

Informal Guidelines for
Implementing Public
Education Bills
Enacted in
Regular and
Special Sessions

2009



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2008-2009**

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FOREWORD

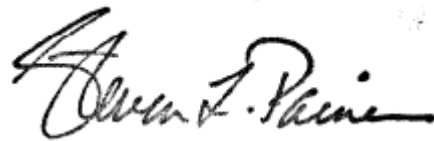
The West Virginia Department of Education is pleased to prepare Informal Guidelines for Implementing Public Education Bills Enacted in the Regular Session and Special Session – 2009 as a document to assist educators and others in understanding and implementing education bills enacted by this year's Legislature.

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 and Special Session – 2009 will be of considerable value during the coming school year. Suggestions for improving this document as a service to the Department's clientele are always welcome. This document is also available online at <http://wvde.state.wv.us/legislature/2009greenbook.pdf> .

Please feel free to call or write if you need additional information regarding bills enacted during the 2009 regular and special sessions of the West Virginia Legislature.

A handwritten signature in black ink, appearing to read "Steven L. Paine". The signature is fluid and cursive, with a long horizontal stroke at the end.

Dr. Steven L. Paine
State Superintendent of Schools

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Special Session

House Bill 109

Effective Date: Passed June 2, 2009; effective July 1, 2009

Signed by Governor: June 17, 2009

Code Reference: Adds new article, designate §18-5B-1, §18-5B-2, §18-5B-3, §18-5B-4, §18-5B-5, §18-5B-6, §18-5B-7, §18-5B-8 and §18-5b-9

Title: School Innovation Zones Act

Major Provisions:

- Is intended to provide principals and teachers with flexibility from the constraints of certain statutes, policies and rules in order to serve as testing grounds for innovative reform strategies that enhance student success and increase accountability.
- Authorizes the State Board of Education to establish a process by which a school, group of schools, or a subdivision/department of a school or group of schools may be designated as an innovation zone.
- Stipulates that the State Board of Education include certain provisions in the application, approval and implementation process for innovation zones including (1) a secret ballot voting and certification process (2) the membership of the voting certification panel, (3) the 80% criteria for approval of the innovation by those affected by the innovation, and (4) the process for approval by the local Board of Education.
- Stipulates that the State Board of Education notify applicants of its decision within 60 days of receiving the application and consider certain factors when approving the application including (1) level of staff commitment, (2) support of parents, students, the county board of education, the Local School Improvement Council, and the school business partner(s).
- Stipulates that applications include descriptions of the programs, policies or initiatives that the zone intends to implement and an explanation of policy, statute or interpretation exceptions desired.
- Requires that no exception be granted to assessment programs administered by the WVDE, provisions of the No Child Left Behind Act or other Federal law, nor exception from W.Va. Code §18A-2-7, §18A-4-7a, §18A-4-7b, §18A-4-8, §18A-4-8b. However, exceptions may include a proposal to require that a candidate for a teaching vacancy in an innovation school possess qualifications over and above those

stipulated in statute if approved in a county-wide school staff election process.

- Establishes provisions for (1) gaining exceptions to West Virginia statute through recommendations from the Legislative Oversight Commission on Education Accountability (LOCEA), (2) employee transfers from a designated innovation zone, (3) the reporting processes for those designated as innovation zones, and (4) the process by which an institution of higher education may work cooperatively with the local board of education, the State Superintendent of Schools and the Legislature to establish an innovation zone school(s).

Special Session

H. B. 109

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

[By Request of the Executive]

[Introduced May 31, 2009; referred to the
Committee on Education.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18-5B-1, §18-5B-2, §18-5B-3, §18-5B-4, §18-5B-5, §18-5B-6, §18-5B-7, §18-5B-8 and §18-5B-9, all relating to school innovation zones; setting forth legislative findings, intent and purpose; authorizing state board to designate school innovation zones in schools, groups of schools and departments or subdivisions of a school or schools; establishing an application, plan review, approval and amendment process; authorizing exceptions to certain policies, rules, interpretations and statutes; providing for approval of the innovation zone plan by certain employees of a school; providing for revocation of designation and plan approval; requiring annual report by the state board; designating the order in which the state board must consider applications; providing for the voluntary transfer of employees; authorizing teacher job postings that exceed certain qualifications and requirements; providing that a state institution of higher education may establish a school designated as an innovation zone and that such school may not receive certain funds; providing the procedure in which a state institution of higher education may apply for and establish an innovation zone school; providing for the approval mechanism for an innovation zone school established by a state institution of higher education by the county board and state board; and authorizing the State Board of Education to promulgate rules and emergency rules.

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 §18-5B-1, §18-5B-2, §18-5B-3, §18-5B-4, §18-5B-5, §18-5B-6, §18-5B-7, §18-5B-8 and §18-5B-9, all to read as follows:

ARTICLE 5B. SCHOOL INNOVATION ZONES ACT.

§18-5B-1. Title.

This article shall be known as the "School Innovation Zones Act".

§18-5B-2. Legislative findings and purpose.

(a) Legislative findings. -- The Legislature finds that:

(1) Decades of school improvement literature substantiate that schools where the principal uses a collaborative and distributed approach to leadership and where the teachers have a unity of purpose, operate in a cohesive learning-centered culture and implement consistent, pervasive and research-based approaches to learning, can and do improve student learning;

(2) As in all enterprises, rules are established in public education to manage the resources efficiently, allot time among the activities and processes required and ensure attention to the goals mandated, but rules, by their nature, also limit the flexibility of professional educators to engage in those activities and implement those approaches

that may best improve the learning of their students for the twenty-first century;
(3) Allowing individual schools to seek and receive exceptions from certain statutes, policies, rules and interpretations through the creation of school innovation zones will provide them greater control over important educational factors that impact student achievement, such as curriculum, personnel, organization of the school day, organization of the school year, technology utilization and the delivery of educational services to improve student learning; and

(4) Providing greater flexibility at innovation zone schools will enable school-level, professional educators to exercise more fully their professional judgment to improve student learning for the twenty-first century by instituting creative and innovative practices.

(b) Intent and purpose. -- The intent and purpose of this article is to:

(1) Provide for the establishment of school innovation zones to improve educational performance;

(2) Provide principals and teachers at schools approved as innovation zones with greater flexibility and control to meet the needs of a diverse population of students by removing certain policy, rule, interpretive and statutory constraints;

(3) Provide a testing ground for innovative educational reform programs and initiatives to be applied on an individual school level;

(4) Provide information regarding the effects of specific innovations and policies on student achievement;

(5) Document educational strategies that enhance student success; and

(6) Increase the accountability of the state's public schools for student achievement as measured by the state assessment programs and local assessment processes identified by the schools.

§18-5B-3. School innovation zones; application for designation; state board rule.

(a) A school, a group of schools, a subdivision or department of a group of schools, or a subdivision or department of a school may be designated as an innovation zone in accordance with this article.

(b) The state board shall promulgate a rule, including an emergency rule if necessary, in accordance with article three-b, chapter twenty-nine-a of this code to implement the provisions of this article. The rule shall include provisions for at least the following:

(1) A process for a school, a group of schools, a subdivision or department of a group of schools or a subdivision or department of a school to apply for designation as an innovation zone that encompasses at least the following:

(A) The manner, time and process for the submission of an innovation zone application;

(B) The contents of the application, which must include a general description of the innovations the school or schools seek to institute and an estimation of the employees who may be affected by the implementation of the innovations; and

(C) Factors to be considered by the state board when evaluating an application, which shall include, but are not limited to, the following factors:

(i) The level of staff commitment to apply for designation as an innovation zone as determined by a vote by secret ballot at a special meeting of employees eligible to vote on the plan, as provided in section six of this article;

(ii) Support from parents, students, the county board of education, the local school improvement council and school business partners; and

(iii) The potential for an applicant to be successful as an innovation zone; and

(2) Standards for the state board to review applications for designation as innovation zones and to make determinations on the designation of innovation zones.

(c) The state board shall review innovation zone applications in accordance with the standards adopted by the board and shall determine whether to designate the applicant as an innovation zone. The state board shall notify an applicant of the board's determination within sixty days of receipt of an innovation zone application. When initially designating innovation zones after the enactment of this article by the first extraordinary session of the 2009 Legislature, the state board shall consider applicants for designation in the following order: (1) A school and groups of schools; (2) a group of schools seeking designation across the same subdivision or department of the schools; and (3) a school seeking designation of a subdivision or a department.

§18-5B-4. Innovation zones; required plans; plan approval; state board rule.

(a) The rule promulgated by the state board pursuant to section three of this article also shall include at least the following:

(1) Each school, group of schools, subdivision or department of a group of schools or subdivision or department of a school designated as an innovation zone or seeking designation as an innovation zone in accordance with this article shall develop an innovation zone plan;

(2) The innovation zone plan shall contain:

(A) A description of the programs, policies or initiatives the school, group of schools, subdivision or department of a group of schools or subdivision or department of a school intends to implement as an innovative strategy to improve student learning if the plan is approved in accordance with section five of this article;

(B) A list of all county and state board rules, policies and interpretations, and all statutes, if any, identified as prohibiting or constraining the implementation of the plan, including an explanation of the specific exceptions to the rules, policies and interpretations and statutes required for plan implementation. A school, a group of schools, a subdivision or department of a group of schools or a subdivision or department of a school may not request an exception nor may an exception be granted from any of the following:

(i) An assessment program administered by the West Virginia Department of Education;

(ii) Any provision of law or policy required by the No Child Left Behind Act of 2001, Public Law No. 107-110 or other federal law; and

(iii) Section seven, article two and sections seven-a, seven- b, eight and eight-b, article four, chapter eighteen-a of this code, except as provided in section eight of this article; and

(C) Any other information the state board requires.

(3) The innovation zone plan may include:

(A) An emphasis in the early childhood through intermediate grade levels on ensuring that each student is prepared fully at each grade level, including additional intervention strategies at grade levels three and eight to reinforce the preparation of students who are not prepared fully for promotion, or an emphasis in the secondary grade levels on ensuring that each student is prepared fully for college or other post-secondary education, as applicable for the school; and

(B) An emphasis on innovative strategies that allows academically advanced students to pursue academic learning above grade level or not available through the normal curriculum at the school.

(b) Each school, group of schools, subdivision or department of a group of schools or subdivision or department of a school designated or seeking designation as an innovation zone shall submit its innovation zone plan to the school's employees, the

county superintendent and county board having jurisdiction over the school, the state board, and the state superintendent in accordance with section five of this article.

§18-5B-5. Approval of innovation zone plans; waiver of statutes, policies, rules or interpretations.

(a) Each school, group of schools, subdivision or department of a group of schools or subdivision or department of a school designated or seeking designation as an innovation zone shall:

(1) Submit its innovation zone plan to each employee regularly employed at the school if the employee's primary job duties would be affected by the implementation of the plan. An innovation zone plan is approved by school employees when approved by a vote by secret ballot as provided in section six of this article;

(2) Submit its innovation zone plan as approved by vote of school employees to the county superintendent and board for review. The county board shall within sixty days of receipt of the plan review the plan and with recommendations from the county superintendent report its support or concerns, or both, and return the plan and report to the school principal, faculty senate and local school improvement council; and

(3) Submit its innovation zone plan as approved by vote of the school employees eligible to vote on the plan along with the report of the county board to the state board and state superintendent for review. The county board shall be given an opportunity to present its concerns with the plan, if any, to the state board during its review. Except as provided in subsection (c) of this section, the state board and state superintendent shall approve or disapprove the plan within sixty days of receipt, subject to the following:

(A) No exceptions to county or state board rules, policies or interpretations are granted unless both the state superintendent and the state board approve the plan at least conditionally pursuant to subsections (b) and (c) of this section; and

(B) If the plan is disapproved, the state superintendent, the state board or both, as applicable, shall communicate the reasons for the disapproval to the school, the group of schools, the subdivision or department of a group of schools or the subdivision or department of a school and shall make recommendations for improving the plan. The school, the group of schools, the subdivision or department of a group of schools or the subdivision or department of a school may amend the plan pursuant to subsection (d) of this section.

(b) Upon the approval of an innovation zone plan by the state board and state superintendent, all exceptions to county and state board rules, policies and interpretations listed within the plan are granted, subject to the limitations contained in subdivision (B), subparagraph (2), subsection (a) of section four of this article.

(c) If an innovation zone plan, or a part thereof, may not be implemented unless an exception to a statute is granted by Act of the Legislature, the state board and state superintendent may approve the plan, or the part thereof, only upon the condition that the Legislature acts to grant the exception. If the state board and state superintendent approve a plan on that condition, the state board and state superintendent shall submit the plan with the request for an exception to a statute, along with supporting reasons, to the Legislative Oversight Commission on Education Accountability. The commission shall review the plan and exemption request and make a recommendation to the Legislature regarding the exception requested.

(d) The rule promulgated by the state board pursuant to section three of this article shall include a process for amending or revising an innovation zone plan. The process shall require that any amendments or revisions to an innovation zone plan are subject to the approval requirements of subsection (a) of this section.

§18-5B-6. Employee approval of innovation plan application and plan; transfer of employees.

(a) An employee shall be eligible to vote in accordance with the provisions of this section if: (1) The employee is regularly employed at the school; and (2) the employee's primary job duties will be affected by the implementation of the innovation zone plan. The panel created in subsection (c) of this section and the principal shall determine which employees are eligible to vote in accordance with this subsection. No employee may be eligible to vote unless both the panel and the principal determine that the employee is eligible to vote.

(b) A secret ballot vote at a special meeting of all employees regularly employed at the school who are eligible to vote in accordance with this section shall be conducted to determine the following:

(1) The level of employee commitment to apply for designation as an innovation zone in accordance with section three of this article; and

(2) The approval of an innovation zone plan as required by section five of this article.

(c) A panel consisting of the elected officers of the faculty senate of the school or schools, one representative of the service personnel employed at the school and three parent members appointed by the local school improvement council shall call the meeting required in subsection (b) of this section, conduct the votes and certify the results to the principal, the county superintendent and the president of the county board. The panel shall provide notice of the special meeting to all employees eligible to vote at least two weeks prior to the meeting and shall provide an absentee ballot to each employee eligible to vote who cannot attend the meeting to vote.

(d) At least eighty percent of the employees who are eligible to vote in accordance with this section must vote to apply for designation as an innovation zone and to approve the school's innovation zone plan before the level of staff commitment at the school is sufficient for the school to apply for designation and before the plan is approved by the school.

(e) An employee regularly employed at a school applying for or designated as an innovation zone whose job duties may be affected by implementation of the innovation zone plan or proposed plan may request a transfer to another school in the school district. The county board shall make every reasonable effort to accommodate the transfer.

§18-5B-7. Progress reviews and annual reports.

(a) At least annually, the state board or its designated committee shall review the progress of the development or implementation of an innovation zone plan. If, following such a review, the state board determines that a designated school, group of schools, subdivision or department of a group of schools, subdivision or department of a school or a school created by a state institution of higher education in accordance with section nine of this article has not made adequate progress toward developing or implementing its plan, the board shall submit a report to the designated school, group of schools, subdivision or department of a group of schools, subdivision or department of a school or a school created by a state institution of higher education in accordance with section nine of this article identifying its areas of concern. The state board or its designated committee may conduct an additional review within six months of submitting a report in accordance with this section. If, following such additional review, the state board or its designated committee determines that the designated school, group of schools, subdivision or department of a group of schools, subdivision or department of a school or a school created by a state institution of higher education in accordance with section

nine of this article has not made adequate progress toward developing or implementing its innovation zone plan, the state board may revoke the designation as an innovation zone or, if the innovation zone plan has been approved in accordance with section five of this article, rescind its approval of the plan.

(b) The state board shall provide an annual report on innovation zones and the progress of innovation zone plans to the Legislative Oversight Committee for Educational Accountability.

§18-5B-8. Teacher vacancies in an innovation zone; job postings exceeding certain qualifications and requirements; approval of postings.

A school, group of schools, subdivision or department of a group of schools, or a subdivision or department of a school whose school innovation zone plan has been approved in accordance with section five of this article may make a job posting for a teacher vacancy at the school, the group of schools, the subdivision or department of a group of schools, or the subdivision or department of a school designated as an innovation zone that sets forth standards or qualifications that exceed the standards and qualifications provided in section seven-a, article four, chapter eighteen-a of this code: *Provided*, That teachers in the county approve the job posting by majority vote: *Provided, however*, That the county superintendent administers the vote and the record of the vote remains on file in the personnel office of the county board until the school group of schools, subdivision or department of a group of schools, or a subdivision or department of a school is no longer designated as an innovation zone.

§18-5B-9. Establishment of new innovation zone schools by state institutions of higher education.

(a) A state institution of higher education may establish a new innovation zone school subject to the following:

(1) The school will be under the jurisdiction of the state institution of higher education;

(2) The county board with jurisdiction over the school district in which the new school is planned to be located must approve the establishment of the new innovation zone school;

(3) The state institution of higher education must enter into cooperative agreements with the county board or county boards whose students attend the new innovation zone school. The agreements shall include at least required reporting on student attendance, academic progress and any other matters relating to the administration, operation and support of the school agreed to by institution and the board or boards;

(4) Students attending the school shall be enrolled in a school in their county of residence subject to the policies of the county. The students may participate in extracurricular and cocurricular activities at the county school in which they are enrolled and, subject to the cooperative agreement with the state institution of higher education, participate in curricular activities at the county school in which they are enrolled;

(5) No funds provided to support the planning and implementation of school innovation zones pursuant to this article may be used for a state institution of higher education to establish a new innovation zone school; and

(6) A school established in accordance with this section may not be funded with: (1) Moneys appropriated by the Legislature to fund the innovation zone program; or (2) state or county moneys that result from the school aid formula.

(b) The state board shall promulgate a rule, including an emergency rule if necessary, in accordance with article three-b, chapter twenty-nine-a of this code for a state institution of higher education to establish a new innovation zone school . The rule shall include provisions for at least the following:

(1) A process for a state institution of higher education in accordance with this section to apply for designation as innovation zone and for approval of its innovation zone plan that encompasses at least the following:

(A) The manner, time and process for the submission of an application for innovation zone designation and for approval of its innovation zone plan;

(B) The contents of the application; and

(C) Factors to be considered by the state board when evaluating an application and plan, which shall include, but are not limited to, support from parents, students, county board or boards of education, the local school improvement council or councils and school business partners and the potential for a school to be successful as an innovation zone.

(2) A school created by state institution of higher education designated as an innovation zone or seeking designation as an innovation zone in accordance with this section shall develop an innovation zone plan that includes at least the following:

(A) A description of the programs, policies or initiatives the state institution of higher education intends to implement as an innovative strategy to improve student learning if the plan is approved;

(B) The approval of the county board of education with jurisdiction over the school district in which the new school is planned to be or is located and the cooperative agreements with the county board or county boards whose students attend the new innovation zone school;

(C) A list of all county and state board rules, policies and interpretations, and all statutes, if any, identified as prohibiting or constraining the implementation of the plan, including an explanation of the specific exceptions to the rules, policies and interpretations and statutes required for plan implementation;

(D) A policy under which the state institution of higher education and participating county board or boards of education agree to meet the accountability requirements for student assessment under all applicable assessment programs administered by the West Virginia Department of Education and provisions of law or policy required by the No Child Left Behind Act of 2001, Public Law No. 107-110 or other federal law; and

(E) Any other information the state board requires.

(3) Standards for the state board to review applications for designation as innovation zones and to make determinations on the approval of innovation zone plans.

(c) The state board and state superintendent shall review innovation zone applications and plans of a school created by a state institution of higher education in accordance with the standards adopted by the board and shall determine whether to designate it as an innovation zone or approve it plan, as applicable. The state board and state superintendent shall notify an applicant of the board's determination within sixty days of receipt of an innovation zone application and receipt of an innovation zone plan. If the plan is disapproved, the state board and state superintendent shall communicate the reasons for the disapproval to the school and make recommendations for improving the plan. The school may amend and resubmit the plan to the state board.

(d) Upon the approval of an innovation zone plan by the state board and state superintendent, all exceptions to county and state board rules, policies and interpretations listed within the plan are granted. If an innovation zone plan, or a part thereof, may not be implemented unless an exception to a statute is granted by Act of the Legislature, the state board and state superintendent may approve the plan, or the part thereof, only upon the condition that the Legislature acts to grant the exception. If the state board and state superintendent approve a plan on that condition, the state

board and state superintendent shall submit the plan with the request for an exception to a statute, along with supporting reasons, to the Legislative Oversight Commission on Education Accountability. The commission shall review the plan and request and make a recommendation to the Legislature on the exception requested.

House Bill 2335

Effective Date: Passed April 11, 2009; in effect ninety days from passage (July 6, 2009)

Signed by Governor: May 4, 2009

Code Reference: Amends and reenacts §18B-10-7, adds §18B-10-7c

Title: Relating to the federal "Yellow Ribbon G. I. Education Enhancement Program"

Major Provisions:

- Requires every state institution of higher education to participate in the Yellow Ribbon G.I. Education Enhancement Program.
- Requires state institutions of higher education to enter into agreements with the United States Secretary of Veterans Affairs to provide matching contributions toward the cost of tuition and mandatory fees not otherwise covered under the Post-9/11 Veterans Educational Assistance Act of 2008; and clarifying residency requirements for certain tuition and fee waivers.
- Authorizes veterans from out of state to enroll in undergraduate level courses at West Virginia institutions of higher education at in-state tuition rates.
- Authorizes each state institution of higher education to waive tuition and fees for any person who is the child or spouse of a National Guard member or a member of a reserve component of the armed forces of the United States who is a resident of this state and is killed in the line of duty.
- Authorizes each state institution of higher education to waive tuition and fees for any person who is the child or spouse of a person on federal or state active military duty who is a resident of this state and is killed in the line of duty.
- Authorizes state institutions of higher education to use the Yellow Ribbon G.I. Education Enhancement Program funds for eligible veterans' tuition and mandatory fees if they are attending as graduate level or professional students.

