

## FOREWORD

The West Virginia Department of Education is pleased to prepare Informal Guidelines for Implementing Public Education Bills Enacted in the Regular Session – 2006 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, title and major new provisions. As time constraints have not permitted an in-depth analysis of these bills from the regular session, it must be emphasized that the information provided in this document must not be considered as official interpretations of the State Superintendent of Schools. Formal interpretations to specific questions will be provided upon request.

The Informal Guidelines for Implementing Public Education Bills Enacted in the Regular Session – 2006 will be of considerable value during the coming school year. Suggestions for improving this document as a service to the Department's clientele are always welcome. This document is also available online at <http://wvde.state.wv.us>.

Please feel free to call or write if you need additional information regarding bills enacted during the 2006 regular session of the West Virginia Legislature.

Dr. Steven L. Paine  
State Superintendent of Schools

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## House Bill 2328

Effective Date: Passed March 11, 2006; in effect ninety days from passage (June 9, 2006)

Signed by Governor: March 31, 2006

Code Reference: Amends §6-9A-11

Title: Open Governmental Proceedings

Major Provisions:

- Adds the provision that any governing body or member thereof that acts in good faith upon reliance of a written advisory opinion of the West Virginia Ethics Commission sought by another person or governing body has an absolute defense to any civil suit or criminal prosecution for any action taken by the governing body or member, as long as the underlying facts and circumstances surrounding the action are substantially the same as those being addressed by the written opinion.

**ENROLLED**

COMMITTEE SUBSTITUTE FOR

**H. B. 2328**

(By Delegate Amores)

[Passed March 11, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §6-9A-11 of the code of West Virginia, 1931, as amended, relating to advisory opinions of the West Virginia Ethics Commission Committee generally and providing that reliance on a written advisory opinion is an absolute defense in certain actions.

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

That §6-9A-11 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 9A. OPEN GOVERNMENTAL PROCEEDINGS.**

**§6-9A-11. Request for advisory opinion; maintaining confidentiality.**

(a) Any governing body or member thereof subject to the provisions of this article may seek advice and information from the executive director of the West Virginia ~~e~~Ethics ~~e~~Commission or request in writing an advisory opinion from the West Virginia ~~e~~Ethics ~~e~~Commission ~~e~~Committee on ~~e~~Open ~~g~~Governmental ~~m~~Meetings as to whether an action or proposed action violates the provisions of this article. The executive director may render oral advice and information upon request. The committee shall respond in writing and in an expeditious manner to a request for an advisory opinion. The opinion ~~shall be~~ is binding on the parties requesting the opinion.

(b) Any governing body or member thereof that seeks an advisory opinion and acts in good faith reliance on the opinion has an absolute defense to any civil suit or criminal prosecution for any action taken in good faith reliance on the opinion unless the committee was willfully and intentionally misinformed as to the facts by the body or its representative.

~~(c) The committee and commission may take appropriate action to protect from disclosure information which is properly shielded by an exception provided for in section four of this article. A governing body or member thereof that acts in good faith reliance on a written advisory opinion sought by another person or governing body has an absolute defense to any civil suit or criminal prosecution for any action taken based upon a written opinion of the West Virginia ethics commission committee, as long as underlying facts and circumstances surrounding the action were the same or substantially the same as those being addressed by the written opinion.~~

(d) The committee and commission may take appropriate action to protect from disclosure information which is properly shielded by an exception provided in section four of this article.

## House Bill 2548

Effective Date: Passed March 9, 2006; in effect ninety days from passage.  
(June 7, 2006)

Signed by Governor: April 3, 2006

Code Reference: Adds §18-2K-1, §18-2K-2, §18-2K-3 and §18-2K-4

Title: The Diabetes Care Plan Act.

Major Provisions:

- Requires the State Board of Education to adopt guidelines for the development of individual diabetes care plans that include representative input, review procedures, staff development and emergency care procedures.
- Requires county boards of education to establish and adopt diabetes care plans for each enrolled student diagnosed with diabetes in accordance with the State Board of Education guidelines required in section two of the article.
- Requires the State Board of Education to report to the Legislative Oversight Commission on Health and Human Resources Accountability no later than September 1, 2007, on the progress made toward meeting the requirements of this article.

**ENROLLED**

**COMMITTEE SUBSTITUTE FOR**

**H. B. 2548**

(By Delegates Tucker, Perdue, Leach, Long, Marshall, Trump and Canterbury)

[Passed March 9, 2006; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18-2K-1, §18-2K-2, §18-2K-3 and §18-2K-4, all relating to establishment of individual diabetes care plans for students with diabetes by county boards of education; requiring the State Board of Education to adopt guidelines for the development and implementation of individual diabetes care plans on or before the first day of January, two thousand seven; requiring each county board of education to adopt a diabetes care plan meeting the guidelines for diabetes care plans adopted by the State Board of Education; requiring the State Board of Education to report to the Legislature regarding adoption of the guidelines and the establishment and implementation of diabetes care plans by county boards of education.

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §18-2K-1, §18-2K-2, §18-2K-3 and §18-2K-4, all to read as follows:

**ARTICLE 2K. THE DIABETES CARE PLAN ACT.**

**§18-2K-1. Title of article.**

This article shall be known as "The Diabetes Care Plan Act."

**§18-2K-2. Adoption of guidelines for individual diabetes care plans.**

(a) The State Board of Education shall adopt guidelines for the development and implementation of individual diabetes care plans on or before the first day of January, two thousand seven. The guidelines for information and allowable actions in a diabetes care plan shall meet or exceed the American Diabetes Association's recommendations for the management of children with diabetes in the school and day care setting. The State Board of Education shall consult with the Bureau for Public Health and the Department of Health and Human Resources in the development of these guidelines. The State Board of Education also shall consult with county board of education employees who have been designated as responsible for coordinating their individual county's efforts to comply with federal regulations adopted under Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794. In its development of these guidelines, the State Board of Education shall consider recent resolutions by the Office of Civil Rights of the United States Department of Education regarding investigation of complaints alleging discrimination against students with diabetes.

The guidelines adopted by the state board shall include:

(1) Procedures for school nurses to develop an individual diabetes care plan for any student diagnosed with diabetes, which shall involve the parent or guardian, the

student's health care provider, the student's classroom teacher, the student if appropriate, and other appropriate school personnel;

(2) Procedures for regular review of an individual care plan.

(3) Information to be included in a diabetes care plan, including the responsibilities and appropriate staff development for teachers and other school personnel, an emergency care plan, the identification of allowable actions to be taken, the extent to which the student is able to participate in the student's diabetes care and management and other information necessary for teachers and other school personnel in order to offer appropriate assistance and support to the student; and

(4) Procedures for information and staff development to be made available to teachers and other school personnel in order to appropriately support and assist students with diabetes.

(b) The State Board of Education shall provide that the guidelines and any subsequent changes are published and disseminated to county boards of education.

**§18-2K-3. Establishment and implementation of diabetes care plans by county boards to support and assist students with diabetes.**

Each county board of education shall establish and adopt a diabetes care plan which shall be implemented in schools in which students diagnosed with diabetes are enrolled.

The plan shall be adopted not later than six months after the State Board of Education adopts guidelines for the plans pursuant to section two of this article. The plan shall meet all of the guidelines for diabetes care plans adopted by the State Board of Education pursuant to section two of this article. In particular, the boards shall require the implementation of the procedures set forth in those guidelines for the development and implementation of individual diabetes care plans. County boards also shall make available necessary information and staff development to teachers and school personnel in order to appropriately support and assist students with diabetes in accordance with their individual diabetes care plans.

**§18-2K-4. Progress report to the Legislature.**

The State Board of Education shall report no later than the first day of September, two thousand seven, to the Legislative Oversight Commission on Health and Human Resources Accountability on the board's progress regarding the adoption and dissemination of the guidelines pursuant to section two of this article and the establishment and implementation of diabetes care plans by county boards of education pursuant to section three of this article.

## House Bill 3213

Effective Date: Passed March 11, 2006; in effect ninety days from passage (June 9, 2006)

Signed by Governor: March 30, 2006

Code Reference: Adds §61-2-16a

Title: Crimes Against the Person

Major Provisions:

- Adds the provision that any person who maliciously shoots, stabs, cuts or wounds or by any means causes bodily injury with the intent to maim, disfigure, disable or kill any driver, conductor, motorman, captain or any other person in charge of any vehicle or boat used as a public conveyance shall be guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility for not less than three years nor more than fifteen years.

ENROLLED

COMMITTEE SUBSTITUTE FOR

H. B. 3213

(By Delegates Delong, Craig, Amores)

[Passed March 11, 2006; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-2-16a, relating to creating crimes against common carriers and providing penalties.

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §61-2-16a, to read as follows:

**ARTICLE 2. CRIMES AGAINST THE PERSON.**

**§61-2-16a. Malicious assault; unlawful assault; battery and recidivism of battery; assault on a driver, conductor, motorman, captain, pilot or other person in charge of any vehicle used for public conveyance.**

(a) Malicious assault. -- Any person who maliciously shoots, stabs, cuts or wounds or by any means causes bodily injury with intent to maim, disfigure, disable or kill any driver, conductor, motorman, captain or other person in charge of any vehicle or boat, driven by steam, electricity, gasoline or other motive power and used for public conveyance acting in his or her official capacity and the person committing the malicious assault knows or has reason to know that the victim is a driver, conductor, motorman, captain or other person in charge of any vehicle or boat used as a public conveyance, acting in his or her official capacity, is guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility for not less than three nor more than fifteen years.

(b) Unlawful assault. -- Any person who unlawfully but not maliciously shoots, stabs, cuts or wounds or by any means causes any driver, conductor, motorman, captain or other person in charge of any vehicle, aircraft or boat, driven by steam, electricity, gasoline or other motive power and used for public conveyance acting in his or her official capacity, bodily injury with intent to maim, disfigure, disable or kill him or her and the person committing the unlawful assault knows or has reason to know that the victim is a driver, conductor, motorman, captain or other person in charge of any vehicle or boat used as a public conveyance, acting in his or her official capacity, is guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility for not less than two nor more than five years.

(c) Battery. -- Any person who unlawfully, knowingly and intentionally makes physical contact of an insulting or provoking nature with a driver, conductor, motorman, captain or other person in charge of any vehicle or boat, driven by steam, electricity, gasoline or other motive power and used for public conveyance, acting in his or her official capacity, or unlawfully and intentionally causes physical harm to a driver, conductor, motorman, captain or other person in charge of any vehicle or boat, driven by steam, electricity, gasoline or other motive power and used for public conveyance, in such capacity, and the person committing the battery knows or has reason to know that the victim is a driver, conductor, motorman, captain or other person in charge of any vehicle

or boat used as a public conveyance, acting in his or her official capacity is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than one month nor more than twelve months, fined the sum of five hundred dollars, or both. If any person commits a second such offense, he or she is guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility for not less than one year nor more than three years or fined the sum of one thousand dollars or both fined and confined. Any person who commits a third violation of this subsection is guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility not less than two years nor more than five years or fined not more than two thousand dollars or both fined and confined.

(d) Assault. -- Any person who unlawfully attempts to commit a violent injury to the person of a driver, conductor, motorman, captain or other person in charge of any vehicle or boat, driven by steam, electricity, gasoline or other motive power and used for public conveyance , acting in his or her official capacity, or unlawfully commits an act which places a driver, conductor, motorman, captain or other person in charge of any vehicle or boat, driven by steam, electricity, gasoline or other motive power and used for public conveyance , acting in his or her official capacity, in reasonable apprehension of immediately receiving a violent injury, and the person committing the assault knows or has reason to know that the victim is a driver, conductor, motorman, captain or other person in charge of any vehicle or boat used as a public conveyance, acting in his or her official capacity is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than twenty-four hours nor more than six months, fined not more than two hundred dollars, or both fined and confined.

## House Bill 4023

Effective Date: Passed March 11, 2006; in effect ninety days from passage (June 9, 2006)

Signed by Governor: April 4, 2006

Code Reference: Amends §21-5C-2

Title: State Minimum Wage

### Major Provisions:

- Increases the State minimum hourly wage that every employer must pay to each employee, as follows:
  - o After June 30, 2006, to \$5.85 per hour;
  - o After June 30, 2007, to \$6.55 per hour, and;
  - o After June 30, 2008, to \$7.25 per hour.
  
- Adds the requirement that at such time as the federal minimum hourly wage is equal to or greater than the wage rates prescribed above, every employer must pay to each employee wages at a rate of not less than the federal minimum hourly wage.
  
- Adds the provision that the wages established pursuant to this section shall be applicable to all individuals employed by the State, its agencies, and departments, regardless of whether the employees or employers are subject to any federal act related to minimum wage.

**ENROLLED**

**COMMITTEE SUBSTITUTE FOR**

**H. B. 4023**

(By Delegates Brown, Amores, Caputo, Hartman, Hrutkay, and R. Thompson)

[Passed March 11, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §21-5C-2 of the Code of West Virginia, 1931, as amended, relating to increasing the state minimum and training wage; linking the state minimum and training wage to the federal minimum and training wage; making all departments and agencies of the State of West Virginia subject to the minimum wage established in this section regardless of federal law; and providing the minimum wage will not fall below the federal minimum wage.

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

That §21-5C-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 5C. MINIMUM WAGE AND MAXIMUM HOURS STANDARDS.**

**§21-5C-2. Minimum wages.**

(a) *Minimum wage:*

(1) After the thirtieth day of ~~September~~ June, ~~one thousand nine hundred ninety-seven~~ two thousand six, every employer shall pay to each of his or her employees wages at a rate not less than ~~four~~ five dollars and ~~seventy~~ eighty-five cents per hour.

(2) After the ~~thirty-first~~ thirtieth day of ~~August~~ June, ~~one two thousand nine hundred ninety-eight~~ seven, every employer shall pay to each of his or her employees wages at a rate not less than ~~five~~ six dollars and ~~fifteen~~ fifty-five cents per hour.

(3) After the thirtieth day of June, two thousand eight, every employer shall pay to each of his or her employees wages at a rate not less than seven dollars and twenty-five cents per hour.

(4) At such time as the federal minimum hourly wage as prescribed by 29 U.S.C. § 206(a)(1) is equal to or greater than the wage rate prescribed in subdivision (3) of this subsection, every employer shall pay to each of his or her employees wages at a rate of not less than the federal minimum hourly wage as prescribed by 29 U.S.C. § 206(a)(1). The minimum wage rates required under this subparagraph shall be thereafter adjusted in accordance with adjustments made in the federal minimum hourly rate. The adoption of the federal minimum wage provided by this subdivision includes only the federal minimum hourly rate prescribed in 29 U.S.C. § 206(a)(1) and does not include other wage rates, or conditions, exclusions, or exceptions to the federal minimum hourly wage rate. In addition, adoption of the federal minimum hourly wage rate does not extend or modify the scope or coverage of the minimum wage rate required under this subdivision.

(b) *Training wage:*

(1) Notwithstanding the provisions set forth in subsection (a) of this section to the contrary, an employer may pay an employee first hired after the thirtieth day of

~~September~~ June, ~~one two thousand nine hundred ninety seven~~ six, a subminimum training wage not less than ~~four~~ five dollars and ~~twenty five~~ fifteen cents per hour.

(2) An employer may not pay the subminimum training wage set forth in subdivision (1) of this subsection to any individual:

(i) Who has attained or attains while an employee of the employer, the age of twenty years; or

(ii) For a cumulative period of not more than ninety days per employee: *Provided*, That if any business has not been in operation for more than ninety days at the time the employer hired the employee, the employer may pay the employee the subminimum training wage set forth in subdivision (1) of this subsection for an additional period not to exceed ninety days.

(3) At such time as the federal subminimum training wage as prescribed by 29 U.S.C. § 206(g)(1) is equal to or greater than the wage rate prescribed in subdivision (1) of this subsection, every employer shall pay to each of his or her employees wages at a rate of not less than the federal minimum hourly wage as prescribed by 29 U.S.C. § 206(g)(1). The minimum wage rates required under this subparagraph shall be thereafter adjusted in accordance with adjustments made in the federal minimum hourly rate. The adoption of the federal minimum wage provided by this subdivision includes only the federal minimum hourly rate prescribed in 29 U.S.C. § 206(g)(1) and does not include other wage rates, or conditions, exclusions, or exceptions to the federal minimum hourly wage rate. In addition, adoption of the federal minimum hourly wage rate does not extend or modify the scope or coverage of the minimum wage rate required under this subdivision.

(c) Notwithstanding any provision or definition to the contrary, the wages established pursuant to this section shall be applicable to all individuals employed by the State of West Virginia, its agencies, and departments, regardless if such employee or employer are subject to any federal act relating to minimum wage: *Provided*, that at no time shall the minimum wage established pursuant to this section fall below the federal minimum hourly wage as prescribed by 29 U. S. C. §206(a)(1).

## House Bill 4032

Effective Date: Passed March 11, 2006; in effect ninety days from passage (June 9, 2006)

Signed by Governor: March 31, 2006

Code Reference: Amends §5-10D-1

Title: Additional Charge for Late Remittance of Payments to the Consolidated Public Retirement Board (CPRB)

### Major Provisions:

- Authorizes the CPRB to charge any participating public employer who fails to remit any payment due any retirement system by the fifteenth day of the month following the month in which the payment is due, the amount of the payment plus an additional amount equal to the actuarial rate of interest lost on both the employer and employee total contributions owed for each month the payment is delinquent.
- Authorizes the CPRB to charge a participating public employer whose employees are members of the Teachers' Defined Contribution System and who fail to remit any payment due by the fifteenth day following the end of each pay period the amount of the payment plus an additional amount equal to the earnings lost on both the employer and employee total contributions owed at the actuarial rate of return determined by the CPRB.
- Specifies that the minimum surcharge is fifty dollars per month.

## ENROLLED

### COMMITTEE SUBSTITUTE FOR

#### H. B. 4032

(By Delegates Stalnaker, Browning, Williams, Frederick, Hall, Duke and Manchin)

[Passed March 11, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §5-10D-1 of the Code of West Virginia, 1931, as amended, relating to authorizing the Consolidated Public Retirement Board to recover from a participating employer that fails to pay contributions due in a timely manner, amounts not to exceed interest or other earnings lost as a result of the untimely payment, or a reasonable minimum fee, whichever is greater, as provided by legislative rule; requiring that any amounts recovered shall be administered in the same manner in which the contributions are required to be administered; and making technical corrections.

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

That §5-10D-1 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

#### **ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.**

##### **§5-10D-1. Consolidated Public Retirement Board continued; members; vacancies; investment of plan funds.**

- (a) The Consolidated Public Retirement Board is continued to administer all public retirement plans in this state. It shall administer the Public Employees Retirement System established in article ten of this chapter; the Teachers Retirement System established in article seven-a, chapter eighteen of this code; the Teachers Defined Contribution Retirement System created by article seven-b of said chapter; the West Virginia State Police Death, Disability and Retirement Fund created by article two, chapter fifteen of this code; the West Virginia State Police Retirement System created by article two-a of said chapter; the Deputy Sheriff Death, Disability and Retirement Fund created by article fourteen-d, chapter seven of this code; and the Judges' Retirement System created under article nine, chapter fifty-one of this code.
- (b) The membership of the Consolidated Public Retirement Board consists of:
- (1) The Governor or his or her designee;
  - (2) The State Treasurer or his or her designee;
  - (3) The State Auditor or his or her designee;
  - (4) The Secretary of the Department of Administration or his or her designee;
  - (5) Four residents of the state, who are not members, retirants or beneficiaries of any of the public retirement systems, to be appointed by the Governor, with the advice and consent of the Senate; and
  - (6) A member, annuitant or retirant of the Public Employees Retirement System who is or was a state employee; a member, annuitant or retirant of the Public Employees Retirement System who is not or was not a state employee; a member, annuitant or retirant of the Teachers Retirement System; a member, annuitant or retirant of the West Virginia State Police Death, Disability and Retirement Fund; a member, annuitant or

retirant of the Deputy Sheriff Death, Disability and Retirement Fund; and a member, annuitant or retirant of the Teachers Defined Contribution Retirement System all to be appointed by the Governor, with the advice and consent of the Senate.

(c) The appointed members of the Bboard serve five-year terms. A member appointed pursuant to subdivision (6), subsection (b) of this section ceases to be a member of the Bboard if he or she ceases to be a member of the represented system. If a vacancy occurs in the appointed membership, the Governor, within sixty days, shall fill the vacancy by appointment for the unexpired term. No more than five appointees may be of the same political party.

(d) The Consolidated Public Retirement Board has all the powers, duties, responsibilities and liabilities of the Public Employees Retirement System established pursuant to article ten of this chapter; the Teachers Retirement System established pursuant to article seven-a, chapter eighteen of this code; the Teachers Defined Contribution System established pursuant to article seven-b of said chapter; the West Virginia State Police Death, Disability and Retirement Fund created pursuant to article two, chapter fifteen of this code; the West Virginia State Police Retirement System created by article two-a of said chapter; the Deputy Sheriff Death, Disability and Retirement Fund created pursuant to article fourteen-d, chapter seven of this code; and the Judges' Retirement System created pursuant to article nine, chapter fifty-one of this code and their appropriate governing boards.

(e) The Consolidated Public Retirement Board may propose rules for legislative approval, in accordance with article three, chapter twenty-nine-a of this code, necessary to effectuate its powers, duties and responsibilities: *Provided*, That the Bboard may adopt any or all of the rules, previously promulgated, of a retirement system which it administers.

(f) (1) The Consolidated Public Retirement Board shall continue to transfer all funds received for the benefit of the retirement systems within the consolidated pension plan as defined in section three-c, article six-b, chapter forty-four of this code, including, but not limited to, all employer and employee contributions, to the West Virginia Investment Management Board: *Provided*, That the employer and employee contributions of the Teachers Defined Contribution System, established in section three, article seven-b, chapter eighteen of this code, and voluntary deferred compensation funds invested by the West Virginia Consolidated Public Retirement Board pursuant to section five, article ten-b of this chapter may not be transferred to the West Virginia Investment Management Board.

(2) The board may recover from a participating employer that fails to pay any amount due a retirement system in a timely manner the contribution due and an additional amount not to exceed interest or other earnings lost as a result of the untimely payment, or a reasonable minimum fee, whichever is greater, as provided by legislative rule promulgated pursuant to the provisions of article three, chapter twenty-nine-a of this code. Any amounts recovered shall be administered in the same manner in which the amount due is required to be administered.

(g) Notwithstanding any provision of this code or any legislative rule to the contrary, all assets of the public retirement plans set forth in subsection (a) of this section shall be held in trust. The Consolidated Public Retirement Board is a trustee for all public retirement plans, except with regard to the investment of funds: *Provided*, That the Consolidated Public Retirement Board is a trustee with regard to the investments of the Teachers' Defined Contribution System, the voluntary deferred compensation funds invested pursuant to section five, article ten-b of this chapter and any other assets of the

public retirement plans administered by the Consolidated Public Retirement Board as set forth in subsection (a) of this section for which no trustee has been expressly designated in this code.

(h) The ~~B~~board may employ the West Virginia Investment Management Board to provide investment management consulting services for the investment of funds in the Teachers' Defined Contribution System.

## House Bill 4283

Effective Date: Passed March 11, 2006; in effect ninety days from passage (June 9, 2006)

Signed by Governor: March 31, 2006

Code Reference: Amends §5A-3-37

Title: Preference for Resident Veterans

Major Provisions:

- Regarding the purchase of commodities or printing, adds authorization for the State or any political subdivision to grant vendor preference to an individual resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard and has resided in West Virginia continuously for the four years immediately preceding the date on which the bid is submitted, if the vendor's bid does not exceed the lowest qualified bid from a nonresident vendor by more than 3 ½ percent and the vendor has made written claim for the preference at the time the bid was submitted.
  
- Also adds the same authorization, regarding the purchase of commodities or printing, for the State or any political subdivision to grant vendor preference to a resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard and if, on average, at least 75% of the vendor's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years, and the vendor's bid does not exceed the lowest qualified bid from a nonresident vendor by more than 3 ½ percent, and the vendor has made written claim for the preference at the time the bid was submitted.

## ENROLLED

### H. B. 4283

(By Mr. Speaker, (Mr. Kiss) and Delegates DeLong,

Argento, Amores, Caputo, Beach, Perry and Michael)

[Passed March 11, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §5A-3-37 of the Code of West Virginia, 1931, as amended, relating to providing a preference to West Virginia veterans in the awarding of state contracts in the competitive bidding process.

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

That §5A-3-37 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

#### **ARTICLE 3. PURCHASING DIVISION.**

#### **§5A-3-37. Preference for resident vendors; preference for vendors employing state residents; preference for veteran residents; exceptions.**

(a) Other provisions of this article notwithstanding, effective the first day of July, one thousand nine hundred ninety, through the thirtieth day of June, one thousand nine hundred ninety-four, in any instance involving the purchase of construction services for the construction, repair or improvement of any buildings or portions thereof, where the total aggregate cost thereof, whether one or a series of contracts are awarded in completing the project, is estimated by the director to exceed the sum of fifty thousand dollars and where the director or any state department is required under the provisions of this article to make the purchase, construction, repair or improvement upon competitive bids, the successful bid shall be determined as provided in this section. Effective beginning the first day of July, one thousand nine hundred ninety-two, in any instance that a purchase of commodities or printing by the director or by a state department is required under the provisions of this article to be made upon competitive bids, the successful bid shall be determined as provided in this section. The ~~Secretary of the Department of tax and Revenue~~ shall promulgate any rules and regulations necessary to: (i) Determine that vendors have met the residence requirements described in this section; (ii) establish the procedure for vendors to certify the residency requirements at the time of submitting their bids; (iii) establish a procedure to audit bids which make a claim for preference permitted by this section and to reject noncomplying bids; and (iv) otherwise accomplish the objectives of this section. In prescribing the rules and regulations, the secretary shall use a strict construction of the residence requirements set forth in this section. For purposes of this section, a successful bid shall be determined and accepted as follows:

(1) From an individual resident vendor who has resided in West Virginia continuously for the four years immediately preceding the date on which the bid is submitted or from a partnership, association, corporation resident vendor, or from a corporation nonresident vendor which has an affiliate or subsidiary which employs a minimum of one hundred state residents and which has maintained its headquarters or principal place of business within West Virginia continuously for four years immediately preceding the date on which the bid is submitted, if the vendor's bid does not exceed the lowest qualified bid

from a nonresident vendor by more than two and one-half percent of the latter bid, and if the vendor has made written claim for the preference at the time the bid was submitted: *Provided*, That for purposes of this subdivision, any partnership, association or corporation resident vendor of this state, which does not meet the requirements of this subdivision solely because of the continuous four-year residence requirement, shall be considered to meet the requirement if at least eighty percent of the ownership interest of the resident vendor is held by another individual, partnership, association or corporation resident vendor who otherwise meets the requirements of this subdivision, including the continuous four-year residency requirement: *Provided, however*, That the ~~s~~Secretary of the ~~d~~Department of ~~tax and r~~Revenue shall promulgate rules and regulations relating to attribution of ownership among several resident vendors for purposes of determining the eighty percent ownership requirement; or

(2) From a resident vendor, if, for purposes of producing or distributing the commodities or completing the project which is the subject of the vendor's bid and continuously over the entire term of the project, on average at least seventy-five percent of the vendor's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years and the vendor's bid does not exceed the lowest qualified bid from a nonresident vendor by more than two and one-half percent of the latter bid, and if the vendor has certified the residency requirements of this subdivision and made written claim for the preference, at the time the bid was submitted; or

(3) From a nonresident vendor, which employs a minimum of one hundred state residents or a nonresident vendor which has an affiliate or subsidiary which maintains its headquarters or principle place of business within West Virginia and which employs a minimum of one hundred state residents, if, for purposes of producing or distributing the commodities or completing the project which is the subject of the vendor's bid and continuously over the entire term of the project, on average at least seventy-five percent of the vendor's employees or the vendor's affiliate's or subsidiary's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years and the vendor's bid does not exceed the lowest qualified bid from a nonresident vendor by more than two and one-half percent of the latter bid, and if the vendor has certified the residency requirements of this subdivision and made written claim for the preference, at the time the bid was submitted; or

(4) From a vendor who meets either the requirements of both subdivisions (1) and (2) of this subsection or subdivisions (1) and (3) of this subsection, if the bid does not exceed the lowest qualified bid from a nonresident vendor by more than five percent of the latter bid, and if the vendor has certified the residency requirements above and made written claim for the preference at the time the bid was submitted; ~~or~~

~~(b) If the Secretary of the Department of Revenue determines under any audit procedure that a vendor who received a preference under this section fails to continue to meet the requirements for the preference at any time during the term of the project for which the preference was received the secretary may: (1) Reject the vendor's bid; or (2) assess a penalty against the vendor of not more than five percent of the vendor's bid on the project.~~

~~(c) Political subdivisions of the state including county boards of education may grant the same preferences to any vendor of this state who has made a written claim for the preference at the time a bid is submitted, but for the purposes of this subsection, in determining the lowest bid, any political subdivision shall exclude from the bid the amount of business occupation taxes which must be paid by a resident vendor to any municipality within the county comprising or located within the political subdivision as a~~

~~result of being awarded the contract which is the object of the bid; in the case of a bid received by a municipality, the municipality shall exclude only the business and occupation taxes as will be paid to the municipality: *Provided*, That prior to soliciting any competitive bids, any political subdivision may, by majority vote of all its members in a public meeting where all the votes are recorded, elect not to exclude from the bid the amount of business and occupation taxes as provided in this subsection.~~

~~(d) If any of the requirements or provisions set forth in this section jeopardize the receipt of federal funds, then the requirement or provisions are void and of no force and effect for that specific project.~~

~~(e) If any provision or clause of this section or application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.~~

~~(f) This section may be cited as the "Jobs for West Virginians Act of 1990."~~

(5) From an individual resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard and has resided in West Virginia continuously for the four years immediately preceding the date on which the bid is submitted, if the vendor's bid does not exceed the lowest qualified bid from a nonresident vendor by more than three and one-half percent of the latter bid, and if the vendor has made written claim for the preference at the time the bid was submitted; or

(6) From a resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard, if, for purposes of producing or distributing the commodities or completing the project which is the subject of the vendor's bid and continuously over the entire term of the project, on average at least seventy-five percent of the vendor's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years and the vendor's bid does not exceed the lowest qualified bid from a nonresident vendor by more than three and one-half percent of the latter bid, and if the vendor has certified the residency requirements of this subdivision and made written claim for the preference, at the time the bid was submitted.

(b) If the Secretary of the Department of Revenue determines under any audit procedure that a vendor who received a preference under this section fails to continue to meet the requirements for the preference at any time during the term of the project for which the preference was received the secretary may: (1) Reject the vendor's bid; or (2) assess a penalty against the vendor of not more than five percent of the vendor's bid on the project.

(c) Political subdivisions of the state including county boards of education may grant the same preferences to any vendor of this state who has made a written claim for the preference at the time a bid is submitted, but for the purposes of this subsection, in determining the lowest bid, any political subdivision shall exclude from the bid the amount of business occupation taxes which must be paid by a resident vendor to any municipality within the county comprising or located within the political subdivision as a result of being awarded the contract which is the object of the bid; in the case of a bid received by a municipality, the municipality shall exclude only the business and occupation taxes as will be paid to the municipality: *Provided*, That prior to soliciting any competitive bids, any political subdivision may, by majority vote of all its members in a public meeting where all the votes are recorded, elect not to exclude from the bid the amount of business and occupation taxes as provided in this subsection.

(d) If any of the requirements or provisions set forth in this section jeopardize the receipt

of federal funds, then the requirement or provisions are void and of no force and effect for that specific project.

(e) If any provision or clause of this section or application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(f) This section may be cited as the "Jobs for West Virginians Act of 1990."

## House Bill 4296

Effective Date: Passed March 11, 2006; in effect ninety days from passage (June 9, 2006)

Signed by Governor: March 31, 2006

Code Reference: Adds §55-7-18a.

Title: Employer Immunity from Liability

Major Provisions:

- Adds the provision that any employer or designated agent who discloses job-related information that may be reasonably considered adverse about a former or current employee to a prospective employer is presumed to be acting in good faith and is immune from civil liability for the disclosure or its consequences, provided that the disclosure is in writing and a copy is provided to the employee at the time of disclosure.
- Defines job-related information as information concerning a person's education, training, experience, qualifications, conduct and job performance which is offered for the purpose of providing criteria to evaluate the person's suitability for employment.

ENROLLED

COMMITTEE SUBSTITUTE FOR

H. B. 4296

(By Delegates Craig, Amores, Morgan and Leach)

[Passed March 11, 2006; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §55-7-18a, relating to providing employers with qualified immunity from liability for disclosing to a prospective employer job-related information reasonably believed to be adverse concerning a current or former employee; requiring written disclosure of the job-related information; and providing for the correction of false or misleading information.

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §55-7-18a, to read as follows:

**ARTICLE 7. ACTIONS FOR INJURIES.**

**§55-7-18a. Employer immunity from liability; disclosure of information regarding former employees.**

(a) Any employer or his or her designated agent who discloses job-related information that may be reasonably considered adverse about a former or current employee to a prospective employer of the former or current employee is presumed to be acting in good faith and is immune from civil liability for the disclosure or its consequences:

Provided, That the disclosure of such information pursuant to this subsection shall be in writing and a copy of any such disclosure shall be provided to the former or current employee at the time of disclosure.

(b) For the purposes of this section, the presumption of good faith is rebutted upon a showing, by a preponderance of the evidence, that the information disclosed was:

(1) Knowingly false;

(2) Disclosed with reckless disregard for the truth;

(3) Deliberately misleading;

(4) Rendered with malicious purpose toward the former or current employee; or

(5) Disclosed in violation of a nondisclosure agreement or applicable law.

(c) For purposes of this section, "job-related information" means information concerning a person's education, training, experience, qualifications, conduct and job performance which is offered for the purpose of providing criteria to evaluate the person's suitability for employment.

(d) If an employer disclosed job-related information to a prospective employer of a former or current employee that was false or misleading, and if the current or former employee requests, then the employer shall give corrected information to every person or entity that is in the employer's records as having received the original information, with a copy thereof to the former or current employee.

## House Bill 4406

Effective Date: Passed March 11, 2006; in effect 90 days from passage (June 9, 2006)

Signed by Governor: April 4, 2006

Code Reference: Amends §18A-2-12

Title: Performance evaluation of school personnel; professional personnel evaluation process.

Major Provisions:

- Removes the requirement to evaluate classroom teachers with at least five years of experience and no unsatisfactory evaluations for at least a period of three years.
- States that these teachers are to be evaluated only when the principal determines it to be necessary or the teacher requests it.

## ENROLLED

### H. B. 4406

(By Delegates Perry, Pino, Beach, Williams, Duke, Campbell, Poling and Sumner)

[Passed March 11, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §18A-2-12 of the Code of West Virginia, 1931, as amended, relating to professional evaluations of classroom teachers; removing the requirement to evaluate certain classroom teachers at least every three years; and making technical changes.

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

That §18A-2-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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

##### **§18A-2-12. Performance evaluations of school personnel; professional personnel evaluation process.**

(a) The ~~S~~state ~~B~~board of ~~E~~ducation shall adopt a written system for the evaluation of the employment performance of personnel, which system shall be applied uniformly by county boards of education in the evaluation of the employment performance of personnel employed by the board.

(b) The system adopted by the ~~S~~state ~~B~~board of ~~E~~ducation for evaluating the employment performance of professional personnel shall be in accordance with the provisions of this section.

(c) For purposes of this section, "professional personnel", "professional" or "professionals", means professional personnel as defined in section one, article one of this chapter.

(d) In developing the professional personnel performance evaluation system, and amendments thereto, the state board shall consult with the ~~professional development project of the e~~Center for ~~p~~Professional ~~d~~Development created in ~~section three~~, article three-a of this chapter. The center shall participate actively with the state board in developing written standards for evaluation which clearly specify satisfactory performance and the criteria to be used to determine whether the performance of each professional meets such standards.

(e) The performance evaluation system shall contain, but shall not be limited to, the following information:

(1) The professional personnel positions to be evaluated, whether they be teachers, substitute teachers, administrators, principals or others;

(2) The frequency and duration of the evaluations, which shall be on a regular basis and of such frequency and duration as to insure the collection of a sufficient amount of data from which reliable conclusions and findings may be drawn: *Provided*, That for school personnel with five or more years of experience, who have not received an unsatisfactory rating, evaluations shall be conducted no more than once every three years unless the principal determines an evaluation for a particular school employee is needed more frequently: *Provided, however*, That for classroom teachers with five or more years of experience who have not received an unsatisfactory rating, an evaluation shall be conducted or professional growth and development plan required only when the

principal determines it to be necessary for a particular classroom teacher, or when a classroom teacher may exercises the option of being evaluated at more frequent intervals;

(3) The evaluation shall serve the following purposes:

(A) Serve as a basis for the improvement of the performance of the personnel in their assigned duties;

(B) Provide an indicator of satisfactory performance for individual professionals;

(C) Serve as documentation for a dismissal on the grounds of unsatisfactory performance; and

(D) Serve as a basis for programs to increase the professional growth and development of professional personnel;

(4) The standards for satisfactory performance for professional personnel and the criteria to be used to determine whether the performance of each professional meets such standards and other criteria for evaluation for each professional position evaluated. Effective the first day of July, two thousand three and thereafter, professional personnel, as appropriate, shall demonstrate competency in the knowledge and implementation of the technology standards adopted by the state board. If a professional fails to demonstrate competency, in the knowledge and implementation of these standards, he or she will be subject to an improvement plan to correct the deficiencies; and

(5) Provisions for a written improvement plan, which shall be specific as to what improvements, if any, are needed in the performance of the professional and shall clearly set forth recommendations for improvements, including recommendations for additional education and training during the professional's recertification process.

(f) A professional whose performance is considered to be unsatisfactory shall be given notice of deficiencies. A remediation plan to correct deficiencies shall be developed by the employing county board of education and the professional. The professional shall be given a reasonable period of time for remediation of the deficiencies and shall receive a statement of the resources and assistance available for the purposes of correcting the deficiencies.

(g) No person may evaluate professional personnel for the purposes of this section unless the person has an administrative certificate issued by the state superintendent and has successfully completed education and training in evaluation skills through the center for professional development, or equivalent education training approved by the state board, which will enable the person to make fair, professional, and credible evaluations of the personnel whom the person is responsible for evaluating. After the first day of July, one thousand nine hundred ninety-four, no person may be issued an administrative certificate or have an administrative certificate renewed unless the state board determines that the person has successfully completed education and training in evaluation skills through the center for professional development, or equivalent education and training approved by the state board.

(h) Any professional whose performance evaluation includes a written improvement plan shall be given an opportunity to improve his or her performance through the implementation of the plan. If the next performance evaluation shows that the professional is now performing satisfactorily, no further action may be taken concerning the original performance evaluation. If the evaluation shows that the professional is still not performing satisfactorily, the evaluator either shall make additional recommendations for improvement or may recommend the dismissal of the professional in accordance with the provisions of section eight of this article.

(i) Lesson plans are intended to serve as a daily guide for teachers and substitutes for the orderly presentation of the curriculum. Lesson plans may not be used as a substitute for observations by an administrator in the performance evaluation process. A classroom teacher, as defined in section one, article one of this chapter, may not be required to post his or her lesson plans on the internet or otherwise make them available to students and parents or to include in his or her lesson plans any of the following:

(1) Teach and re-teach strategies;

(2) Write to learn activities;

(3) Cultural diversity;

(4) Color coding; or

(5) Any other similar items which are not required to serve as a guide to the teacher or substitute for daily instruction; and

(j) The Legislature finds that classroom teachers must be free of unnecessary paper work so that they can focus their time on instruction. Therefore, classroom teachers may not be required to keep records or logs of routine contacts with parents or guardians.

(k) Nothing in this section may be construed to prohibit classroom teachers from voluntarily posting material on the internet.

## House Bill 4454

Effective Date: Passed March 10, 2006; in effect ninety days from passage (June 8, 2006).

Signed by Governor: April 4, 2006

Code Reference: Amends §21-5-4

Title: Wage Payment and Collection

Major Provisions:

- Increases the amount of liquidating damages that an employer is required to pay to an employee who is discharged and whose payment of wages is not made as required by statute, from the amount of the wages to three times the amount of the wages.
- The wage payment requirements, which were not changed, are:
  - o A person, firm or corporation that discharges an employee must pay the employee's wages in full within seventy-two (72) hours.
  - o If an employee quits or resigns, the employer must pay the employee's wages no later than the next regular payday, except that if the employee gives at least one pay period's notice of intention to quit, the person, firm or corporation must pay all wages earned by the employee at the time the employee quits.
- If an employee, for whatever reason is laid off, the employer must pay in full to the employee, not later than the next regular payday, all wages earned at the time of suspension or layoff.

## ENROLLED

### COMMITTEE SUBSTITUTE FOR

#### H. B. 4454

(By Mr. Speaker, Mr. Kiss, and Delegates Morgan, Pethtel, Stemple, Trump, Amores, Schadler, Hartman, Sobonya, Craig and Azinger)

[Passed March 10, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §21-5-4 of the Code of West Virginia, 1931, as amended, relating to wages withheld from an employee; clarifying that liquidated damages be proportionately related to wages owed to an employee; and providing that liquidated damages will equal three times actual damages.

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

That §21-5-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

#### **ARTICLE 5. WAGE PAYMENT AND COLLECTION.**

##### **§21-5-4. Cash orders; employees separated from payroll before paydays.**

(a) In lieu of lawful money of the United States, any person, firm or corporation may compensate employees for services by cash order which may include checks or money orders on banks convenient to the place of employment where suitable arrangements have been made for the cashing of such checks by employees for the full amount of wages.

(b) Whenever a person, firm or corporation discharges an employee, such person, firm or corporation shall pay the employee's wages in full within seventy-two hours.

(c) Whenever an employee quits or resigns, the person, firm or corporation shall pay the employee's wages no later than the next regular payday, either through the regular pay channels or by mail if requested by the employee, except that if the employee gives at least one pay period's notice of intention to quit the person, firm or corporation shall pay all wages earned by the employee at the time of quitting.

(d) When work of any employee is suspended as a result of a labor dispute, or when an employee for any reason whatsoever is laid off, the person, firm or corporation shall pay in full to such employee not later than the next regular payday, either through the regular pay channels or by mail if requested by the employee, wages earned at the time of suspension or layoff.

(e) If a person, firm or corporation fails to pay an employee wages as required under this section, such person, firm or corporation shall, in addition to the amount which was unpaid when due, be liable to the employee for three times that unpaid amount as liquidated damages in the amount of wages at his regular rate for each day the employer is in default, until he is paid in full, without rendering any service therefore: **Provided, however,** that he shall cease to draw such wages thirty days after such default. Every employee shall have such lien and all other rights and remedies for the protection and enforcement of such salary or wages, as he or she would have been entitled to had he or she rendered service therefor in the manner as last employed; except that, for the purpose of such liquidated damages, such failure shall not be

deemed to continue after the date of the filing of a petition in bankruptcy with respect to the employer if he or she is adjudicated bankrupt upon such petition.

## House Bill 4491

Effective Date: Passed March 8, 2006; in effect 90 days from passage (June 6, 2006)

Signed by Governor: March 29, 2006

Code Reference: Adds §§18-100-1 through 18-100-5

Title: Disability History Week

Major Provisions:

- Recognizes that 24% of the state's population is disabled.
- Acknowledges that it is necessary to expand the public's knowledge of disabilities.
- Acknowledges that October is recognized nationally as Disability Awareness Month.
- Designates the third week in October as Disability History Week in West Virginia so that students and the public will have the opportunity to learn more about the history and contributions of people with disabilities.
- Requires each public school to provide instruction on disability history, people with disabilities and the disability rights movement.
- Specifies that the instruction shall be integrated into the existing school curriculum.
- Suggestions of integrating the instruction include guest speakers, lesson plans, school assemblies, and other school activities.
- Encourages institutions of higher education to conduct and promote activities regarding Disability History Week.
- Encourages the Legislature to annually recognize Disability History Week by introducing a concurrent resolution to recognize youth leaders in the disability rights movement, reaffirm a commitment to the full inclusion of people with disabilities in society, recognize the disability rights movement as an important part of the history of this state and nation, recognize resources for information, such as, the Centers for Independent Living, the Statewide Independent Living Council, the Developmental Disabilities Council, and the State Americans with Disabilities Act Coordinator.
- States that the provisions of the bill are not intended to create a

burden, financial or otherwise, for public schools, teachers or state institutions of higher education.

## ENROLLED

### COMMITTEE SUBSTITUTE FOR

#### H. B. 4491

(By Mr. Speaker, Mr. Kiss, and Delegate Campbell)

[Passed March 8, 2006; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18-100-1, §18-100-2, §18-100-3, §18-100-4 and §18-100-5, all relating to increasing the awareness and understanding of the history and contributions of people with disabilities in the state, nation and world; designating the third week of October as Disability History Week for the state of West Virginia; requiring integration of instruction on disability history, people with disabilities and the disability rights movement into the existing public school curriculum; legislative findings; and defined terms.

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §18-100-1, §18-100-2, §18-100-3, §18-100-4 and §18-100-5, all to read as follows:

#### **ARTICLE 100. DISABILITY HISTORY WEEK.**

##### **§18-100-1. Short title.**

This article is known and may be cited as the "Disability History Week Act."

##### **§18-100-2. Legislative findings.**

The Legislature finds that:

(1) According to the two thousand United States Census over four hundred thousand West Virginians have disabilities, which is nearly twenty-four percent of the state's general population;

(2) In order to ensure the full inclusion of people with disabilities into society, it is necessary to expand the public's knowledge, awareness and understanding of the history of disabilities and the disability rights movement;

(3) The disability rights movement is a civil rights movement that is an important part of the history of this state and this country;

(4) October is recognized nationally as Disability Awareness Month; and

(5) By designating the third week of October as Disability History Week, students and the public will have the opportunity to learn about the history and contributions of people with disabilities.

##### **§18-100-3. Purpose.**

The purpose of this article is to increase the awareness and understanding of the history and contributions of people with disabilities in the state, nation and world by designating the annual observance of the third week of October as Disability History Week.

##### **§18-100-4. Definitions.**

As used in this article the following words and phrases have the following meanings:

(a) "Disability history" means the people, events and timelines of the development and

evolution of services to, and the civil rights of, people with disabilities. Disability history includes the contributions of specific people with disabilities; and

(b) "Existing school curriculum" means all the courses and curricula currently in place at a public school.