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2335

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

[By Request of the Executive]

(Passed April 11, 2009; in effect ninety days from passage.)

AN ACT to amend and reenact §18B-10-7 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §18B-10-7c, all relating to higher education tuition and fee waivers; tuition and fee waivers for certain military personnel; the federal "Yellow Ribbon G.I. Education Enhancement Program"; requiring state institutions of higher education to participate in the program; requiring state institutions of higher education to enter into agreements with the United States Secretary of Veterans Affairs to provide matching contributions toward the cost of tuition and mandatory fees not otherwise covered under the Post-9/11 Veterans Educational Assistance Act of 2008; and clarifying residency requirement for certain tuition and fee waivers.

Be it enacted by the Legislature of West Virginia:

That §18B-10-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be further amended by adding thereto a new section, designated §18B-10-7c, all to read as follows:

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

§18B-10-7. Tuition and fee waivers for children and spouses of officers, firefighters, National Guard personnel, reserve personnel and active military duty personnel killed in the line of duty.

(a) Each state institution of higher education shall waive tuition and fees for any person who is the child or spouse of an individual who:

(1) Was employed or serving as:

(A) A law-enforcement officer as defined in section one, article twenty-nine, chapter thirty of this code;

(B) A correctional officer at a state penal institution;

(C) A parole officer;

(D) A probation officer;

(E) A conservation officer; or

(F) A registered firefighter; and

(2) Was killed in the line of duty while:

(A) Employed by the state or any political subdivision of the state; or

(B) A member of a volunteer fire department serving a political subdivision of this state.

(b) Each state institution of higher education shall waive tuition and fees for any person who is the child or spouse of:

(1) A National Guard member or a member of a reserve component of the armed forces of the United States who is a resident of this state and is killed in the line of duty. The member is considered to have been killed in the line of duty if death resulted from performing a duty required by his or her orders or commander while in an official duty status, other than on federal active duty, authorized under federal or state law; or
(2) A person on federal or state active military duty who is a resident of this state and is killed in the line of duty. The person is considered to have been killed in the line of duty if death resulted from performance of a duty required by his or her orders or commander while in an official duty status.

(c) Any waiver granted pursuant to this section is subject to the following:

(1) The recipient may attend any undergraduate course if classroom space is available;
(2) The recipient has applied and been admitted to the institution;
(3) The recipient has applied for and submitted the Free Application for Federal Student Aid;
(4) The recipient has exhausted all other sources of student financial assistance dedicated solely to tuition and fees that exceed other grant assistance that are available to him or her, excluding student loans;
(5) Waiver renewal is contingent upon the recipient continuing to meet the academic progress standards established by the institution.

(d) The state institution of higher education may require the person to pay:

(1) Special fees, including any laboratory fees, if the fees are required of all other students taking a single course or that particular course; and
(2) Parking fees.

(e) The governing boards may promulgate rules:

(1) For determining the availability of classroom space;
(2) As it each considers necessary to implement this section; and
(3) Regarding requirements for attendance, which may not exceed the requirements for other ~~persons~~ students.

(f) The governing boards may extend to persons attending courses and classes under this section any rights, privileges or benefits extended to other students which it considers appropriate.

§18B-10-7c. Tuition and fee waivers for certain veterans receiving federal educational assistance benefits.

(a) The Legislature finds that:

(1) The United States Congress, in enacting the Post-9/11 Veterans Educational Assistance Act of 2008, 38 U.S.C. §3301, et seq., has established a program within the United States Department of Veterans Affairs known as the "Yellow Ribbon G.I. Education Enhancement Program";

(2) Under the Act, certain individuals who served or are serving on active duty in the United States Armed Forces after September 11, 2001, are eligible to receive educational assistance benefits equal to the cost of undergraduate resident tuition and mandatory fees charged by a state institution of higher education; and

(3) The Program provides additional educational assistance benefits above the cost of undergraduate resident tuition and mandatory fees to veterans receiving benefits under the Act.

(b) The purpose of this section is to require state institutions of higher education to participate in the Program and encourage private institutions of higher education located in the state to participate.

(c) As soon as practicable after the effective date of this section, the governing board of each state institution of higher education shall enter into an agreement with the United States Secretary of Veterans Affairs to participate in the Program. For every eligible

veteran who is enrolled or will be enrolled as an undergraduate student, the agreement shall provide for a waiver of the cost of tuition and mandatory fees not otherwise covered under 38 U.S.C. §3313(c)(1)(A) at a percentage equal to the maximum contribution available for match by the United States Department of Veterans Affairs. The agreement also may provide for a waiver of the cost of tuition and mandatory fees not otherwise covered under 38 U.S.C. §3313(c)(1)(A) at a percentage equal to the maximum contribution available for match by the United States Department of Veterans Affairs for every eligible veteran who is or will be enrolled in a graduate or professional program.

(d) For the purposes of the limitation on the amount of fee waivers permitted at state institutions of higher education set forth in sections five and six of this article, any waiver granted by a state institution of higher education in connection with the Program is not counted toward the amount of undergraduate, graduate or professional fee waivers permitted at that institution.

(e) The Legislature encourages every private institution of higher education located in the state to participate in the Program.

(f) For the purposes of this section:

(1) "The Act" means the Post-9/11 Veterans Educational Assistance Act of 2008, 38 U.S.C. §3301, et seq.;

(2) "The Program" means the Yellow Ribbon G.I. Education Enhancement Program, 38 U.S.C. §3317; and

(3) "Eligible veteran" means any individual who is eligible to participate in the Program.

House Bill 2530

Effective Date: Passed April 10, 2009; in effect July 1, 2009

Signed by Governor: April 24, 2009

Code Reference: Amends and reenacts §18-9A-2; §18-9A-3a and §18-9A-9

Title: Relating to further defining professional student support personnel

Major Provisions:

- Makes technical corrections to the statutes related to the PSSP which were revised by HB 4588 during the 2008 legislative session.
- Provides that for all purposes except for the determination of the allowance for professional educators under Step 1 of the PSSP, the personnel classified as “Professional Student Support Personnel” are teachers and professional educators.
- Clarifies that the term “net enrollment” for all purposes other than the determination of funding under steps 1 and 2 of the PSSP is to be the actual full-time equivalency (FTE) enrollment with certified adults, but excluding the additional enrollments added for funding purposes for the school districts with less than 1,400 students.
- Bases the allowances for professional educators and service personnel on the number of personnel allowed for funding by the funding ratios without consideration of the number of such personnel actually employed for the fiscal years 2009-10 through 2012-13.
- Also bases the allowances for professional educators on the number of professional educators allowed for funding without a reduction for failure to meet the minimum professional instructional (PI) limits set forth in WVC 19-9A-4 for the fiscal years 2009-10 through 2012-13.
- Includes the allowance under Step 5 of the PSSP for professional student support personnel in determining the allowance for Step 6a, allowance for other current expense.
- Includes professional student support personnel in determining the \$200 allowance for faculty senates.
- Bases the calculation for the county boards with less than 1,400 students on the actual number of students each district is below the threshold of 1,400 students, rather than using the statutory specified difference of 300.

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2530

(By Delegates Perry and M. Poling)

[Passed April 10, 2009; in effect July 1, 2009.]

AN ACT to amend and reenact §18-9A-2, §18-9A-3a and §18-9A-9 of the Code of West Virginia, 1931, as amended, all relating to further defining professional student support personnel; clarifying definition of net enrollment; modifying method for computing increase in net enrollment for certain counties; providing for computation of certain personnel allowances for certain fiscal years based on number of personnel that would be eligible based on net enrollment; and including professional student support personnel in the public school support formula allowance calculations for current expense and faculty senates.

Be it enacted by the Legislature of West Virginia:

That §18-9A-2, §18-9A-3a and §18-9A-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-2. Definitions.

For the purpose of this article:

- (a) "State board" means the West Virginia Board of Education.
- (b) "County board" or "board" means a county board of education.
- (c) "Professional salaries" means the state legally mandated salaries of the professional educators as provided in article four, chapter eighteen-a of this code.
- (d) "Professional educator" shall be synonymous with and shall have the same meaning as "teacher" as defined in section one, article one of this chapter, and includes technology integration specialists.
- (e) "Professional instructional personnel" means a professional educator whose regular duty is as that of a classroom teacher, librarian, attendance director or school psychologist. A professional educator having both instructional and administrative or other duties shall be included as professional instructional personnel for that ratio of the school day for which he or she is assigned and serves on a regular full-time basis in appropriate instruction, library, attendance, or psychologist duties.
- (f) "Professional student support personnel" means a ~~professional person~~ "teacher" as ~~those terms are defined in section one, article one, of this chapter eighteen-a of this code~~ who is assigned and serves on a regular full-time basis as a counselor or as a school nurse with a bachelor's degree and who is licensed by the West Virginia Board of Examiners for Registered Professional Nurses. For all purposes except for the determination of the allowance for professional educators pursuant to section four of this article, professional student support personnel are professional educators.
- (g) "Service personnel salaries" means the state legally mandated salaries for service

personnel as provided in section eight-a, article four, chapter eighteen-a of this code.

(h) "Service personnel" means all personnel as provided in section eight, article four, chapter eighteen-a of this code. For the purpose of computations under this article of ratios of service personnel to net enrollment, a service employee shall be counted as that number found by dividing his or her number of employment days in a fiscal year by two hundred: *Provided*, That the computation for any service person employed for three and one-half hours or less per day as provided in section eight-a, article four, chapter eighteen-a of this code shall be calculated as one-half an employment day.

(i) "Net enrollment" means the number of pupils enrolled in special education programs, kindergarten programs and grades one to twelve, inclusive, of the public schools of the county. Net enrollment further shall include:

(1) Adults enrolled in regular secondary vocational programs existing as of the effective date of this section, subject to the following:

(A) Net enrollment includes no more than one thousand of those adults counted on the basis of full-time equivalency and apportioned annually to each county in proportion to the adults participating in regular secondary vocational programs in the prior year counted on the basis of full-time equivalency; and

(B) Net enrollment does not include any adult charged tuition or special fees beyond that required of the regular secondary vocational student;

(2) Students enrolled in early childhood education programs as provided in section forty-four, article five of this chapter, counted on the basis of full-time equivalency;

(3) No pupil shall be counted more than once by reason of transfer within the county or from another county within the state, and no pupil shall be counted who attends school in this state from another state;

(4) The enrollment shall be modified to the equivalent of the instructional term and in accordance with the eligibility requirements and rules established by the state board; and

(5) For the purposes of determining the county's basic foundation program, only, For any county whose net enrollment as determined under all other provisions of this definition is less than one thousand four hundred, the net enrollment of the county shall be increased by an amount to be determined in accordance with the following:

(A) Divide the state's lowest county student population density by the county's actual student population density;

(B) Multiply the amount derived from the calculation in paragraph (A) of this subdivision by ~~three hundred~~ the difference between one thousand four hundred and the county's actual net enrollment;

(C) If the increase in net enrollment as determined under this subdivision plus the county's net enrollment as determined under all other provisions of this subsection is greater than one thousand four hundred, the increase in net enrollment shall be reduced so that the total does not exceed one thousand four hundred; and

(D) During the ~~two thousand eight – two thousand nine~~ 2008-2009 interim period and every three interim periods thereafter, the Legislative Oversight Commission on Education Accountability shall review the provisions of this subdivision to determine whether or not they properly address the needs of counties with low enrollment and a sparse population density.

(j) "Sparse-density county" means a county whose ratio of net enrollment, excluding any increase in the net enrollment of counties pursuant to subdivision (5) of the definition of net enrollment, to the square miles of the county is less than five.

(k) "Low-density county" means a county whose ratio of net enrollment, excluding any increase in the net enrollment of counties pursuant to subdivision (5) of the definition of net enrollment, to the square miles of the county is equal to or greater than five but less than ten.

(l) "Medium-density county" means a county whose ratio of net enrollment, excluding any increase in the net enrollment of counties pursuant to subdivision (5) of the definition of net enrollment, to the square miles of the county is equal to or greater than ten but less than twenty.

(m) "High-density county" means a county whose ratio of net enrollment, excluding any increase in the net enrollment of counties pursuant to subdivision (5) of the definition of net enrollment, to the square miles of the county is equal to or greater than twenty.

(n) "Levies for general current expense purposes" means ninety-four percent of the levy rate for county boards of education calculated or set by the Legislature pursuant to the provisions of section six-f, article eight, chapter eleven of this code: *Provided*, That beginning July ~~two thousand eight~~ 1, 2008, "levies for general current expense purposes" means ninety percent of the levy rate for county boards of education calculated or set by the Legislature pursuant to the provisions of section six-f, article eight, chapter eleven of this code: *Provided, however*, That effective ~~the first day of July 1, 2010~~, the definitions set forth in this subsection are subject to the provisions of section two-a of this article.

(o) "Technology integration specialist" means a professional educator who has expertise in the technology field and is assigned as a resource teacher to provide information and guidance to classroom teachers on the integration of technology into the curriculum.

(p) "State aid eligible personnel" means all professional educators and service personnel employed by a county board in positions that are eligible to be funded under this article and whose salaries are not funded by a specific funding source such as a federal or state grant, donation, contribution or other specific funding source not listed.

§18-9A-3a. Total state basic foundation program for fiscal years 2009 through 2013, only.

(a) Notwithstanding any other provisions of this article to the contrary, the total basic foundation program for the state for the fiscal year ~~two thousand nine~~ 2009 through ~~two thousand thirteen~~ 2013 shall be the sum of the amounts computed for each county in accordance with this section, less the county's local share:

(1) For the fiscal year ~~two thousand nine~~ 2009, the ~~d~~EDepartment of ~~e~~Education shall compute the total basic foundation program for each county in accordance with the provisions of this article and in accordance with the provisions of this article in effect for fiscal year ~~two thousand eight~~ 2008. The total basic foundation program for each county computed in accordance with this article is limited to a growth of one-fifth above the amount computed for the county in accordance with the provisions in effect for fiscal year ~~two thousand eight~~ 2008. The total basic foundation program for the county is the greater of the two computations.

(2) For the fiscal year ~~two thousand ten~~ 2010, the ~~d~~EDepartment of ~~e~~Education shall compute the total basic foundation program for each county in accordance with the provisions of this article and in accordance with the provisions of this article in effect for fiscal year ~~two thousand eight~~ 2008. The total basic foundation program for each county computed in accordance with this article is limited to a growth of two-fifths above the amount computed for the county in accordance with the provisions in effect for fiscal

year ~~two thousand eight~~ 2008. The total basic foundation program for the county is the greater of the two computations.

(3) For the fiscal year ~~two thousand eleven~~ 2011, the ~~d~~Department of ~~e~~Education shall compute the total basic foundation program for each county in accordance with the provisions of this article and in accordance with the provisions of this article in effect for fiscal year ~~two thousand eight~~ 2008. The total basic foundation program for each county computed in accordance with this article is limited to a growth of three-fifths above the amount computed for the county in accordance with the provisions in effect for fiscal year ~~two thousand eight~~ 2008. The total basic foundation program for the county is the greater of the two computations.

(4) For the fiscal year ~~two thousand twelve~~ 2012, the ~~d~~Department of ~~e~~Education shall compute the total basic foundation program for each county in accordance with the provisions of this article and in accordance with the provisions of this article in effect for fiscal year ~~two thousand eight~~ 2008. The total basic foundation program for each county computed in accordance with this article is limited to a growth of four-fifths above the amount computed for the county in accordance with the provisions in effect for fiscal year ~~two thousand eight~~ 2008. The total basic foundation program for the county is the greater of the two computations.

(5) For the fiscal year ~~two thousand thirteen~~ 2013 and each year thereafter, the ~~d~~Department of ~~e~~Education shall compute the total basic foundation program for each county in accordance with the provisions of this article and in accordance with the provisions of this article in effect for fiscal year ~~two thousand eight~~ 2008. For the fiscal year ~~two thousand thirteen~~ 2013 only, the total basic foundation program for the county is the greater of the two computations.

(b) When computing the basic foundation program for fiscal years 2010 through 2013 only, the allowance for professional educators and the allowance for service personnel computed for each school district in accordance with the provisions of this article that became effective on July 1, 2008, shall be based on the number of personnel that would be eligible based on the net enrollment of the county notwithstanding the number employed for the second month of the prior school term and notwithstanding the pro rata reduction for failure to establish and maintain the minimum professional instructional personnel ratios set forth in section four of this article.

§18-9A-9. Foundation allowance for other current expense and substitute employees.

The total allowance for other current expense and substitute employees shall be the sum of the following:

(1) For current expense, ten percent of the sum of the computed state allocation for professional educators, professional student support personnel and service personnel as determined in sections four, ~~and five~~ and eight of this article. Distribution to the counties shall be made proportional to the average of each county's average daily attendance for the preceding year and the county's second month net enrollment; plus

(2) For professional educator substitutes or current expense, two and five-tenths percent of the computed state allocation for professional educators and ~~other~~ professional student support personnel as determined in sections four and eight of this article. Distribution to the counties shall be made proportional to the number of professional educators and ~~other~~ professional student support personnel authorized for the county in compliance with sections four and eight of this article; plus

(3) For service personnel substitutes or current expense, two and five-tenths percent of the computed state allocation for service personnel as determined in section five of this article. Distribution to the counties shall be made proportional to the number of service personnel authorized for the county in compliance with section five of this article; plus

(4) For academic materials, supplies and equipment for use in instructional programs, ~~two hundred dollars~~ \$200 multiplied by the number of professional instructional personnel and professional student support personnel employed in the schools of the county. Distribution shall be made to each county for allocation to the faculty senate of each school in the county on the basis of ~~two hundred dollars~~ \$200 per professional instructional personnel employed at the school. Faculty senate means a faculty senate created pursuant to section five, article five-a of this chapter. Decisions for the expenditure of such funds shall be made at the school level by the faculty senate in accordance with the provisions of said section five, article five-a and shall not be used to supplant the current expense expenditures of the county. Beginning on ~~the first day of September 1, one thousand nine hundred ninety-four~~ 1994, and every September thereafter, county boards shall forward to each school for the use by faculty senates the appropriation specified in this section. Each school shall be responsible for keeping accurate records of expenditures.

House Bill 2703

Effective Date: Passed April 7, 2009, in effect 90 days from passage (July 6, 2009)

Signed by Governor: April 11, 2009

Code Reference: Amends and reenacts §18-7A-3; §18-7A-13; §18-7A-14; §18-7A-23; §18-7A-28c; §18-7A-34

Title: Relating to the State Teachers Retirements System

Major Provisions:

- Makes technical changes to the statutes related to the State Teachers Retirement System.
- Modifies the definition of "Member" to include any person who has accumulated contributions standing to his or credit in the Teachers Retirement System; adds a definition for "Employer error" as any unintentional omission, misrepresentation, or violation by the participating public employer; and deletes the definition for "Pick up service".
- Specifies that a member who ceases service with an unpaid loan balance will no longer be a member when the unpaid loan balance, plus accrued interest, equals or exceeds the member's accumulated contributions.
- Clarifies loan offsets at time of withdrawal.
- Specifies procedures for the correction of errors.
- Permits rollovers of any dollar amount.
- Permits loan borrowers to receive retirement income or disability payments when the outstanding loan balance is deducted from the actuarial reserve of accrued benefit.

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2703

(By Delegate Spencer)

[Passed April 7, 2009; in effect ninety days from passage.]

AN ACT to amend and reenact §18-7A-3, §18-7A-13, §18-7A-14, §18-7A-23, §18-7A-28c and §18-7A-34 of the Code of West Virginia, 1931, as amended, all relating to State Teachers Retirement System; making technical changes; modifying definitions; specifying cessation of membership; clarifying loan offsets at time of withdrawal; specifying procedures for the correction of errors; permitting rollovers of any dollar amount; and permitting loan borrowers to receive retirement income or disability payments when outstanding loan balance is deducted from the actuarial reserve of accrued benefit.

Be it enacted by the Legislature of West Virginia:

That §18-7A-3, §18-7A-13, §18-7A-14, §18-7A-23, §18-7A-28c and §18-7A-34 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-3. Definitions.

As used in this article, unless the context clearly require a different meaning:

- (1) "Accumulated contributions" means all deposits and all deductions from the gross salary of a contributor plus regular interest.
- (2) "Accumulated net benefit" means the aggregate amount of all benefits paid to or on behalf of a retired member;
- (3) "Annuities" means the annual retirement payments for life granted beneficiaries in accordance with this article.
- (4) "Average final salary" means the average of the five highest fiscal year salaries earned as a member within the last fifteen fiscal years of total service credit, including military service as provided in this article, or if total service is less than fifteen years, the average annual salary for the period on which contributions were made.
- (5) "Beneficiary" means the recipient of annuity payments made under the retirement system.
- (6) "Contributor" means a member of the retirement system who has an account in the ~~Teachers a~~Accumulation ~~f~~Fund.
- (7) "Deposit" means a voluntary payment to his or her account by a member.
- (8) "Employer" means the agency of and within the state which has employed or employs a member.
- (9) "Employer error" means an omission, misrepresentation, or violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required. A deliberate act contrary to the

provisions of this section by a participating public employer does not constitute employer error.

~~(9)~~ (10) "Employment term" means employment for at least ten months, a month being defined as twenty employment days.

~~(10)~~ (11) "Gross salary" means the fixed annual or periodic cash wages paid by a participating public employer to a member for performing duties for the participating public employer for which the member was hired. Gross salary also ~~shall include~~ includes retroactive payments made to a member to correct a clerical error, or made pursuant to a court order or final order of an administrative agency charged with enforcing federal or state law pertaining to the member's rights to employment or wages, with all ~~the~~ retroactive salary payments to be allocated to and considered paid in the periods in which the work was or would have been done. Gross salary ~~shall~~ does not include lump sum payments for bonuses, early retirement incentives, severance pay, or any other fringe benefit of any kind including, but not limited to, transportation allowances, automobiles or automobile allowances, or lump sum payments for unused, accrued leave of any type or character.

~~(11)~~ (12) "Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been amended.

~~(12)~~ (13) "Member" means ~~a member of the retirement system~~ any person who has accumulated contributions standing to his or her credit in the Teachers Retirement System. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited, or until cessation of membership pursuant to section thirteen of this article.

~~(13)~~ (14) "Members of the administrative staff of the public schools" means deans of instruction, deans of men, deans of women, and financial and administrative secretaries.

~~(14)~~ (15) "Members of the extension staff of the public schools" means every agricultural agent, boys' and girls' club agent and every member of the agricultural extension staff whose work is not primarily stenographic, clerical or secretarial.

~~(15)~~ (16) "New entrant" means a teacher who is not a present teacher.

~~(16)~~ (17) "Nonteaching member" means any person, except a teacher member, who is regularly employed for full-time service by: ~~(a)~~ (A) Any county board of education; ~~(b)~~ (B) the State Board of Education; ~~(c)~~ (C) the Higher Education Policy Commission, (D) the West Virginia Council for Community and Technical College Education, or (E) a governing board, as defined in section two, article one, chapter eighteen-b of this code; ~~or (d) The Teachers Retirement Board: Provided, That any person whose employment with the Higher Education Policy Commission, the West Virginia Council for Community and Technical College Education or a governing board commences on or after the first day of July 1, one thousand nine hundred ninety-one 1991, is not considered a nonteaching member.~~

~~(17)~~ "Pick-up service" means ~~service that a member was entitled to, but which the employer has not withheld or paid for.~~

~~(18)~~ (18) "Plan year" means the twelve-month period commencing on ~~the first day of July 1~~ and ending the following ~~thirtieth day of June 30~~ of any designated year.

~~(19)~~ (19) "Present member" means a present teacher who is a member of the retirement system.

~~(20)~~ (20) "Present teacher" means any person who was a teacher within the thirty-five years beginning ~~the first day of July 1, one thousand nine hundred thirty-four 1934,~~ and whose membership in the retirement system is currently active.

- (21) "Prior service" means all service as a teacher completed prior to ~~the first day of July 1, one thousand nine hundred forty-one~~ 1941, and all service of a present member who was employed as a teacher, and did not contribute to a retirement account because he or she was legally ineligible for membership during the service.
- (22) "Public schools" means all publicly supported schools, including colleges and universities in this state.
- (23) "Refund beneficiary" means the estate of a deceased contributor or a person he or she has nominated as beneficiary of his or her contributions by written designation duly executed and filed with the retirement board.
- (24) "Refund interest" means interest compounded, according to the formula established in legislative rules, series seven of the Consolidated Public Retirement Board, 162 CSR 7.
- (25) "Regular interest" means interest at four percent compounded annually, or a higher earnable rate if set forth in the formula established in legislative rules, series seven of the Consolidated Public Retirement Board, 162 CSR 7.
- (26) "Regularly employed for full-time service" means employment in a regular position or job throughout the employment term regardless of the number of hours worked or the method of pay.
- (27) "Required beginning date" means ~~the first day of~~ April 1 of the calendar year following the later of: (aA) The calendar year in which the member attains age seventy and one-half years; or (bB) the calendar year in which the member retires or ceases covered employment under the system after having attained the age of seventy and one-half years.
- (28) "Retirement system" means the State Teachers' Retirement System ~~provided for in~~ established by this article.
- (29) "Teacher member" means the following persons, if regularly employed for full-time service: (aA) Any person employed for instructional service in the public schools of West Virginia; (bB) principals; (cC) public school librarians; (dD) superintendents of schools and assistant county superintendents of schools; (eE) any county school attendance director holding a West Virginia teacher's certificate; (fF) the ~~E~~Executive Secretary ~~director~~ of the ~~R~~Retirement B~~oard~~; (gG) members of the research, extension, administrative or library staffs of the public schools; (hH) the State Superintendent of Schools, heads and assistant heads of the divisions under his or her supervision, or any other employee under the State Superintendent performing services of an educational nature; (iI) employees of the ~~S~~State Board of Education who are performing services of an educational nature; (jJ) any person employed in a nonteaching capacity by the State Board of Education, any county board of education, the State Department of Education or the Teachers Retirement Board, if that person was formerly employed as a teacher in the public schools; (kK) all classroom teachers, principals and educational administrators in schools under the supervision of the Division of Corrections, the Division of Health or the Division of Human Services; (lL) ~~an~~ employees of the ~~S~~State Board of School Finance, if that person was formerly employed as a teacher in the public schools; and (mM) any person designated as a 21st Century Learner Fellow pursuant to section eleven, article three, chapter eighteen-a of this code who elects to remain a member of the Teachers' Retirement System ~~provided for~~ in this article.
- (30) "Total service" means all service as a teacher while a member of the retirement system since last becoming a member and, in addition thereto, credit for prior service, if any.

~~The masculine gender shall be construed as to include the feminine.~~ Age in excess of seventy years shall be considered to be seventy years.

§18-7A-13. Membership in retirement system; cessation of membership; reinstatement of withdrawn service.

The membership of the retirement system shall consist of the following:
(a) New entrants, whose membership in the system is compulsory upon employment as teachers and nonteachers.

(b) The membership of the retirement system shall not include any person who is an active member of or who has been retired by the West Virginia ~~Public Employees Retirement System~~, the judge's retirement system, or the retirement system of the ~~department of public safety~~ West Virginia State Police or the supplemental retirement system as provided in section four-a, article twenty-three of this chapter. The membership of any person in the retirement system ceases:

(1) Upon the withdrawal of accumulated contributions after the cessation of service; or
(2) upon effective retirement date; or (3) at death; or (4) ~~if service amounts to fewer than five years in any period of ten consecutive years upon the date, if any, when after the cessation of service, the outstanding balance of any loan obtained by the member pursuant to section thirty-four of this article or section five, article seven-d of this chapter, plus accrued interest, equals or exceeds the member's accumulated contributions.~~

(c) Any former member of the retirement system who has withdrawn accumulated contributions but subsequently reenters the retirement system may repay to the retirement fund the amount withdrawn, plus interest at a rate set by the board, compounded annually from the date of withdrawal to the date of repayment: *Provided*, That no repayment may be made until the former member has completed two years of contributory service after reentry; and the member shall be accorded all the rights to prior service and experience as were held at the time of withdrawal of the accumulated contributions: *Provided, however*, That no withdrawn service may be reinstated that has been transferred to another retirement system from which the member is currently or will in the future draw benefits based on the same service. The interest paid shall be deposited in the reserve fund.

(d) No member is eligible for prior service credit unless he or she is eligible for prior service pension, as prescribed by section twenty-two of this article; however, a new entrant who becomes a present teacher as provided in this subdivision shall be considered eligible for prior service pension upon retirement.

(e) Any individual who is a leased employee is not eligible to participate in the system. For purposes of this system, a "leased employee" means any individual who performs services as an independent contractor or pursuant to an agreement with an employee leasing organization or other similar organization. If a question arises regarding the status of an individual as a leased employee, the board has final power to decide the question.

§18-7A-14. Contributions by members; contributions by employers; correction of errors.

(a) At the end of each month every member of the retirement system shall contribute six percent of that member's monthly gross salary to the retirement board: *Provided*, That any member employed by a state institution of higher education shall contribute on the member's full earnable compensation, unless otherwise provided in section fourteen-a of this article. The sums are due the Teachers Retirement System at the end of each calendar month in arrears and shall be paid not later than fifteen days following the end

of the calendar month. Each remittance shall be accompanied by a detailed summary of the sums withheld from the compensation of each member for that month on forms, either paper or electronic, provided by the Teachers Retirement System for that purpose.

(b) Annually, the contributions of each member shall be credited to the member's account in the Teachers' Retirement System Fund. The contributions shall be deducted from the salaries of the members as prescribed in this section, and every member shall be considered to have given consent to the deductions. No deductions, however, shall be made from the earnable compensation of any member who retired because of age or service, and then resumed service unless as provided in section thirteen-a of this article.

(c) The aggregate of employer contributions, due and payable under this article, shall equal annually the total deductions from the gross salary of members required by this section. ~~Beginning the first day of July 1, one thousand nine hundred ninety-four 1994,~~ the rate shall be seven and one-half percent; ~~beginning on the first day of July 1, one thousand nine hundred ninety-five 1995,~~ the rate shall be nine percent; ~~beginning on the first day of July 1, one thousand nine hundred ninety-six 1996,~~ the rate shall be ten and one-half percent; ~~beginning on the first day of July 1, one thousand nine hundred ninety-seven 1997,~~ the rate shall be twelve percent; ~~beginning on the first day of July 1, one thousand nine hundred ninety-eight 1998,~~ the rate shall be thirteen and one-half percent; and ~~beginning on the first day of July 1, one thousand nine hundred ninety-nine 1999,~~ and thereafter, the rate shall be fifteen percent: *Provided*, That the rate shall be seven and one-half percent for any individual who becomes a member of the Teachers Retirement System for the first time on or after ~~the first day of July 1, two thousand five 2005,~~ or any individual who becomes a member of the Teachers Retirement System as a result of the voluntary transfer contemplated in article seven-d of this chapter.

(d) Payment by an employer to a member of the sum specified in the employment contract minus the amount of the employee's deductions shall be considered to be a full discharge of the employer's contractual obligation as to earnable compensation.

(e) Each contributor shall file with the retirement board or with the employer to be forwarded to the retirement board an enrollment form showing the contributor's date of birth and other data needed by the retirement board.

(f) If any change or employer error in the records of any participating public employer or the retirement system results in any member receiving from the system more or less than he or she would have been entitled to receive had the records been correct, the board shall correct the error, and as far as is practicable shall adjust the payment of the benefit in a manner that the actuarial equivalent of the benefit to which the member was correctly entitled shall be paid. Any employer error resulting in an underpayment to the retirement system may be corrected by the member remitting the required employee contribution and the participating public employer remitting the required employer contribution. Interest shall accumulate in accordance with the Legislative Rule, Retirement Board Reinstatement Interest, 162 CSR 7, and any accumulating interest owed on the employee and employer contributions resulting from the employer error shall be the responsibility of the participating public employer. The participating public employer may remit total payment and the employee reimburse the participating public employer through payroll deduction over a period equivalent to the time period during which the employer error occurred.

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

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

(1) A contributor who withdraws from service for any cause other than death, disability or retirement shall, upon application, be paid his or her accumulated contributions up to the end of the fiscal year preceding the year in which application is made, after offset of any outstanding loan balance, plus accrued interest, pursuant to section thirty-four of this article, 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*, That ~~such~~ the contributor, at the time of application, is then no longer under contract, verbal or otherwise, to serve as a teacher; or

(2) If ~~such~~ the contributor 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*, That if ~~such~~ the contributor has completed at 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 the election. If the contributor has completed fewer than five years of service in this state, he or she shall be subject to the provisions as outlined in subdivision (1) of this subsection.

(b) 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 the spouse is designated as the sole refund beneficiary, is eligible for an annuity 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 subdivision (1) of this subsection, then the following sum shall be paid to the refund beneficiary of the contributor: The contributor's accumulated contributions up to the year of his or her death plus an amount equal to his or her employee contributions. The latter sum shall emanate from the Employer's Accumulation Fund.

§18-7A-28c. Direct rollovers.

(a) This section applies to distributions made on or after ~~the first day of January 1, one thousand nine hundred ninety-three~~ 1993. Notwithstanding any provision of this article to the contrary that would otherwise limit a distributee's election under this system, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution ~~that is equal to at least five hundred dollars~~ paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of this section, the following definitions apply:

(1) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any of the following: (i) A) Any distribution that is one of a series of substantially equal periodic payments not less frequently than annually made for the life or life expectancy of the distributee or the joint lives or the joint life expectancies of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; (ii) B) any distribution to the extent the distribution is required under Section 401(a)(9) of the Internal Revenue Code; (iii) C) the portion of any distribution that is not includable in gross income determined without regard to the exclusion for net

unrealized appreciation with respect to employer securities; and ~~(iv)~~ (D) any hardship distribution described in Section 401(k)(2)(B)(i)(iv) of the Internal Revenue Code. ~~and (v) any other distribution reasonably or distributions expected to total less than two hundred dollars during a year~~ For distributions after the thirty-first day of December 31, two thousand one 2001, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includable in gross income. However, this portion may be paid only to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Internal Revenue Code that agrees to separately account for amounts transferred, including separately accounting for the portion of the distribution which is includable in gross income and the portion of the distribution which is not includable.

(2) "Eligible retirement plan" means an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code, or a qualified plan described in Section 401(a) of the Internal Revenue Code, that accepts the distributee's eligible rollover distribution: *Provided*, That in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity. For distributions after the thirty-first day of December 31, two thousand one 2001, an eligible retirement plan also means an annuity contract described in Section 403(b) of the Internal Revenue Code and an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into the plan from this system.

(3) "Distributee" means an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code, as applicable to governmental plans, are distributees with regard to the interest of the spouse or former spouse.

(4) "Direct rollover" means a payment by the system to the eligible retirement plan.

(b) Nothing in this section may be construed as permitting rollovers into this system or any other retirement system administered by the board.

§18-7A-34. Loans to members.

(a) An actively contributing member of the retirement system upon written application may borrow from his or her individual account in the Teachers Retirement System, subject to these restrictions:

(1) Loans shall be made in multiples of ~~ten dollars~~ \$10, the minimal loan being ~~one hundred dollars~~ \$100 and the maximum being ~~eight thousand dollars~~ \$8,000: *Provided*, That the maximum amount of any loan when added to the outstanding balance of all other loans granted under this section shall not exceed the lesser of the following: (A) ~~Eight thousand dollars~~ \$8,000 reduced by the excess, (if any), of the highest outstanding balance of loans during the one-year period ending on the day before the date on which the loan is made, over the outstanding balance of loans to the member on the date on which the loan is made; or (B) fifty percent of the member's contributions to his or her individual account in the Teachers Retirement System: *Provided, however*, That if the total amount of loaned money outstanding exceeds ~~forty~~ \$40 million dollars, the maximum shall not exceed ~~three thousand dollars~~ \$3,000 until the Retirement

Board determines that loans outstanding have been reduced to an extent that additional loan amounts are again authorized: *Provided further*, That the amount of any loan made pursuant to article seven-d of this chapter is not included for the purposes of determining if the ~~forty~~ \$40 million dollar threshold has been exceeded.

(2) Interest charged on the amount of the loan shall be six percent per annum, or a higher rate as set by the Board: *Provided*, That interest charged shall be commercially reasonable in accordance with the provisions of ~~s~~Section 72(p)(2) of the Internal Revenue Code, and the federal regulations issued thereunder. If repayable in installments, the interest shall not exceed the annual rate so established upon the principal amount of the loan, for the entire period of the loan, and ~~such~~ the charge shall be added to the principal amount of the loan. The minimal interest charge shall be for six months.

(3) No member is eligible for more than one outstanding loan at any time: *Provided*, That the foregoing provision does not apply to any loan made pursuant to article seven-d of this chapter. Upon full payment of a loan, a member may apply for a subsequent loan after sixty days beginning the first day of the month following receipt of final payment.

(4) If a refund of accumulated contributions is payable to the borrower or his or her beneficiary before he or she repays the loan with interest, the balance due with interest to date shall be deducted from the refund. A member with an unpaid loan balance who wishes to retire or becomes eligible to receive disability benefits under any provision of this article may have the loan repaid in full by accepting retirement income or disability payments reduced by deducting from the actuarial reserve for the accrued benefit the amount of the unpaid balance plus accrued interest, if any, and then converting the remaining of the reserve to a monthly pension or disability benefit payable in the form of the annuity desired by the member.

(5) From his or her monthly salary as a teacher or a nonteacher the member shall pay the loan and interest by deductions which will pay the loan and interest in substantially level payments in not more than sixty nor less than six months. Upon notice of loan granted and payment due, the employer is responsible for making the salary deductions and reporting them to the Retirement Board. At the option of the board, loan deductions may be collected as prescribed herein for the collection of members' contribution, or may be collected through issuance of warrant by employer. If the borrower is no longer employed as a teacher or nonteaching member, the borrower must make monthly loan payments directly to the Consolidated Public Retirement Board and the Board must accept the payments.

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

(7) Loans shall be evidenced by such form of obligations and shall be made upon such additional terms as to default, prepayment, security, and otherwise as the board determines.

(8) Notwithstanding anything herein to the contrary, the loan program authorized by this section shall comply with the provisions of Section 72(p)(2) and Section 401 of the Internal Revenue Code, and the federal regulations issued thereunder, and accordingly, the ~~R~~etirement ~~B~~oard is authorized to: (A) Apply and construe the provisions of this section and administer the plan loan program in such a manner as to comply with the provisions of Section 72(p)(2) and Section 401 of the Internal Revenue Code and the federal regulations issued thereunder; (B) adopt plan loan policies or procedures consistent with these federal law provisions; and (C) take such actions as it ~~deems~~ considers necessary or appropriate to administer the plan loan program created hereunder in accordance with these federal law provisions. The ~~R~~etirement ~~B~~oard is further authorized in connection with the plan loan program to take any actions that may at any time be required by the Internal Revenue Service regarding compliance with the requirements of Section 72(p)(2) or Section 401 of the Internal Revenue Code, and the federal regulations issued thereunder, notwithstanding any provision in this article to the contrary.

(b) Notwithstanding anything in this article to the contrary, the loan program authorized by this section shall not be available to any teacher or nonteacher who becomes a member of the Teachers Retirement System on or after ~~the first day of July 1, two thousand five~~ 2005: *Provided*, That a member is eligible for a loan under article seven-d of this chapter to pay all or part of the Actuarial Reserve, or if available in accordance with the provisions of subsection (d), section six, article seven-d of this chapter, the one and one-half percent contribution for service in the Teachers' Defined Contribution System for the purpose of receiving additional service credit in the State Teachers Retirement System pursuant to section six, article seven-d, of this chapter.

(c) A member who ceases service with an unpaid loan balance will no longer be a member when the unpaid loan balance, plus accrued interest, equals or exceeds the member's accumulated contributions.

House Bill 2734

Effective Date: Passed April 8, 2009; in effect 90 days after passage (July 3, 2009)

Signed by Governor: April 30, 2009

Code Reference: Amends and reenacts §18-7D-11

Title: Relating to minimum guarantees provided to members who elected to transfer from the Teachers' Defined Contribution System to the Teachers' Retirement System

Major Provisions:

- Recognizes that any member of the Teachers' Defined Contribution Retirement System who works one hour or more and who has made a contribution to the State Teachers' Retirement System after his or her assets are transferred to the State Teachers' Retirement System pursuant to this article, is guaranteed a minimum benefit equal to his or her member contributions plus the vested portion of employer contributions made on his or her behalf to the Teachers' Defined Contribution Retirement System, plus any earnings thereon as of June 30, 2008.
- Recognizes that those meeting the above requirements are entitled to 1) The right to receive an annuity from the State Teachers' Retirement System based upon the provisions of article seven-a of this chapter; or 2) The right to withdraw from the State Teachers' Retirement System and receive his or her member accumulated contributions in the State Teachers' Retirement System, plus refund interest and the right to withdraw and receive his or her member contributions plus the vested portion of employer contributions made on his or her behalf to the Teachers' Defined Contribution Retirement System, plus any earnings thereon as of the date his or her assets are transferred to the State Teachers' Retirement System. The amount shall be distributed in a lump sum.
- Recognizes that any member of the Teachers' Defined Contribution Retirement System who does not work one hour or more and who makes no contribution to the State Teachers' Retirement System after his or her assets are transferred to the State Teachers' Retirement System is guaranteed the receipt of the amount in his or her total vested account in the Teachers' Defined Contribution Retirement System on the date of the transfer plus four percent interest accruing from the date of the transfer distributed in a lump sum.

ENROLLED

H. B. 2734

(By Delegate Spencer)

[Passed April 8, 2009; in effect ninety days from passage.]

AN ACT to amend and reenact §18-7D-11 of the Code of West Virginia, 1931, as amended, relating to the minimum guarantees provided to members who elected to transfer from the Teachers' Defined Contribution System to the Teachers' Retirement System.

Be it enacted by the Legislature of West Virginia:

That §18-7D-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7D. VOLUNTARY TRANSFER FROM TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM TO STATE TEACHERS RETIREMENT SYSTEM.

§18-7D-11. Minimum guarantees.

(a) Any member of the Teachers' Defined Contribution Retirement System who works one hour or more and who has made a contribution to the State Teachers Retirement System after his or her assets are transferred to the State Teachers Retirement System pursuant to this article, is guaranteed a minimum benefit equal to his or her member contributions plus the vested portion of employer contributions made on his or her behalf to the Teachers' Defined Contribution Retirement System, plus any earnings thereon, as of ~~the thirtieth day of June 30, two thousand eight~~ 2008, as stated by the board.