**§18-100-5. Disability History Week designated.**

(a) The third week of October annually is designated as Disability History Week for the state of West Virginia.

(b) In recognition of and to further the purposes of Disability History Week, each public school shall provide instruction on disability history, people with disabilities and the disability rights movement. The instruction shall be integrated into the existing school curriculum in a manner such as, but not limited to, supplementing existing lesson plans, holding school assemblies or providing other school activities. The instruction may be delivered by school personnel or by guest speakers.

(c) State institutions of higher education are encouraged to conduct and promote activities that provide education, awareness and understanding of disability history, people with disabilities and the disability rights movement.

(d) The Legislature is encouraged to annually recognize Disability History Week by introducing a concurrent resolution to:

(1) Recognize youth leaders in the disability rights movement;

(2) Reaffirm a commitment to the full inclusion of people with disabilities in society; and

(3) Recognize the disability rights movement as an important part of the history of this state and nation.

(e) Recognized resources for information, materials and speakers regarding disability history, people with disabilities and the disability rights movement include, but are not limited to:

(1) Centers for Independent Living;

(2) The Statewide Independent Living Council;

(3) The Developmental Disabilities Council; and

(4) The State Americans with Disabilities Act Coordinator.

(f) The provisions of this article are not intended to create a burden, financial or otherwise, for public schools, teachers or state institutions of higher education.

## House Bill 4625

Effective Date: Passed March 11, 2006; in effect from passage (June 9, 2006)

Signed by Governor: March 31, 2006

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

Title: Extending Certain Authority to Professional Personnel Designee of School Principal

Major Provisions:

- Defines "principal", for the purposes of these sections only, to mean the principal, assistant principal, vice principal or the administrative head of the school or a professional personnel designee of the principal or the administrative head of the school.

## ENROLLED

### COMMITTEE SUBSTITUTE FOR

#### H. B. 4625

(By Delegates Campbell, Williams and Spencer)

[Passed March 11, 2006; in effect from passage.]

AN ACT to amend and reenact §18A-5-1 and §18A-5-1a of the Code of West Virginia, 1931, as amended, relating to authority over pupils and discipline; defining principal to include principal, assistant principal, vice principal, administrative head of school or professional personnel designee of school principal or administrative head.

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

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

#### **ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.**

#### **§18A-5-1. Authority of teachers and other school personnel; exclusion of pupils having infectious diseases; suspension or expulsion of disorderly pupils; corporal punishment abolished.**

(a) The teacher shall stand in the place of the parent(s), guardian(s) or custodian(s) in exercising authority over the school and shall have control of all pupils enrolled in the school from the time they reach the school until they have returned to their respective homes, except that where transportation of pupils is provided, the driver in charge of the school bus or other mode of transportation shall exercise such authority and control over the children while they are in transit to and from the school.

(b) Subject to the rules of the State Board of Education, the teacher shall exclude from the school any pupil or pupils known to have or suspected of having any infectious disease, or any pupil or pupils who have been exposed to ~~such~~ any infectious disease, and shall immediately notify the proper health officer or medical inspector of ~~such~~ the exclusion. Any pupil so excluded shall not be readmitted to the school until ~~such~~ the pupil has complied with all the requirements of the rules governing ~~such~~ those cases or has presented a certificate of health signed by the medical inspector or other proper health officer.

(c) The teacher ~~shall have authority to~~ may exclude from his or her classroom or school bus any pupil who is guilty of disorderly conduct; who in any manner interferes with an orderly educational process; who threatens, abuses or otherwise intimidates or attempts to intimidate a school employee or a pupil; ~~or~~ who willfully disobeys a school employee; or who uses abusive or profane language directed at a school employee. Any pupil excluded shall be placed under the control of the principal of the school or a designee. The excluded pupil may be admitted to the classroom or school bus only when the principal, or a designee, provides written certification to the teacher that the pupil may be readmitted and specifies the specific type of disciplinary action, if any, which was taken. If the principal finds that disciplinary action is warranted, he or she shall provide written and, if possible, telephonic notice of ~~such~~ the action to the parent(s), guardian(s) or custodian(s). When a teacher excludes the same pupil from his or her classroom or

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

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

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

(f) Each county board is solely responsible for the administration of proper discipline in the public schools of the county and shall adopt policies consistent with the provisions of this section to govern disciplinary actions. These policies shall encourage the use of alternatives to corporal punishment, providing for the training of school personnel in alternatives to corporal punishment and for the involvement of parent(s), guardian(s) or custodian(s) in the maintenance of school discipline. The county boards of education shall provide for the immediate incorporation and implementation in the schools of a preventive discipline program which may include the responsible student program and a student involvement program which may include the peer mediation program, devised by the West Virginia Board of Education. Each board may modify those programs to meet the particular needs of the county. The county boards shall provide in-service training for teachers and principals relating to assertive discipline procedures and conflict resolution. The county boards of education ~~may~~ also may establish cooperatives with private entities to provide middle educational programs which may include programs focusing on developing individual coping skills, conflict resolution, anger control, self-esteem issues, stress management and decision making for students and any other program related to preventive discipline.

(g) For the purpose of this section: (1) "Pupil or student" ~~shall~~ includes any child, youth or adult who is enrolled in any instructional program or activity conducted under board authorization and within the facilities of or in connection with any program under public school direction: *Provided*, That, in the case of adults, the pupil-teacher relationship shall terminate when the pupil leaves the school or other place of instruction or activity; ~~and~~ (2) "~~Teacher~~" ~~shall~~ means all professional educators as defined in section one, article one of this chapter and shall include the driver of a school bus or other mode of transportation; and (3) "Principal" means the principal, assistant principal, vice principal or the administrative head of the school or a professional personnel designee of the principal or the administrative head of the school.

(h) Teachers shall exercise ~~such~~ other authority and perform ~~such~~ other duties ~~as may~~ be prescribed for them by law or by the rules of the State Board of Education not inconsistent with the provisions of this chapter and chapter eighteen of this code.

**§18A-5-1a. Possessing deadly weapons on premises of educational facilities; possessing a controlled substance on premises of educational facilities; assaults and batteries committed by pupils upon teachers or other school personnel; temporary suspension, hearing; procedure, notice**

**and formal hearing; extended suspension; sale of narcotic; expulsion; exception; alternative education.**

(a) A principal shall suspend a pupil from school or from transportation to or from the school on any school bus if the pupil, in the determination of the principal after an informal hearing pursuant to subsection (d) of this section, has: (i) Violated the provisions of subsection (b), section fifteen, article two, chapter sixty-one of this code; (ii) violated the provisions of subsection (b), section eleven-a, article seven of said chapter; or (iii) sold a narcotic drug, as defined in section one hundred one, article one, chapter sixty-a of this code, on the premises of an educational facility, at a school-sponsored function or on a school bus. If a student has been suspended pursuant to this subsection, the principal shall, within twenty-four hours, request that the county superintendent recommend to the county board that the student be expelled. Upon such a request by a principal, the county superintendent shall recommend to the county board that the student be expelled. Upon such recommendation, the county board shall conduct a hearing in accordance with subsections (e), (f) and (g) of this section to determine if the student committed the alleged violation. If the county board finds that the student did commit the alleged violation, the county board shall expel the student.

(b) A principal shall suspend a pupil from school, or from transportation to or from the school on any school bus, if the pupil, in the determination of the principal after an informal hearing pursuant to subsection (d) of this section, has: (i) Committed an act or engaged in conduct that would constitute a felony under the laws of this state if committed by an adult; or (ii) unlawfully possessed on the premises of an educational facility or at a school-sponsored function a controlled substance governed by the uniform controlled substances act as described in chapter sixty-a of this code. If a student has been suspended pursuant to this subsection, the principal may request that the superintendent recommend to the county board that the student be expelled. Upon such recommendation by the county superintendent, the county board may hold a hearing in accordance with the provisions of subsections (e), (f) and (g) of this section to determine if the student committed the alleged violation. If the county board finds that the student did commit the alleged violation, the county board may expel the student.

(c) A principal may suspend a pupil from school, or transportation to or from the school on any school bus, if the pupil, in the determination of the principal after an informal hearing pursuant to subsection (d) of this section: (i) Threatened to injure, or in any manner injured, a pupil, teacher, administrator or other school personnel; (ii) willfully disobeyed a teacher; (iii) possessed alcohol in an educational facility, on school grounds, a school bus or at any school-sponsored function; (iv) used profane language directed at a school employee or pupil; (v) intentionally defaced any school property; (vi) participated in any physical altercation with another person while under the authority of school personnel; or (vii) habitually violated school rules or policies. If a student has been suspended pursuant to this subsection, the principal may request that the superintendent recommend to the county board that the student be expelled. Upon such recommendation by the county superintendent, the county board may hold a hearing in accordance with the provisions of subsections (e), (f) and (g) of this section to determine if the student committed the alleged violation. If the county board finds that the student did commit the alleged violation, the county board may expel the student.

(d) The actions of any pupil which may be grounds for his or her suspension or expulsion under the provisions of this section shall be reported immediately to the principal of the school in which the pupil is enrolled. If the principal determines that the alleged actions of the pupil would be grounds for suspension, he or she shall conduct

an informal hearing for the pupil immediately after the alleged actions have occurred. The hearing shall be held before the pupil is suspended unless the principal believes that the continued presence of the pupil in the school poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process, in which case the pupil shall be suspended immediately and a hearing held as soon as practicable after the suspension.

The pupil and his or her parent(s), guardian(s) or custodian(s), as the case may be, shall be given telephonic notice, if possible, of this informal hearing, which notice shall briefly state the grounds for suspension.

At the commencement of the informal hearing, the principal shall inquire of the pupil as to whether he or she admits or denies the charges. If the pupil does not admit the charges, he or she shall be given an explanation of the evidence possessed by the principal and an opportunity to present his or her version of the occurrence. At the conclusion of the hearing or upon the failure of the noticed student to appear, the principal may suspend the pupil for a maximum of ten school days, including the time prior to the hearing, if any, for which the pupil has been excluded from school. The principal shall report any suspension the same day it has been decided upon, in writing, to the parent(s), guardian(s) or custodian(s) of the pupil by regular United States mail. The suspension also shall be reported to the county superintendent and to the faculty senate of the school at the next meeting after the suspension.

(e) Prior to a hearing before the county board, the county board shall cause a written notice which states the charges and the recommended disposition to be served upon the pupil and his or her parent(s), guardian(s) or custodian(s), as the case may be. The notice shall state clearly whether the board will attempt at hearing to establish the student as a dangerous student, as defined by section one, article one of this chapter. The notice also shall include any evidence upon which the board will rely in asserting its claim that the student is a dangerous student. The notice shall set forth a date and time at which the hearing shall be held, which date shall be within the ten-day period of suspension imposed by the principal.

(f) The county board shall hold the scheduled hearing to determine if the pupil should be reinstated or should or, under the provisions of this section, must be expelled from school. If the county board determines that the student should or must be expelled from school, it ~~may~~ also may determine whether the student is a dangerous student pursuant to subsection (g) of this section. At this, or any hearing before a county board conducted pursuant to this section, the pupil may be represented by counsel, may call his or her own witnesses to verify his or her version of the incident and may confront and cross-examine witnesses supporting the charge against him or her. ~~Such~~ The a hearing shall be recorded by mechanical means unless recorded by a certified court reporter. ~~Any such~~ The hearing may be postponed for good cause shown by the pupil but he or she shall remain under suspension until after the hearing. The State Board may adopt other supplementary rules of procedure to be followed in these hearings. At the conclusion of the hearing the county board shall either: (1) Order the pupil reinstated immediately at the end of his or her initial suspension; (2) suspend the pupil for a further designated number of days; or (3) expel the pupil from the public schools of the county.

(g) A county board that did not intend prior to a hearing to assert a dangerous student claim, that did not notify the student prior to the hearing that ~~such~~ a dangerous student determination would be considered and that determines through the course of the hearing that the student may be a dangerous student shall schedule a second hearing within ten days to decide the issue. The hearing may be postponed for good cause

shown by the pupil, but he or she remains under suspension until after the hearing. A county board that expels a student, and finds that the student is a dangerous student, may refuse to provide alternative education. However, after a hearing conducted pursuant to this section for determining whether a student is a dangerous student, when the student is found to be a dangerous student, is expelled and is denied alternative education, a hearing shall be conducted within three months after the refusal by the board to provide alternative education to reexamine whether or not the student remains a dangerous student and whether the student shall be provided alternative education. Thereafter, a hearing for the purpose of reexamining whether or not the student remains a dangerous student and whether the student shall be provided alternative education shall be conducted every three months for so long as the student remains a dangerous student and is denied alternative education. During the initial hearing, or in any subsequent hearing, the board may consider the history of the pupil's conduct as well as any improvements made subsequent to the expulsion. If it is determined during any of the hearings that the student is no longer a dangerous student or should be provided alternative education, the student shall be provided alternative education during the remainder of the expulsion period.

(h) The superintendent may apply to a circuit judge or magistrate for authority to subpoena witnesses and documents, upon his or her own initiative, in a proceeding related to a recommended student expulsion or dangerous student determination, before a county board conducted pursuant to the provisions of this section. Upon the written request of any other party, the superintendent shall apply to a circuit judge or magistrate for the authority to subpoena witnesses, documents or both on behalf of the other party in a proceeding related to a recommended student expulsion or dangerous student determination before a county board. If the authority to subpoena is granted, the superintendent shall subpoena the witnesses, documents or both requested by the other party. Furthermore, if the authority to subpoena is granted, it shall be exercised in accordance with the provisions of section one, article five, chapter twenty-nine-a of this code.

Any hearing conducted pursuant to this subsection may be postponed: (1) For good cause shown by the pupil; (2) when proceedings to compel a subpoenaed witness to appear must be instituted; or (3) when a delay in service of a subpoena hinders either party's ability to provide sufficient notice to appear to a witness. A pupil remains under suspension until after the hearing in any case where a postponement occurs. The county boards are directed to report the number of pupils determined to be dangerous students to the State Board of Education. The State Board will compile the county boards' statistics and shall report its findings to the Legislative Oversight Commission on Education Accountability.

(i) Pupils may be expelled pursuant to the provisions of this section for a period not to exceed one school year, except that if a pupil is determined to have violated the provisions of subsection (a) of this section the pupil shall be expelled for a period of not less than twelve consecutive months: *Provided*, That the county superintendent may lessen the mandatory period of twelve consecutive months for the expulsion of the pupil if the circumstances of the pupil's case demonstrably warrant. Upon the reduction of the period of expulsion, the county superintendent shall prepare a written statement setting forth the circumstances of the pupil's case which warrant the reduction of the period of expulsion. The county superintendent shall submit the statement to the county board, the principal, the faculty senate and the local school improvement council for the school from which the pupil was expelled. The county superintendent may use the following

factors as guidelines in determining whether or not to reduce a mandatory twelve-month expulsion:

(1) The extent of the pupil's malicious intent;

(2) The outcome of the pupil's misconduct;

(3) The pupil's past behavior history; and

(4) The likelihood of the pupil's repeated misconduct.

(j) In all hearings under this section, facts shall be found by a preponderance of the evidence.

(k) For purposes of this section, nothing herein may be construed to be in conflict with the federal provisions of the Individuals with Disabilities Education Act of 1990 (~~PL 101-476~~), 20 U.S.C. §1400 *et seq.*

(l) Each suspension or expulsion imposed upon a pupil under the authority of this section shall be recorded in the uniform integrated regional computer information system (commonly known as the West Virginia Education Information System) described in subsection (f), section twenty-six, article two, chapter eighteen of this code.

(1) The principal of the school at which the pupil is enrolled shall create an electronic record within twenty-four hours of the imposition of the suspension or expulsion.

(2) Each record of a suspension or expulsion shall include the pupil's name and identification number, the reason for the suspension or expulsion, and the beginning and ending dates of the suspension or expulsion.

(3) The State Board of Education shall collect and disseminate data so that any principal of a public school in West Virginia can review the complete history of disciplinary actions taken by West Virginia public schools against any pupil enrolled or seeking to enroll at that principal's school. The purposes of this provision are to allow every principal to fulfill his or her duty under subsection (b), section fifteen-f, article five, chapter eighteen of this code to determine whether a pupil requesting to enroll at a public school in West Virginia is currently serving a suspension or expulsion from another public school in West Virginia and to allow principals to obtain general information about pupils' disciplinary histories.

(m) Principals may exercise any other authority and perform any other duties to discipline pupils consistent with state and federal law, including policies of the State Board of Education.

(n) Each county board is solely responsible for the administration of proper discipline in the public schools of the county and shall adopt policies consistent with the provisions of this section to govern disciplinary actions.

(o) For the purpose of this section, "principal" means the principal, assistant principal, vice principal or the administrative head of the school or a professional personnel designee of the principal or the administrative head of the school.

## House Bill 4626

Effective Date: Passed March 11, 2006; in effect from passage.

Signed by Governor: March 31, 2006

Code Reference: Amends §18A-3-1

Title: Teacher Preparation Programs; Program Approval and Standards; Authority to Issue Teaching Certificates.

### Major Provisions:

- Adds language in W.Va. Code §18A-3-1 to clarify that the agreement established pursuant to this section recognizes student teaching as a joint responsibility of the educator preparation institution and the cooperating public school or non-public school.
- Adds language in W.Va. Code §18A-3-1 to allow an institution of higher education (IHE) with an approved teacher preparation program to provide an alternative student teaching experience in a non-public school setting in lieu of the student teaching experience required in a public school setting beginning in the Fall 2006, provided the IHE enters into an agreement with the cooperation non-public school as described in this section.
- States that the alternative student teaching experience agreement with the non-public school shall require that either:
  - o The student teacher complete at least one-half of the clinical experience (i.e., six of the twelve weeks of clinical experience required for certification to teach in the public schools in West Virginia) in a public school setting and the other half in a non-public school setting; **OR**
  - o The student teacher complete two hundred clock hours of field-based training (i.e., classroom observation) in a public school; **AND**
  - o The student teacher complete a course which is a component of the IHE's WVBE-approved educator preparation program, that provides information sufficient to prepare the prospective teacher to demonstrate competence to teach in the public schools of West Virginia.
  - o The course shall include instruction in at least the following:

- State board policy and provisions of this code governing public education;
  - Requirements for federal and state accountability, including the mandatory reporting of child abuse;
  - Federal as state mandated curriculum and assessment requirements, including multicultural education, safe schools and student code of conduct;
  - Federal and state regulations for the instruction of exceptional students, as defined by IDEA; and
  - Varied approaches for effective instruction for students who are at-risk.
- States that the alternative student teaching experience agreement with the non-public school shall also:
- Require that the IHE document that the student teacher's field-based and clinical experiences include participation and instruction with multicultural, at-risk and exceptional children at each programmatic level for which the teacher seeks certification; and
  - Include the minimum qualifications for the employment of school teachers selected as supervising teachers, including the requirement that field-based and clinical experiences be supervised by a teacher fully certified in the state in which that teacher is supervising.

**ENROLLED**

**COMMITTEE SUBSTITUTE FOR**

**H. B. 4626**

(By Mr. Speaker, Mr. Kiss)

[Passed March 11, 2006; in effect from passage.]

AN ACT to amend and reenact §18A-3-1 of the Code of West Virginia, 1931, as amended, relating to educator preparation programs generally; adding requirements for the student teaching experience agreement; and providing for an alternate student teaching experience in a nonpublic school setting in lieu of the student teaching experience required in a public school setting.

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

That §18A-3-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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

**§18A-3-1. Teacher preparation programs; program approval and standards; authority to issue teaching certificates.**

(a) The education of professional educators in the state shall be is under the general direction and control of the ~~S~~state ~~B~~oard of ~~E~~ducation after consultation with the Secretary of Education and the Arts and the ~~e~~Chancellor for ~~h~~Higher ~~e~~Education who shall represent the interests of ~~teacher~~ educator preparation programs within the institutions of higher education in this state as those institutions are defined in section two, article one, chapter eighteen-b of this code.

The education of professional educators in the state includes all programs leading to certification to teach or serve in the public schools including: (1) Those programs in all institutions of higher education, including student teaching in the public schools as provided in this section; (2) ~~b~~Beginning teacher internship programs; (3) ~~t~~The granting of West Virginia certification to persons who received their preparation to teach outside the boundaries of this state, except as provided in subsection (b) of this section; (4) ~~a~~Any alternative preparation programs in this state leading to certification, including programs established pursuant to the provisions of section one-a of this article and programs which are in effect on the effective date of this section; and (5) ~~a~~Any continuing professional education, professional development and in-service training programs for professional educators employed in the public schools in the state.

(b) The ~~S~~state ~~B~~oard of ~~E~~ducation, after consultation with the Secretary of Education and the Arts and the ~~e~~Chancellor for ~~h~~Higher ~~e~~Education, ~~who shall represent the interests of teacher preparation programs within the institutions of higher education in this state as those institutions are defined in section two, article one, chapter eighteen-b of this code~~, shall adopt standards for the education of professional educators in the state and for awarding of certificates valid in the public schools of this state subject to the following conditions. The standards shall include, but not be limited to the following:

(1) ~~The standards approved by the Board for teacher preparation shall include a~~

provision for the study of multicultural education. As used in this section, multicultural education means the study of the pluralistic nature of American society including its values, institutions, organizations, groups, status positions and social roles;

~~(2) Effective the first day of January, one thousand nine hundred ninety-three, the standards approved by the Board shall also include a~~ A provision for the study of classroom management techniques, ~~and shall include~~ including methods of effective management of disruptive behavior which shall include societal factors and their impact on student behavior; and

~~(3) Effective on the effective date of this section, any teacher who: (i) Has graduated from a teacher preparation program at a regionally accredited institution of higher education; (ii) possesses the minimum of a bachelor's degree; and (iii) holds a valid teaching certificate or certificates issued by another state, or holds a certificate of eligibility issued by another state and meets all of the requirements of the state for full certification except employment, shall be, upon application, awarded a teaching certificate or certificates for the same grade level or levels and subject area or areas valid in the public schools of this state, s~~ Subject only to the provisions of section ten of this article-, a teacher from another state shall be awarded a teaching certificate for a comparable grade level and subject area valid in the public schools of this state, if he or she:

(A) Holds a valid teaching certificate or a certificate of eligibility issued by another state;

(B) Has graduated from an educator preparation program at a regionally accredited institution of higher education;

(C) Possesses the minimum of a bachelor's degree; and

(D) Meets all of the requirements of the state for full certification except employment.

~~(c) To give prospective teachers the teaching experience needed to demonstrate competence as a prerequisite to certification, to teach in the West Virginia public schools, the S~~ State B ~~oard of Education may enter into an agreement with county boards for the use of the public schools. Such agreement shall recognize student teaching as a joint responsibility of the teacher preparation institution and the cooperating public schools and shall include: (1) The minimum qualifications for the employment of public school teachers selected as supervising teachers; (2) the remuneration to be paid public school teachers by the State Board, in addition to their contractual salaries, for supervising student teachers; and (3) minimum standards to guarantee the adequacy of the facilities and program of the public school selected for student teaching. The student teacher, under the direction and supervision of the supervising teacher, shall exercise the authority of a substitute teacher.~~

~~(d) The State Superintendent of Schools may issue certificates to graduates of teacher education programs and alternative teacher education programs approved by the State Board of Education and in accordance with this section and rules adopted by the State Board after consultation with the Secretary of Education and the Arts and the chancellor for higher education. A certificate to teach shall not be granted to any person who is not a citizen of the United States, is not of good moral character and physically, mentally and emotionally qualified to perform the duties of a teacher and who has not attained the age of eighteen years on or before the first day of October of the year in which his or her certificate is issued; except that an exchange teacher from a foreign country, or an alien person who meets the requirements to teach, may be granted a permit to teach within the public schools of the state. An agreement established pursuant to subsection (c) of this section shall recognize student teaching as a joint responsibility of the teacher educator preparation institution and the cooperating public schools and shall include:~~

(1) The minimum qualifications for the employment of public school teachers selected as supervising teachers; including the requirement that field-based and clinical experiences be supervised by a teacher fully certified in the state in which that teacher is supervising;

(2) The remuneration to be paid public school teachers by the State Board, in addition to their contractual salaries, for supervising student teachers; and (3) Minimum standards to guarantee the adequacy of the facilities and program of the public school selected for student teaching; (4) That the student teacher, under the direction and supervision of the supervising teacher, shall exercise the authority of a substitute teacher; and (5) A provision requiring any higher education institution with an educator preparation program to document that the student teacher's field-based and clinical experiences include participation and instruction with multicultural, at-risk and exceptional children at each programmatic level for which the student teacher seeks certification.

~~(e) In consultation with the Secretary of Education and the Arts and the chancellor for higher education, institutions of higher education approved for teacher preparation may cooperate with each other, with the center for professional development and with one or more county boards in the organization and operation of centers to provide selected phases of the teacher preparation program such as student teaching, beginning teacher internship programs, instruction in methodology and seminar programs for college students, teachers with provisional certification, professional support team members and supervising teachers.~~

~~The institutions of higher education, the center for professional development and county boards may by mutual agreement budget and expend funds for the operation of the centers through payments to the appropriate fiscal office of the participating institutions, the center for professional development and the county boards. Beginning the fall, two thousand six - two thousand seven academic term, in lieu of the student teaching experience in a public school setting required by this section, an institution of higher education may provide an alternate student teaching experience in a nonpublic school setting if the institution of higher education:~~

~~(1) Complies with the provisions of this section;~~

~~(2) Has a state board approved educator preparation program; and~~

~~(3) Enters into an agreement pursuant to subdivisions (f) and (g) of this section.~~

~~(f) The provisions of this section shall not be construed to require the discontinuation of an existing student teacher training center or school which meets the standards of the State Board of Education. At the discretion of the higher education institution, an agreement for an alternate student teaching experience between an institution of higher education and a nonpublic school shall require that either:~~

~~(1) The student teacher complete at least one-half of the clinical experience in a public school; or~~

~~(2) The educator preparation program include a requirement that any student performing student teaching in a nonpublic school complete at least:~~

~~(A) Two hundred clock hours of field-based training in a public school; and~~

~~(B) A course, which is a component of the institution's state board approved educator preparation program, that provides to prospective teachers information that is equivalent to the teaching experience needed to demonstrate competence as a prerequisite to certification to teach in the public schools in West Virginia. The course shall include instruction on at least the following elements:~~

(i) State board policy and provisions of this code governing public education;  
(ii) Requirements for federal and state accountability, including the mandatory reporting of child abuse;  
(iii) Federal and state mandated curriculum and assessment requirements, including multicultural education, safe schools and student code of conduct;  
(iv) Federal and state regulations for the instruction of exceptional students as defined by the Individuals with Disabilities Education Act, 20 U.S.C. §1400 et seq.;  
(v) Varied approaches for effective instruction for students who are at-risk;  
(g) All institutions of higher education approved for teacher preparation in the school year of one thousand nine hundred sixty-two-sixty-three shall continue to hold that distinction so long as they meet the minimum standards for teacher preparation. Nothing contained herein shall infringe upon the rights granted to any institution by charter given according to law previous to the adoption of this code. In addition to the requirements set forth in subsection (f) of this section, an agreement for an alternate student teaching experience between an institution of higher education and a nonpublic school shall:  
(1) Require that the higher education institution with an educator preparation program document that the student teacher's field-based and clinical experiences include participation and instruction with multicultural, at-risk and exceptional children at each programmatic level for which the student teacher seeks certification; and  
(2) Include the minimum qualifications for the employment of school teachers selected as supervising teachers, including the requirement that field-based and clinical experiences be supervised by a teacher fully certified in the state in which that teacher is supervising.  
(h) The state superintendent may issue certificates to graduates of educator preparation programs and alternative educator preparation programs approved by the state board. The certificates are issued in accordance with this section and rules adopted by the State Board after consultation with the Secretary of Education and the Arts and the Chancellor for Higher Education.  
(1) A certificate to teach may be granted only to any person who is:  
(A) A citizen of the United States, except as provided in subdivision (2) of this subsection;  
(B) Is of good moral character;  
(C) Physically, mentally and emotionally qualified to perform the duties of a teacher; and  
(D) At least eighteen years on or before the first day of October of the year in which his or her certificate is issued.;  
(2) A permit to teach in the public schools of this state may be granted to a person who is an exchange teacher from a foreign country, or an alien person who meets the requirements to teach.  
(i) In consultation with the Secretary of Education and the Arts and the Chancellor for Higher Education, institutions of higher education approved for educator preparation may cooperate with each other, with the Center for Professional Development and with one or more county boards to organize and operate centers to provide selected phases of the educator preparation program. The phases include, but are not limited to:  
(1) Student teaching;  
(2) Beginning teacher internship programs;  
(3) Instruction in methodology; and  
(4) Seminar programs for college students, teachers with provisional certification, professional support team members and supervising teachers.

The institutions of higher education, the Center for Professional Development and county boards may by mutual agreement budget and expend funds to operate the centers through payments to the appropriate fiscal office of the participating institutions, the center for professional development and the county boards.

(j) The provisions of this section do not require discontinuation of an existing student teacher training center or school which meets the standards of the state board.

(k) All institutions of higher education approved for educator preparation in the one thousand nine hundred sixty-two--sixty-three school year shall continue to hold that distinction so long as they meet the minimum standards for educator preparation. Nothing in this section infringes upon the rights granted to any institution by charter given according to law previous to the adoption of this code.

(l) Notwithstanding any other provision of this section, nor any other provision of rule, law or this code to the contrary, an institution of higher education may enter into an agreement with a nonpublic school:

(1) For the purposes of this section regarding student teaching;

(2) For the spring, two thousand six academic term only;

(3) If the institution is approved for educator preparation by the state board; and

(4) If the institution had entered into the agreement for that academic term prior to the effective date of this section.

(m) As used in this section:

(1) "Nonpublic school" means a private school, parochial school, church school, school operated by a religious order or other nonpublic school that elects to:

(A) Comply with the provisions of article twenty-eight, chapter eighteen of this code;

(B) Participate on a voluntary basis in a state operated or state sponsored program provided to such schools pursuant to this section; and

(C) Comply with the provisions of this section;

(2) "At-risk" means having the potential for academic failure, including, but not limited to the risk of dropping out of school, involvement in delinquent activity or poverty as indicated by free or reduced lunch status; and

(3) "Exceptional children" has the meaning ascribed pursuant to section one, article twenty, chapter eighteen of this code, but does not include gifted students.

## House Bill 4654

Effective Date: Passed March 11, 2006; in effect ninety days from passage (June 9, 2006)

Signed by Governor: March 31, 2006

Code Reference: Amends §5-16-5 and adds §§5-16D-1, 5-16D-2, 5-16D-3, 5-16D-4, 5-16D-5, and 5-16D-6.

Title: West Virginia Public Employees Insurance Act

Major Provisions:

- Adds the provision that the aggregate premium cost-sharing percentage between employers and employees scheduled to be at a level of twenty percent by July 1, 2006 may be offset, in part, by a legislative appropriation.
- Creates the West Virginia Retiree Health Benefit Trust Fund for the purpose of providing for and administering retiree post-employment health care benefits, and the respective revenues and costs of those benefits as a cost sharing multiple employer plan.
- Places the responsibility for the rules and policies for the proper operation of the fund with the Public Employees Insurance Agency Finance Board and the operational control of the fund with the Public Employees Insurance Agency.
- Requires the PEIA Finance Board to annually set the total annual required contribution sufficient to maintain the fund in an actuarially sound manner in accordance with generally accepted accounting principles.
- Requires the PEIA Finance Board to annually allocate to each respective employer the employer's portion of the annual required contribution.
- Permits the PEIA Finance Board to apportion the annual required contribution into various components, which may include the amortized unfunded actuarial accrued liability, the total normal cost, the employer annual required contribution, and the lesser included minimum annual employer premium payment.
- Makes it the mandatory responsibility of employers to make annual contributions to the fund in, at least, the amount of the minimum annual employer premium payment rates.
- Requires PEIA to bill each employer for the employer annual

required contribution and the included minimum annual employer premium payment and to annually collect the minimum annual employer premium payment and any amounts the employer elects to pay towards the employer annual required contribution.

- Specifies that any employer annual required contribution amount not satisfied by the respective employer shall remain the liability of that employer until fully paid.

## ENROLLED

### H. B. 4654

(By Mr. Speaker, Mr. Kiss, and Delegate Trump)

[By Request of the Executive]

[Passed March 11, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §5-16-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §5-16D-1, §5-16D-2, §5-16D-3, §5-16D-4, §5-16D-5 and §5-16D-6, all relating to the Public Employees Insurance Agency, establishing the West Virginia Retiree health Benefit Trust fund, providing for post-employment health care benefits, operation and funding and establishing that the eighty-twenty split between employer and employee for the scheduled increase in health care costs for employees may be partially offset by a legislative appropriation.

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

That §5-16-5 of the Code of West Virginia, 1931, as amended, be amended; and that said code be amended by adding thereto a new article, designated §5-16D-1, §5-16D-2, §5-16D-3, §5-16D-4, §5-16D-5 and §5-16D-6, all to read as follows:

#### **ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.**

##### **§5-16-5. Purpose, powers and duties of the Finance Board; initial financial plan; financial plan for following year; and annual financial plans.**

(a) The purpose of the Finance Board created by this article is to bring fiscal stability to the Public Employees Insurance Agency through development of annual financial plans and long-range plans designed to meet the Agency's estimated total financial requirements, taking into account all revenues projected to be made available to the Agency and apportioning necessary costs equitably among participating employers, employees and retired employees and providers of health care services.

(b) The Finance Board shall retain the services of an impartial, professional actuary, with demonstrated experience in analysis of large group health insurance plans, to estimate the total financial requirements of the Public Employees Insurance Agency for each fiscal year and to review and render written professional opinions as to financial plans proposed by the Finance Board. The actuary shall also assist in the development of alternative financing options and perform any other services requested by the Finance Board or the Director. All reasonable fees and expenses for actuarial services shall be paid by the Public Employees Insurance Agency. Any financial plan or modifications to a financial plan approved or proposed by the Finance Board pursuant to this section shall be submitted to and reviewed by the actuary and may not be finally approved and submitted to the Governor and to the Legislature without the actuary's written professional opinion that the plan may be reasonably expected to generate sufficient revenues to meet all estimated program and administrative costs of the agency, including incurred but unreported claims, for the fiscal year for which the plan is proposed. The actuary's opinion on the financial plan for each fiscal year shall allow for no more than thirty days of accounts payable to be carried over into the next fiscal year.

The actuary's opinion for any fiscal year shall not include a requirement for establishment of a reserve fund.

(c) All financial plans required by this section shall establish:

(1) Maximum levels of reimbursement which the Public Employees Insurance Agency makes to categories of health care providers;

(2) Any necessary cost containment measures for implementation by the Director;

(3) The levels of premium costs to participating employers; and

(4) The types and levels of cost to participating employees and retired employees.

The financial plans may provide for different levels of costs based on the insureds' ability to pay. The Finance Board may establish different levels of costs to retired employees based upon length of employment with a participating employer, ability to pay or other relevant factors. The financial plans may also include optional alternative benefit plans with alternative types and levels of cost. The Finance Board may develop policies which encourage the use of West Virginia health care providers.

In addition, the Finance Board may allocate a portion of the premium costs charged to participating employers to subsidize the cost of coverage for participating retired employees, on such terms as the Finance Board determines are equitable and financially responsible.

(d)(1) The Finance Board shall prepare an annual financial plan for each fiscal year during which the Finance Board remains in existence. The Finance Board Chairman shall request the actuary to estimate the total financial requirements of the Public Employees Insurance Agency for the fiscal year.

(2) The Finance Board shall prepare a proposed financial plan designed to generate revenues sufficient to meet all estimated program and administrative costs of the Public Employees Insurance Agency for the fiscal year. The proposed financial plan shall allow for no more than thirty days of accounts payable to be carried over into the next fiscal year. Before final adoption of the proposed financial plan, the Finance Board shall request the actuary to review the plan and to render a written professional opinion stating whether the plan will generate sufficient revenues to meet all estimated program and administrative costs of the Public Employees Insurance Agency for the fiscal year. The actuary's report shall explain the basis of its opinion. If the actuary concludes that the proposed financial plan will not generate sufficient revenues to meet all anticipated costs, then the Finance Board shall make necessary modifications to the proposed plan to ensure that all actuarially determined financial requirements of the agency will be met.

(3) Upon obtaining the actuary's opinion, the Finance Board shall conduct one or more public hearings in each congressional district to receive public comment on the proposed financial plan, shall review such the comments and shall finalize and approve the financial plan.

(4) Any financial plan shall be designed to allow thirty days or less of accounts payable to be carried over into the next fiscal year. For each fiscal year, the Governor shall provide his or her estimate of total revenues to the Finance Board no later than the fifteenth day of October of the preceding fiscal year: *Provided*, That, for the prospective financial plans required by this section, the Governor shall estimate the revenues available for each fiscal year of the plans based on the estimated percentage of growth in general fund revenues. The Finance Board shall submit its final, approved financial plan, after obtaining the necessary actuary's opinion and conducting one or more public hearings in each congressional district, to the Governor and to the Legislature no later than the first day of January preceding the fiscal year. The financial plan for a fiscal year

becomes effective and shall be implemented by the Director on the first day of July of the fiscal year. In addition to each final, approved financial plan required under this section, the Finance Board shall also simultaneously submit financial statements based on generally accepted accounting practices (GAAP) and the final, approved plan restated on an accrual basis of accounting, which shall include allowances for incurred but not reported claims: *Provided, however,* That the financial statements and the accrual-based financial plan restatement shall not affect the approved financial plan.

(e) The provisions of chapter twenty-nine-a of this code shall not apply to the preparation, approval and implementation of the financial plans required by this section.

(f) By the first day of January of each year the Finance Board shall submit to the Governor and the Legislature a prospective financial plan, for a period not to exceed five years, for the programs provided in this article. Factors that the Board shall consider include, but are not limited to, the trends for the program and the industry; the medical rate of inflation; utilization patterns; cost of services; and specific information such as average age of employee population, active to retiree ratios, the service delivery system and health status of the population.

(g) The prospective financial plans shall be based on the estimated revenues submitted in accordance with subdivision (4), subsection (d) of this section and shall include an average of the projected cost-sharing percentages of premiums and an average of the projected deductibles and copays for the various programs. Beginning in the plan year which commences on the first day of July, two thousand two, and in each plan year thereafter, until and including the plan year which commences on the first day of July, two thousand six, the prospective plans shall include incremental adjustments toward the ultimate level required in this subsection, in the aggregate cost-sharing percentages of premium between employers and employees, including the amounts of any subsidization of retired employee benefits: *Provided,* That for the period beginning the first day of July, two thousand five, through the thirty-first day of December, two thousand five, the portion of the policy surcharge collected from certain fire and casualty insurers and transferred into the fund in the State Treasury of the Public Employees Insurance Agency pursuant to the provisions of section thirty-three, article three, chapter thirty-three of this code shall be used, in lieu of an increase in costs to active state pool employees, to subsidize any incremental adjustment in those employees' portion of the aggregate cost-sharing percentages of premium between employers and employees. The foregoing does not prohibit any premium increase occasioned by an employee's increase in salary: *Provided, however,* That for the period beginning the first day of July, two thousand five, through the thirty-first day of December, two thousand five, in lieu of an increase in costs to retired state pool employees, such funds as are necessary to subsidize any increase in costs to retired state pool employees shall be transferred from the reserve fund established in section twenty-five of this article into the fund in the State Treasury of the Public Employees Insurance Agency. Effective in the plan year commencing on the first day of July, two thousand six, and in each plan year thereafter, the aggregate premium cost-sharing percentages between employers and employees, including the amounts of any subsidization of retired employee benefits, shall be at a level of eighty percent for the employer and twenty percent for employees, except for the employers provided in subsection (d), section eighteen of this article whose premium cost-sharing percentages shall be governed by that subsection. After the submission of the initial prospective plan, the Board may not increase costs to the participating employers or change the average of the premiums, deductibles and copays for employees, except in the event of a true emergency as provided in this

section: *Provided further*, That if the Bboard invokes the emergency provisions, the cost shall be borne between the employers and employees in proportion to the cost-sharing ratio for that plan year: *And provided further*, That for purposes of this section, "emergency" means that the most recent projections demonstrate that plan expenses will exceed plan revenues by more than one percent in any plan year: *And provided further*, That the aggregate premium cost-sharing percentages between employers and employees, including the amounts of any subsidization of retired employee benefits, scheduled to be at a level of twenty percent for employees by the first day of July two-thousand six may be offset, in part, by a legislative appropriation for that purpose, prior to the first day of July two-thousand six.

(h) The Ffinance Bboard shall meet on at least a quarterly basis to review implementation of its current financial plan in light of the actual experience of the Public Employees Insurance Agency. The Bboard shall review actual costs incurred, any revised cost estimates provided by the actuary, expenditures and any other factors affecting the fiscal stability of the plan and may make any additional modifications to the plan necessary to ensure that the total financial requirements of the agency for the current fiscal year are met. The Ffinance Bboard may not increase the types and levels of cost to employees during its quarterly review except in the event of a true emergency.

(i) For any fiscal year in which legislative appropriations differ from the Governor's estimate of general and special revenues available to the Agency, the Ffinance Bboard shall, within thirty days after passage of the budget bill, make any modifications to the plan necessary to ensure that the total financial requirements of the agency for the current fiscal year are met.

## **ARTICLE 16D. WEST VIRGINIA RETIREMENT HEALTH BENEFIT TRUST FUND.**

### **§5-16D-1. Definitions.**

As used in this article, the term:

(a) "Actuarial accrued liability" means that portion, as determined by a particular actuarial cost method, of the actuarial present value of fund obligations and administrative expenses which is not provided by future normal costs.

(b) "Actuarial cost method" means a method for determining the actuarial present value of the obligations and administrative expenses of the fund and for developing an actuarially equivalent allocation of the value to time periods, usually in the form of a normal cost and an actuarial accrued liability. Acceptable actuarial methods are the aggregate, attained age, entry age, frozen attained age, frozen entry age, and projected unit credit methods.

(c) "Actuarially sound" means that calculated contributions to the fund are sufficient to pay the full actuarial cost of the fund. The full actuarial cost includes both the normal cost of providing for fund obligations as they accrue in the future and the cost of amortizing the unfunded actuarial accrued liability over a period of no more than 30 years.

(d) "Actuarial present value of total projected benefits" means the present value, at the valuation date, of the cost to finance benefits payable in the future, discounted to reflect the expected effects of the time value of money and the probability of payment.

(e) "Actuarial assumptions" means assumptions regarding the occurrence of future events affecting the fund such as mortality, withdrawal, disability, and retirement; changes in compensation and offered post-employment benefits; rates of investment earnings and other asset appreciation or depreciation; procedures used to determine the actuarial value of assets; and other relevant items.

(f) "Actuarial valuation" means the determination, as of a valuation date, of the normal cost, actuarial accrued liability, actuarial value of assets, and related actuarial present values for the fund.

(g) "Administrative expenses" means all expenses incurred in the operation of the fund, including all investment expenses.

(h) "Annual required contribution" means the amount employers must contribute in a given year to fully fund the trust, as determined by the actuarial valuation in accordance with requirements of generally accepted accounting principles. This amount shall represent a level of funding that if paid on an ongoing basis is projected to cover the normal cost each year and amortize any unfunded actuarial liabilities of the plan over a period not to exceed thirty years.

(i) "Board" means the Public Employees Insurance Agency Finance Board created in section four, article sixteen of this chapter.

(j) "Cost sharing multiple employer plan" means a single plan with pooling (cost-sharing) arrangements for the participating employers. All risk, rewards, and costs, including benefit costs, are shared and not attributed individually to the employers. A single actuarial valuation covers all plan members and the same contribution rate(s) applies for each employer.

(k) "Covered health care expenses" means all actual health care expenses paid by the health plan on behalf, of fund beneficiaries. Actual health care expenses include claims payments to providers and premiums paid to intermediary entities and health care providers by the health plan.

(l) "Employer" means any employer as defined by section two, article sixteen, of this chapter, which has or will have retired employees in any Public Employees Insurance Agency health plan.

(m) "Employer annual required contribution" means the portion of the annual required contribution which is the responsibility of that particular employer.

(n) "Fund" means the West Virginia Retiree Health Benefit Trust Fund established under this article.

(o) "Fund beneficiaries" means all persons receiving post- employment health care benefits through the health plan.

(p) "Health plan" means the health insurance plan or plans established under article sixteen of this chapter.

(q) "Minimum annual employer premium payment" means the annual amount paid by employers toward retiree premiums, which, when combined with the retirees' contributions on their premiums that year, provide sufficient funds to cover all projected retiree covered health care expenses and related administrative costs for that year. The finance board shall develop the minimum annual employer premium payment as part of its financial plan each year as addressed in section five, article sixteen, of this chapter.

(r) "Normal cost" means that portion of the actuarial present value of the fund obligations and expenses which is allocated to a valuation year by the actuarial cost method used for the fund.

(s) "Obligations" means the administrative expenses of the fund and the cost of covered health care expenses incurred on behalf of fund beneficiaries.

(t) "Other post-employment benefits" or "retiree post- employment health care benefits" means those benefits as addressed by governmental accounting standards board statement no. 43, or any subsequent governmental standards board statement that may be applicable to the fund.

(u) "Plan for other post-employment benefits" means the fiscal funding plan for retiree post-employment health care benefits as it relates to governmental accounting standards board statement no. 43, or any subsequent governmental accounting standards board statements that may be applicable to the fund.

(v) "Retiree" means retired employee as defined by section two, article sixteen, of this chapter.

(w) "Retirement system" or "system" means the West Virginia Consolidated Public Retirement Board created and established by article ten of this chapter and includes any retirement systems or funds administered or overseen by the Consolidated Public Retirement Board.

(x) "Unfunded actuarial accrued liability" means for any actuarial valuation the excess of the actuarial accrued liability over the actuarial value of the assets of the fund under an actuarial cost method used by the fund for funding purposes.

#### **§5-16D-2. Creation of West Virginia Retiree Health Benefit Trust Fund.**

The legislature declares that certain dedicated revenues should be preserved in trust for the purpose of funding other post-employment benefits.

There is hereby created the West Virginia Retiree Health Benefit Trust Fund for the purpose of providing for and administering retiree post-employment health care benefits, and the respective revenues and costs of those benefits as a cost sharing multiple employer plan.