(b) A member of the Teachers' Defined Contribution Retirement System who works one hour or more and who has made contributions to the State Teachers Retirement System after his or her assets are transferred to the State Teachers Retirement System, upon eligibility to receive a distribution under article seven-a of this chapter, shall have at a minimum the following ~~three~~ two options:

(1) The right to receive an annuity from the State Teachers Retirement System based upon the provisions of article seven-a of this chapter; or

(2) The right to withdraw from the State Teachers Retirement System and receive his or her member accumulated contributions in the State Teachers Retirement System, plus refund interest thereon, as set forth in article seven-a of this chapter; ~~or (3) and~~ and ~~the~~ right to withdraw and receive his or her member contributions plus the vested portion of employer contributions made on his or her behalf to the Teachers' Defined Contribution Retirement System, plus any earnings thereon as of the date his or her assets are transferred to the State Teachers Retirement System pursuant to this article, as determined by the board pursuant to the vesting provisions of article seven-a of this chapter. This amount shall be distributed in a lump sum.

(c) Any member of the Teachers' Defined Contribution Retirement System who does not work one hour or more and who makes no contribution to the State Teachers Retirement System after his or her assets are transferred to the State Teachers Retirement System pursuant to this article, is guaranteed the receipt of the amount in his or her total vested account in the Teachers' Defined Contribution Retirement System

on the date of the transfer, plus interest thereon, at four percent accruing from the date of the transfer. This amount shall be distributed in a lump sum: *Provided*, That no benefits may be obtained under this subsection solely by the reciprocity provisions of sections three, four and six, article thirteen, chapter five of this code.

House Bill 2870

Effective Date: Passed April 11, 2009; in effect from passage

Signed by Governor: April 22, 2009

Code Reference: Amends and reenacts §18-7D-5 and §18-7D-6

Title: Extending the deadline of the buyback provision provided under the Teachers' Defined Contribution Retirement System to the State Teachers Retirement System

Major Provisions:

- Recognizes that those who received delayed results of the final buy back amount may need more time to decide on the option and obtain a loan if they wish to buy back full credit.
- States that the deadline for making a loan available to buy back full credit is June 30, 2009 or no later than ninety days after the postmarked date on the final and definitive contribution calculation from the board (CPRB), whichever is later.
- Does not extend the June 30, 2009 lump sum payment due.

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2870

(By Delegates Paxton, Stowers, Perry, Caputo, Boggs, Pethtel, Fragale, M. Poling, Duke, Campbell and Spencer)

(Passed April 11, 2009; in effect from passage.)

AN ACT to amend and reenact §18-7D-5 and §18-7D-6 of the Code of West Virginia, 1931, as amended, relating to extending the deadline of the buyback provision provided under the Teachers' Defined Contribution Retirement System to the State Teachers Retirement System; and similarly extending the time for loans for such buyback.

Be it enacted by the Legislature of West Virginia:

That §18-7D-5 and §18-7D-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7D. VOLUNTARY TRANSFER FROM TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM TO STATE TEACHERS RETIREMENT SYSTEM.

§18-7D-5. Conversion of assets from Defined Contribution Retirement System to State Teachers Retirement System; contributions; loans.

(a) If at least sixty-five percent of actively contributing members of the Teachers' Defined Contribution Retirement System affirmatively elect to transfer to the State Teachers Retirement System within the period provided in section seven of this article, then the Consolidated Public Retirement Board shall transfer the members and all properties held in the Teachers' Defined Contribution Retirement System's Trust Fund in trust for those members who affirmatively elected to do so during that period to the State Teachers Retirement System, effective on the first day of July, two thousand eight: *Provided*, That the board shall, for any member whose election to transfer was received by the board after the twelfth day of May, two thousand eight, but on or before the twentieth day of May, two thousand eight, and has not been certified as accepted by the board on or before the effective date of the amendments to this section enacted during the second extraordinary session of the Legislature, two thousand eight, effectuate the transfer as provided in this subsection on the first day of August, two thousand eight.

(b) The board shall make available to each member a loan for the purpose of paying all or part of the Actuarial Reserve, or if available in accordance with the provisions of subsection (d), section six of this article, the one and one-half percent contribution for service in the Teachers' Defined Contribution System to receive additional service credit in the State Teachers Retirement System for service in the Teachers' Defined Contribution Retirement System pursuant to section six of this article. The loan shall be offered in accordance with the provisions of section thirty-four, article seven-a of this chapter.

(1) Notwithstanding any provision of this code, rule or policy of the board to the contrary, the interest rate on any loan may not exceed seven and one-half percent per annum. The total amount borrowed may not exceed forty thousand dollars: *Provided*, That the loan may not exceed the limitations of the Internal Revenue Code Section 72(p).

(2) In the event a loan made pursuant to this section is used to pay the Actuarial Reserve or the one and one-half percent contribution, as the case may be, the board shall make any necessary adjustments at the time the loan is made.

(3) The board shall make this loan available to any member who has provided to the board by the effective date of the amendments to this section enacted in the 2009 regular legislative session a signed verification of cost for service credit purchase form until the thirtieth day of June, two thousand nine-, or no later than ninety days after the postmarked date on a final and definitive contribution calculation from the board, whichever is later.

(c) The board shall develop and institute a payroll deduction program for repayment of the loan established in this section.

(d) If at least sixty-five percent of actively contributing members of the Teachers' Defined Contribution Retirement System affirmatively elect to transfer to the State Teachers Retirement System within the period provided in section seven of this article:

(1) As of the first day of July, two thousand eight, or the first day of August, two thousand eight, as the case may be, the transferred members' contribution rate becomes six percent of his or her salary or wages; and

(2) All transferred members who work one hour or more and who make a contribution into the State Teachers Retirement System on or after the first day of July, two thousand eight, are governed by the provisions of article seven-a of this chapter, subject to the provisions of this article.

(e) Subject to the provisions of subdivision (1) of this subsection, if a member has withdrawn or cashed out part of his or her assets, that member will not receive credit for those moneys cashed out or withdrawn. The board shall make a determination as to the amount of credit a member loses based on the periods of time and the amounts he or she has withdrawn or cashed out, which shall be expressed as a loss of service credit.

(1) A member may repay those amounts he or she previously cashed out or withdrew, along with interest as determined by the board, and receive the same credit as if the withdrawal or cash-out never occurred. To receive full credit for the cashed-out or withdrawn amounts being repaid to the State Teachers Retirement System, the member also shall pay the actuarial reserve, or the one and one-half percent contribution, as the case may be, pursuant to section six of this article.

(2) The loan provided in this section is not available to members to repay previously cashed out or withdrawn moneys.

(3) If the repayment occurs five or more years following the cash-out or withdrawal, the member also shall repay any forfeited employer contribution account balance along with interest determined by the board.

(f) Notwithstanding any provision of subsection (e) to the contrary, if a member has cashed out or withdrawn any of his or her assets after the last day of June, two thousand three, and that member chooses to repurchase that service after the thirtieth day of June, two thousand eight, the member shall repay the previously distributed amounts and any applicable interest to the State Teachers Retirement System.

(g) Any service in the State Teachers Retirement System a member has before the date of the transfer is not affected by the provisions of this article.

(h) The board shall take all necessary steps to see that the voluntary transfers of persons and assets authorized by this article do not affect the qualified status with the Internal Revenue Service of either retirement plan.

§18-7D-6. Service credit in State Teachers Retirement System following transfer; conversion of assets; adjustments.

(a) Any member who has affirmatively elected to transfer to the State Teachers Retirement System within the period provided in section seven of this article whose assets have been transferred from the Teachers' Defined Contribution Retirement System to the State Teachers Retirement System pursuant to the provisions of this article and who has not made any withdrawals or cash-outs from his or her assets is, depending upon the percentage of actively contributing members affirmatively electing to transfer, entitled to service credit in the State Teachers Retirement System in accordance with the provisions of subsections (c) ~~or (d)~~ of this section.

(b) Any such member who has made withdrawals or cash-outs will receive service credit based upon the amounts transferred. The board shall make the appropriate adjustment to the service credit the member will receive.

~~(c) If at least sixty-five percent but less than seventy-five percent of actively contributing members of the Teachers' Defined Contribution Retirement System affirmatively elect to transfer to the State Teachers Retirement System within the period provided in section seven of this article, for any member of the Defined Contribution Retirement System who elects to transfer to the State Teachers Retirement System, his or her service credit in the State Teachers Retirement System is determined as follows:~~

~~(1) For any member affirmatively electing to transfer, the member's State Teachers Retirement System credit shall be seventy-five percent of the member's Teachers' Defined Contribution Retirement System service credit, less any service previously withdrawn by the member or due to a qualified domestic relations order and not repaid;~~

~~(2) To receive full credit in the State Teachers Retirement System for service in the Teachers' Defined Contribution Retirement System for which assets are transferred, transferring members shall have the option to pay into the State Teachers Retirement System the actuarial reserve, as defined in section two of this article, by no later than June 30, 2009.~~

~~(d) If at least seventy-five~~ More than seventy-five percent of actively contributing members of the Teachers' Defined Contribution Retirement System affirmatively ~~elect~~ elected to transfer to the State Teachers Retirement System within the period provided in section seven of this article, ~~for~~ Therefore, any member of the Defined Contribution Retirement System who ~~elects~~ decides to transfer to the State Teachers Retirement System, calculates his or her service credit in the State Teachers Retirement System is ~~determined~~ as follows:

(1) For any member affirmatively electing to transfer, the member's State Teachers Retirement System credit shall be seventy-five percent of the member's Teachers' Defined Contribution Retirement System service credit, less any service previously withdrawn by the member or due to a qualified domestic relations order and not repaid;

(2) To receive full credit in the State Teachers Retirement System for service in the Teachers' Defined Contribution Retirement System for which assets are transferred, ~~transferring members shall have the option to~~ who affirmatively elected to transfer and who provided to the board a signed verification of cost for service credit purchase form by the effective date of the amendments to this section enacted in the 2009 regular legislative session shall pay into the State Teachers Retirement System ~~the Actuarial Reserve, as defined in section two of this article, by~~ a one and one-half percent

~~contribution by no later than June 30, 2009, or no later than the thirtieth day of June, two thousand nine ninety days after the postmarked date on a final and definitive contribution calculation from the board, whichever is later. This contribution shall be calculated as one and one-half percent of the member's estimated total earnings for which assets are transferred, plus interest of four percent per annum accumulated from the date of the member's initial participation in the Defined Contribution Retirement System through June 30, 2009.~~

~~(d) If at least seventy-five percent of actively contributing members of the Teachers' Defined Contribution Retirement System affirmatively elect to transfer to the State Teachers Retirement System within the period provide in section seven of this article, for any member of the Defined Contribution Retirement System who elects to transfer to the State Teachers Retirement System, his or her service credit in the State Teachers Retirement System is determined as follows:~~

~~(1) For any member affirmatively electing to transfer, the member's State Teachers Retirement System credit shall be seventy-five percent of the member's Teachers' Defined Contribution Retirement System service credit, less any service previously withdrawn by the member or due to a qualified domestic relations order and not repaid;~~

~~(2) To receive full credit in the State Teachers Retirement System for service in the Teachers' Defined Contribution Retirement System for which assets are transferred, members who affirmatively elected to transfer shall pay into the State Teachers Retirement System a one and one-half percent contribution by no later than the thirtieth day of June, two thousand nine. This contribution shall be calculated as one and one-half percent of the member's estimated total earnings for which assets are transferred, plus interest of four percent per annum accumulated from the date of the member's initial participation in the Defined Contribution Retirement System.~~

~~(A) For a member contributing to the Defined Contribution Retirement System at any time during the two thousand eight 2008 fiscal year and commencing membership in the State Teachers Retirement System on the first day of July 1, two thousand eight 2008, or the first day of August 1, two thousand eight 2008, as the case may be:~~

~~(i) The estimated total earnings shall be calculated based on the member's salary and the member's age nearest birthday on the thirtieth day of June 30, two thousand eight 2008;~~

~~(ii) This calculation shall apply both an annual backward salary scale from that date for prior years' salaries and a forward salary scale for the salary for the two thousand eight 2008 fiscal year.~~

~~(B) The calculations in paragraph (A) of this subdivision are based upon the salary scale assumption applied in the West Virginia Teachers Retirement System Actuarial Vvaluation as of the first day of July 1, two thousand seven 2007, prepared for the Consolidated Public Retirement Board. This salary scale shall be applied regardless of breaks in service.~~

~~(e) (d) All service previously transferred from the State Teachers Retirement System to the Teachers' Defined Contribution Retirement System is considered Teachers' Defined Contribution Retirement System service for the purposes of this article.~~

~~(f) (e) Notwithstanding any provision of this code to the contrary, the retirement of a member who becomes eligible to retire after the member's assets are transferred to the State Teachers Retirement System pursuant to the provisions of this article may not commence prior to the first day of September 1, two thousand eight 2008: *Provided*, That the Consolidated Public Retirement Board may not retire any member who is eligible to retire during the calendar year two thousand eight 2008 during the calendar~~

~~year two thousand eight~~ unless the member has provided a written notice to his or her county board of education by ~~the first day of July 1, two thousand eight~~ 2008, of his or her intent to retire.

(f) The provisions of section twenty-eight-e, article seven-a of this chapter do not apply to the amendments to this section enacted during the 2009 regular legislative session.

House Bill 3146

Effective Date: Passed April 11, 2009; in effect ninety days from passage (July 10, 2009)

Signed by Governor: May 13, 2009

Code Reference: Amends and reenacts §18A-4-8b and §18A-4-17

Title: Relating to seniority rights for school service personnel

Major Provisions:

- Establishes the following new priorities for filling vacant service personnel positions and for determining promotions:
 - o Regularly employed service personnel who hold a classification title within the classification category of the vacancy;
 - o Service personnel on the preferred recall list who have held a classification title within the classification category of the vacancy;
 - o Regularly employed service personnel who do NOT hold a classification title within the classification category of the vacancy;
 - o Service personnel on the preferred recall list who have NOT held a classification title within the same classification category as the vacancy;
 - o Substitute service personnel who hold a classification title within the same classification category as the vacancy;
 - o Substitute service personnel who do NOT hold a classification title within the same classification category as the vacancy; and
 - o New service personnel.
- Requires that aides be assigned to particular positions within a school based on seniority within the aide classification category, if the aide is qualified for the position.

- Requires that custodians be assigned to work shifts at a school or work site based on seniority within the custodian classification category.
- Adds professional and service personnel at public community and technical colleges who provide middle college services to the group of employees who are entitled to receive the same rate of pay as employees of the school district of the county in which the facility is located.
- Adds professional personnel at public community and technical colleges that provide middle college services to the group of professional personnel who are afforded all rights, privileges and benefits established for professional personnel under Article 4 of Chapter 18A of the West Virginia Code, subject to the following:
 - o The benefits apply only within the facility at which the professional personnel are employed;
 - o The benefits exclude salaries unless explicitly provided for under WVC 18A-4-17 or other sections of this article;
 - o Seniority for professional personnel is determined on the basis of the length of time the employee has been professionally employed at the facility, regardless of which state agency was the actual employer.
- Specifies that professional and service personnel at public community and technical colleges who provide middle college services are state employees.

ENROLLED

Committee Substitute

for

H. B. 3146

(By Delegates Moye, Perry, Shaver, Caputo, Fragale and Rodighiero)
[Passed April 11, 2009; in effect from passage.]

AN ACT to amend and reenact §18A-4-8b and §18A-4-17 the Code of West Virginia, 1931, as amended , all relating to seniority rights for school service personnel; revising criteria for consideration of applicants; providing for assignment based on seniority in certain circumstances in certain classifications; specifying certain rights, privileges and benefits of certain professional and service personnel providing middle college services in public community and technical colleges; and making technical changes .

Be it enacted by the Legislature of West Virginia:

That §18A-4-8b and §18A-4-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

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

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

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

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

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

(3) ~~Professional personnel who held temporary service personnel jobs or positions prior to the ninth day of June, one thousand nine hundred eighty-two, and who apply only for these temporary jobs or positions~~ Regularly employed service personnel who do not hold a classification title within the classification category of vacancy;

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

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

- (6) Substitute service personnel who do not hold a classification title within the classification category of the vacancy; and
- (7) New service personnel.
- (c) The county board may not prohibit a service person from retaining or continuing his or her employment in any positions or jobs held prior to the effective date of this section and thereafter.
- (d) A promotion ~~is defined as~~ means any change in employment that the service person considers to improve his or her working circumstance within the classification category of employment.
- (1) A promotion includes a transfer to another classification category or place of employment if the position is not filled by an employee who holds a title within that classification category of employment.
- (2) Each class title listed in section eight of this article is considered a separate classification category of employment for service personnel, except for those class titles having Roman numeral designations, which ~~shall be~~ are considered a single classification of employment:
- (A) The cafeteria manager class title is included in the same classification category as cooks;
- (B) The executive secretary class title is included in the same classification category as secretaries;
- (C) Paraprofessional, autism mentor and braille or sign language specialist class titles are included in the same classification category as aides; and
- (D) The mechanic assistant and chief mechanic class titles are included in the same classification category as mechanics.
- (3) The assignment of an aide to a particular position within a school is based on seniority within the aide classification category if the aide is qualified for the position.
- (4) Assignment of a custodian to work shifts in a school or work site is based on seniority within the custodian classification category.
- (e) For purposes of determining seniority under this section an service person's seniority begins on the date that he or she enters into the assigned duties.
- (f) *Extra-duty assignments.* –
- (1) For the purpose of this section, "extra-duty assignment" ~~are defined as~~ means an irregular jobs that occurs periodically or occasionally such as, but not limited to, field trips, athletic events, proms, banquets and band festival trips.
- (2) Notwithstanding any other provisions of this chapter to the contrary, decisions affecting service personnel with respect to extra-duty assignments ~~shall be~~ are made in the following manner:
- (A) A service person with the greatest length of service time in a particular category of employment ~~shall be~~ is given priority in accepting extra duty assignments, followed by other fellow employees on a rotating basis according to the length of their service time until all ~~such~~ employees have had an opportunity to perform similar assignments. The cycle then is repeated.
- (B) An alternative procedure for making extra-duty assignments within a particular classification category of employment may be used if the alternative procedure is approved both by the county board and by an affirmative vote of two thirds of the employees within that classification category of employment.
- (g) County boards shall post and date notices of all job vacancies of ~~established~~ existing or newly created positions in conspicuous places for all school service personnel to observe for at least five working days.

- (1) Posting locations shall include any website maintained by or available for the use of the county board.
- (2) Notice of a job vacancy shall include the job description, the period of employment, the amount of pay and any benefits and other information that is helpful to prospective applicants to understand the particulars of the job. Job postings for vacancies made pursuant to this section shall be written so as to ensure that the largest possible pool of qualified applicants may apply. Job postings may not require criteria which are not necessary for the successful performance of the job and may not be written with the intent to favor a specific applicant.
- (3) After the five-day minimum posting period, all vacancies shall be filled within twenty working days from the posting date notice of any job vacancies of established existing or newly created positions.
- (4) The county board shall notify any person who has applied for a job posted pursuant to this section of the status of his or her application as soon as possible after the county board makes a hiring decision regarding the posted position.
- (h) All decisions by county boards concerning reduction in work force of service personnel shall be made on the basis of seniority, as provided in this section.
- (i) The seniority of any a service person shall be is determined on the basis of the length of time the employee has been employed by the county board within a particular job classification. For the purpose of establishing seniority for a preferred recall list as provided in this section, when a service person who has been employed in one or more classifications, retains the seniority accrued in each previous classification is retained by the employee.
- (j) If a county board is required to reduce the number of service personnel within a particular job classification, the following conditions apply:
- (1) The employee with the least amount of seniority within that classification or grades of classification shall be is properly released and employed in a different grade of that classification if there is a job vacancy;
- (2) If there is no job vacancy for employment within that classification or grades of classification, the service person shall be is employed in any other job classification which he or she previously held with the county board if there is a vacancy and shall retains any seniority accrued in the job classification or grade of classification.
- (k) After a reduction in force or transfer is approved, but ~~Prior to the first day of August 1, after a county board in its sole and exclusive judgment may determine that the reason for any particular reduction in force or transfer is approved no longer exists:~~
- (1) ~~If the county board in its sole and exclusive judgment determines that the reason for any particular makes this determination, it shall rescind the reduction in force or transfer no longer exists, the board shall rescind the reduction in force or transfer and notify the affected employee in writing of the right to be restored to his or her former position of employment.~~
- (2) ~~Within five days of being notified, t~~The affected employee shall notify the county board of his or her intent to return to the former position of employment within five days of being notified or lose the right of restoration to the be restored to the former position terminates:.
- (3) The county board shall may not rescind the reduction in force of an employee until all service personnel with more seniority in the classification category on the preferred recall list have been offered the opportunity for recall to regular employment as provided in this section.

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

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

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

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

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

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

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

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

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

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

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

§18A-4-17. Health and other facility employee salaries.

(a) The minimum salary scale for professional personnel and service personnel employed by the state department of education to provide education and support services to residents of state department of health and human resources facilities, corrections facilities providing services to juvenile and youthful offenders, ~~and~~ in the West Virginia schools for the deaf and the blind and in public community and technical colleges providing middle college services is the same as set forth in sections two, three and eight- a of this article. Additionally, those personnel shall receive the equivalent of salary supplements paid to professional and service personnel employed by the county board ~~of education~~ in the county wherein each facility is located, as set forth in sections

five-a and five-b of this article. Professional personnel and service personnel in these facilities who earn advanced classification of training after the effective date of this section shall be paid the advanced salary from the date the classification of training is earned. The professional personnel shall be certified, licensed or trained, and shall meet other eligibility classifications as may be required by the provisions of this chapter and by state board regulations for comparable instructional personnel who are employed by county boards of education. The professional personnel shall be paid at the equivalent rate of pay of teachers as set forth in section two of this article, but outside the public support plan, plus the equivalent of the salary supplement paid to teachers employed by the county board of education in the county in which each facility is located, as set forth in section five-a of this article.