The fund shall be available without fiscal year limitations for covered health care expenses and administration costs. All contributions, appropriations, earnings, and reserves for the payment of obligations under this article shall be credited to the fund and are irrevocable.

The amounts remaining in the fund, if any, after covered health care expenses and administration costs have been paid shall be retained in the fund as a special reserve for adverse fluctuation. All assets of the fund shall be used solely for the payment of fund obligations and for no other purpose.

#### **§5-16D-3. Operation of trust fund.**

(a) Responsibility for the rules and policies for the proper operation of the fund is vested in the board.

(b) The board shall adopt actuarial assumptions as it deems necessary and prudent.

(c) The board shall determine the annual required contribution rates sufficient to maintain the fund in accordance with the state plan for other post-employment benefits.

(d) The board may promulgate, in accordance with chapter twenty-nine-a of this code, any rules it finds necessary to properly administer the fund. The board may promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code.

(e) The Public Employees Insurance Agency shall furnish reports to the board at each of the board's regularly scheduled meetings. The reports shall contain the most recent information reasonably available to the Public Employees Insurance Agency reflecting the obligations of the fund, earnings on investments, and such other information as the board deems necessary and appropriate.

(f) The Secretary of the Department of Administration, as chairman of the board, shall cause to be employed within the Public Employees Insurance Agency such personnel as may be needed to carry out the provisions of this article. The pro rata share of the costs to the Public Employees Insurance Agency of operating the fund shall be part of the administrative costs of the fund and shall be reimbursed to the Public Employees Insurance Agency.

(g) The Public Employees Insurance Agency, on the board's behalf, shall be responsible for the day-to-day operation of the fund and may employ or contract for the services of actuaries and other professionals as required to carry out the duties established by this article.

(h) The board shall contract with the West Virginia Investment Management Board for any necessary services with respect to fund investments.

(i) The Public Employees Insurance Agency, on the board's behalf, shall maintain all necessary records regarding the fund in accordance with generally accepted accounting principles.

(j) The Public Employees Insurance Agency, on the board's behalf, shall collect all moneys due to the fund and shall pay current post-employment healthcare costs and any administrative expenses necessary and appropriate for the operation of the fund from the fund. The fund's assets shall be maintained and accounted for in state funds. The state funds shall be: (1) The Other Post- Employment Benefit Contribution Accumulation Fund; (2) the Other Post-Employment Benefit Investment Fund; and (3) the Other Post- Employment Benefit Expense Fund. These funds will be maintained by the Public Employees Insurance Agency on the board's behalf.

(k) The Public Employees Insurance Agency, on the board's behalf, shall prepare an annual report of fund activities. Such report shall include, but not be limited to, independently audited financial statements in accordance with generally accepted accounting principles. The financial statements must be independently audited in accordance with auditing standards generally accepted in the United States and the standards applicable to financial audits contained in government auditing standards as issued by the Comptroller General of the United States.

(l) Notwithstanding any other provision of law to the contrary, the Public Employees Insurance Agency shall be entitled to request and receive any information that it deems necessary and appropriate from any relevant retirement system in order that the provisions of this article may be carried out.

#### **§5-16D-4. Actuary.**

(a) The actuary employed or retained by the Public Employees Insurance Agency shall provide technical advice to the Public Employees Insurance Agency and to the board regarding the operation of the fund.

(b) Using the actuarial assumptions most recently adopted by the board, the actuary shall, on a biannual basis, or as frequently as the board determines necessary, set actuarial valuations of normal cost, actuarial liability, actuarial value of assets, and related actuarial present values for the state plan for other post- employment benefits.

#### **§5-16D-5. Operational control of trust fund.**

(a) The Public Employees Insurance Agency shall have operational control over the fund. The obligations provided in this article and all related administrative expenses shall be paid from the fund. The Public Employees Insurance Agency may expend moneys from the fund for any purpose authorized by this article.

(b) Notwithstanding any provision of this code or any legislative rule to the contrary, all assets of the fund shall be held in Trust. The Public Employees Insurance Agency, on behalf of the board, shall have full power to invest and reinvest the fund's assets via the West Virginia Investment Management Board, subject to all of the terms, conditions, limitations, and restrictions imposed by article six, chapter twelve, of this code. Subject to the terms, conditions, limitations and restrictions, and consistent with this article, the Public Employees Insurance Agency shall have full power to hold, purchase, sell, assign, transfer, and dispose of any securities and investments in which any of the

moneys are invested, including the proceeds of any investments and other moneys belonging to the fund.

(c) Except as otherwise provided in this chapter, no member of the board or employee of the Public Employees Insurance Agency shall have any personal interest in the gains or profits from any investment made by the board or use the assets of the fund in any manner, except to make such payments as may be authorized by the board or by the secretary of the department of administration as the chairman of the board in accordance with this article.

**§ 5-16D-6. Mandatory employer contributions.**

(a) The board shall annually set the total annual required contribution sufficient to maintain the fund in an actuarially sound manner in accordance with generally accepted accounting principles.

(b) The board shall annually allocate to the respective employers the employer's portion of the annual required contribution, which allocated amount is the "employer annual required contribution".

(c) The board may apportion the annual required contribution into various components. These components may include the amortized unfunded actuarial accrued liability, the total normal cost, the employer annual required contribution and the lesser included minimum annual employer premium payment.

(d) It shall be the mandatory responsibility of employers to make annual contributions to the fund in, at least, the amount of the minimum annual employer premium payment rates established by the board.

(e) It shall be the responsibility of the Public Employees Insurance Agency to bill each employer for the employer annual required contribution and the included minimum annual employer premium payment. It shall be the responsibility of the Public Employees Insurance Agency to annually collect the minimum annual employer premium payment. The Public Employees Insurance Agency shall, in addition to the minimum annual employer premium payment, collect any amounts the employer elects to pay toward the employer annual required contribution. Any employer annual required contribution amount not satisfied by the respective employer shall remain the liability of that employer until fully paid.

## House Bill 4751

Effective Date: Passed March 6, 2006; in effect from passage

Signed by Governor: March 14, 2006

Code Reference: Act §1.

Title: Extends the Time That the Grant County Board of Education is to Meet as a Levying Body

### Major Provisions:

- Extends the time that the Grant County Board of Education is to meet as a levying body until the third Tuesday in May 2006 for the purpose of providing additional time to present to the voters of the county an election for an excess levy.

**ENROLLED**

**H. B. 4751**

(By Delegate Proudfoot, Tabb, Palumbo, Wysong, Tansill, Caputo, Yost, Hunt, Schadler and Walters)

[Passed March 6, 2006; in effect from passage.]

AN ACT to extend the time for the Board of Education of Grant County to meet as a levying body for the purpose of presenting to the voters of the county an election for an additional excess levy to provide funding for the operation, maintenance and repair of schools and to pay school personnel from between the seventh and twenty-eighth days of March and the third Tuesday in April until the third Tuesday in May, two thousand six.

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

**THE BOARD OF EDUCATION OF GRANT COUNTY MEETING AS LEVYING BODY EXTENDED.**

**§1. Extending time for the board of education of Grant County to meet as a levying body for an election for an additional excess levy.**

Notwithstanding the provision of article eight, chapter eleven of the Code of West Virginia, 1931, as amended, the board of education of Grant County is hereby authorized to extend the time for its meeting as a levying body, setting the levy rate and certifying its actions to the State Tax Commissioner from between the seventh and twenty-eighth days of March and the third Tuesday in April until the third Tuesday in May, two thousand six, for the purpose of presenting to the voters of the county an election for an additional excess levy to provide funding for the operation, maintenance and repair of schools and to pay school personnel.

## **Senate Bill 53**

Effective Date: Passed March 11, 2006; takes effect July 1, 2006

Signed by Governor: April 3, 2006

Code Reference: Amends §18-5-22 and adds 18-9A-10a

Title: School Nurses

Major Provisions:

- Adds a provision to WVC §18-5-22 to allow for an appropriation to be made to the Department of Education for distribution to county boards to support school health service needs that exceed the capacity of staff as mandated in the statute (\$1,000,000 was appropriated for this purpose for the 2006-07 year).
- Specifies that county boards are to apply to the state superintendent for receipt of the funding appropriated for this purpose in accordance with procedures established by the state superintendent.
- Specifies that in making the determination, the state superintendent is to take into account varying acuity levels of students with specialized health care needs.
- Acknowledges that the need for health services has grown over the years in the public schools, particularly with respect to serving special needs students and regulations on the administration of medications, and the existing statutorily required ratio of one nurse for each one thousand five hundred students in net enrollment in grades kindergarten through seven is no longer adequate.
- Augments the funding of instructional personnel provided under the Public School Support Program as an intermediate step by providing funding for nurses at the state average contracted salary for nurses, plus fixed charges, retirement and PEIA premiums, by applying a ratio of one nurse per each 1,500 students in net enrollment in grades prekindergarten through twelve, less the existing nurses employed during the 2005-06 school year, to the extent funds are available (\$1,404,530 was appropriated for the 2006-07 year).

**ENROLLED**

COMMITTEE SUBSTITUTE FOR

COMMITTEE SUBSTITUTE FOR

**Senate Bill No. 53**

(Senators Hunter, Dempsey and Unger, *original sponsors*)

[Passed March 11, 2006; to take effect July 1, 2006.]

AN ACT to amend and reenact §18-5-22 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §18-9A-10a, all relating to improving the capacity of county boards of education to provide school health services; providing for distribution to counties of appropriations to support certain school health service needs; eliminating the authority of the Commissioner of the Bureau for Public Health to promulgate a rule to implement certain training and create certain standards and giving that authority to the State Board of Education; and establishing an allowance for new nurse positions to the extent funds are available.

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

That §18-5-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §18-9A-10a, all to read as follows:

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

**§18-5-22. Medical and dental inspection; school nurses; specialized health procedures; establishment of council of school nurses.**

(a) County boards shall provide proper medical and dental inspections for all pupils attending the schools of their county and have the authority to take any other action necessary to protect the pupils from infectious diseases, including the authority to require from all school personnel employed in their county, certificates of good health and of physical fitness.

(b) Each county board shall employ full time at least one school nurse for every one thousand five hundred kindergarten through seventh grade pupils in net enrollment or major fraction thereof: *Provided*, That each county shall employ full time at least one school nurse: *Provided, however*, That a county board may contract with a public health department for services considered equivalent to those required by this section in accordance with a plan to be approved by the state board: *Provided further*, That the state board shall promulgate rules requiring the employment of school nurses in excess of the number required by this section to ensure adequate provision of services to severely handicapped pupils. An appropriation may be made to the state department to be distributed to county boards to support school health service needs that exceed the capacity of staff as mandated in this section. Each county board shall apply to the state superintendent for receipt of this funding in a manner set forth by the state superintendent that assesses and takes into account varying acuity levels of students with specialized health care needs.

(c) Any person employed as a school nurse must be a registered professional nurse properly licensed by the West Virginia ~~h~~Board of ~~e~~Examiners for ~~r~~Registered ~~p~~Professional ~~n~~Nurses in accordance with article seven, chapter thirty of this code.

(d) Specialized health procedures that require the skill, knowledge and judgment of a licensed health professional, may be performed only by school nurses, other licensed school health care providers as provided ~~f~~or in this section, or school employees who have been trained and retrained every two years who are subject to the supervision and approval by school nurses. After assessing the health status of the individual student, a school nurse, in collaboration with the student's physician, parents and, in some instances, an individualized education program team, may delegate certain health care procedures to a school employee who shall be trained pursuant to this section, considered competent, have consultation with, and be monitored or supervised by the school nurse: *Provided*, That nothing in this section prohibits any school employee from providing specialized health procedures or any other prudent action to aid any person who is in acute physical distress or requires emergency assistance. For the purposes of this section "specialized health procedures" means, but is not limited to, catheterization, suctioning of tracheostomy, naso-gastric tube feeding or gastrostomy tube feeding. "School employee" means "teachers", as defined in section one, article one of this chapter and "aides", as defined in section eight, article four, chapter eighteen-a of this code. Commencing with the school year beginning on the first day of July, two thousand two, "school employee" also means "secretary I", "secretary II" and "secretary III", as defined in section eight, article four, chapter eighteen-a of this code: *Provided, however*, That a "secretary I", "secretary II" and "secretary III" shall be limited to the dispensing of medications.

(e) Any school service employee who elects, or is required by this section, to undergo training or retraining to provide, in the manner specified in this section, the specialized health care procedures for those students for which the selection has been approved by both the principal and the county board, shall receive additional pay of at least one pay grade higher than the highest pay grade for which the employee is paid: *Provided*, That any training required in this section may be considered in lieu of required in-service training of the school employee and a school employee may not be required to elect to undergo the training or retraining: *Provided, however*, That commencing with the first day of July, one thousand nine hundred eighty-nine, any newly employed school employee in the field of special education is required to undergo the training and retraining as provided ~~f~~or in this section: *Provided further*, That if an employee who holds a class title of an aide is employed in a school and the aide has received the training, pursuant to this section, then an employee in the field of special education is not required to perform the specialized health care procedures.

(f) Each county school nurse, as designated and defined by this section, shall perform a needs assessment. These nurses shall meet on the basis of the area served by their regional educational service agency, prepare recommendations and elect a representative to serve on the council of school nurses established under this section.

(g) There shall be a council of school nurses which shall be convened by the ~~s~~State ~~h~~Board of ~~e~~Education. This council shall prepare a procedural manual and shall provide recommendations regarding a training course to the ~~e~~Commissioner of the ~~h~~Bureau for ~~p~~Public ~~h~~Health who shall consult with the ~~s~~State ~~d~~Department of ~~e~~Education. The ~~commissioner~~ state board then has the authority to promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code, to implement the training and to create standards used by those school nurses and school employees

performing specialized health procedures. The council shall meet every two years to review the certification and training program regarding school employees.

(h) The ~~s~~State ~~b~~Board of ~~e~~Education shall work in conjunction with county boards to provide training and retraining every two years as recommended by the ~~e~~Council of ~~s~~School ~~n~~Nurses and implemented by the rule promulgated by the ~~e~~commissioner state board.

#### **ARTICLE 9A. PUBLIC SCHOOL SUPPORT.**

##### **§18-9A-10a. Allowance for student health services.**

Repealed

Acts, 1984 Reg. Sess., Ch. 64.

(a) The Legislature finds that the need for health services has grown over the years in the public schools, particularly with respect to serving special needs students and regulations on the administration of medications, and the existing statutorily required ratio of one nurse for each one thousand five hundred students in net enrollment in grades kindergarten through seven is no longer adequate. The Legislature further finds that limits on state-funded professional personnel, required ratios for instructional personnel and declining student population and population density require county boards to make increasingly difficult decisions with respect to the instructional personnel employed in the classroom and those that provide health and other services to students. Therefore, the intent of this section is to augment the funding of instructional personnel and to assure improved health services for students by partially funding nurse positions for certain counties as an intermediate step toward improving instructional personnel staffing. The Legislature intends to further examine the state basic foundation program in context with the changing educational environment and address the staffing and other needs of the public schools as may be indicated through that examination.

(b) Commencing with the school year beginning on the first day of July, two thousand six, notwithstanding any other provision of this code to the contrary and not subject to nor counted toward the respective ratios of professional and instructional personnel per students in adjusted and net enrollment set forth in sections four and five-a of this article, counties shall receive funding at the state average contracted salary for nurses plus fixed charges, retirement and the public employee insurance employer premium for nurse positions as determined by applying a ratio of one nurse per each one thousand five hundred students in net enrollment, or major fraction thereof, in grades prekindergarten through twelve, less existing nurses employed during the two thousand five-two thousand six school year, to the extent funds are available.

## **Senate Bill 127**

Effective Date: Passed March 11, 2006; in effect ninety days from passage (June 9, 2006)

Signed by Governor: April 4, 2006

Code Reference: Amends §18-2-15a and 18 –9A-8a

Title: Regional Education Service Agencies Study

Major Provisions:

- Requires the state superintendent of schools to conduct a comprehensive study of the programs, governance, and administration of the RESAs
- Requires the state superintendent to report the findings of the study, along with recommendations and any legislation necessary to effectuate the changes to LOCEA by December 1, 2006.
- Limits the allowance for RESAs under the Public School Support Program to not more than \$4,200,000 per year.

**ENROLLED**

COMMITTEE SUBSTITUTE FOR

**Senate Bill No. 127**

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

[Passed March 11, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §18-2-15a of the Code of West Virginia, 1931, as amended; and to amend and reenact §18-9A-8a of said code, all relating to regional education service agencies; study by the State Superintendent of Schools; and foundation allowance for regional education service agencies.

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

That §18-2-15a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §18-9A-8a of said code be amended and reenacted, all to read as follows:

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

**§18-2-15a. Comprehensive study of ~~education law~~ regional education service agencies.**

~~(a) The state board of education superintendent shall conduct a comprehensive study of the administrative rules adopted by the board, the state superintendent's interpretations and the West Virginia statutes relating to education that are the basis of the rules, and interpretations programs, governance and administration of the regional education service agencies established pursuant to section twenty-six of this article.~~

~~(b) The study shall include, recommendations to revise or to repeal certain rules, interpretations or statutes with specific attention to be given to reducing paper work for classroom teachers. but is not limited to, the following:~~

~~(1) The general structure and specific processes for governance and oversight of the regional education service agencies to ensure efficiency of operations and accountability in the areas of:~~

~~(A) Financial integrity, oversight and accountability;~~

~~(B) Fiscal oversight of budgeting, salaries, benefits and employment;~~

~~(C) Service delivery in priority areas, including, but not limited to: (i) The types, cost, convenience and results of in- service training programs and other efforts to assist low performing schools and school systems; and (ii) the costs and turnaround time of computer repair services; and~~

~~(D) The costs and benefits of other services provided to the respective members' counties;~~

~~(2) Areas of needed improvements, including any existing limitations or hindrances to improvement;~~

~~(3) The powers and duties of state board and state superintendent relating to regional education service agencies;~~

~~(4) The qualifications and procedures for selection of agency executive directors;~~

~~(5) The selection and supervision of agency staff;~~

~~(6) Development of agency budget;~~

(7) Oversight of agency purchasing and auditing procedures;

(8) Development of programs and delivery of services; and

(9) Procedures to ensure fiscal and programmatic accountability.

(c) The state superintendent shall prepare a written report detailing the findings, conclusions and recommendations generated by the study, to be presented together with recommendations and any legislation necessary to effectuate the recommendations, to the Legislative Oversight Commission on Education Accountability by the first day of December, one two thousand ~~nine hundred eighty-eight~~ six.

#### **ARTICLE 9A. PUBLIC SCHOOL SUPPORT.**

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

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

## Senate Bill 362

Effective Date: Passed March 11, 2006; in effect ninety days from passage (June 9, 2006)

Signed by Governor: April 4, 2006

Code Reference: Adds §11-10-5y

Title: Disclosure of Tax Return Information to Consolidated Public Retirement Board (CPRB)

Major Provisions:

- Requires the tax commissioner, upon written request, to disclose to designated employees of the CPRB available tax return information filed by, or with respect to, any individual receiving a disability annuity in order to assist the CPRB in its efforts to ascertain whether individuals receiving disability retirement benefits under any of the retirement systems it administers continue to be eligible to receive those benefits.

## ENROLLED

### Senate Bill No. 362

(By Senators Bowman, Foster, Hunter and Oliverio)

[Passed March 11, 2006; in effect ninety days from passage.]

ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-10-5y, relating to requiring the Tax Commissioner to disclose certain tax information to the Consolidated Public Retirement Board to aid in administering retirement plans' disability retirement benefits; and providing applicability of criminal penalties for unlawful disclosure of information.

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §11-10-5y, to read as follows:

**ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.**  
**§11-10-5y. Disclosure of return information to Consolidated Public Retirement Board.**

(a) The Tax Commissioner shall, upon written request, disclose to designated employees authorized by the Consolidated Public Retirement Board created by article ten-d, chapter five of this code:

(1) Available return information from the master files of the Tax Division relating to the social security account number, address, filing status, marital status, amounts, nature and source of income and the number of dependents reported on any return filed by, or with respect to, any individual receiving a disability annuity; and

(2) Available state return information reflected on any state return filed by, or with respect to, any individual described in this subsection relating to the amount of and sources of the individual's gross income.

(b) The Tax Commissioner shall disclose return information under this section only for purposes of assisting the Consolidated Public Retirement Board in its efforts to ascertain whether individuals receiving disability retirement benefits under any of the retirement systems which it administers continue to be eligible to receive their disability retirement benefits.

(c) The Consolidated Public Retirement Board and its employees shall maintain the confidentiality of information received under this section, except that the information may be disclosed during an administrative process, hearing or appeal, or other action relating to whether an individual receiving disability retirement benefits under any of the retirement systems which the board administers continues to be eligible to receive his or her disability retirement benefits.

(d) The provisions of subsection (c), section five-d of this article are applicable to all employees, officers and agents of the Consolidated Public Retirement Board who disclose information received pursuant to this section that is otherwise confidential under any provision of this code for purposes other than those specified in this section.

**Senate Bill 370**

Effective Date: Passed March 6, 2006; takes effect July 1, 2006

Signed by Governor: April 4, 2006

Code Reference: Amends §11-3-9

Title: Taxable Assessed Property

Major Provisions:

- Exempts from property taxes personal property, including vehicles that qualify for a farm use exemption certificate, and livestock employed exclusively in agriculture on a farm or farming operation that annually produces for sale agricultural products.

## ENROLLED

### Senate Bill No. 370

(By Senators Helmick, Facemyer, Sharpe, Prezioso, Plymale,  
Edgell, Love, Bailey, McCabe, Unger, Minear,  
Boley, Yoder, Guills and Sprouse)

[Passed March 18, 2006; to take effect January 1, 2007.]

AN ACT to amend and reenact §11-3-9 of the Code of West Virginia, 1931, as amended, relating to exempting personal property employed exclusively in agriculture and owned by the producer from personal property taxation.