(b) Professional personnel employed by the department to provide educational services to residents in state department of health and human resources facilities, corrections facilities providing services to juvenile and youthful offenders, ~~or in the West Virginia schools for the deaf and the blind~~ or in public community and technical colleges providing middle college services shall be ~~are~~ afforded all the rights, privileges and benefits established for the professional personnel under this article ~~Provided, That the benefits shall apply only within the facility at which the professional personnel are employed: Provided, however, That benefits shall exclude salaries unless explicitly provided for under this or other sections of this article: Provided further, That seniority for the professional personnel shall be determined on the basis of the length of time that the employee has been professionally employed at the facility, regardless of which state agency was the actual employer., subject to the following:~~

(1) The benefits apply only within the facility at which the professional personnel are employed;

(2) The benefits exclude salaries unless explicitly provided for under this or other sections of this article; and

(3) Seniority for the professional personnel is determined on the basis of the length of time the employee has been professionally employed at the facility, regardless of which state agency was the actual employer.

(c) ~~Nothing contained in this section shall be construed to mean that~~ Professional personnel and service personnel employed by the department of education to provide educational and support services to residents in state department of health and human resources facilities, corrections facilities providing services to juvenile and youthful offenders, and the West Virginia schools for the deaf and the blind and in public community and technical colleges providing middle college services are other than state employees.

(d) Additional seniority provisions.

(1) Notwithstanding any other provision of this section to the contrary, professional and service personnel employed in an educational facility operated by the West Virginia department of education shall accrue seniority at that facility on the basis of the length of time the employee has been employed at the facility. ~~Any~~ Professional or and service personnel whose employment at the facility was preceded immediately by employment with the county board previously providing education services at the facility or whose employment contract was with the county board previously providing education services at the facility:

(A) ~~Shall~~ Retains any seniority accrued during employment by the county board;

(B) ~~shall~~ accrues seniority as a regular employee with the county board during employment at the facility;

(C) ~~shall~~ Attains continuing contract status in accordance with section two, article two, chapter eighteen-a of this code with both the county and the facility if the sum of the years employed by the county and the facility equals the statutory number required for continuing contract status; and

(D) ~~shall~~ Retains and continues to accrue county and facility seniority in the event of reemployment by the county as a result of direct transfer from the facility or recall from the preferred list.

(2) Reductions in work force in the facility or employment by the facility or county board ~~shall be~~ are made in accordance with the provisions of sections seven-a and eight-b, article ~~four, chapter eighteen-a~~ of this code: chapter. ~~Provided, That~~ Only years of employment within the facility ~~shall be~~ are considered for purposes of reduction in force within the facility.

(3) The seniority conferred in this section applies retroactively to all affected professional and service personnel, but the rights incidental to the seniority commence ~~as of~~ on the effective date of this section.

(4) Amendments made to this section during the 2009 regular session of the Legislature do not abrogate any rights, privileges or benefits bestowed under previous enactments of this section.

House Bill 3208

Effective Date: Passed April 11, 2009; in effect ninety days from passage (July 10, 2009)

Signed by Governor: May 13, 2009

Code Reference: Amends and reenacts §18-2E-4; §18-4-1; §18-4-4; §18-5-1a

Title: Relating to training for county board members, eligibility and duties of county board members, and appointments, terms, and the deadline for setting annual compensation for county superintendents.

Major Provisions:

- The number of training hours set by the State Board of Education and received by county board of education members are to be added to school district report cards.
- The appointment of a county superintendent shall be after January 1.
- If a county superintendent vacancy results in an incomplete term, the local board may appoint an interim superintendent to serve until the following July 1.
- If a superintendent vacancy occurs after March 1, the interim superintendent may serve until July 1 of the next following year unless a superintendent is appointed sooner.
- If the superintendent is incapacitated for a prolonged absence due to accident or illness, the board may, upon unanimous vote, enter an order declaring the incapacity and shall appoint an acting superintendent until a majority of members determine the incapacity no longer exists.
- An acting superintendent may not serve as such for more than one year or later than the expiration date of the superintendent's term, whichever is less, without the reappointment of the board.
- The county board's president shall upon the appointment of an acting county superintendent and upon a majority vote of the board that the incapacity no longer exists, shall certify the acting superintendent's appointment, reappointment and appointment termination to the state superintendent.

- The county board shall fix the annual salary of the superintendent on or before June 1.
- The state board shall appoint a “county board member training standards review committee” to meet annually.
- The training standards review committee shall determine, subject to state board approval, if particular trainings and training organizations shall be approved and if county board members have satisfied the annual training requirement.
- Members of the training standards review committee shall serve without compensation but may be reimbursed by their agencies or employers for all reasonable and necessary expenses actually incurred in the performance of their duties.

ENROLLED

Committee Substitute

for

H. B. 3208

(By Delegates Fragale, Williams, Duke,
Shott and Smith)

[Passed April 11, 2009; in effect ninety days from passage.]

AN ACT to amend and reenact §18-2E-4 of the Code of West Virginia, 1931, as amended; to amend and reenact §18-4-1 and §18-4-4 of said code; and to amend and reenact §18-5-1a of said code, all relating to reporting hours of certain training received by county board members on county report card; clarifying eligibility for county board of education generally; providing for appointment and term of interim county superintendents to fill vacancies; providing for appointment and terms of acting county superintendents under certain circumstances; requiring certification to state superintendent of certain appointments, reappointments and appointment terminations; modifying deadline for setting annual compensation of county superintendents; establishing county board member training standards review committee; providing for member appointments, duties and certain expenses under certain circumstances; clarifying eligibility requirements for candidates, members and members-elect of county boards of education; prohibiting certain political activities and clarifying which political activities are permissible; removing certain duty of state board of education regarding members of county boards of education; making technical clarifications of current law; authorizing candidates for county boards of education to hold public office until taking the oath of office as members of county boards; adding definition of neglect of duty; making other technical changes; and clarifying terms .

Be it enacted by the Legislature of West Virginia:

That §18-2E-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §18-4-1 and §18-4-4 of said code be amended and reenacted; and that §18-5-1a of said code be amended and reenacted, all to read as follows:

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-4. Better schools accountability; school, school district and statewide school report cards.

(a) For the purpose of providing information to the parents of public school children and the general public on the quality of education in the public schools which is uniform and comparable between schools within and among the various school districts, the state board shall prepare forms for school, school district and statewide school report cards and shall promulgate rules concerning the collection and reporting of data and the preparation, printing and distribution of report cards under this section. The forms shall provide for brief, concise reporting in nontechnical language of required information. Any technical or explanatory material a county board wishes to include shall be contained in a separate appendix available to the general public upon request.

(b) The school report cards shall include information as shall be prescribed by lawfully

promulgated rule by the state board to give the parents of students at the school and the general public an indication of the quality of education at the school and other programs supportive of community needs, including, but not limited to, the following:

- (1) Indicators of student performance at the school in comparison with the county, state, regional and national student performance, as applicable, including student performance by grade_level in the various subjects measured pursuant to a uniform statewide assessment program adopted by the state board; school attendance rates; the percent of students not promoted to next grade; and the graduation rate;
- (2) Indicators of school performance in comparison with the aggregate of all other schools in the county and the state, as applicable, including average class size; percent of enrollments in courses in high school mathematics, science, English and social science; amount of time per day devoted to mathematics, science, English and social science at middle, junior high and high school grade levels; percentage distribution of students by career cluster as indicated on the individualized student transition plan; pupil-teacher ratio; number of exceptions to pupil-teacher ratio requested by the county board and the number of exceptions granted; the number of split-grade classrooms; pupil-administrator ratio; operating expenditure per pupil; county expenditure by fund in graphic display; and the average degree classification and years of experience of the administrators and teachers at the school;
- (3) The names of the members of the local school improvement council, created pursuant to section two, article five-a of this chapter; and
- (4) The name or names of the business partner or partners of the school.

In addition, every county board annually shall determine the number of administrators, classroom teachers and service personnel employed that exceeds the number allowed by the public school support plan and determine the amount of salary supplements that would be available per state authorized employee if all expenditures for the excess employees were converted to annual salaries for state authorized administrators, classroom teachers and service personnel within their county. The information shall be published annually in each school report card of each such county.

(c) The school district report card shall include the data for each school for each separately listed applicable indicator and the aggregate of the data for all schools, as applicable, in the county for each indicator. The statewide school report card shall include the data for each county for each separately listed indicator and the aggregate for all counties for each indicator.

(d) The report cards shall be prepared using actual local school, county, state, regional and national data indicating the present performance of the school and ~~shall~~ also shall include the state norms and the upcoming year's targets for the school and the county board.

The state board shall provide technical assistance to each county board in preparing the school and school district report cards.

Each county board shall prepare report cards in accordance with the guidelines set forth in this section. The school district report cards shall be presented at a regular school board meeting subject to applicable notice requirements and shall be made available to a newspaper of general circulation serving the district. The school report cards shall be mailed directly to the parent or parents of ~~any~~ each child enrolled in that school. In addition, each county board shall submit the completed report cards to the state board which shall make copies available to any person requesting them.

The report cards shall be completed and disseminated prior to ~~first day of~~ January 1, ~~one thousand nine hundred eighty-nine~~ 1989, and in each year thereafter, and shall be

based upon information for the current school year, or for the most recent school year for which the information is available, in which case the year shall be clearly footnoted. (e) In addition to the requirements of subsection (c) of this section, the school district report card shall list the following information: (1) The names of the members of the county board, the dates upon which their terms expire and whether they have attended an orientation program for new members approved by the state board and conducted by the West Virginia sSchool bBoard aAssociation or other approved organizations, ~~and other school board member training programs~~; and (2) The number of hours of training that meets state board standards that county board members have received during the school term reported; and ~~(2 3)~~ (3) The names of the county school superintendent and every assistant and associate superintendent and any training programs related to their area of school administration which they have attended. The information shall also shall be reported by district in the statewide school report card.

(f) The state board shall develop and implement a separate report card for nontraditional public schools pursuant to the appropriate provisions of this section to the extent practicable.

ARTICLE 4. COUNTY SUPERINTENDENT OF SCHOOLS.

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

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

(1) aAt the expiration of his or her term or terms of service the county superintendent may transfer to any teaching position in the county for which he or she is qualified and has seniority, unless dismissed for statutory reasons.

(2) The appointment of the county superintendent shall be made ~~on or before the first day of~~ between January 1 and June 1 for a term beginning on ~~the first day of~~ July 1 following the appointment.

~~(b) A county superintendent who fills a vacancy caused by an incomplete term shall be appointed to serve until the following first day of July: Provided, however, That In the event of a vacancy in the superintendent's position that results in an incomplete term, the board may appoint an interim county superintendent:~~

~~(1) †To serve for a period not to exceed one hundred twenty days from the occurrence of the vacancy until the following July 1 if the vacancy occurs before March 1.~~

~~(2) To serve until July 1 of the next following year if the vacancy occurs on or after March 1, unless a superintendent is appointed sooner.~~

~~(c) The president of the county board, immediately upon the appointment of the county superintendent, or the appointment of an interim county superintendent, shall certify the appointment to the state superintendent. If the superintendent becomes incapacitated due to accident or illness to an extent that may lead to prolonged absence, the county board, by unanimous vote, may enter an order declaring that an incapacity exists in which case the county board shall appoint an acting superintendent to serve until a majority of the members of the board determine that the incapacity no longer exists. An acting superintendent may not serve in that capacity for more than one year, nor later than the expiration date of the superintendent's term, whichever occurs sooner, unless he or she is reappointed by the county board.~~

~~(d) Immediately following the appointment of a county superintendent or an interim county superintendent, the president of the county board shall certify the appointment to~~

the state superintendent. Immediately following the appointment of an acting county superintendent or a vote by a majority of the members of the county board that an incapacity no longer exists, the president of the county board shall certify the appointment, reappointment, or appointment termination of the acting superintendent to the state superintendent.

~~(d e)~~ During his or her term of appointment, the county superintendent shall be a state resident of and shall reside in the county, or of which he or she serves or in a contiguous county in this state, which he or she serves. The county superintendent in office on the effective date of this section shall continue in office until the expiration of his or her term.

§18-4-4. Compensation.

On or before ~~the first day of May~~ June 1 of the year in which the superintendent is appointed, the board shall fix the annual salary of the superintendent for the period of appointment for the term beginning on the ~~first day of~~ following July ~~following~~ 1. The board shall pay the salary from the general current expense fund of the district.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

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

(a) ~~No~~ A ~~person shall be eligible who is a candidate~~ person shall be eligible who is a candidate for membership on a county board ~~or who is not a citizen, resident in such county, or who accepts a position as teacher or service personnel in the school district in which he or she is a resident or who is an elected member of any political party executive committee, or who becomes a candidate for any other office than to succeed oneself~~ member or member-elect of a county board:

(1) Shall be a citizen and resident in the county in which he or she serves or seeks to serve on the county board;

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

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

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

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

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

(I) The person does not receive compensation; and

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

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

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

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

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

(A) Make campaign contributions to partisan or bipartisan candidates;

(B) Attend political fund raisers for partisan or bipartisan candidates;

(C) Serve as an unpaid volunteer on a partisan campaign;

(D) Politically endorse any candidate in a partisan or bipartisan election; or

(E) Attend a county, state or national political party convention.

~~(b) No~~ A member or member-elect of any a county board shall be eligible for nomination, election or appointment to any public office, other than to succeed oneself, or for election or appointment as a member of any political party executive committee, unless and until after that membership on the board, or his status as member elect to the board, has been terminated at or before the time of his filing for such nomination for, or appointed to, such public office or committee: ~~Provided, That~~ "office" or "committee", as used in this subsection and subsection (a) of this section, does not include service on any board, elected or appointed, profit or nonprofit, for which a person does not receive compensation and whose primary scope is not related to the public schools, or ~~(c)~~ A a person desiring to become a member or member-elect of a county board, or a person desiring to become a member of a county board, may make a written request to the West Virginia eEthics eCommission for an advisory opinion ~~on whether to determine if another~~ elected or appointed position held or sought by the person is an office or public office which would bar service on the a county board pursuant to subsection (a) of this section.

(1) Within thirty days of receipt of the request, the eEthics eCommission shall issue a written advisory opinion in response to the request and ~~shall also~~ shall publish such the opinion in a manner which, to the fullest extent possible, does not reveal the identity of the person making the request.

(2) ~~Any~~ A county board member who ~~relied~~ relies in good faith upon an advisory opinion issued by the West Virginia eEthics eCommission to the effect that holding a particular office or public office is not a bar from membership on a county board and against whom proceedings are subsequently brought for removal from the county board on the basis of holding ~~such~~ that office or offices ~~shall be~~ is entitled to reimbursement by the county board for reasonable attorney's fees and court costs incurred by the member in defending against ~~such~~ these proceedings, regardless of the outcome of the proceedings.

(3) ~~Further, no~~ A vote cast by the member at a meeting of the county board shall may not be invalidated due to a subsequent finding that holding the particular office or public office is a bar to membership on the county board.

(4) Good faith reliance on a written advisory opinion of the West Virginia eEthics eCommission that a particular office or public office is not a bar to membership on a county board is an absolute defense to any civil suit or criminal prosecution arising from any proper action taken within the scope of membership on the county board, becoming a member-elect of the county board or seeking election to the county board.

~~(d c)~~ Any person who is elected or appointed to To be eligible for election or appointment as a member of a county board on or after the fifth day of May 5, one thousand nine hundred ninety-two 1992, a person shall possess at least a high school diploma or a general educational development (GED) diploma: ~~Provided, That,~~ ~~†~~ This provision shall does not apply to members or members-elect who have taken office prior to the fifth day of May 5, one thousand nine hundred ninety-two 1992, and who serve continuously therefrom from that date forward.

~~(e d)~~ No A person elected to a county board after the first day of July 1, one thousand nine hundred ninety 1990, shall may not assume the duties of county board member unless he or she has first attended and completed a course of orientation relating to boardsmanship and governance effectiveness which shall be given between the date of election and the beginning of the member's term of office : ~~Provided, That~~ under the following conditions:

~~(1) That a~~ A portion or portions of subsequent training such as that offered in orientation may be provided to members after they have commenced their term of office: ~~Provided, however, That;~~

~~(2) a~~ Attendance at the session of orientation given between the date of election and the beginning of the member's term of office ~~shall permit~~ such member or members the member-elect to assume the duties of county board member, as specified in this section;

~~(3) Members appointed to the~~ county board shall attend and complete the next such course offered following their appointment: ~~Provided further, That; and~~

~~(4) The~~ provisions of this subsection relating to orientation shall do not apply to members who have taken office prior to ~~the first day of July 1, one thousand nine hundred eighty-eight 1988,~~ and who serve continuously ~~therefrom~~ from that date forward.

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

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

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

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

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

~~(g) In the final year of any four-year term of office, a member shall satisfy the annual training requirement before the first day of January 1. The state board shall petition the circuit court of Kanawha County to remove any county board member who has failed to or who refuses to attend and complete the approved course of orientation and training. If the county board member fails to show good cause for not attending the approved course or orientation and training, the court shall remove the member from office. Failure to comply with the training requirements of this section without good cause as defined by the state board by duly promulgated legislative rules constitutes neglect of duty under section seven, article six, chapter six of this code.~~

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

House Bill 3313

Effective Date: Passed April 10, 2009; in effect ninety days from passage (July 9, 2009)

Signed by Governor: April 30, 2009

Code Reference: Amends and reenacts §18-9-6

Title: Related to allowing depositories and banks to meet the security requirement necessary to be a depository for boards of education by providing a letter of credit from a federal home loan bank.

Major Provisions:

- Adds "letters of credit from a federal home loan bank" as an authorized security that a bank may pledge in lieu of providing bond for monies deposited by a board of education.

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 3313

(By Delegates Cann, Varner, Klempa, Craig and Manchin)

[Passed April 10, 2009; in effect ninety days from passage.]

AN ACT to amend and reenact §18-9-6 of the Code of West Virginia, 1931, as amended, relating to allowing depositories and banks to meet the security requirement necessary to be a depository for boards of education by providing a letter of credit from a federal home loan bank.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. SCHOOL FINANCES.

§18-9-6. Transfer of moneys; appointment of treasurer; bonding of treasurer; approval of bank accounts; authority to invest; security for funds invested.

The sheriff of each county shall remit to the board of education all moneys in his or her possession held on behalf of the county board of education, whether or not deposited in a bank or depository, unless the sheriff has been designated treasurer of the board of education as provided in this section. The transfer of funds shall be made as of the balances on hand on ~~the thirtieth day~~ of June 30 of the year in which the board of education appoints a treasurer other than the sheriff, and shall be completed no later than ~~the first day~~ of August 1 of that year. The transfer shall be adjudged complete and final upon the approval of the sheriff's official settlement for the fiscal year ending on ~~the thirtieth day~~ of June 30 of the year in which the board of education appoints a treasurer other than the sheriff, and any minor adjustment made necessary by the actually known figures shall also be made at that time. All balances in all county school funds at the end of each month after ~~the thirtieth day~~ of June 30 of the year in which the board of education appoints a treasurer other than the sheriff shall be transferred by the sheriff to the county board of education not later than the tenth day of the following month. On or before the first Monday in May each county board of education shall upon recommendation of the county superintendent appoint a treasurer for the board. The treasurer is the fiscal officer of the board, or an employee commonly designated as the person in charge of the financial affairs of the county board, or the county sheriff: *Provided*, That once a board of education has appointed a treasurer other than the sheriff, the sheriff may not be named treasurer of the board in a subsequent year. Upon appointment this person shall be titled and referred to as treasurer of the board of education. For the faithful performance of this duty, the treasurer shall execute a bond, to be approved by the board of education, in the penalty to be fixed by the board of education, not to exceed the amount of school funds which it is estimated the treasurer will handle within any period of two months. The premium on the bond shall be paid by the board of education.

The board of education may open a bank account, or accounts, as required to adequately and properly transact the business of the district in a depository, or banks, within the county. The depositories, or banks, shall provide bond to cover the maximum amount to be deposited at any one time. However, the county board of education may, in lieu of such bond, accept as security for money deposited letters of credit from a federal home loan bank, securities of the United States, or of a state, county, district or municipal corporation, or federal agency securities: *Provided*, That a banking institution is not required to provide a bond or security in lieu of bond if the deposits accepted are placed in certificates of deposit meeting the following requirements: (1) The funds are invested through a designated state depository selected by the county board of education; (2) the selected depository arranges for the deposit of the funds in certificates of deposit in one or more banks or savings and loan associations wherever located in the United States, for the account of the county board of education; (3) the full amount of principal and accrued interest of each certificate of deposit is insured by the Federal Deposit Insurance Corporation; (4) the selected depository acts as custodian for the county board of education with respect to such certificates of deposit issued for the county's account; and (5) at the same time that the county board of education's funds are deposited and the certificates of deposit are issued, the selected depository receives an amount of deposits from customers of other financial institutions wherever located in the United States equal to or greater than the amount of the funds invested by the county board of education through the selected depository. One hundred ten percent of the face or par value of the securities may not be less than the sum hereinbefore specified as the amount to be named in the bond in lieu of which the securities are accepted, or the county board of education may accept the securities as partial security to the extent of their face value for the money so deposited and require bond for the remainder of the full amount hereinbefore specified, to be named in the bond, and, in the bond so required, the acceptance of securities as partial security and the extent thereof shall be set forth. The hypothecation of the securities shall be by proper legal transfer as collateral security to protect and indemnify by trust any and all loss in case of any default on the part of the banking institution in its capacity as depository as aforesaid. All such securities shall be delivered to or deposited for the account of the county board of education, and withdrawal or substitution thereof may be permitted from time to time upon approval by the county board of education by order of record, but the collateral security shall be released only by order of record of the county board of education when satisfied that full and faithful accounting and payment of all the moneys has been made under the provisions hereof. In the event actual possession of the hypothecated securities is delivered to the county board of education, it shall make ample provision for the safekeeping thereof, and the interest thereon when paid shall be turned over to the banking institution, so long as it is not in default as aforesaid. The county board of education may permit the deposit under proper receipt of such securities with one or more banking institutions within the State of West Virginia and may contract with any such institution for safekeeping and exchange of any such hypothecated securities, and may prescribe the rules for handling and protecting the same.

On and after ~~the first day of July 1, one thousand nine hundred seventy-three~~ 1973, all levies and any other school moneys received by the sheriff and paid to the treasurer of the county board of education shall be deposited in these accounts, and all proper payments from such funds shall be made by the designated depository or bank upon order or draft presented for payment and signed by the duly authorized signatories of

the board of education: *Provided*, That in determining the depository for board of education funds a board member who has a pecuniary interest in a bank within the county shall not participate in the determination of the depository for such funds. If it is considered that sufficient funds are on hand in any account at any one time which may be more than are normally required for the payment of incurred expenses, the funds in the amount so considered available may be invested by the treasurer of the county board with the West Virginia ~~Municipal~~ Bond Commission, or in guaranteed certificates of deposit issued by the depository or bank, or other guaranteed investments such as treasury bills, treasury notes or certificates of deposit issued by either the United States government or a banking institution in which federal or state guarantees are applicable. Interest earned in such investments is to be credited to the fund from which the moneys were originally available.

House Bill 3340

Effective Date: Effective from passage (April 10, 2009)

Signed by Governor: May 4, 2009

Code Reference: Amends and reenacts §18B-1D-10

Title: Relating to entry into a data state compact among the Higher Education Policy Commission, Council for Community and Technical College Education and State Board of Education

Major Provisions:

- Directs the Commission, Council and the State Board of Education to enter into a state compact to develop and maintain a longitudinal education data system to share educational information.
- The purpose of the system is to be used to analyze and assess student progress beginning with early learning programs and continuing into employment.
- The use and management of the education data shall be in accordance with all legal requirements protecting student privacy, including Family Education Rights Privacy Act of 1974.
- The unique student identifier for students in public schools will be collected by the parties of the compact to facilitate record matching.

ENROLLED

H. B. 3340

(By Delegates M. Poling and Paxton)

[Passed April 10, 2009; in effect from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18B-1D-10, relating to entry into a data state compact among the Higher Education Policy Commission, Council for Community and Technical College Education and State Board of Education; authorizing disclosures of information among the parties; requiring that personal privacy laws be obeyed and security measures and procedures be developed; and setting forth requirements for data sharing arrangements with research organizations.

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 §18B-1D-10, to read as follows:

ARTICLE 1D. HIGHER EDUCATION ACCOUNTABILITY.

§18B-1D-10. State data sharing compact; legislative intent; findings; definitions.

(a) The intent of the Legislature in enacting this section is to direct the commission, council and State Board of Education to enter into a state compact, consistent with the provisions of section six of this article, on or before July 1, 2009, to develop and maintain a longitudinal education data system and to share educational information.

(b) The Legislature makes the following findings:

(1) Sound data collection, reporting and analysis are critical to building an education system capable of ensuring that all West Virginia students are adequately prepared for college and the global workforce. Elementary schools, middle schools, secondary schools and higher education institutions can improve instructional and educational decision-making using data that are collected and made available to them.

(2) State education policymaking benefits from partnerships between state education agencies and entities with expertise in education research. It is beneficial for West Virginia to establish systems and processes that permit qualified researchers to assist with state evaluation and research functions in a manner that is consistent with privacy protection laws.

(3) West Virginia is committed to establishing and maintaining a longitudinal student unit record data system that educators and policymakers can use to analyze and assess student progress beginning with early learning programs and continuing through post-secondary education and into employment. The commission, council and State Board of Education have designed, built and deployed some of the fundamental components of a longitudinal data system and have engaged in extensive efforts to link and use available education data effectively. Now, it is necessary to integrate and manage the various education data components in a cooperative manner to establish a data-driven, decision-making environment for this state's education system.

(4) Students will achieve improved learning outcomes because of the longitudinal data system established through the state compact mandated by this section.

(6) State use and management of education data shall be in accordance with all legal requirements protecting student privacy and shall protect personal information from

intentional or accidental release to unauthorized persons and from intentional or accidental use for unauthorized purposes.

(c) Definitions:

(1) "Longitudinal data system" means a student unit record data system that links student records beginning with early learning programs and continuing through post-secondary education, entry into the workforce and beyond. The system may consist of separate student unit record systems integrated through agreement and data transfer mechanisms.

(2) "Privacy protection laws" means the federal Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232g) and any other state or federal laws relating to the confidentiality and protection of personally identifiable information.

(3) "Research organization" means a governmental entity, institution of higher education, public policy organization or other person or entity conducting educational research that meets the following conditions:

(i) Qualified to perform educational research and protect the privacy of student data;

(ii) Seeks to perform research for a non-commercial purpose authorized by privacy protection laws; and

(iii) Agrees to perform the research pursuant to a written agreement meeting the requirements of privacy protection laws and best research practices.

(d) The state data-sharing compact entered into by the commission, council and State Board of Education shall contain the following:

(1) A plan to establish and maintain a longitudinal data system that links early learning, elementary, middle and secondary school student unit records with higher education institution student unit records;

(2) A plan to establish a data warehouse that integrates data from multiple student unit record systems and supports all of the uses and functions of the longitudinal data system;

(3) A list of areas for collaborative research and a preliminary plan for conducting that research;

(4) A system for entering into data sharing arrangements with each other and with research organizations consistent with subsection (f) of this section; and

(5) A provision that allows another party to the compact to review any draft report or study generated using that party's data at least ten days before the report or study is released publicly. During that ten day period, each party shall be given the opportunity to submit comments regarding the accuracy, conclusions and recommendations of the report or study.

(e) To facilitate implementation of the requirements of this section:

(1) The commission, council and State Board of Education are authorized to disclose data to the longitudinal data system and to each other consistent with the purposes of this section;

(2) With the assistance of the State Board of Education, the commission, council and state institutions of higher education shall collect the State Board of Education's unique identifier for all students who have attended public schools in West Virginia to facilitate better matching of student unit record data.

(3) The commission, council and State Board of Education shall collect, use, maintain, disclose and share data in accordance with personal privacy laws and shall develop security measures and procedures that protect personal information from intentional or accidental release to unauthorized persons and from intentional or accidental use for unauthorized purposes.

(f) A data sharing arrangement entered into with a research organization pursuant to this section shall meet the following criteria:

(1) Permitted by and undertaken in accordance with privacy protection laws;

(2) Receives prior approval from the State Superintendent of Schools or designee, the Chancellor for Higher Education or designee, and the Chancellor for Community and Technical College Education or designee, as appropriate, if data from that entity are being utilized in the research;

(3) Prohibits the personal identification of any person by individuals other than authorized representatives of the research organization who have legitimate interests in the information;

(4) Ensures the destruction or return of the data when no longer needed for the authorized purposes under the data sharing arrangement;

(5) Performed pursuant to a written agreement with the research organization that does the following:

(A) Specifies the purpose, scope and duration of the data sharing arrangement;

(B) Requires the recipient of the data to use personally identifiable information from education records only to meet the purpose or purposes of the data sharing arrangement stated in the written agreement;

(C) Describes specific data access, use and security restrictions that the recipient will undertake; and

(D) Contains such other terms and provisions as the commission, council and State Board of Education, as appropriate, consider necessary or appropriate.

(g) As a condition of participating in state-level financial aid programs provided for in chapter eighteen-c of this code, the commission may require non-public institutions of higher education to provide data for the longitudinal data system and data warehouse.

Special Session

Senate Bill 1001

Effective Date: Passed June 2, 2009; effective July 1, 2009

Signed by Governor: June 17, 2009

Code Reference: Adds new section §18-2E-10

Title: Critical skills instructional support programs for third and eighth graders.

Major Provisions:

- Requires the State Board of Education to generate rules/policies to effectuate the provisions of this section.
- Encourages and assists county boards to establish and operate critical skills instructional support programs during and after the instructional day and during the summer for students in grades 3 and 8, who in the judgment of the school assistance team or student's classroom teachers, are not mastering the content and skills in reading, language arts and mathematics adequately for success at the next grade level.
- Encourages parent involvement in supporting critical skills development of their children.
- Ensures the employment of qualified teachers and service personnel to provide instruction.
- Requires the creation of a formula or grant based program for distribution of funds.
- Requires counties to provide transportation and healthy foods for students required to attend after school and summer critical skills programs.
- If funds are limited, it requires the implementation of a critical skills support program to begin at the third grade level.
- Requires a program status report to the Legislative Oversight Committee on Education Accountability, the Joint Committee on Government and Finance and the Governor by November 1, 2010.

Special Session

Senate Bill No. 1001

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

By Request of the Executive)

[Introduced May 31, 2009; referred to the Committee on Education; and then to the Committee on Finance.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2E-10, relating to critical skills instructional support programs for students in grades three and eight; setting forth legislative findings; providing for the promulgation of rules; establishing minimum provisions of rules; providing condition for promotion for certain students under certain circumstances; precluding county from charging tuition for program; requiring suitable facilities by county boards; preserving ability to retain students; preserving individualized education plans from effect of section; providing for county board preparation; providing that implementation is contingent upon funding; and requiring reports by State 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 §18-2E-10, to read as follows:

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-10. Critical skills instructional support programs for third and eighth graders.

(a) The Legislature finds that:

(1) In the early childhood through intermediate grade levels, ensuring that each student masters the content and skills needed for mastery at the next grade level is critically important for student success;

(2) Students who do not demonstrate grade-level mastery in reading, language arts and mathematics become increasingly less likely to succeed at each successive grade level;

(3) State board policy requires every school to establish a student assistance team that reviews student academic needs that have persisted despite being addressed by instruction and intervention and requires every school to implement, in an equitable manner, programs during and after the instructional day at the appropriate instructional levels that contribute to the success of students; and

(4) Grades three and eight are critical transition points for additional intervention strategies that reinforce the preparation of students who are not prepared fully for success at the next grade level.

(b) The state board shall, in accordance with the provisions of article three-b, chapter twenty-nine-a of this code, promulgate legislative rules as necessary to effectuate the provisions of this section. The rules shall provide for at least the following:

(1) Encouraging and assisting county boards in establishing and operating critical skills instructional support programs during and after the instructional day and during the summer for students in grades three and eight who in the judgment of the student assistance team or the student's classroom teacher are not mastering the content and skills in reading, language arts and mathematics adequately for success at the next

- grade level and who are recommended by the student assistance team or the student's classroom teacher for additional academic help through the programs;
- (2) Maximizing parental involvement in supporting the critical skills development of their children in reading, language arts and mathematics through critical skills instructional support programs;
- (3) Ensuring the employment of qualified teachers and service personnel in accordance with the provisions of section thirty-nine, article five of this chapter and section seven-c, article four, chapter eighteen-a of this code to provide instruction to students enrolled in critical skills instructional support programs;
- (4) Creating a formula or grant-based program for the distribution of funds appropriated specifically for the purposes of this section or otherwise available for the support of in-school, after-school and summer critical skills instructional support programs;
- (5) Providing transportation and healthy foods for students required to attend after-school and summer critical skills instructional support programs and supervision at the school that accommodates the typical work schedules of parents; and
- (6) Receiving from county boards any applications and annual reports required by rule of the state board.
- (c) A student in grades three or eight who is recommended by the student assistance team or the student's classroom teacher for additional academic help in one or more of the subjects of reading, language arts and mathematics through a critical skills instructional support program may be required to attend a summer critical skills instructional support program as a condition for promotion if:
- (1) The student has been provided additional academic help through an in-school or after-school critical skills instructional support program and, prior to the end of the school year, the student assistance team or the student's classroom teacher recommends that further additional academic help is needed for the student to be successful at the next grade level; and
- (2) The county board has established a critical skills instructional support program during the summer months for the student's grade level.
- (d) County boards shall provide suitable educational facilities, equipment and services to support critical skills instructional support programs established pursuant to this section. Summer programs may be provided at a central location for third and eighth graders who qualify for the program.
- (e) This section may not be construed to prohibit a classroom teacher from recommending the grade level retention of a student based upon the student's lack of mastery of the subject matter and preparation for the subject matter at the next grade level.
- (f) This section may not be construed to affect the individualized education plans of exceptional students.
- (g) This section may not be construed to limit the authority of the county board to establish a summer school program in accordance with section thirty-nine, article five of this chapter. County boards may not charge tuition for enrollment in critical skills instructional support programs established pursuant to this section.
- (h) Each county board shall prepare to implement the provisions of this section and the provisions of the state board rule required by subsection (b) of this section. The preparations shall at least include planning, ensuring the student assistance teams are established as currently required by state board policy and performing a needs assessment.
- (i) The state board shall provide a report describing the proposed implementation of the

critical skills instructional support program to be instituted for the summer of 2010 to the Legislative Oversight Commission on Education Accountability on or before May 1, 2010.

(j) The state board shall provide a comprehensive report regarding the status of the critical skills instructional support program to the Legislative Oversight Commission on Education Accountability, the Joint Committee on Government and Finance, and the Governor on November 1, 2010, and annually on November 1 on each year thereafter. The report shall address, at a minimum, the progress of the program throughout the state, its effect on student achievement and the sources of the funding both available to and used by the program.

(k) The provisions of this section shall be subject to the availability of funds from legislative appropriation or other sources. If a county board determines that adequate funds are not available for full implementation of a critical skills instructional support program in the county, the county board may implement its program in phases by first establishing a critical skills instructional support program in the third grade and then establishing a critical skills instructional support program for the eighth grade once the county board determines that adequate funds are available.

Special Session

Senate Bill 1006

Effective Date: Passed June 2, 2009; effective July 1, 2009

Signed by Governor: June 17, 2009

Code Reference: Amend and reenact §18-5-4; §18A-1-1; §18A-2-2; §18A-2-6; §18A-2-7 and §18A-2-8a

Title: Relating to hiring, terminating, transferring and reassigning teachers and school personnel

Major Provisions:

- The definition of “long term substitute” has been changed from a position that is expected to last at least 90 days to a position that is expected to last at least 30 days.
- A county may sign a contract of employment with employable professional personnel and prospective and recent graduates of teacher education programs who have not yet attained certification upon the condition that the certificate is issued to the employee prior to the beginning of the employment term in which the employee enters upon his or her duties.
- The date by which teachers and service personnel must be notified of the county’s intent to terminate a contract has been changed from the 1st Monday in April to February 1st. Teachers desiring to be released from a contract at the end of a school year must now provide notice by February 1st.
- A classroom teacher must now notify the county of his or her intention to retire on or before December 1 (not February 1) in order to qualify for the \$500 bonus. The position of a classroom teacher providing written notice of retirement may be considered vacant and the county board may immediately post the position as an opening to be filled at the conclusion of the school year. If a teacher has been hired to fill the position of a retiring classroom teacher prior to the start of the next school year, the retiring classroom teacher is disqualified from continuing his or her employment in that position unless he/she forfeits the early retirement notification payment and demonstrates that he/she is subject to a significant unforeseen financial hardship.

- An employee shall now be notified in writing by the superintendent on or before February 1 (rather than the first Monday in April) if he or she is being considered for transfer. Hearings on the proposed transfers shall be held on or before March 15 (rather than the first Monday in May). The superintendent must furnish a list of employees to be transferred to the county board for consideration on or before March 15 (rather than the first Monday in May).
- Probationary employees must be rehired on or before March 15 (rather than the first Monday in May).

Special Session

ENROLLED

Senate Bill No. 1006

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

By Request of the Executive)

[Passed June 2, 2009; to take effect July 1, 2009.]

AN ACT to amend and reenact §18-5-4 of the Code of West Virginia, 1931, as amended; to amend and reenact §18A-1-1 of said code; and to amend and reenact §18A-2-2, §18A-2-6, §18A-2-7 and §18A-2-8a of said code, all relating to the hiring, termination, transfer and reassignment of teachers and school personnel; revising definition of "long-term substitute"; revising certain dates upon which action must be taken with respect to the hiring, termination, resignation or transfer of teachers and school personnel; clarifying probationary professional employee contract; providing conditional contract of prospective and recent graduates and prospective employable professional personnel; revising dates regarding the early notification of retirement; providing for nonrevocation of early notification; and providing an economic hardship exception.

Be it enacted by the Legislature of West Virginia:

That §18-5-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §18A-1-1 of said code be amended and reenacted; and that §18A-2-2, §18A-2-6, §18A-2-7 and §18A-2-8a of said code be amended and reenacted, all to read as follows:

CHAPTER 18. EDUCATION.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

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

(a) The county board shall meet on the first Monday in July, and upon the dates provided by law for the laying of levies, and at any other times the county board fixes upon its records. Subject to adequate public notice, nothing ~~herein shall prohibit in this section prohibits~~ the county board from conducting regular meetings in facilities within the county other than the county board office. At any meeting as authorized in this section and in compliance with the provisions of ~~article four of this chapter eighteen-a of this code~~, the county board may employ qualified teachers, or those who will qualify by the time they enter upon their duties, necessary to fill existing or anticipated vacancies for the current or next ensuing school year. ~~At a meeting of the county board, on or before the first Monday in May, the county superintendent shall furnish in writing to the county board a list of those teachers to be considered for transfer and subsequent assignment for the next ensuing school year. All other teachers not listed are considered as reassigned to the positions held at the time of this meeting. The list of those recommended for transfer shall be included in the minute record and the teachers~~

~~listed shall be notified in writing. The notice shall be delivered in writing, by certified mail, return receipt requested, to the teachers' last known addresses within ten days following the board meeting, of their having been recommended for transfer and subsequent assignment.~~ Meetings of the county board shall be held in compliance with the provisions of chapter eighteen-a of this code for purposes relating to the assignment, transfer, termination and dismissal of teachers and other school employees.

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

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

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

(e) Board members may receive compensation at a rate not to exceed \$160 per meeting attended, but they may not receive pay for more than fifty meetings in any one fiscal year. Board members who serve on an administrative council of a multicounty vocational center also may receive compensation for attending up to twelve meetings of the council at the same rate as for meetings of the county board. Meetings of the council are not counted as board meetings for purposes of determining the limit on compensable board meetings.

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

(g) When, by a majority vote of its members, a county board considers it a matter of public interest, the county board may join the West Virginia School Board Association and the National School Board Association and may pay the dues prescribed by the associations and approved by action of the respective county boards. Membership dues and actual traveling expenses incurred by board members for attending meetings of the West Virginia School Board Association may be paid by their respective county boards out of funds available to meet actual expenses of the members, but no allowance may be made except upon sworn itemized statements.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 1. GENERAL PROVISIONS.

§18A-1-1. Definitions.

The definitions contained in section one, article one, chapter eighteen of this code apply to this chapter. In addition, the following words used in this chapter and in any proceedings pursuant to this chapter have the meanings ascribed to them unless the context clearly indicates a different meaning:

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

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

employee;

(c) "Professional educator" has the same meaning as "teacher" as defined in section one, article one, chapter eighteen of this code. Professional educators are classified as follows:

(1) "Classroom teacher" means a professional educator who has a direct instructional or counseling relationship with students and who spends the majority of his or her time in this capacity;

(2) "Principal" means a professional educator who functions as an agent of the county board and has responsibility for the supervision, management and control of a school or schools within the guidelines established by the county board. The principal's major area of responsibility is the general supervision of all the schools and all school activities involving students, teachers and other school personnel;

(3) "Supervisor" means a professional educator who is responsible for working primarily in the field with professional and other personnel in instructional and other school improvement. This category includes other appropriate titles or positions with duties that fit within this definition; and

(4) "Central office administrator" means a superintendent, associate superintendent, assistant superintendent and other professional educators who are charged with administering and supervising the whole or some assigned part of the total program of the countywide school system. This category includes other appropriate titles or positions with duties that fit within this definition;

(d) "Other professional employee" means a person from another profession who is properly licensed and who is employed to serve the public schools. This definition includes a registered professional nurse, licensed by the West Virginia Board of Examiners for Registered Professional Nurses, who is employed by a county board and has completed either a two-year (sixty-four semester hours) or a three-year (ninety-six semester hours) nursing program;

(e) "Service person" or "service personnel", whether singular or plural, means a nonteaching school employee who is not included in the meaning of "teacher" as defined in section one, article one, chapter eighteen of this code and who serves the school or schools as a whole, in a nonprofessional capacity, including such areas as secretarial, custodial, maintenance, transportation, school lunch and aides. Any reference to "service employee" or "service employees" in this chapter or chapter eighteen of this code means service person or service personnel as defined in this section;

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

(g) "Center for Professional Development" means the center created pursuant to section one, article three-a of this chapter;

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

(i) "Prospective employable professional person", whether singular or plural, means a certified professional educator who:

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

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

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

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

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

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

(l) "Long-term substitute" means a substitute employee who fills a vacant position: That the county superintendent expects to extend for at least ~~ninety~~ thirty consecutive days, and is either:

(A) Listed in the job posting as a long-term substitute position of over ~~ninety~~ thirty days; or

(B) Listed in a job posting as a regular, full-time position and:

(i) Is not filled by a regular, full-time employee; and

(ii) Is filled by a substitute employee.

For the purposes of section two, article sixteen, chapter five of this code, long-term substitute does not include a retired employee hired to fill the vacant position.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-2. Employment of teachers; contracts; continuing contract status; how terminated; dismissal for lack of need; released time; failure of teacher to perform contract or violation thereof; written notice bonus for teachers and professional personnel.