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

That §11-3-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

#### **ARTICLE 3. ASSESSMENTS GENERALLY.**

##### **§11-3-9. Property exempt from taxation.**

(a) All property, real and personal, described in this subsection, and to the extent herein limited, is exempt from taxation:

- (1) Property belonging to the United States, other than property permitted by the United States to be taxed under state law;
- (2) Property belonging exclusively to the state;
- (3) Property belonging exclusively to any county, district, city, village or town in this state and used for public purposes;
- (4) Property located in this state, belonging to any city, town, village, county or any other political subdivision of another state and used for public purposes;
- (5) Property used exclusively for divine worship;
- (6) Parsonages and the household goods and furniture pertaining thereto;
- (7) Mortgages, bonds and other evidence of indebtedness in the hands of bona fide owners and holders hereafter issued and sold by churches and religious societies for the purposes of securing money to be used in the erection of church buildings used exclusively for divine worship, or for the purpose of paying indebtedness thereon;
- (8) Cemeteries;
- (9) Property belonging to, or held in trust for, colleges, seminaries, academies and free schools, if used for educational, literary or scientific purposes, including books, apparatus, annuities and furniture;
- (10) Property belonging to, or held in trust for, colleges or universities located in West Virginia, or any public or private nonprofit foundation or corporation which receives contributions exclusively for such college or university, if the property or dividends, interest, rents or royalties derived therefrom are used or devoted to educational purposes of such college or university;
- (11) Public and family libraries;
- (12) Property used for charitable purposes, and not held or leased out for profit;

- (13) Property used for the public purposes of distributing water or natural gas, or providing sewer service by a duly chartered nonprofit corporation when such property is not held, leased out or used for profit;
  - (14) Property used for area economic development purposes by nonprofit corporations when such property is not leased out for profit;
  - (15) All real estate not exceeding one acre in extent, and the buildings thereon, used exclusively by any college or university society as a literary hall, or as a dormitory or clubroom, if not used with a view to profit, including, but not limited to, property owned by a fraternity or sorority organization affiliated with a university or college, or property owned by a nonprofit housing corporation or similar entity on behalf of a fraternity or sorority organization affiliated with a university or college, when the property is used as residential accommodations, or as a dormitory for members of the organization;
  - (16) All property belonging to benevolent associations, not conducted for private profit;
  - (17) Property belonging to any public institution for the education of the deaf, dumb or blind, or any hospital not held or leased out for profit;
  - (18) Houses of refuge and mental health facility or orphanage;
  - (19) Homes for children or for the aged, friendless or infirm, not conducted for private profit;
  - (20) Fire engines and implements for extinguishing fires, and property used exclusively for the safekeeping thereof, and for the meeting of fire companies;
  - (21) All property on hand to be used in the subsistence of livestock on hand at the commencement of the assessment year;
  - (22) Household goods to the value of two hundred dollars, whether or not held or used for profit;
  - (23) Bank deposits and money;
  - (24) Household goods, which for purposes of this section means only personal property and household goods commonly found within the house and items used to care for the house and its surrounding property, when not held or used for profit;
  - (25) Personal effects, which for purposes of this section means only articles and items of personal property commonly worn on or about the human body, or carried by a person and normally thought to be associated with the person when not held or used for profit;
  - (26) Dead victuals laid away for family use;
  - (27) All property belonging to the state, any county, district, city, village, town or other political subdivision, or any state college or university which is subject to a lease purchase agreement and which provides that, during the term of the lease purchase agreement, title to the leased property rests in the lessee so long as lessee is not in default or shall not have terminated the lease as to the property; and
  - ~~(28) Any other property or security exempted by any other provision of law.~~
- ~~(b) Notwithstanding the provisions of subsection (a) of this section, no property is exempt from taxation which has been purchased or procured for the purpose of evading taxation, whether temporarily holding the same over the first day of the assessment year or otherwise.~~
- ~~(c) Real property which is exempt from taxation by subsection (a) of this section shall be entered upon the assessor's books, together with the true and actual value thereof, but no taxes may be levied upon the property or extended upon the assessor's books.~~
- ~~(d) Notwithstanding any other provisions of this section, this section does not exempt from taxation any property owned by, or held in trust for, educational, literary, scientific, religious or other charitable corporations or organizations, including any public or private~~

~~nonprofit foundation or corporation existing for the support of any college or university located in West Virginia, unless such property, or the dividends, interest, rents or royalties derived therefrom, is used primarily and immediately for the purposes of the corporations or organizations.~~

~~(e) The Tax Commissioner shall, by issuance of rules, provide each assessor with guidelines to ensure uniform assessment practices statewide to effect the intent of this section.~~

~~(f) Inasmuch as there is litigation pending regarding application of this section to property held by fraternities and sororities, amendments to this section enacted in the year one thousand nine hundred ninety-eight shall apply to all cases and controversies pending on the date of such enactment.~~

~~(g) The amendment to subdivision (27), subsection (a) of this section, passed during the two thousand five regular session of the Legislature, shall apply to all applicable lease purchase agreements in existence upon the effective date of the amendment.~~

Personal property, including vehicles that qualify for a farm use exemption certificate pursuant to section two, article three, chapter seventeen-a of this code and livestock, employed exclusively in agriculture, as defined in article ten, section one of the West Virginia Constitution: *Provided*, That this exemption shall only apply in the case of such personal property used on a farm or farming operation that annually produces for sale agricultural products, as defined in rules of the Tax Commissioner ; and (29) Any other property or security exempted by any other provision of law.

(b) Notwithstanding the provisions of subsection (a) of this section, no property is exempt from taxation which has been purchased or procured for the purpose of evading taxation, whether temporarily holding the same over the first day of the assessment year or otherwise.

(c) Real property which is exempt from taxation by subsection (a) of this section shall be entered upon the assessor's books, together with the true and actual value thereof, but no taxes may be levied upon the property or extended upon the assessor's books.

(d) Notwithstanding any other provisions of this section, this section does not exempt from taxation any property owned by, or held in trust for, educational, literary, scientific, religious or other charitable corporations or organizations, including any public or private nonprofit foundation or corporation existing for the support of any college or university located in West Virginia, unless such property, or the dividends, interest, rents or royalties derived therefrom, is used primarily and immediately for the purposes of the corporations or organizations.

(e) The Tax Commissioner shall, by issuance of rules, provide each assessor with guidelines to ensure uniform assessment practices statewide to effect the intent of this section.

(f) Inasmuch as there is litigation pending regarding application of this section to property held by fraternities and sororities, amendments to this section enacted in the year one thousand nine hundred ninety-eight shall apply to all cases and controversies pending on the date of such enactment.

(g) The amendment to subdivision (27), subsection (a) of this section, passed during the two thousand five regular session of the Legislature, shall apply to all applicable lease purchase agreements in existence upon the effective date of the amendment.

## **Senate Bill 489**

Effective Date: Passed March 8, 2006; in effect ninety days from passage (June 6, 2006)

Signed by Governor: March 23, 2006

Code Reference: Amends §12-3A-6

Title: Electronic Commerce

Major Provisions:

- Adds the provision that, upon written request from a political subdivision, including a county board of education, the State Treasurer may provide the services of that office to enable a political subdivision to accept credit cards, debit cards, or other payment methods for electronic commerce purchases and to charge for those services.

ENROLLED

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 489**

(Senators Chafin and Helmick, *original sponsors*)

[Passed March 8, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §12-3A-6 of the Code of West Virginia, 1931, as amended, relating to the authorization of the State Treasurer to provide remittance processing and e-government services for a political subdivision upon its request.

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

That §12-3A-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 3A. FINANCIAL ELECTRONIC COMMERCE.**

**§12-3A-6. Receipting of electronic commerce purchases.**

(a) The sState tTreasurer may establish a system for acceptance of credit card and other payment methods for electronic commerce purchases from spending units. Notwithstanding any other provision of this code to the contrary, each spending unit utilizing WEB commerce, electronic commerce or other method that offers products or services for sale shall utilize the sState tTreasurer's system for acceptance of payments.

(b) To facilitate electronic commerce, the sState tTreasurer may charge a spending unit for the banking and other expenses incurred by the tTreasurer on behalf of the spending unit and for any work performed, including, without limitation, assisting in the development of a website and utilization of the tTreasurer's payment gateway. A special revenue account, entitled the "Treasurer's Financial Electronic Commerce Fund," is created in the sState tTreasury to receive the amounts charged by the tTreasurer. The tTreasurer may expend the funds received in the Treasurer's Financial Electronic Commerce Fund only for the purposes of this article and for other purposes as determined by the Legislature.

(c) The sState tTreasurer may authorize a spending unit to assess and collect a fee to recover or pay the cost of accepting bank, charge, check, credit or debit cards from amounts collected.

(d) Upon written request from a political subdivision, the State Treasurer may provide services of his or her office to a political subdivision and charge for the services.

~~(e) The State Treasurer shall propose legislative rules for promulgation in accordance with the provisions of article three of, chapter twenty-nine-a of this code to establish the criteria and procedures involved in granting the authorization and may promulgate emergency rules in accordance with the provisions of article three of chapter twenty-nine-a of the code to implement the provisions of this section prior to authorization of the legislative rules.~~

## **Senate Bill 517**

Effective Date: Passed March 11, 2006; in effect from passage

Signed by Governor: April 4, 2006

Code Reference: Amends §§ 49-5-13a, 49-5-20, and 49-5D-3

Title: Juvenile Proceedings

Major Provisions:

- Adds the requirement that as a part of the examination period related to the dispositional proceeding for a juvenile who has been adjudicated delinquent and ordered to be delivered into the custody of the Director of the Division of Juvenile Services, the director or his or her designee, shall convene and direct a multidisciplinary treatment team for the juvenile.
- Specifies that the team shall include the juvenile, if appropriate, the juvenile's probation officer, the juvenile's social worker, if any, the juvenile's custodial parent or parents, the juvenile's guardian, attorneys representing the juvenile or the parents, the guardian ad litem, if any, the prosecuting attorney and an appropriate school official or representative.
- Specifies that the team may also include, where appropriate, a court-appointed special advocate, a member of a child advocacy center and any other person who may assist in providing recommendations for the particular needs of the juvenile and the family.
- Adds the requirement that prior to the discharge of a juvenile from any institution or facility to which the juvenile has been committed, the superintendent of the institution or facility shall call a meeting of the multidisciplinary treatment team to which the juvenile has been referred, or if no referral has been made, convene a multidisciplinary treatment team for any juvenile for any child for which a team is required.
- Changes the minimum time limit for forwarding a copy of the juvenile's proposed after-care plan to the circuit court which committed the juvenile from at least forty-five days prior to discharge to prior to discharge.
- Requires the Division of Juvenile Services to establish a treatment planning process for delinquency cases in which a juvenile has been committed to the custody of the Director of the Division of Juvenile Services, similar to the one that the Secretary of

Department of Health and Human Services is required to establish.

- Grants the Director of the Division of Juvenile Services the authorization for convening a treatment team for the juveniles who have been ordered into its custody.
- Grants authorization to any person who is authorized by the provision of Chapter forty-nine to convene a multidisciplinary team meeting to seek and receive an order of the circuit court setting such meeting and directing attendance.
- Authorizes members of the multidisciplinary team to participate in team meetings by telephone or video conferencing.

**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 517**

(Senators Foster, Unger and Hunter)

[Passed March 11, 2006; in effect from passage.]

AN ACT to amend and reenact §49-5-13a and §49-5-20 of the Code of West Virginia, 1931, as amended; and to amend and reenact §49-5D-3 of said code, all relating to juvenile proceedings and multidisciplinary teams; requiring the Division of Juvenile Services to establish a multidisciplinary team treatment planning process for certain juveniles in its custody; requiring multidisciplinary team to be convened and directed by the Division of Juvenile Services for juveniles committed to its custody by the court for examination and diagnosis; specifying members of the multidisciplinary team; requiring multidisciplinary team to be convened for juveniles prior to discharge from a juvenile correctional facility; authorizing those who convene a multidisciplinary team meeting to obtain an order of the circuit court setting a hearing and compelling attendance; and exceptions to team meeting requirement.

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

That §49-5-13a and §49-5-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §49-5D-3 of said code be amended and reenacted, all to read as follows:

**ARTICLE 5. JUVENILE PROCEEDINGS.**

**§49-5-13a. Examination, diagnosis and classification; period of custody.**

(a) As a part of the dispositional proceeding for a juvenile who has been adjudicated delinquent, the court may, upon its own motion or upon request of counsel, order the juvenile to be delivered into the custody of the Director of the Division of Juvenile Services, who shall cause the juvenile to be transferred to a juvenile diagnostic center for a period not to exceed sixty days. During this period, the juvenile shall undergo examination, diagnosis, classification and a complete medical examination and shall at all times be kept apart from the general juvenile inmate population in the director's custody. ~~Not later than sixty days after commitment pursuant to this section the juvenile shall be remanded and delivered to the custody of the director, an appropriate agency or any other person that the court by its order directs. Within ten days after the end of the examination, diagnosis and classification, the director of the division of juvenile services shall make or cause to be made a report to the court containing the results, findings, conclusions and recommendations of the director with respect to that juvenile.~~

(b) During the examination period established by subsection (a) of this section, the director, or his or her designee, shall convene and direct a multidisciplinary treatment team for the juvenile which team shall include the juvenile, if appropriate, the juvenile's probation officer, the juvenile's social worker, if any, the juvenile's custodial parent or

parents, the juvenile's guardian, attorneys representing the juvenile or the parents, the guardian ad litem, if any, the prosecuting attorney and an appropriate school official or representative. The team may also include, where appropriate, a court-appointed special advocate, a member of a child advocacy center and any other person who may assist in providing recommendations for the particular needs of the juvenile and the family.

(c) Not later than sixty days after commitment pursuant to this section the juvenile shall be remanded and delivered to the custody of the director, an appropriate agency or any other person that the court by its order directs. Within ten days after the end of the examination, diagnosis and classification, the Director of the Division of Juvenile Services shall make or cause to be made a report to the court containing the results, findings, conclusions and recommendations of the multidisciplinary team with respect to that juvenile.

**§49-5-20. After-care plans.**

~~(a) At least forty-five days prior to the discharge of a juvenile from any institution or facility to which the juvenile was committed pursuant to subdivision (5); or (6), or (7) of subsection (b), section thirteen of this article, the director~~ superintendent of the institution or facility shall call a meeting of the multidisciplinary treatment team to which the child has been referred or, if no referral has been made, convene a multidisciplinary treatment team for any child for which a multidisciplinary treatment plan is required by the provisions of section three, article five-d of this chapter and forward a copy of the juvenile's proposed after-care plan to the circuit court which committed the juvenile. A copy of the plan shall also be sent to: (1) The juvenile's parents or legal guardian; (2) the juvenile's lawyer; (3) the juvenile's probation officer or community mental health center professional; (4) the prosecuting attorney of the county in which the original commitment proceedings were held; and (5) the principal of the school which the juvenile will attend. The plan shall have a list of the names and addresses of these persons attached to it.

(b) The after-care plan shall contain a detailed description of the education, counseling and treatment which the juvenile received while at the institution or facility, and it shall also propose a plan for education, counseling and treatment for the juvenile upon the juvenile's discharge. The plan shall also contain a description of any problems the juvenile has, including the source of those problems, and it shall propose a manner for addressing those problems upon discharge.

(c) Within twenty-one days of receiving the plan, the juvenile's probation officer or community mental health center professional shall submit written comments upon the plan to the circuit court which committed the juvenile. Any other person who received a copy of the plan pursuant to subsection (a) of this section may submit written comments upon the plan to the circuit court which committed the juvenile. Any person who submits comments upon the plan shall send a copy of those comments to every other person who received a copy of the plan.

(d) Within twenty-one days of receiving the plan, the juvenile's probation officer or community mental health center professional shall contact all persons, organizations and agencies which are to be involved in executing the plan to determine whether they are capable of executing their responsibilities under the plan and to further determine whether they are willing to execute their responsibilities under the plan.

(e) If adverse comments or objections regarding the plan are submitted to the circuit court, it shall, within forty-five days of receiving the plan, hold a hearing to consider the plan and the adverse comments or objections. Any person, organization or agency

which has responsibilities in executing the plan, or their representatives, may be required to appear at the hearing unless they are excused by the circuit court. Within five days of the hearing, the circuit court shall issue an order which adopts the plan as submitted or as modified in response to any comments or objections.

(f) If no adverse comments or objections are submitted, a hearing need not be held. In that case, the circuit court shall consider the plan as submitted and shall, within forty-five days of receiving the plan, issue an order which adopts the plan as submitted.

(g) Notwithstanding the provisions of subsections (e) and (f) of this section, the plan which is adopted by the circuit court shall be in the best interests of the juvenile and shall also be in conformity with West Virginia's interest in youth as embodied in subsection (b), section thirteen of this article.

(h) The circuit court which committed the juvenile shall appoint the juvenile's probation officer or community mental health center professional to act as supervisor of the plan. The supervisor shall report the juvenile's progress under the plan to the circuit court every sixty days, or until the circuit court determines that no report or no further care is necessary.

#### **ARTICLE 5D. MULTIDISCIPLINARY TEAMS.**

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

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

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

(3) Prior to disposition, in each case in which a treatment planning team has been convened, the team shall advise the court as to the types of services the team has determined are needed and the type of placement, if any, which will best serve the needs of the child. If the team determines that an out-of-home placement will best serve the needs of the child, the team shall first consider placement at facilities or programs

located within the state. The team may only recommend placement in an out-of-state facility if it concludes, after considering the best interests and overall needs of the child, that there are no available and suitable in-state facilities which can satisfactorily meet the specific needs of the child.

(b) Each treatment team shall be convened and directed by the child's or family's case manager in the Department of Health and Human Resources or the Division of Juvenile Services if the juvenile has been ordered into its custody for examination and diagnosis pursuant to section thirteen, article five of this chapter. The treatment team shall consist of the child's custodial parent or parents, guardian or guardians, other immediate family members, the attorney or attorneys representing the child, the parent or parents of the child, the child's attorney, the guardian ad litem, if any, the prosecuting attorney or his or her designee and where appropriate to the particular case under consideration and available, a court-appointed special advocate, a member of a child advocacy center, an appropriate school official and any other person or an agency representative who may assist in providing recommendations for the particular needs of the child and family. The child may participate in multidisciplinary treatment team meetings if such is deemed appropriate by the multidisciplinary treatment team. For purposes of delinquency proceedings, the juvenile probation officer shall be a member of the treatment team. Any person authorized by the provisions of this chapter to convene a multidisciplinary team meeting may seek and receive an order of the circuit court setting such meeting and directing attendance. Members of the multidisciplinary team may participate in team meetings by telephone or video conferencing.

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

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

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

## **Senate Bill 538**

Effective Date: Passed March 10, 2006; in effect ninety days from passage (June 8, 2006)

Signed by Governor: March 31, 2006

Code Reference: Amends §§5-10B-1 through 5-10B-5, 5-10B-9 5-10B-10 and adds 5-10B-11, 5-10B-12, 5-10B-13

Title: Deferred Compensation Plans

Major Provisions:

- Adds the authorization for employees of county, municipal or other political subdivisions to participate in the state deferred compensation plan, if their employer does not have a deferred compensation plan.
- Adds the provision that a county commission or the governing body of a public employer may seek authorization from the state treasurer for its employees to participate in a state deferred compensation plan, instead of implementing its own plan.
- Moves the responsibility for implementing and managing any deferred compensation plan for state employees from the board of trustees of the Consolidated Public Retirement Board to the state treasurer, effective July 1, 2006.
- Authorizes the state or public employers to charge a fee for administrative expenses, based on plan contributions, total assets, total returns, or other selected methods.
- States specifically that the state and the public employers are not to incur any liability for losses suffered or change in value of an investment product.

## ENROLLED

### Senate Bill No. 538

(By Senators Chafin, Helmick and Love)

[Passed March 10, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §5-10B-1, §5-10B-2, §5-10B-3, §5-10B-4, §5-10B-5, §5-10B-9 and §5-10B-10 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto three new sections, designated §5-10B-11, §5-10B-12 and §5-10B-13, all relating to government employees' deferred compensation plans; transferring responsibility for the State Employee Deferred Compensation Plan to the State Treasurer on the first day of July, two thousand six; authorizing political subdivisions without plans to request the Treasurer include its employees in the state plan; allowing political subdivision employees to participate in the state plan; allowing political subdivision employees to participate in the state plan when their employer does not offer a plan; clarifying various powers and requirements; authorizing employees to attend meetings called by the state or public employer during regular working hours to explain the plan; authorizing the state and public employers to charge fees for plan administration; clarifying liability; establishing trust fund and administrative account in the State Treasury; providing that information that would tend to disclose the identity of a participating employee is exempt from disclosure under the Freedom of Information Act; and protecting the moneys from certain legal processes.

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

That §5-10B-1, §5-10B-2, §5-10B-3, §5-10B-4, §5-10B-5, §5-10B-9 and §5-10B-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto three new sections, designated §5-10B-11, §5-10B-12 and §5-10B-13, all to read as follows:

#### **ARTICLE 10B. GOVERNMENT EMPLOYEES DEFERRED COMPENSATION PLANS.**

##### **§5-10B-1. Legislative purpose.**

The legislative purpose of this enactment is to enable employees of the state, its agencies, counties, municipalities and political subdivisions of such governmental bodies to participate in voluntary deferred compensation plans authorized by the United States Internal Revenue Code as interpreted by the Internal Revenue Service, thereby permitting such employees to obtain the advantages inherent in such plans relative to the income tax treatment of the contributions and disbursements made pursuant to such voluntary income deferral plans. It is further the purpose of this enactment to authorize the establishment of separate plans for the state and its agencies and for counties, municipalities and political subdivisions within the state and to authorize county, municipal and political subdivision employees to participate in the state deferred compensation plan if their employer does not have a plan.

##### **§5-10B-2. Definitions.**

Unless the context in which used clearly indicates a different meaning, as used in this article:

(a) "Board" means the ~~e~~Consolidated ~~p~~Public ~~r~~Retirement ~~b~~Board provided for in article ten of this chapter.

(b) "Deferred compensation" means the income and earnings on that income an employee may legally defer for personal income tax purposes pursuant to the Internal Revenue Code until distribution.

~~(b)~~ (c) "Deferred compensation plan" or "plan" means a trust whereby the state of ~~West Virginia,~~ employer or as a public employer, ~~or a public employer~~ agrees with an employee for the voluntary reduction in employee compensation for the payment of benefits by the state employer or the public employer to the employee at a later date pursuant to this article and the federal laws and regulations relating to eligible state deferred compensation plans as described in Section 457 of the Internal Revenue Code.

(d) "Deferred compensation trust fund" or "trust" means the fund in which deferred amounts and investment income of participating employees are held.

~~(e)~~ (e) "Employee" means any person, whether appointed, elected, or under contract, providing services for the state employer or public employer for which compensation is paid.

(f) "Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been amended.

(g) "Investment product" means any fixed or variable rate annuity, life insurance contract, savings account, certificate of deposit, money market account, bond, mutual fund or any other form of investment not prohibited under the Internal Revenue Code and authorized by the state employer or the public employer for the purpose of receiving funds under a plan.

~~(d)~~ (h) "Public employer" means counties, municipalities or political subdivisions of those governmental bodies which meet the definition of "state" as described in Internal Revenue Code Section 457 (d)(1), but which do not meet the definition of "state employer" as used in this article.

~~(e)~~ (i) "State employer" means the ~~s~~State of West Virginia, ~~and any~~ which includes every state board, commission, state agency ~~or~~ and instrumentality of the state.

(j) "Treasurer" means the State Treasurer.

(k) "Vendor" means a private entity that sells investment products or provides goods and services.

**~~§5-10B-3. Contracts for deferred compensation plans — Approval of plans — Approval of companies providing investments. Powers; contracts; meetings.~~**

(a) ~~Notwithstanding any provision of this code to the contrary, including, without limitation, this chapter and chapter five-a of this code, the state employer and a public employer have the power necessary or appropriate to carry out the provisions and objectives of this article and to operate the trust, including, without limitation, entering into contracts and executing and delivering instruments; engaging consultants, auditors, counsel, managers, advisors, trustees or any other contractors or professionals; and charging and collecting administrative fees.~~

(b) ~~The state employer or any public employer may, by contract, agree with any of its employees to defer and hold in trust any portion of that employee's compensation and may subsequently purchase or acquire from any company vendors licensed to do business in the s~~State of West Virginia ~~fixed or variable annuities, insurance,~~

~~endowment, or savings account investment products~~ for the purpose of carrying out the objectives of the deferred compensation plan as described in this article.

(c) Employees are authorized to attend meetings called by the state employer or public employer for the purpose of explaining a plan during regular working hours.