(a) Before entering upon their duties, all teachers shall execute a contract with their county boards, which shall state the salary to be paid and shall be in the form prescribed by the state superintendent. Each contract shall be signed by the teacher and by the president and secretary of the county board and shall be filed, together with the certificate of the teacher, by the secretary of the office of the county board: Provided, That when necessary to facilitate the employment of employable professional personnel and prospective and recent graduates of teacher education programs who have not yet attained certification, the contract may be signed upon the condition that the certificate is issued to the employee prior to the beginning of the employment term in which the employee enters upon his or her duties.

(b) A Each teacher's contract, under this section, shall be designated as a probationary or continuing contract. A probationary teacher's contract shall be for a term of not less than one nor more than three years, one of which shall be for completion of a beginning teacher internship pursuant to the provisions of section two-b, article three of this chapter, if applicable. If, after three years of such employment, the teacher who holds a professional certificate, based on at least a bachelor's degree, has met the qualifications for a bachelor's degree and the county board enter into a new contract of employment, it shall be a continuing contract, subject to the following:

(1) Any teacher holding a valid certificate with less than a bachelor's degree who is employed in a county beyond the three-year probationary period shall upon qualifying for the professional certificate based upon a bachelor's degree, if reemployed, be granted continuing contract status; and

(2) A teacher holding continuing contract status with one county shall be granted continuing contract status with any other county upon completion of one year of acceptable employment if the employment is during the next succeeding school year or immediately following an approved leave of absence extending no more than one year.

(c) The continuing contract of any teacher shall remain in full force and effect except as modified by mutual consent of the school board and the teacher, unless and until terminated, subject to the following:

(1) A continuing contract may not be terminated except:

(A) By a majority vote of the full membership of the county board on or before ~~the first Monday of April~~ February 1 of the then current year, after written notice, served upon the teacher, return receipt requested, stating cause or causes and an opportunity to be heard at a meeting of the board prior to the board's action on the termination issue; or

(B) By written resignation of the teacher on or before that date February 1 to initiate termination of a continuing contract;

(2) The termination shall take effect at the close of the school year in which the contract is terminated;

(3) The contract may be terminated at any time by mutual consent of the school board and the teacher;

(4) This section does not affect the powers of the school board to suspend or dismiss a principal or teacher pursuant to section eight of this article;

(5) A continuing contract for any teacher holding a certificate valid for more than one year and in full force and effect during the school year 1984-1985 shall remain in full force and effect;

(6) A continuing contract does not operate to prevent a teacher's dismissal based upon the lack of need for the teacher's services pursuant to the provisions of law relating to the allocation to teachers and pupil-teacher ratios. The written notification of teachers being considered for dismissal for lack of need shall be limited to only those teachers whose consideration for dismissal is based upon known or expected circumstances which will require dismissal for lack of need. An employee who was not provided notice and an opportunity for a hearing pursuant to this subsection may not be included on the list. In case of dismissal for lack of need, a dismissed teacher shall be placed upon a preferred list in the order of their length of service with that board. No teacher shall may be employed by the board until each qualified teacher upon the preferred list, in order, has been offered the opportunity for reemployment in a position for which he or she is qualified, not including a teacher who has accepted a teaching position elsewhere. The reemployment shall be upon a teacher's preexisting continuing contract and has the same effect as though the contract had been suspended during the time the teacher was not employed.

(d) In the assignment of position or duties of a teacher under a continuing contract, the board may provide for released time of a teacher for any special professional or governmental assignment without jeopardizing the contractual rights of the teacher or any other rights, privileges or benefits under the provisions of this chapter. Released time shall be provided for any professional educator while serving as a member of the Legislature during any duly constituted session of that body and its interim and statutory committees and commissions without jeopardizing his or her contractual rights or any other rights, privileges, benefits or accrual of experience for placement on the state minimum salary schedule in the following school year under the provisions of this chapter, board policy and law.

(e) Any teacher who fails to fulfill his or her contract with the board, unless prevented from doing so by personal illness or other just cause or unless released from his or her contract by the board, or who violates any lawful provision of the contract, ~~shall be~~ is disqualified to teach in any other public school in the state for a period of the next ensuing school year and the State Department of Education or board may hold all papers and credentials of the teacher on file for a period of one year for the violation: *Provided*, That marriage of a teacher ~~shall~~ is not ~~be~~ considered a failure to fulfill, or violation of, the contract.

(f) Any classroom teacher, as defined in section one, article one of this chapter, who desires to resign employment with a county board or request a leave of absence, the resignation or leave of absence to become effective on or before July 15 of the same year and after completion of the employment term, may do so at any time during the school year by written notification of the resignation or leave of absence and any notification received by a county board shall automatically extend the teacher's public employee insurance coverage until August 31 of the same year.

(g) ~~Any~~ (1) A classroom teacher who gives written notice to the county board on or before ~~the first day of February~~ December 1 of the school year of ~~their~~ his or her retirement from employment with the board at the conclusion of the school year shall be paid \$500 from the Early Notification of Retirement line item established for the Department of Education for this purpose, subject to appropriation by the Legislature. If the appropriations to the Department of Education for this purpose are insufficient to compensate all applicable teachers, the Department of Education shall request a supplemental appropriation in an amount sufficient to compensate all such teachers. Additionally, if funds are still insufficient to compensate all applicable teachers, the priority of payment is for teachers who give written notice the earliest. This payment shall not be counted as part of the final average salary for the purpose of calculating retirement.

(2) The position of a classroom teacher providing written notice of retirement pursuant to this subsection may be considered vacant and the county board may immediately post the position as an opening to be filled at the conclusion of the school year. If a teacher has been hired to fill the position of a retiring classroom teacher prior to the start of the next school year, the retiring classroom teacher is disqualified from continuing his or her employment in that position. However, the retiring classroom teacher may be permitted to continue his or her employment in that position and forfeit the early retirement notification payment if, after giving notice of retirement in accordance with this subsection, he or she becomes subject to a significant unforeseen financial hardship, including a hardship caused by the death or illness of an immediate family member or loss of employment of a spouse. Other significant unforeseen financial hardships shall be determined by the county superintendent on a case-by-case basis. This subsection does not prohibit a county school board from eliminating the position of a retiring classroom teacher.

§18A-2-6. Continuing contract status for service personnel; termination.

After three years of acceptable employment, each service personnel employee who enters into a new contract of employment with the board shall be granted continuing contract status: *Provided*, That a service personnel employee holding continuing contract status with one county shall be granted continuing contract status with any other county upon completion of one year of acceptable employment if such employment is during the next succeeding school year or immediately following an approved leave of absence extending no more than one year. The continuing contract

of any such employee shall remain in full force and effect except as modified by mutual consent of the school board and the employee, unless and until terminated with written notice, stating cause or causes, to the employee, by a majority vote of the full membership of the board before ~~the first day of April~~ February 1 of the then current year, or by written resignation of the employee on or before that date, ~~except that for the school year one thousand nine hundred eighty eight eighty nine only, the board shall have until the fourth Monday of April, one thousand nine hundred eighty nine, to initiate termination of a continuing contract.~~ The affected employee ~~shall have~~ has the right of a hearing before the board, if requested, before final action is taken by the board upon the termination of such employment.

Those employees who have completed three years of acceptable employment as of the effective date of this legislation shall be granted continuing contract status.

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

(a) The superintendent, subject only to approval of the board, ~~shall have authority to~~ may assign, transfer, promote, demote or suspend school personnel and recommend their dismissal pursuant to provisions of this chapter. However, an employee shall be notified in writing by the superintendent on or before ~~the first Monday in April~~ February 1 if he or she is being considered for transfer or to be transferred. Only those employees whose consideration for transfer or intended transfer is based upon known or expected circumstances which will require the transfer of employees shall be considered for transfer or intended for transfer and the notification shall be limited to only those employees. Any teacher or employee who desires to protest ~~such~~ the proposed transfer may request in writing a statement of the reasons for the proposed transfer. ~~Such~~ The statement of reasons shall be delivered to the teacher or employee within ten days of the receipt of the request. Within ten days of the receipt of the statement of the reasons, the teacher or employee may make written demand upon the superintendent for a hearing on the proposed transfer before the county board of education. The hearing on the proposed transfer shall be held on or before ~~the first Monday in May~~ March 15. At the hearing, the reasons for the proposed transfer must be shown.

(b) The superintendent at a meeting of the board on or before ~~the first Monday in May~~ March 15 shall furnish in writing to the board a list of teachers and other employees to be considered for transfer and subsequent assignment for the next ensuing school year. An employee who was not provided notice and an opportunity for a hearing pursuant to subsection (a) of this section may not be included on the list. All other teachers and employees not so listed shall be considered as reassigned to the positions or jobs held at the time of this meeting. The list of those recommended for transfer shall be included in the minute record of ~~such~~ the meeting and all those so listed shall be notified in writing, which notice shall be delivered in writing, by certified mail, return receipt requested, to ~~such~~ the persons' last known addresses within ten days following ~~said~~ the board meeting, of their having been so recommended for transfer and subsequent assignment and the reasons therefor.

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

(d) The provisions of this section respecting hearing upon notice of transfer ~~shall~~ is not ~~be~~ applicable in emergency situations where the school building becomes damaged or

destroyed through an unforeseeable act and which act necessitates a transfer of ~~such~~ the school personnel because of the aforementioned condition of the building.

§18A-2-8a. Notice to probationary personnel of rehiring or nonrehiring; hearing.

The superintendent at a meeting of the board on or before ~~the first Monday in May~~ March 15 of each year shall provide in writing to the board a list of all probationary teachers that he or she recommends to be rehired for the next ensuing school year. The board shall act upon the superintendent's recommendations at that meeting in accordance with section one of this article. The board at this same meeting shall also act upon the retention of other probationary employees as provided in sections ~~four~~ two and five of this article. Any such probationary teacher or other probationary employee who is not rehired by the board at that meeting shall be notified in writing, by certified mail, return receipt requested, to such persons' last known addresses within ten days following said board meeting, of their not having been rehired or not having been recommended for rehiring.

Any probationary teacher who receives notice that he or she has not been recommended for rehiring or other probationary employee who has not been reemployed may within ten days after receiving the written notice request a statement of the reasons for not having been rehired and may request a hearing before the board. ~~Such~~ The hearing shall be held at the next regularly scheduled board of education meeting or a special meeting of the board called within thirty days of the request for hearing. At the hearing, the reasons for the nonrehiring must be shown.

Senate Bill 258

Effective Date: Effective from passage April 11, 2009

Signed by Governor: May 8, 2009

Code Reference: Amends and reenacts §11-8-26

Title: Related to liability of board members

Major Provision:

- Adds provision to the code section that states in calculating a deficit, account is not to be taken of the unfunded actuarial accrued liability due the West Virginia Retiree Health Benefit Trust Fund or any amount allocated to the local fiscal body as an employer annual required contribution.

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 258

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

[Passed April 11, 2009; in effect from passage.]

AN ACT to amend and reenact §11-8-26 of the Code of West Virginia, 1931, as amended, relating to unlawful expenditures by a local fiscal body; and clarifying that a local fiscal body or its duly authorized officials shall not be penalized for certain deficits relating to the unfunded actuarial accrued liability of the West Virginia Retiree Health Benefit Trust Fund and annual required employer contributions.

Be it enacted by the Legislature of West Virginia:

That §11-8-26 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. LEVIES.

§11-8-26. Unlawful expenditures by local fiscal body.

(a) Except as provided in sections fourteen-b, twenty-five-a and twenty-six-a of this article, a local fiscal body shall not expend money or incur obligations:

- (1) In an unauthorized manner;
- (2) For an unauthorized purpose;
- (3) In excess of the amount allocated to the fund in the levy order; or
- (4) In excess of the funds available for current expenses.

(b) Notwithstanding the foregoing and any other provision of law to the contrary, a local fiscal body or its duly authorized officials ~~shall~~ may not be penalized for a casual deficit which does not exceed its approved levy estimate by more than three percent; ~~provided~~ Provided, That such casual deficit is satisfied in the levy estimate for the succeeding fiscal year: Provided, however, That in calculating a deficit for purposes of this section, account shall not be taken of any amount for which the local fiscal body may be liable for the unfunded actuarial accrued liability of the West Virginia Retiree Health Benefit Trust Fund or any amount allocated to the local fiscal body as an employer annual required contribution that exceeds the minimum annual employer payment component of the contribution, all as provided under article sixteen-d, chapter five of this code.

Senate Bill 398

Effective Date: Passed April 11, 2009, in effect ninety days from passage (July 10, 2009)

Signed by Governor: May 7, 2009

Code Reference: Amends and reenacts §17B-2-3a

Title: Imposing certain restrictions on graduated driver's licenses

Major Provisions:

- The purpose of this bill is to strengthen West Virginia's graduated licensing statute so as to conform to recommendations by the National Safety Council and other experts aimed at keeping new teen drivers out of high-risk situations and protecting all highway users while teen drivers gain driving experience.
- Applicant's age for being issued a level one instruction permit is changed from fifteen to sixteen years of age.
- For the first six months after issuance of a level two intermediate driver's license, the licensee may not operate a motor vehicle carrying any passengers less than twenty years old, unless these passengers are family members of the licensee.
- For the second six months after issuance of a level two intermediate driver's license, the licensee may not operate a motor vehicle carrying more than one passenger less than twenty years old, unless these passengers are family members of the licensee.
- In order to maintain license, licensee must maintain current school enrollment requirements and make satisfactory academic progress.
- A level two intermediate driver's license may not be issued by the DMV unless the applicant has completed either a driver's education course approved by the State Department of Education or fifty hours of behind-the-wheel driving experience, including a minimum of ten hours of nighttime driving, certified by a parent or legal guardian or other responsible adult over the age of twenty-one.
- Nothing in this code shall be construed to require any school or any county board of education to provide any particular number of driver's education courses or to provide driver's education training to any student beyond what is required in West Virginia Board of Education Policy

ENROLLED

COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 398

(Senator Foster, *original sponsor*)

[Passed April 11, 2009; in effect ninety days from passage.]

AN ACT to amend and reenact §17B-2-3a of the Code of West Virginia, 1931, as amended, relating to imposing certain restrictions on a graduated driver's license to increase public safety; and imposing criminal penalties for violations of this section.

Be it enacted by the Legislature of West Virginia:

That §17B-2-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §60A-4-406 of said code be amended and reenacted, all to read as follows :

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-3a. Graduated driver's license.

(a) Any person under the age of eighteen may not operate a motor vehicle unless he or she has obtained a graduated driver's license in accordance with the three-level graduated driver's license system described in the following provisions.

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

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

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

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

(B) Presents a certified copy of a birth certificate issued by a state or other governmental entity responsible for vital records unexpired, or a valid passport issued by the United States government evidencing that the applicant meets the minimum age requirement and is of verifiable identity;

(C) Passes the vision and written knowledge examination and completes the driving under the influence awareness program, as prescribed in section seven of this article; (D) Presents a driver's eligibility certificate or otherwise shows compliance with the provisions of section eleven, article eight, chapter eighteen of this code; and (E) Pays a fee of ~~five dollars~~ \$5, which shall permit the applicant two attempts at the written knowledge test.

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

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

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

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

(D) Without any measurable blood alcohol content, in accordance with the provisions of subsection (h), section two, article five, chapter seventeen-c of this code; and (E) Maintains current school enrollment and is making satisfactory academic progress or otherwise shows compliance with the provisions of section eleven, article eight, chapter eighteen of this code.

(F) A holder of a level one instruction permit who is under the age of eighteen years ~~may not use~~ shall be prohibited from using a wireless communication device while operating a motor vehicle, unless the use of the wireless communication device is for contacting a 9-1-1 system. ~~A law enforcement officer may enforce the provisions of this paragraph only as a secondary action when a law enforcement officer with probable cause detains a driver for a suspected violation of another provision of this code.~~ A person violating the provisions of this paragraph is guilty of a misdemeanor and, upon conviction thereof, shall for the first offense be fined ~~twenty-five dollars~~ \$25; for a second offense be fined ~~fifty dollars~~ \$50; and for a third or subsequent offense be fined ~~seventy-five dollars~~ \$75. (d) *Level two intermediate driver's license.* -- An applicant sixteen years of age or older, meeting all other requirements of the code, may be issued a level two intermediate driver's license.

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

(A) Presents a completed application as prescribed in section six of this article;
(B) Has held the level one instruction permit conviction-free for the one hundred eighty days immediately preceding the date of application for a level two intermediate license;
(C) Has completed either a driver's education course approved by the State Department of Education or ~~thirty~~ fifty hours of behind-the-wheel driving experience, including a minimum of ten hours of nighttime driving, certified by a parent or legal guardian or other responsible adult over the age of twenty-one as indicated on the form prescribed by the division: *Provided*, That nothing in this paragraph shall be construed to require any school or any county board of education to provide any particular number of driver's education courses or to provide driver's education training to any student;
(D) Presents a driver's eligibility certificate or otherwise shows compliance with the provisions of section eleven, article eight, chapter eighteen of this code;
(E) Passes the road skills examination as prescribed by section seven of this article;
and

(F) Pays a fee of ~~five dollars~~ \$5.

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

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

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

(i) Lawful employment;

(ii) A school-sanctioned activity;

(iii) A religious event; or

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

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

(D) ~~Operates the vehicle no~~ For the first six months after issuance of a level two intermediate driver's license, the licensee may not operate a motor vehicle carrying any passengers less than twenty years old, unless these passengers are family members of the licensee; for the second six months after issuance of a level two intermediate driver's license, the licensee may not operate a motor vehicle carrying more than three one passengers under the age of nineteen less than twenty years old, unless the these passengers are family members, in addition to the driver of the licensee;

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

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

(G) A holder of a level two intermediate driver's license who is under the age of eighteen years ~~may not use~~ shall be prohibited from using a wireless communication device while operating a motor vehicle, unless the use of the wireless communication device is for contacting a 9-1-1 system. ~~A law enforcement officer may enforce the provisions of this~~

~~paragraph only as a secondary action when a law enforcement officer with probably cause detains a driver for a suspected violation of another provision of this code. A person violating the provisions of this paragraph is guilty of a misdemeanor and, upon conviction thereof, shall for the first offense be fined ~~twenty-five~~ \$25; for a second offense be fined ~~fifty dollars~~ \$50; and for a third or subsequent offense be fined ~~seventy-five dollars~~ \$75.~~

(H) Upon the first conviction for a moving traffic violation or a violation of paragraph (A), (B), (C), (D) or (G), subdivision (1), subsection (d) of this section of the terms and conditions of a level two intermediate driver's license, the licensee shall enroll in an approved driver improvement program unless a greater penalty is required by this section or by any other provision of this code; and

At the discretion of the commissioner, completion of an approved driver improvement program may be used to negate the effect of a minor traffic violation as defined by the commissioner against the one year conviction-free driving criteria for early eligibility for a level three driver's license; and may also negate the effect of one minor traffic violation for purposes of avoiding a second conviction under paragraph (I) of this subdivision; and

(I) Upon the second conviction for a moving traffic violation or a violation of the terms and conditions of the level two intermediate driver's license, the licensee's privilege to operate a motor vehicle shall be revoked or suspended for the applicable statutory period or until the licensee's eighteenth birthday, whichever is longer unless a greater penalty is required by this section or any other provision of this code. Any person whose driver's license has been revoked as a level two intermediate driver, upon reaching the age of eighteen years and if otherwise eligible may reapply for an instruction permit, then a driver's license in accordance with the provisions of sections five, six and seven of this article.

(e) *Level three, full Class E license.* -- The level three license is valid until thirty days after the date the licensee attains his or her twenty-first birthday. Unless otherwise provided in this section or any other section of this code, the holder of a level three full Class E license is subject to the same terms and conditions as the holder of a regular Class E driver's license.

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

(1) Has reached the age of seventeen years; and

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

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

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

(D) Pays a fee of ~~two dollars and fifty cents~~ \$2.50 for each year the license is valid. An additional fee of ~~fifty cents~~ \$.50 shall be collected to be deposited in the Combined Voter Registration and Driver's Licensing Fund established in section twelve, article two, chapter three of this code;

(E) Presents a driver's eligibility certificate or otherwise shows compliance with the provisions of section eleven, article eight, chapter eighteen of this code; or

(2) Reaches the age of eighteen years; and

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

(B) Pays a fee of ~~two dollars and fifty cents~~ \$2.50 for each year the license is valid. An additional fee of ~~fifty cents~~ \$.50 shall be collected to be deposited in the Combined Voter Registration and Driver's Licensing Fund established in section twelve, article two, chapter three of this code.

(f) A person violating the provisions of the terms and conditions of a level one or level two intermediate driver's license is guilty of a misdemeanor and, upon conviction thereof, shall for the first offense be fined \$25; for a second offense be fined \$50; and for a third or subsequent offense be fined \$75.

Senate Bill 498

Effective Date: Passed April 11, 2009; in effect from passage

Signed by Governor: May 12, 2009

Code Reference: Amend and reenact §18-5-44; adding a new article, designated §49-2E-1, §49-2E-2, §49-2E-3 and §49-2E-4

Title: Relating to early childhood development

Major Provisions:

- Amends early education bill to require county boards of education to report annually, after 2012-13, to the Secretary of DHHR and the State Superintendent of Schools on the continued maximization of resources with community partners.
- Amends early education bill to require county boards of education to report annually, after 2012-13, to the Secretary of DHHR and the State Superintendent of Schools documentation on the equitable distribution of funds to community partners enrolling eligible children.
- WVDHHR must establish a plan for the implementation of a quality rating and improvement system for child care programs and create a Quality Rating and Improvement System Advisory Council to advise on the implementation and ongoing review of policies for improvement.
- Authorizes WVDHHR to create provisions for a four star rating system for licensed child care centers and family providers, including accountability measures and evaluation procedures for participating centers.
- Requires WVDHHR to submit a financial plan to support the implementation of the quality rating and improvement system. The financial plan must include staffing for monitors, technical assistance, collaboration, specialists for professional development and administration needs. The financial plan must also include a public awareness campaign, internet-based management information system, and financial assistance to program improvements, increased staff salaries, and consumers.
- Requires WVDHHR to pilot the quality rating and improvement system, contract with a third party evaluator to evaluate the pilot program, and modify the proposed rule and financial plan based on the findings.