**§5-10B-4. Responsibility for implementing plans -- Payroll reductions -- Billing and administration.**

(a) The responsibility for implementing the deferred compensation plan for employees of the state employer shall be delegated to the board of trustees through the thirtieth day of June, two thousand six. On the first day of July, two thousand six, the Treasurer shall manage any deferred compensation plan for state employees. Any and all records, moneys, contracts, property and other matters involving deferred compensation plans for state employees shall transfer on the first day of July, two thousand six, to the Treasurer.

(b) The responsibility for implementing the deferred compensation plan for employees of a public employer, as defined hereunder, shall be is delegated to the county commission of a county or tribunal in lieu thereof, the governing body of a municipality, as that term is defined in section two, article one, chapter eight of this code, and, in the case of any other political subdivision, the board, commission, or other similar body responsible for determining the policy of such political subdivision. A county commission or a governing body of another public employer may request the Treasurer authorize its employees to participate in the state plan instead of implementing its own plan.

(c) If the governing body has adopted more than one plan, an employee electing to participate shall also elect the plan or plans in which he or she desires to participate. When a public employer has not implemented a plan, its employees may participate in the state plan.

(d) Payroll reductions shall be made, remitted in each instance, as specified by the state employer or public employer for deposit in the trust, in each instance, by the appropriate payroll officer. The board of trustees, the Treasurer or appropriately designated local officer, board or committee of such deferred compensation plan may contract with a private corporation, institution and/or custodial bank one or more vendors to provide consolidated billing and all or any other administrative goods and services deemed necessary, needed in order that any such deferred compensation plan adopted shall operate without cost to or contribution from the state employer except for the incidental expense of administering the payroll salary reductions and the remittance thereof for a plan.

(e) Plans shall operate without cost to or contribution from the state employer or public employer except for the incidental expense of administering the payroll salary reductions and the remittance thereof.

(f) The state employer and the public employers may charge fees on plan contributions, total assets, total return or other selected method as necessary to provide for the administrative expenses of a plan.

**§5-10B-5. Investment of funds.**

Notwithstanding any other provision of law to the contrary, the board, or the Treasurer beginning the first day of July, two thousand six, as well as the appropriate local officer, board or committee, designated as responsible for implementing a deferred compensation plan, is hereby authorized to invest compensation held pursuant to any such a deferred compensation plan in fixed and variable annuities, mutual funds, insurance, endowment or savings accounts from any company duly authorized to contract such business in the state investment products.

**§5-10B-9. Liabilities of sState of West Virginia or political subdivisions.**

The state employer and the public employers shall not incur any liability for losses suffered or change in value of an investment product. The financial liability of the state employer or public employer under any deferred compensation plan shall be limited in each instance to the value of the particular fixed or variable annuity, insurance, endowment or savings account acquired pursuant to the terms and provisions of this article, and the state employer or public employer shall not be liable for any change in value of such investments at the time of distribution to an employee amounts paid over to the trust but not invested.

**§5-10B-10. Deferred compensation plan funds held in trust.**

(a) Notwithstanding anything herein to the contrary, as of the first day of January, one thousand nine hundred ninety-eight, all assets and income of all deferred compensation plans created or administered pursuant to this article shall be held in trust for the exclusive benefit of participants and their beneficiaries.

(b) The West Virginia Deferred Compensation Trust Fund is created within the accounts held by the Treasurer or with one or more financial institutions, vendors or any other entities selected by the Treasurer for the purpose of managing and investing the trust. A public employer managing a trust shall create a trust fund and select one or more financial institutions, vendors or other entities to hold the trust.

(c) The corpus, assets and earnings of the trust do not constitute public funds of the state or public employer and are available solely for carrying out the purposes of this article. Any contract entered into by or any obligation of the state employer or a public employer in connection with a plan does not create or constitute a debt, but is solely an obligation of the trust.

**§5-10B-11. Deferred Compensation Administrative Account.**

The Deferred Compensation Administrative Account is created in the accounts of the Treasurer for the purposes of implementing, operating and maintaining the trust and plan. The account shall receive all fees charged and collected by the Treasurer under this article.

**§5-10B-12. Confidential information exempt from disclosure.**

All information contained in the records maintained pursuant to this article that would tend to disclose the identity of a participating employee, including, without limitation, social security number, account number, address, telephone number, e-mail address, amounts invested, selected investments, returns and medical or disability information, are confidential and exempt from disclosure under the provisions of article one, chapter twenty-nine-b of this code. Employees and persons authorized by employees are permitted access to their own information.

**§5-10B-13. Moneys not subject to legal process.**

No account, benefit or right, created pursuant to this article, accrued or accruing, is subject to execution, garnishment, attachment, sale to satisfy a judgment or order, the operation of bankruptcy or insolvency laws, or other process of law and shall be unassignable.

## **Senate Bill 598**

Effective Date: Passed March 11, 2006; in effect ninety days from passage (June 9, 2006)

Signed by Governor: April 3, 2006

Code Reference: Amends § 18-7A-23 and 18-7A-25

Title: State Teachers Retirement System

Major Provisions:

- Deletes the requirement that the Consolidated Public Retirement Board refund the accumulated contributions and earned interest of an employee who quits employment with less than five years of service and fails to make application for a refund within five years from the date that the employee quits.

## ENROLLED

### Senate Bill No. 598

(By Senators Foster and Minard)

[Passed March 11, 2006; in effect ninety days from passage.]

AN ACT to repeal §18-7A-24 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18-7A-23 and §18-7A-25 of said code, all relating to the State Teachers Retirement System; deleting provisions which allowed for the distribution, without a contributor's consent, of accumulated contributions to the State Teachers Retirement System to a contributor with fewer than five years of service, who quits service or ceases to be a member; and correcting code references.

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

That §18-7A-24 of the Code of West Virginia, 1931, as amended, be repealed; and that §18-7A-23 and §18-7A-25 of said code be amended and reenacted, all to read as follows:

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

##### **§18-7A-23. Withdrawal and death benefits.**

Benefits upon withdrawal from service prior to retirement under the provisions of this article shall be as follows:

(a) A contributor who withdraws from service for any cause other than death or retirement shall, upon application, be paid his or her accumulated contributions plus refund interest up to the end of the fiscal year preceding the year in which application is made, but in no event shall interest be paid beyond the end of five years following the year in which the last contribution was made: **Provided** *Provided*, That such contributor, at the time of application, is then no longer under contract, verbal or otherwise, to serve as a teacher; or

(b) ~~(c)~~ If a such contributor ~~with fewer than five years of established service does not apply for the refund of his accumulated contributions within five years from the year in which he quits service, then his accumulated contributions plus refund interest, up to and including the fifth year, shall be returned to such member or to his legal representative; or~~ has completed twenty years of total service, he or she may elect to receive at retirement age an annuity which shall be computed as provided in this article: **Provided** *Provided*, That if such contributor has completed as least five, but fewer than twenty years of total service in this state, he or she may elect to receive at age sixty-two, an annuity which shall be computed as provided in this article. The contributor must notify the retirement board in writing concerning such election. If such contributor has completed fewer than five years of service in this state, he or she shall be subject to the provisions as outlined in subsection (a) ~~or (b)~~ above.

Benefits upon the death of a contributor prior to retirement under the provisions of this article shall be paid as follows:

(1) If the contributor was at least fifty years old, and if his or her total service as a teacher was at least twenty-five years at the time of his or her death, then the surviving spouse of the deceased, provided ~~said~~ the spouse is designated as the sole refund beneficiary, ~~shall be~~ is eligible for an annuity ~~which shall be~~ computed as though the

deceased were actually a retired teacher at the time of death, and had selected a survivorship option which pays the spouse the same monthly amount which would have been received by the deceased; or

(2) If the facts do not permit payment under the preceding paragraph (1), then the following sum shall be paid to the refund beneficiary of the contributor: ~~His~~ The contributor's accumulated contributions with refund interest up to the year of his or her death plus the amount of his or her accumulated contributions. The latter sum shall emanate from the employer's accumulation fund.

**§18-7A-25. Eligibility for retirement allowance.**

(a) Any member who has attained the age of sixty years or who has had thirty-five years of total service as a teacher in West Virginia, regardless of age, is eligible for an annuity. No new entrant nor present member is eligible for an annuity, however, if either has less than five years of service to his or her credit.

(b) Any member who has attained the age of fifty-five years and who has served thirty years as a teacher in West Virginia is eligible for an annuity.

(c) Any member who has served at least thirty but less than thirty-five years as a teacher or nonteaching member in West Virginia and is less than fifty-five years of age is eligible for an annuity, but the annuity shall be the reduced actuarial equivalent of the annuity the member would have received if the member were age fifty-five at the time such annuity was applied for.

(d) The request for any annuity shall be made by the member in writing to the ~~R~~Retirement ~~B~~Board, but in case of retirement for disability, the written request may be made by either the member or the employer.

(e) A member is eligible for annuity for disability if he or she satisfies the conditions in either subdivision ~~(a)~~ (1) ~~subdivision or (b)~~ (2) of this subsection and meets the conditions of subdivision ~~(e)~~ (3) of this subsection as follows:

(1) His or her service as a teacher or nonteaching member in West Virginia must total at least ten years, and service as a teacher or nonteaching member must have been terminated because of disability, which disability must have caused absence from service for at least six months before his or her application for disability annuity is approved.

(2) His or her service as a teacher or nonteaching member in West Virginia must total at least five years, and service as a teacher or nonteaching member must have been terminated because of disability, which disability must have caused absence from service for at least six months before his or her application for disability annuity is approved and the disability is a direct and total result of an act of student violence directed toward the member.

(3) An examination by a physician or physicians selected by the Retirement Board must show that the member is at the time mentally or physically incapacitated for service as a teacher, that for that service the disability is total and likely to be permanent, and that he or she should be retired in consequence of the disability.

(f) Continuance of the disability of the retired member shall be established by medical examination, as prescribed in subdivision ~~three~~ (3), subsection ~~(4)~~ (e) of this section, annually for five years after retirement, and thereafter at such times required by the ~~R~~Retirement ~~B~~Board. Effective the first day of July, one thousand nine hundred ninety-eight, a member who has retired because of a disability may select an option of payment under the provisions of section twenty-eight of this article: *Provided*, That any option selected under the provisions of section twenty-eight of this article shall be in all respects the actuarial equivalent of the straight life annuity benefit the disability retiree

receives or would receive if the options under ~~section twenty-eight of this article~~ said section were not available and that no beneficiary or beneficiaries of the disability annuitant may receive a greater benefit, nor receive any benefit for a greater length of time, than the beneficiary or beneficiaries would have received had the disability retiree not made any election of the options available under said section ~~twenty-eight~~. In determining the actuarial equivalence, the Board shall take into account the life expectancies of the member and the beneficiary: *Provided, however,* That the life expectancies may at the discretion of the Board be established by an underwriting medical director of a competent insurance company offering annuities. Payment of the disability annuity provided in this article shall cease immediately if the Retirement Board finds that the disability of the retired teacher no longer exists, or if the retired teacher refuses to submit to medical examination as required by this section.

## **Senate Bill 603**

Effective Date: Passed March 11, 2006; in effect ninety days from passage (June 9, 2006)

Signed by Governor: April 5, 2006

Code Reference: Amends §2-2-1

Title: State Holidays

Major Provisions:

- Adds the day after Thanksgiving Day as a State holiday and designates the day as “Lincoln’s Day”.
- The bill does not add the day as a school holiday.

**ENROLLED**

COMMITTEE SUBSTITUTE FOR

**Senate Bill No. 603**

(Senators Caruth, McKenzie, Deem, Harrison, Yoder, Minear and McCabe, *original sponsors*)

[Passed March 11, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §2-2-1 of the Code of West Virginia, 1931, as amended, relating to renaming the day after Thanksgiving Day as Lincoln's Day.

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

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

**ARTICLE 2. LEGAL HOLIDAYS; SPECIAL MEMORIAL DAYS; CONSTRUCTION OF STATUTES; DEFINITIONS.**

**§2-2-1. Legal holidays; official acts or court proceedings.**

(a) The following days are legal holidays:

(1) The first day of January is "New Year's Day";

(2) The third Monday of January is "Martin Luther King's Birthday";

(3) The third Monday of February is "Presidents' Day";

(4) The last Monday in May is "Memorial Day";

(5) The twentieth day of June is "West Virginia Day";

(6) The fourth day of July is "Independence Day";

(7) The first Monday of September is "Labor Day";

(8) The second Monday of October is "Columbus Day";

(9) The eleventh day of November is "Veterans' Day";

(10) The fourth Thursday and Friday of November are the is "Thanksgiving Days";

(11) ~~The twenty-fifth day of December is "Christmas Day"~~ The day after Thanksgiving Day is "Lincoln's Day";

(12) ~~Any day on which a general, primary or special election is held is a holiday throughout the state, a political subdivision of the state, a district or an incorporated city, town or village in which the election is conducted; The twenty-fifth day of December is "Christmas Day";~~

(13) ~~General election day on even years shall be designated Susan B. Anthony Day, in accordance with the provisions of subsection (b), section one-a of this article; and Any day on which a general, primary or special election is held is a holiday throughout the state, a political subdivision of the state, a district or an incorporated city, town or village in which the election is conducted;~~

(14) General election day on even years shall be designated Susan B. Anthony Day, in accordance with the provisions of subsection (b), section one-a of this article; and

~~(14)~~ (15) Any day proclaimed or ordered by the Governor or the President of the United States as a day of special observance or Thanksgiving, or a day for the general cessation of business, is a holiday.

(b) If a holiday otherwise described in subsection (a) of this section falls on a Sunday, then the following Monday is the legal holiday. If a holiday otherwise described in subsection (a) of this section falls on a Saturday, then the preceding Friday is the legal holiday: *Provided*, That this subsection (b) shall not apply to subdivisions ~~(12)~~ (13), (14) and (15), subsection (a) of this section.

(c) Any day or part thereof designated by the Governor as time off, without charge against accrued annual leave, for state employees statewide may also be time off for county employees if the county commission elects to designate the day or part thereof as time off, without charge against accrued annual leave for county employees. Any entire or part statewide day off designated by the Governor may, for all courts, be treated as if it were a legal holiday.

(d) In computing any period of time prescribed by any applicable provision of this code or any legislative rule or other administrative rule or regulation promulgated pursuant to the provisions of this code, the day of the act, event, default or omission from which the applicable period begins to run is not included. The last day of the period so computed is included, unless it is a Saturday, a Sunday, a legal holiday or a designated day off in which event the prescribed period of time runs until the end of the next day that is not a Saturday, Sunday, legal holiday or designated day off.

(e) If any applicable provision of this code or any legislative rule or other administrative rule or regulation promulgated pursuant to the provisions of this code designates a particular date on, before or after which an act, event, default or omission is required or allowed to occur, and if the particular date designated falls on a Saturday, Sunday, legal holiday or designated day off, then the date on which the act, event, default or omission is required or allowed to occur is the next day that is not a Saturday, Sunday, legal holiday or designated day off.

(f) With regard to the courts of this state, the computation of periods of time, the specific dates or days when an act, event, default or omission is required or allowed to occur and the relationship of those time periods and dates to Saturdays, Sundays, legal holidays, or days designated as weather or other emergency days pursuant to section two of this article are governed by rules promulgated by the Supreme Court of Appeals.

(g) The provisions of this section do not increase or diminish the legal school holidays provided in section two, article five, chapter eighteen-a of this code.

## **Senate Bill 626**

Effective Date: Passed March 9, 2006; in effect ninety days from passage (June 7, 2006)

Signed by Governor: April 3, 2006

Code Reference: Amends §11-21-74

Title: Personal Income Tax Returns

Major Provisions:

- Adds the requirement that any employer that is required to deduct and withhold West Virginia personal income taxes must submit an annual reconciliation of the taxes withheld by February 28 following the close of the calendar year, together with copies of all withholding tax statements for the year.
- Also adds the requirement that any employer that is required to file a State withholding return for 250 or more employees must file the return using electronic filing.
- Adds the provision that an employer that is required to file electronically but fails to do so is subject to a penalty of twenty-five per employee for whom the return was not filed electronically, unless the employer shows that the failure is due to a reasonable cause and not due to willful neglect.
- States that the amendments enacted during 2006 are effective for tax years beginning on or after January 2006.

## ENROLLED

### Senate Bill No. 626

(By Senators Helmick and Minard)

[Passed March 9, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §11-21-74 of the Code of West Virginia, 1931, as amended, relating to personal income tax; requiring employers to submit copy of employee's withholding statement with an annual reconciliation of income tax withheld; and requiring employer with two hundred fifty or more employees to submit withholding statements electronically.

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

That §11-21-74 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

#### **ARTICLE 21. PERSONAL INCOME TAX.**

#### **§11-21-74. Employer's return and payment of withheld taxes. Filing of employer's withholding return and payment of withheld taxes; annual reconciliation; e-filing required for certain tax preparers and employers.**

(a) *General.* -- Every employer required to deduct and withhold tax under this article shall, for each calendar quarter, on or before the last day of the month following the close of such calendar quarter, file a withholding return as prescribed by the Tax Commissioner and pay over to the Tax Commissioner the taxes so required to be deducted and withheld. Where the average quarterly amount so deducted and withheld by any employer is less than one hundred fifty dollars and the aggregate for the calendar year can reasonably be expected to be less than six hundred dollars, the Tax Commissioner may by regulation permit an employer to file an annual return and pay over to the Tax Commissioner the taxes deducted and withheld on or before the last day of the month following the close of the calendar year: *Provided*, That the Tax Commissioner may, by nonemergency legislative rules promulgated pursuant to article three, chapter twenty-nine-a of this code, change the minimum amounts established by this subsection. The Tax Commissioner may, if he or she believes such action necessary for the protection of the revenues, require any employer to make the return and pay to him or her the tax deducted and withheld at any time, or from time to time.

(b) *Monthly returns and payments of withheld tax on and after the first day of January, two thousand one.* -- Notwithstanding the provisions of subsection (a) of this section, on and after the first day of January, two thousand one, every employer required to deduct and withhold tax under this article shall, for each of the first eleven months of the calendar year, on or before the twentieth day of the succeeding month and for the last calendar month of the year, on or before the last day of the succeeding month, file a withholding return as prescribed by the Tax Commissioner and pay over to the Tax Commissioner the taxes so required to be deducted and withheld, if such withheld taxes aggregate two hundred fifty dollars or more for the month; except any employer with respect to whom the Tax Commissioner may have by regulation provided otherwise in accordance with the provisions of subsection (a) of this section.

(c) *Annual returns and payments of withheld tax of certain domestic and household employees.* -- Employers of domestic and household employees whose withholdings of

federal income tax are annually paid and reported by the employer pursuant to the filing of Schedule H of federal form 1040, 1040A, 1040NR, 1040NR-EZ, 1040SS or 1041 may, on or before the thirty-first day of January next succeeding the end of the calendar year for which withholdings are deducted and withheld, file an annual withholding return with the Tax Commissioner and annually remit to the Tax Commissioner West Virginia personal income taxes deducted and withheld for the employees. The Tax Commissioner may promulgate legislative or other rules pursuant to article three, chapter twenty-nine-a of this code for implementation of this subsection.

(d) *Deposit in trust for Tax Commissioner.* -- Whenever any employer fails to collect, truthfully account for, or pay over the tax, or to make returns of the tax as required in this section, the Tax Commissioner may serve a notice requiring the employer to collect the taxes which become collectible after service of the notice, to deposit the taxes in a bank approved by the Tax Commissioner, in a separate account, in trust for and payable to the Tax Commissioner, and to keep the amount of the tax in the separate account until payment over to the Tax Commissioner. The notice shall remain in effect until a notice of cancellation is served by the Tax Commissioner.

(e) *Accelerated payment.* -- (1) Notwithstanding the provisions of subsections (a) and (b) of this section, for calendar years beginning after the thirty-first day of December, one thousand nine hundred ninety, every employer required to deduct and withhold tax whose average payment per calendar month for the preceding calendar year under subsection (b) of this section exceeded one hundred thousand dollars shall remit the tax attributable to the first fifteen days of June each year on or before the twenty-third day of June.

(2) For purposes of complying with subdivision (1) of this subsection ~~(e)~~, the employer shall remit an amount equal to the withholding tax due under this article on employee compensation subject to withholding tax payable or paid to employees for the first fifteen days of June or, at the employer's election, the employer may remit an amount equal to fifty percent of the employer's liability for withholding tax under this article on compensation payable or paid to employees for the preceding month of May.

(3) For an employer which has not been in business for a full calendar year, the total amount the employer was required to deduct and withhold under subsection (b) of this section for the prior calendar year shall be divided by the number of months, including fractions of a month, that it was in business during the prior calendar year, and if that amount exceeds one hundred thousand dollars, the employer shall remit the tax attributable to the first fifteen days of June each year on or before the twenty-third day of June, as provided in subdivision (2) of this subsection ~~(e)~~.

(4) When an employer required to make an advanced payment of withholding tax under subdivision (1) of this subsection ~~(e)~~ makes out its return for the month of June, which is due on the twentieth day of July, that employer may claim as a credit against its liability under this article for tax on employee compensation paid or payable for employee services rendered during the month of June the amount of the advanced payment of tax made under subdivision (1) of this subsection ~~(e)~~.

(f) The amendments to this section enacted in the year two thousand six are effective for tax years beginning on or after the first day of January, two thousand ~~one~~ six.

(g) An annual reconciliation of West Virginia personal income tax withheld shall be submitted by the employer on or before the twenty-eighth day of February following the close of the calendar year, together with Tax Division copies of all withholding tax statements for that preceding calendar year. The reconciliation shall be accompanied by a list of the amounts of income withheld for each employee in such form as the Tax

Commissioner prescribes and shall be filed separately from the employer's monthly or quarterly return.

(h) Any employer required to file a withholding return for two hundred fifty or more employees shall file its return using electronic filing as defined in section fifty-four of this article. An employer that is required to file electronically but does not do so is subject to a penalty in the amount of twenty-five dollars per employee for whom the return was not filed electronically, unless the employer shows that the failure is due to reasonable cause and not due to willful neglect.

## **Senate Bill 631**

Effective Date: Passed March 9, 2006; in effect ninety days from passage (June 7, 2006)

Signed by Governor: March 27, 2006

Code Reference: Amends §18-8-4

Title: Duties of Attendance Director and Assistant Directors;  
Complaints, Warrants and Hearings

Major Provisions:

- Amends paragraph (b) to allow more than one parent, guardian or custodian to be charged with a complaint related to school attendance.
- Amends paragraph (b) to require that initial service of a summons or warrant be attempted within ten calendar days instead of executed within ten calendar days. Subsequent attempts must continue until the summons or warrant is executed or until the end of the school term.

## ENROLLED

### Senate Bill No. 631

(By Senators Kessler, Dempsey, Hunter, Caruth, Deem, Lanham, McKenzie and Weeks)

[Passed March 9, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §18-8-4 of the Code of West Virginia, 1931, as amended, relating to process, service and parties charged in summons or warrants for violations of compulsory school attendance; authorizing charge of more than one parent, custodian or guardian in single complaint; and continuing attempts to serve until executed or end of school term.

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

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

#### **ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.**

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

(a) The county attendance director and the assistants shall diligently promote regular school attendance. They shall ascertain reasons for inexcusable absences from school of pupils of compulsory school age and students who remain enrolled beyond the sixteenth birthday as defined under this article and shall take such steps as are, in their discretion, best calculated to correct attitudes of parents and pupils which result in absences from school even though not clearly in violation of law.

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

(c) The magistrate court clerk, or the clerk of the circuit court performing the duties of the magistrate court as authorized in section eight, article one, chapter fifty of this code,

shall assign the case to a magistrate within ten days of execution of the summons or warrant. The hearing shall be held within twenty days of the assignment to the magistrate, subject to lawful continuance. The magistrate shall provide to the accused at least ten days' advance notice of the date, time and place of the hearing.

(d) When any doubt exists as to the age of a child absent from school, the attendance director shall have authority to require a properly attested birth certificate or an affidavit from the parent, guardian or custodian of such child, stating age of the child. The county attendance director or assistant shall, in the performance of his or her duties, have authority to take without warrant any child absent from school in violation of the provisions of this article and to place such child in the school in which such child is or should be enrolled.

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

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

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

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

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

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

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

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

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

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

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

## **Senate Bill 635**

Effective Date: Passed March 8, 2006; in effect ninety days from passage (June 6, 2006)

Signed by Governor: March 23, 2006

Code Reference: Adds §18-5-47

Title: Flood Insurance Required by County Boards

Major Provisions:

- Requires county boards to maintain flood insurance on each insurable building that it owns and that meets one or both of the following requirements:
  - o The building is within the 100-year flood plan and has a replacement value that is greater than \$300,000.
  - o The building has sustained damage in a previous flood and flood insurance is required by FEMA.
  
- Requires county boards to also maintain flood insurance on the contents of each insurable building that meets one or both of the requirements described above.

## ENROLLED

### Senate Bill No. 635

(By Senators Edgell, Plymale, Bailey, Dempsey, Hunter, Unger, White, Boley, Guills, Harrison and Sprouse)

[Passed March 8, 2006; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5-47, relating to requiring flood insurance on certain buildings, and the contents of those buildings, owned by a county board of education.

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-5-47, to read as follows:

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

##### **§18-5-47. County board flood insurance requirements.**

(a) Each county board shall maintain flood insurance on each insurable building that it owns and that meets one or both of the following requirements:

(1) The building is within the identified special flood hazard area which is the area on a flood hazard boundary map or a flood insurance rate map that is identified as an "A zone", a numbered "A zone" or an "AE zone" or regulatory one hundred year floodplain and the building has a replacement value that is greater than three hundred thousand dollars; or

(2) The building has been damaged in a previous flood and flood insurance is required by the Federal Emergency Management Agency.

(b) Each county board also shall maintain flood insurance on the contents of each insurable building that it owns and that meets one or both of the requirements set forth in subsection (a) of this section.

(c) The buildings and the contents of those buildings required to be insured by this section shall be insured at the maximum amounts available through the National Flood Insurance Program or the estimated replacement value of the structure and contents, whichever is less.

## **Senate Bill 783**

Effective Date: Passed March 11, 2006; in effect ninety days from passage.  
(June 9, 2006)

Signed by Governor: April 4, 2006

Code Reference: Amends §§18A-4-2a and 18A-4-2b

Title: State Minimum Salary Bonus for Classroom Teachers With National Board Certification and Professional Personnel With Recognized National Certification in Speech-Language Pathology, Audiology or Counseling

### Major Provisions:

- Adds language to W.Va. Code §18A-4-2a to clarify that completion of the NBPTS certification process is defined as “the completion of ten scorable entries as verified by NBPTS.”
- Specifies that upon completing of ten scorable entries as verified by NBPTS, a teacher is eligible for reimbursement for the second half of the fees incurred by the teacher through the NBPTS certification process. (Previous language was interpreted to mean that a teacher was required to complete the certification process and receive a passing score as verified by NBPTS in order to receive reimbursement for the second half of the NBPTS fees.)
- Adds language to §18A-4-2b to allow professional personnel employed in the public schools who hold a nationally recognized professional certification in speech-language pathology, audiology or counseling to receive reimbursement for fees incurred in the certification process as well as a \$2500 salary supplement
- For school counselors, adds language to provide for reimbursement of fees and a salary supplement in recognition of the rigorous standards and processes for advanced certification by either the National Board of Certified Counselors (NBCC) or the West Virginia Board of Examiners in Counseling (WVBEC) which helps to promote the quality of counseling in schools.
- For Speech-Language Pathologists and audiologists, adds language to provide for reimbursement of fees and provision of a salary supplement in recognition of the rigorous standards and processes for advanced certification for Individuals who attain the national professional certification by the American Speech-Language-Hearing Association (ASHA)

- Also adds language to establish a hiring preference for a fully certified educator whenever one is available.
- States that effective the first day of July, two thousand six, professional personnel employed as speech-language pathologists, audiologists or counselors are eligible upon enrollment for reimbursement for one-half of the fee for certification in accordance with this section. In addition, these personnel are eligible upon attainment of the certification for reimbursement of the remainder of the application fee plus other expenses actually incurred toward attainment of the certification, not exceeding six hundred dollars, upon approval by the Department of Education.
- Limits the number of speech-language pathologists, audiologists and counselors who are eligible for reimbursement in any one fiscal year to one hundred, combined total.
- Limits to no more than one hundred speech-language pathologists, audiologists and counselors, combined total, to be paid the annual salary supplement provided for in said subsection during the first year of implementation.
- Limits the number of speech-language pathologists, audiologists and counselors to be paid the annual salary supplement provided for in said subsection to no more than an additional one hundred qualified recipients in each of the subsequent fiscal years.
- Requires the state board to promulgate a legislative rule establishing criteria for selection of the individuals eligible for reimbursement and a salary supplement in accordance with this section.
- States the state board selection criteria shall prioritize the length of time the certification has been held and the years of experience of the holder in determining eligibility.
- Requires the board to report the rule to the Legislative Oversight Commission on Education Accountability by the January, two thousand seven legislative interim meeting and shall report on its progress in developing the rule to the commission during each prior interim meeting period.
- States that payment of the supplement and reimbursement provided in this section is subject to legislative appropriation; therefore nothing in this section requires any appropriation, or any specific level of appropriation, by the Legislature.

## ENROLLED

### Senate Bill No. 783

(By Senators Plymale, Edgell, Dempsey, Oliverio, Boley, Guills and Sprouse)

[Passed March 11, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §18A-4-2a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §18A-4-2b, all relating to defining completion of the National Board for Professional Teaching Standards certification; establishing state minimum salary supplement for professional personnel holding certain advanced certification in speech-language pathology, audiology or counseling; reimbursement for certain expenses; limitations; applicability; and state board rule.

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

That §18A-4-2a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §18A-4-2b, all to read as follows:

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

##### **§18A-4-2a. State minimum salary bonus for classroom teachers with national board certification.**

(a) The Legislature hereby finds and declares that the rigorous standards and processes for certification by the ~~n~~National ~~b~~Board for ~~p~~Professional ~~t~~Teaching ~~s~~Standards (NBPTS) helps to promote the quality of teaching and learning. Therefore, classroom teachers in the public schools of West Virginia should be encouraged to achieve national board certification through a reimbursement of expenses and an additional salary bonus which reflects their additional certification, to be paid in accordance with the provisions of this section.

(b) ~~One~~ Two thousand five hundred dollars shall be paid annually to each classroom teacher who holds a valid certificate issued by the ~~n~~National ~~b~~Board of ~~p~~Professional ~~t~~Teaching ~~s~~Standards for the life of the certification, but in no event more than ten years for any one certification: ~~Provided, That beginning the first day of July, two thousand one, in lieu of the one thousand dollars, two thousand five hundred dollars shall be paid annually to each classroom teacher who holds a valid certificate issued by the national board of professional teaching standards for the life of the certification, but in no event more than ten years for any one certification.~~

(c) The payments: (i) ~~1~~ Shall be in addition to any amounts prescribed in the applicable state minimum salary schedule; (ii) ~~s~~ Shall be paid in equal monthly installments; and (iii) ~~s~~ Shall be considered a part of the state minimum salaries for teachers.

(d) ~~One thousand dollars shall be paid for reimbursement once to each teacher who enrolls in the program for the national board for professional teaching standards certification and one thousand dollars shall be paid for reimbursement once to each teacher who completes the national board for professional teaching standards certification. Effective the first day of July, two thousand one, in lieu of the one thousand dollar payment for reimbursements, e~~ One-half the certification fee shall be paid for reimbursement once to each teacher who enrolls in the program for the

~~the National Board for Professional Teaching Standards certification and one-half the certification fee shall be paid for reimbursement once to each teacher who completes the National Board for Professional Teaching Standards certification. Completion shall be defined as the completion of ten scorable entries, as verified by the National Board for Professional Teaching Standards. Teachers who achieve National Board for Professional Teaching Standards certification may be reimbursed a maximum of six hundred dollars for expenses actually incurred while obtaining the National Board for Professional Teaching Standards certification.~~

~~(e) The state board shall limit the number of teachers who receive the initial reimbursements of the certification fees set forth in subsection (d) to one hundred teachers annually. Effective the first day of July, two thousand one, in lieu of the limit of one hundred teachers annually, the state board shall limit the number of teachers who receive the initial reimbursements of the certification fees set forth in subsection (d) to two hundred teachers annually. The state board shall establish selection criteria for the teachers by the legislative rule required pursuant to subsection (g) of this section.~~

~~(f) Subject to the provisions of subsection (e) of this section, funding for reimbursement of the certification fee and expenses actually incurred while obtaining the National Board for Professional Teaching Standards certifications shall be administered by the state department of education from an appropriation established for that purpose by the Legislature. If funds appropriated by the Legislature to accomplish the purposes of this subsection are insufficient, the state department shall prorate the reimbursements for expenses and shall request of the Legislature, at its next regular session, funds sufficient to accomplish the purposes of this subsection, including needed retroactive payments.~~

~~(g) The state board shall promulgate legislative rules pursuant to article three-b, chapter twenty-nine-a of this code to implement the provisions of this section.~~

**§18A-4-2b. State minimum salary supplement for professional personnel with recognized national certification in speech-language pathology, audiology or counseling.**

~~Repealed.~~

~~Acts, 1978 Reg. Sess., Ch. 41.~~

~~(a) (1) The Legislature finds that achieving a nationally recognized professional certification in speech-language pathology or audiology involves a rigorous process of demonstrating both knowledge and skills and results in highly trained and capable employees. Individuals who attain the national professional certification by the American Speech-Language-Hearing Association (ASHA) provide needed and essential services to the school students of this state and, consequently, should be encouraged to achieve and maintain the national board certification through reimbursement of expenses and a salary bonus which reflects their additional certification, to be paid in accordance with subsection (b) of this section.~~

~~(2) The Legislature further finds and declares that the rigorous standards and processes for advanced certification by either the National Board of Certified Counselors (NBCC) or the West Virginia Board of Examiners in Counseling (WVBEC) helps to promote the quality of counseling in schools. Counselors in the public schools of West Virginia should be encouraged to achieve and maintain the advanced certification through reimbursement of expenses and a salary bonus that reflects their additional certification, to be paid in accordance with subsection (b) of this section.~~

~~(3) Therefore, the purpose of this section is to provide a statewide salary supplement for certain professional personnel employed in the public schools who hold a nationally~~

recognized professional certification in speech-language pathology, audiology or counseling, to treat the professional certification equally, to encourage others to attain such a certification and to help school systems with recruitment of these highly qualified professionals.

(b) In addition to any amounts prescribed in the applicable state minimum salary schedule, effective the first day of July, two thousand six, any professional personnel who hold national certification or other credential as provided in this section must be paid an annual salary supplement of two thousand five hundred dollars. The payment is:

(1) To be made in equal monthly installments;

(2) To be considered a part of the state minimum salaries for teachers; and

(3) To continue for the life of the certification, or for ten years for any one certification, whichever first expires.

(c) Effective the first day of July, two thousand six, professional personnel employed as speech-language pathologists, audiologists or counselors are eligible upon enrollment for reimbursement for one-half of the fee for certification in accordance with this section. In addition, these personnel are eligible upon attainment of the certification for reimbursement of the remainder of the application fee plus other expenses actually incurred toward attainment of the certification, not exceeding six hundred dollars, upon approval by the Department of Education. No more than one hundred speech-language pathologists, audiologists and counselors, combined total, are eligible for reimbursement in any one fiscal year.

(d) Notwithstanding subsection (b) of this section, no more than one hundred speech-language pathologists, audiologists and counselors, combined total, shall be paid the annual salary supplement provided for in said subsection during the first year of implementation. The number of speech-language pathologists, audiologists and counselors paid the annual salary supplement provided for in said subsection may not exceed an additional one hundred qualified recipients in each of the subsequent fiscal years. The state board shall promulgate a legislative rule establishing criteria for selection of the individuals eligible for reimbursement and a salary supplement in accordance with this section. The selection criteria shall prioritize the length of time the certification has been held and the years of experience of the holder in determining eligibility.

(e) The board shall report the rule to the Legislative Oversight Commission on Education Accountability by the January, two thousand seven, legislative interim meeting period and shall report on its progress in developing the rule to the commission during each prior interim meeting period.

(f) Payment of the supplement and reimbursement provided in this section is subject to legislative appropriation; therefore nothing in this section requires any appropriation, or any specific level of appropriation, by the Legislature.

(g) Notwithstanding any other provision of this section or the provisions of section two-a of this article, professional personnel may not be paid a salary supplement pursuant to the provisions of both said sections.

## **Senate Bill 785**

Effective Date: Passed March 11, 2006; in effect ninety days from passage (June 9, 2006)

Signed by Governor: April 4, 2006

Code Reference: Amends §18-2-7a

Title: Legislative Findings; Required Physical Education; Program in Physical Fitness.

Major Provisions:

- Amends paragraph (b) to set physical education requirements by programmatic level name (elementary, middle and high school) instead of specific grade level groupings. This will provide flexibility to accommodate the various school grade configurations within the state.
  
- Amends paragraph (e) to require the state board to promulgate rules related to the collection of Body Mass Index data which allows for a random sampling of students instead of population sample and also removes the requirement for the data to be collected via the West Virginia Education Information System (WVEIS). This will provide flexibility for the state board to collaborate with other health services entities to collect the necessary data (i.e. WVU CARDIAC, School Based Health Centers).

## ENROLLED

### Senate Bill No. 785

(By Senators Plymale, Edgell, Dempsey, Hunter, Oliverio, White, Boley and Sprouse)

[Passed March 11, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §18-2-7a of the Code of West Virginia, 1931, as amended, relating to requirements for physical education in public schools; additional condition authorizing development of alternative programs to meet requirements; grouping requirements by programmatic rather than grade levels; and requiring state board rule on collection, use and reporting body mass index data.

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

That §18-2-7a of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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

##### **§18-2-7a. Legislative findings; required physical education; program in physical fitness.**

(a) The Legislature hereby finds that obesity is a problem of epidemic proportions in this state. There is increasing evidence that all segments of the population, beginning with children, are becoming more sedentary, more overweight, and more likely to develop health risks and diseases including Type II Diabetes, high blood cholesterol and high blood pressure. The Legislature further finds that the promotion of physical activity during the school day for school children is a crucial step in combating this growing epidemic and in changing the attitudes and behavior of the residents of this state toward health promoting physical activity.

(b) As a result of these findings, the State Department of Education shall establish the requirement that each child enrolled in the public schools of this state actively participates in physical education classes during the school year to the level of his or her ability as follows:

(1) ~~Kindergarten to and including grades five~~ Elementary school grades. -- Not less than thirty minutes of physical education, including physical exercise and age-appropriate physical activities, for not less than three days a week.

(2) ~~Grade six to and including grade eight~~ Middle school grades. -- Not less than one full period of physical education, including physical exercise and age-appropriate physical activities, each school day of one semester of the school year.

(3) ~~Grade nine to and including grade twelve~~ High school grades. -- Not less than one full course credit of physical education, including physical exercise and age-appropriate physical activities, which shall be required for graduation and the opportunity to enroll in an elective lifetime physical education course.

(c) Enrollment in physical education classes and activities required by the provisions of this section shall not exceed, and shall be consistent with, state guidelines for enrollment in all other subjects and classes: *Provided*, That schools which do not currently have the number of certified physical education teachers, or do not currently have the required physical setting or would have to significantly alter academic offerings to meet the physical education requirements may develop alternate programs that will

enable current staff, and physical settings and offerings to be used to meet the physical education requirements established herein. These alternate programs shall be submitted to the State Department of Education and the Healthy Lifestyle Council for approval. Those schools needing to develop alternate programs shall not be required to implement this program until the school year commencing two thousand six.

(d) The ~~S~~state ~~B~~oard shall prescribe a program within the existing health and physical education program which incorporates fitness testing, reporting, recognition, fitness events and incentive programs which requires the participation in grades four through eight and the required high school course. The program shall be selected from nationally accepted fitness testing programs designed for school-aged children that test cardiovascular fitness, muscular strength and endurance, flexibility and body composition: *Provided*, That nothing in this subsection shall be construed to prohibit the use of programs designed under the auspices of the President's Council on Physical Fitness and Sports. The program shall include modified tests for exceptional students. Each school in the state shall participate in National Physical Fitness and Sports Month in May of each year and shall make every effort to involve the community it serves in the related events.

~~(e) Body mass index measures shall be used as an indicator of progress toward promoting healthy lifestyles among school-aged children. The body mass index measures shall be determined using student height and weight data and reported to the State Department of Education via the West Virginia Education Information System. Body mass index measures shall be included in kindergarten screening procedures. Students in grades four through eight and students enrolled in high school physical education courses shall have their body mass index measured through required fitness testing procedures. All school personnel responsible for conducting and reporting body mass index measures shall receive training or written documentation on the appropriate methodology for assessing the body mass index and reporting data in a manner that protects student confidentiality. The state board shall promulgate a rule in accordance with the provisions article three-b, chapter twenty-nine-a of this code that includes at least the following provisions to provide for the collection, reporting and use of body mass index data in the public schools:~~

~~(1) The data shall be collected using the appropriate methodology for assessing the body mass index from student height and weight data;~~

~~(2) The data shall be collected on a scientifically drawn sample of students;~~

~~(3) The data shall be collected and reported in a manner that protects student confidentiality;~~

~~(4) The data shall be reported to the Department of Education; and~~

~~(5) All body mass index data shall be reported in aggregate to the Governor, the State Board of Education, the Healthy Lifestyles Coalition and the Legislative Oversight Commission on Health and Human Resources Accountability for use as an indicator of progress toward promoting healthy lifestyles among school-aged children.~~

## **Senate Bill 790**

Effective Date: Passed March 9, 2006; in effect from passage

Signed by Governor: April 4, 2006

Code Reference: Amends §23-5-12

Title: Appeal of Workers' Compensation Decisions

Major Provisions:

- Changes the party to whom written notice of appeal from an administrative law judge decision regarding a workers' compensation claim from the office of judges to the board of review, with a copy to the office of judges.

## ENROLLED

### Senate Bill No. 790

(By Senators Kessler, Dempsey, Fanning, Foster, Hunter, Jenkins, Minard, Oliverio, Barnes, Caruth, Deem, Harrison, Lanham, McKenzie and Weeks)

[Passed March 9, 2006; in effect from passage.]

AN ACT to amend and reenact §23-5-12 of the Code of West Virginia, 1931, as amended, relating to filing appeals of workers' compensation decisions to the board of review.

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

That §23-5-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

#### **ARTICLE 5. REVIEW.**

##### **§23-5-12. Appeal to board; procedure; remand and supplemental hearing.**

(a) Any employer, employee, claimant or dependent, who shall feel aggrieved at any final action of the administrative law judge taken after a hearing held in accordance with the provisions of section nine of this article, shall have the right to appeal to the board created in section eleven of this article for a review of such action. The Workers' Compensation Commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, shall likewise have the right to appeal to the board any final action taken by the administrative law judge. The aggrieved party shall file a written notice of appeal with the ~~office board of judges directed to the board review,~~ with a copy to the office of judges, within thirty days after receipt of notice of the action complained of, or, in any event, regardless of notice, within sixty days after the date of the action complained of, and unless the notice of appeal is filed within the time specified, no appeal shall be allowed, the time limitation is a condition of the right to appeal and hence jurisdictional. The ~~office of judges board~~ shall notify the other parties immediately upon the filing of a notice of appeal. The notice of appeal shall state the ground for review and whether oral argument is requested. The office of judges, after receiving a copy of the notice of appeal, shall forthwith make up a transcript of the proceedings before the office of judges and certify and transmit it to the board. The certificate shall incorporate a brief recital of the proceedings in the case and recite each order entered and the date thereof.

(b) The board shall set a time and place for the hearing of arguments on each claim and shall notify the interested parties thereof. The review by the board shall be based upon the record submitted to it and such oral argument as may be requested and received. The board may affirm, reverse, modify or supplement the decision of the administrative law judge and make such disposition of the case as it determines to be appropriate. Briefs may be filed by the interested parties in accordance with the rules of procedure prescribed by the board. The board may affirm the order or decision of the administrative law judge or remand the case for further proceedings. It shall reverse, vacate or modify the order or decision of the administrative law judge if the substantial rights of the petitioner or petitioners have been prejudiced because the administrative law judge's findings are:

(1) In violation of statutory provisions; or

- (2) In excess of the statutory authority or jurisdiction of the administrative law judge; or
  - (3) Made upon unlawful procedures; or
  - (4) Affected by other error of law; or
  - (5) Clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or
  - (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.
- (c) After a review of the case, the board shall issue a written decision ~~to be filed with the commission and send a copy thereof sent~~ by mail to the parties.
- (1) All decisions, findings of fact and conclusions of law of the board of review shall be in writing and state with specificity the laws and facts relied upon to sustain, reverse or modify the administrative law judge's decision.
  - (2) Decisions of the board of review shall be made by a majority vote of the board of review.
  - (3) A decision of the board of review is binding upon the executive director and the commission and the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, with respect to the parties involved in the particular appeal. The executive director, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, shall have the right to seek judicial review of a board of review decision irrespective of whether or not he or she appeared or participated in the appeal to the board of review.
- (d) Instead of affirming, reversing or modifying the decision of the administrative law judge, the board may, upon motion of any party or upon its own motion, for good cause shown, to be set forth in the order of the board, remand the case to the chief administrative law judge for the taking of such new, additional or further evidence as in the opinion of the board may be necessary for a full and complete development of the facts of the case. In the event the board shall remand the case to the chief administrative law judge for the taking of further evidence, the administrative law judge shall proceed to take new, additional or further evidence in accordance with any instruction given by the board within thirty days after receipt of the order remanding the case. The chief administrative law judge shall give to the interested parties at least ten days' written notice of the supplemental hearing, unless the taking of evidence is postponed by agreement of parties, or by the administrative law judge for good cause. After the completion of a supplemental hearing, the administrative law judge shall, within sixty days, render his or her decision affirming, reversing or modifying the former action of the administrative law judge. The decision shall be appealable to, and proceeded with by the board of review in the same manner as other appeals. In addition, upon a finding of good cause, the board may remand the case to the Workers' Compensation Commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, for further development. Any decision made by the commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever applicable, following a remand shall be subject to objection to the office of judges and not to the board. The board may remand any case as often as in its opinion is necessary for a full development and just decision of the case.
- (e) All appeals from the action of the administrative law judge shall be decided by the board at the same session at which they are heard, unless good cause for delay thereof be shown and entered of record.
  - (f) In all proceedings before the board, any party may be represented by counsel.