ENROLLED

COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 498

(Senators Plymale, Prezioso, Kessler, Wells, Foster, Jenkins, Stollings and Unger,
original sponsors)

[Passed April 11, 2009; in effect from passage.]

AN ACT to amend and reenact §18-5-44 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §49-2E-1, §49-2E-2, §49-2E-3 and §49-2E-4 , all relating to early childhood; requiring county boards to report certain information to the Secretary of the Department of Health and Human Resources and the state superintendent relating to the use of community-based programs to provide early childhood education services; quality rating and improvement system applicable to certain child care providers; findings and intent; Secretary of Department of Health and Human Resources rules; Quality Rating and Improvement System Advisory Council; statewide quality rating system rules; statewide implementation; system components; review, reduction, suspension or disqualification; statewide quality improvement system; financial plan for implementation and quality improvement; plan components; pilot projects; third-party evaluator; reports to Legislature; gradual implementation; conditioning requirements on legislative appropriation; prioritization of components for funding; and PIECES advisory council.

Be it enacted by the Legislature of West Virginia:

That §18-5-44 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new article, designated §49-2E-1, §49-2E-2, §49-2E-3 and §49-2E-4 , all to read as follows:

CHAPTER 18. EDUCATION.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-44. Early childhood education programs.

(a) For the purposes of this section, "early childhood education" means programs for children who have attained the age of four prior to ~~the first day of~~ September 1 of the school year in which the pupil enters the program created in this section.

(b) *Findings.* –

(1) Among other positive outcomes, early childhood education programs have been determined to:

(A) Improve overall readiness when children enter school;

(B) Decrease behavioral problems;

(C) Improve student attendance;

- (D) Increase scores on achievement tests;
- (E) Decrease the percentage of students repeating a grade; and
- (F) Decrease the number of students placed in special education programs;
- (2) Quality early childhood education programs improve school performance and low-quality early childhood education programs may have negative effects, especially for at-risk children;
- (3) West Virginia has the lowest percentage of its adult population ~~with a college degree~~ twenty-five years of age or older with a bachelor's degree and the education level of parents is a strong indicator of how their children will perform in school;
- (4) During the 2006-2007 school year, West Virginia ~~ranks~~ ranked ~~forty-fourth~~ thirty-ninth among the fifty states in the percentage of school children eligible for free and reduced lunches and this percentage is a strong indicator of how the children will perform in school;
- (5) For the school year ~~two thousand one—two thousand two~~ 2008-2009, ~~six thousand eight hundred fifty-three~~ thirteen thousand one hundred thirty-five students ~~less than five years of age~~ were enrolled in the ~~public schools~~ prekindergarten, a number equal to approximately ~~thirty-three~~ sixty-three percent of the number of ~~five-year-old~~ students enrolled in kindergarten;
- (6) Excluding projected increases due to increases in enrollment in the early childhood education program, ~~P~~projections indicate that total student enrollment in West Virginia will decline by ~~as much as eighteen~~ one percent, or by approximately ~~fifty two thousand seven hundred four~~ students, by the school year ~~two thousand twelve—two thousand thirteen~~ 2012-2013;
- (7) In part, because of the dynamics of the state aid formula, county boards will continue to enroll four-year old students to offset the declining enrollments;
- (8) West Virginia has a comprehensive kindergarten program for five-year olds, but the program was established in a manner that resulted in unequal implementation among the counties which helped create deficit financial situations for several county ~~school~~ boards;
- (9) Expansion of current efforts to implement a comprehensive early childhood education program should avoid the problems encountered in kindergarten implementation;
- (10) Because of the dynamics of the state aid formula, counties experiencing growth are at a disadvantage in implementing comprehensive early childhood education programs; and
- (11) West Virginia citizens will benefit from the establishment of quality comprehensive early childhood education programs.
- (c) Beginning no later than the school year ~~two thousand twelve—two thousand thirteen~~ 2012-2013, and continuing thereafter, county boards shall provide early childhood education programs for all children who have attained the age of four prior to ~~the first day of~~ September 1 of the school year in which the pupil enters the early childhood education program.
- (d) The program shall meet the following criteria:
- (1) It shall be voluntary, except, upon enrollment, the provisions of section one, article eight of this chapter shall apply to an enrolled student; and
- (2) It may be for fewer than five days per week and may be less than full day.
- (e) Enrollment of students in ~~H~~Head ~~s~~Start, or in any other program approved by the state superintendent as provided in subsection (k) of this section, shall be counted toward satisfying the requirement of subsection (c) of this section.

- (f) For the purposes of implementation financing, all counties are encouraged to make use of funds from existing sources, including:
- (1) Federal funds provided under the Elementary and Secondary Education Act pursuant to 20 U. S. C. §6301, *et seq.*;
 - (2) Federal funds provided for ~~h~~Head ~~s~~Start pursuant to 42 U. S. C. §9831, *et seq.*;
 - (3) Federal funds for temporary assistance to needy families pursuant to 42 U. S. C. §601, *et seq.*;
 - (4) Funds provided by the ~~s~~School ~~b~~Building ~~a~~Authority pursuant to article nine-d of this chapter;
 - (5) In the case of counties with declining enrollments, funds from the state aid formula above the amount indicated for the number of students actually enrolled in any school year; and
 - (6) Any other public or private funds.
- (g) ~~Prior to the school year beginning two thousand three, e~~Each county board shall develop a plan for implementing the program required by this section. The plan shall include the following elements:
- (1) An analysis of the demographics of the county related to early childhood education program implementation;
 - (2) An analysis of facility and personnel needs;
 - (3) Financial requirements for implementation and potential sources of funding to assist implementation;
 - (4) Details of how the county board will cooperate and collaborate with other early childhood education programs including, but not limited to, ~~h~~Head ~~s~~Start, to maximize federal and other sources of revenue;
 - (5) Specific time lines for implementation; and
 - (6) ~~Such~~ Any other items as the state board may require by policy ~~may require~~.
- (h) ~~Prior to the school year beginning two thousand three, a~~ A county board shall submit its plan to the ~~s~~Secretary of the ~~d~~Department of ~~h~~Health and ~~h~~Human ~~r~~Resources. The secretary shall approve the plan if the following conditions are met:
- (1) The county board has maximized the use of federal and other available funds for early childhood programs;
 - (2) The county board has provided for the maximum implementation of ~~h~~Head ~~s~~Start programs and other public and private programs approved by the state superintendent pursuant to the terms of subsection (k) of this section; and
 - (3) If the ~~s~~Secretary of the ~~d~~Department of ~~h~~Health and ~~h~~Human ~~r~~Resources finds that the county board has not met one or more of the requirements of this subsection, but that the county board has acted in good faith and the failure to comply was not the primary fault of the county board, then the secretary shall approve the plan. Any denial by the secretary may be appealed to the circuit court of the county in which the county board is located.
- (i) ~~Prior to the school year beginning two thousand three, t~~The county board shall submit its plan for approval to the state board. The state board shall approve the plan if the county board has complied substantially with the requirements of subsection (g) of this section and has obtained the approval required in subsection (h) of this section.
- (j) Every county board shall submit its plan for reapproval by the ~~s~~Secretary of the ~~d~~Department of ~~h~~Health and ~~h~~Human ~~r~~Resources and by the state board at least every two years after the initial approval of the plan and until full implementation of the early childhood education program in the county. As part of the submission, the county board shall provide a detailed statement of the progress made in implementing its plan. The

standards and procedures provided for the original approval of the plan apply to any reapproval.

~~(k) Commencing with the school year beginning on the first day of July, two thousand four, and thereafter no~~ A county board may not increase the total number of students enrolled in the county in an early childhood program until its program is approved by the ~~s~~Secretary of the ~~d~~Department of ~~h~~Health and ~~h~~Human ~~r~~Resources and the state board ~~has been granted~~.

(l) The state board annually may grant a county board a waiver for total or partial implementation if the state board finds that all of the following conditions exist:

(1) The county board is unable to comply either because:

(A) It does not have sufficient facilities available; or

(B) It does not and has not had available funds sufficient to implement the program;

(2) The county has not experienced a decline in enrollment at least equal to the total number of students to be enrolled; and

(3) Other agencies of government have not made sufficient funds or facilities available to assist in implementation.

Any county board seeking a waiver ~~must~~ shall apply with the supporting data to meet the criteria for which they are eligible on or before ~~the twenty-fifth day of~~ March 25 for the following school year. The state superintendent shall grant or deny the requested waiver on or before ~~the fifteenth day of~~ April 15 of that same year.

(m) The provisions of subsections (b), (c) and (d), section eighteen of this article relating to kindergarten ~~shall~~ apply to early childhood education programs in the same manner in which they apply to kindergarten programs.

~~(n) On or before the first day of December, two thousand four, and each year thereafter,~~ Annually, the state board shall report to the ~~l~~Legislative ~~e~~Oversight ~~e~~Commission on ~~e~~Education ~~a~~Accountability on the progress of implementation of this section.

~~(o) During or after the school year beginning in two thousand four, and e~~Except as ~~may~~ be required by federal law or regulation, no county board ~~shall~~ may enroll students who will be less than four years of age prior to ~~the first day of~~ September 1 for the year they enter school.

(p) Neither the state board nor the state department may provide any funds to any county board for the purpose of implementing this section unless the county board has a plan approved pursuant to subsections (h), (i) and (j) of this section.

(q) The state board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code for the purposes of implementing the provisions of this section. The state board shall consult with the ~~s~~Secretary of the ~~d~~Department of ~~h~~Health and ~~h~~Human ~~r~~Resources in the preparation of the rule. The rule shall contain the following:

(1) Standards for curriculum;

(2) Standards for preparing students;

(3) Attendance requirements;

(4) Standards for personnel; and

~~(5) Such~~ Any other terms ~~as may be~~ necessary to implement the provisions of this section.

(r) The rule shall include the following elements relating to curriculum standards:

(1) A requirement that the curriculum be designed to address the developmental needs of four-year old children, consistent with prevailing research on how children learn;

(2) A requirement that the curriculum be designed to achieve long-range goals for the social, emotional, physical and academic development of young children;

- (3) A method for including a broad range of content that is relevant, engaging and meaningful to young children;
- (4) A requirement that the curriculum incorporate a wide variety of learning experiences, materials and equipment, and instructional strategies to respond to differences in prior experience, maturation rates and learning styles that young children bring to the classroom;
- (5) A requirement that the curriculum be designed to build on what children already know in order to consolidate their learning and foster their acquisition of new concepts and skills;
- (6) A requirement that the curriculum meet the recognized standards of the relevant subject matter disciplines;
- (7) A requirement that the curriculum engage children actively in the learning process and provide them with opportunities to make meaningful choices;
- (8) A requirement that the curriculum emphasize the development of thinking, reasoning, decision-making and problem-solving skills;
- (9) A set of clear guidelines for communicating with parents and involving them in decisions about the instructional needs of their children; and
- (10) A systematic plan for evaluating program success in meeting the needs of young children and for helping them to be ready to succeed in school.

(s) ~~On or before the second day of January, two thousand four,~~ The secretary and the state superintendent shall submit a report to the Legislative Oversight Commission on Education Accountability and the Joint Committee on Government and Finance which addresses, at a minimum, the following issues:

- (1) A summary of the approved county plans for providing the early childhood education programs pursuant to this section;
- (2) An analysis of the total cost to the state and ~~counties~~ county boards of implementing the plans;
- (3) A separate analysis of the impact of the plans on counties with increasing enrollment; and
- (4) An analysis of the effect of the programs on the maximization of the use of federal funds for early childhood programs.

The intent of this subsection is to enable the Legislature to proceed in a fiscally responsible manner, and make any necessary program improvements ~~as may be necessary~~ based on reported information prior to implementation of the early childhood education programs.

(t) After the school year 2012-2013, on or before July 1 of each year, each county board shall report the following information to the Secretary of the Department of Health and Human Resources and the state superintendent:

- (1) Documentation indicating the extent to which county boards are maximizing resources by using the existing capacity of community-based programs, including, but not limited to Head Start and child care; and
- (2) For those county boards that are including eligible children attending approved, contracted community-based programs in their net enrollment for the purposes of calculating state aid pursuant to article nine-a of this chapter, documentation that the county board is equitably distributing funding for all children regardless of setting.

CHAPTER 49. CHILD WELFARE.

ARTICLE 2E. QUALITY RATING AND IMPROVEMENT SYSTEM.

§49-2E-1. Findings and intent; advisory council.

(a) The Legislature finds that:

(1) High quality early childhood development substantially improves the intellectual and social potential of children and reduces societal costs;

(2) A child care program quality rating and improvement system provides incentives and resources to improve the quality child care programs; and

(3) A child care program quality rating and improvement system provides information about the quality of child care programs to parents so they may make more informed decisions about the placement of their children.

(b) It is the intent of the Legislature to require the Secretary of the Department of Health and Human Resources promulgate a legislative rule and establish a plan for the phased implementation of a child care program quality rating and improvement system not inconsistent with the provisions of this article.

(c) The Secretary of the Department of Health and Human Resources shall create a Quality Rating and Improvement System Advisory Council to provide advice on the development of the rule and plan for the phased implementation of a child care program quality rating and improvement system and the ongoing program review and policies for quality improvement. The secretary shall facilitate meetings of the advisory council. The advisory council shall include representatives from the provider community, advocacy groups, the Legislature, providers of professional development services for the early childhood community, regulatory agencies and others who may be impacted by the creation of a quality rating and improvement system.

(d) Nothing in this article requires an appropriation, or any specific level of appropriation, by the Legislature.

§49-2E-2. Creation of statewide quality rating system; legislative rule required; minimum provisions.

(a) The Secretary of the Department of Health and Human Resources shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement a quality rating and improvement system. The quality rating and improvement system shall be applicable to licensed child care centers and facilities and registered family child care homes. If other types of child care settings such as school-age child care programs become licensed after the implementation of a statewide quality rating and improvement system, the secretary may develop quality criteria and incentives that will allow the other types of child care settings to participate in the quality rating and improvement system. The rules shall include, but are not limited to, the following:

(1) A four-star rating system for registered family child care homes and a four-star rating system for all licensed programs, including family child care facilities and child care centers, to easily communicate to consumers four progressively higher levels of quality child care. One star indicating meeting the minimum acceptable standard and four stars indicating meeting or exceeding the highest standard. The system shall reflect the cumulative attainment of the standards at each level and all lesser levels: *Provided*, That any program accredited by the National Association for the Education of Young Children or the National Association for Family Child Care, as applicable, shall automatically be awarded four-star status;

(2) Program standards for registered family child care homes and program standards for all licensed programs, including family child care facilities and child care centers, that are each divided into four levels of attributes that progressively improve the quality of child care beginning with basic state registration and licensing requirements at level one, through achievement of a national accreditation by the appropriate organization at level four. Participation beyond the first level is voluntary. The program standards shall

be categorized using the West Virginia State Training and Registry System Core Knowledge Areas or its equivalent;

(3) Accountability measures that provide for a fair, valid, accurate and reliable assessment of compliance with quality standards, including, but not limited to:

(A) Evaluations conducted by trained evaluators with appropriate early childhood education and training on the selected assessment tool and with a demonstrated inter-rater reliability of eighty-five percent or higher. The evaluations shall include an on-site inspection conducted at least annually to determine whether programs are rated correctly and continue to meet the appropriate standards. The evaluations and observations shall be conducted on at least a statistically valid percentage of center classrooms, with a minimum of one class per age group;

(B) The use of valid and reliable observation and assessment tools, such as environmental rating scales for early childhood, infant and toddler, school-age care and family child care as appropriate for the particular setting and age group;

(C) An annual self-assessment using the proper observation and assessment tool for programs rated at two stars; and

(D) Model program improvement planning shall be designed to help programs improve their evaluation results and level of program quality.

(b) The rules required pursuant to this section shall include policies relating to the review, reduction, suspension or disqualification of child care programs from the quality rating and improvement system.

(c) The rules shall provide for implementation of the statewide quality rating system effective July 1, 2011, subject to section four of this article.

§49-2E-3. Creation of statewide quality improvement system; financial plan to support implementation and quality improvement required as part of rules.

Attached to the proposed rules required in section two of this article, the Secretary of the Department of Health and Human Resources shall submit a financial plan to support the implementation of a statewide quality rating and improvement system and help promote quality improvement. The financial plan shall be considered a part of the rule and shall include specific proposals for implementation of the provisions of this section as determined by the Secretary. The plan shall address, but is not limited to, the following:

(1) State agency staffing requirements, including, but not limited to:

(A) Highly trained evaluators to monitor the assessment process and ensure inter-rater reliability of eighty-five percent or higher;

(B) Technical assistance staff responsible for career advising, accreditation support services, improvement planning, portfolio development and evaluations for improvement planning only. The goal for technical assistance staffing is to ensure that individualized technical assistance is available to participating programs;

(C) A person within the department to collaborate with other professional development providers to maximize funding for training, scholarships and professional development. The person filling this position also shall encourage community and technical colleges to provide courses through nontraditional means such as online training, evening classes and off-campus training;

(D) Additional infant and toddler specialists to provide high level professional development for staff caring for infants and to provide on-site assistance with infant and toddler issues;

(E) At least one additional training specialist at each of the child care resource and referral agencies to support new training topics and to provide training for school-age

child care programs. Training providers such as the child care resource and referral agencies shall purchase new training programs on topics such as business management, the Devereux Resiliency Training and Mind in the Making; and

(F) Additional staff necessary for program administration;

(2) Implementation of a broad public awareness campaign and communication strategies that may include, but are not limited to:

(A) Brochures, internet sites, posters, banners, certificates, decals and pins to educate parents; and

(B) Strategies such as earned media campaigns, paid advertising campaigns, e-mail and internet-based outreach, face-to-face communication with key civic groups and grassroots organizing techniques; and

(3) Implementation of an internet-based management information system that meets the following requirements:

(A) The system shall allow for multiple agencies to access and input data;

(B) The system shall provide the data necessary to determine if the quality enhancements result in improved care and better outcomes for children;

(C) The system shall allow access by Department of Health and Human Resources subsidy and licensing staff, child care resource and referral agencies, the agencies that provide training and scholarships, evaluators and the child care programs;

(D) The system shall include different security levels in order to comply with the numerous confidentiality requirements;

(E) The system shall assist in informing practice; determining training needs; and tracking changes in availability of care, cost of care, changes in wages and education levels; and

(F) The system shall provide accountability for child care programs and recipients and assure funds are being used effectively;

(4) Financial assistance for child care programs needed to improve learning environments, attain high ratings and sustain long-term quality without passing additional costs on to families that may include, but are not limited to:

(A) Assistance to programs in assessment and individual program improvement planning and providing the necessary information, coaching and resources to assist programs to increase their level of quality;

(B) Subsidizing participating programs for providing child care services to children of low-income families in accordance with the following:

(i) Base payment rates shall be established at the seventy- fifth percentile of market rate; and

(ii) A system of tiered reimbursement shall be established which increases the payment rates by a certain amount above the base payment rates in accordance with the rating tier of the child care program;

(C) Two types of grants shall be awarded to child care programs in accordance with the following:

(i) An incentive grant shall be awarded based on the type of child care program and the level at which the child care program is rated with the types of child care programs having more children and child care programs rated at higher tiers being awarded a larger grant than the types of child care programs having less children and child care programs rated at lower tiers; and

(ii) Grants for helping with the cost of national accreditation shall be awarded on an equitable basis.

(5) Support for increased salaries and benefits for program staff to increase educational levels essential to improving the quality of care that may include, but are not limited to: (A) Wage supports and benefits provided as an incentive to increase child care programs ratings and as an incentive to increase staff qualifications in accordance with the following:

(i) The cost of salary supplements shall be phased in over a five-year period;
(ii) The Secretary of the Department of Health and Human Resources shall establish a salary scale for each of the top three rating tiers that varies the salary support based on the education of the care giver and the rating tier of the program; and
(iii) Any center with at least a tier two rating that employs at least one staff person participating in the scholarship program required pursuant to paragraph (B) of this subsection or employs degree staff may apply to the Secretary of the Department of Health and Human Resources for funding to provide health care benefits based on the Teacher Education and Compensation Helps model in which insurance costs are shared among the employees, the employer and the state; and

(B) The provision of scholarships and establishment of professional development plans for center staff that would promote increasing the credentials of center staff over a five-year period; and

(6) Financial assistance to the child care consumers whose income is at two hundred percent of the federal poverty level or under to help them afford the increased market price of child care resulting from increased quality.

§49-2E-4. Quality rating and improvement system pilot projects; independent third-party evaluation; modification of proposed rule and financial plan; report to Legislature; limitations on implementation.

(a) The Secretary of the Department of Health and Human Resources may promulgate emergency rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement a quality rating and improvement system in up to five counties as pilot projects beginning July 1, 2009. The pilot quality rating and improvement systems shall be in accordance with the provisions of this article for the statewide system. The purpose of the pilot projects is to test the rating system, assess the quality of existing child care providers, provide a basis for estimating the financial requirements of the various elements of a statewide system as set forth in this article and to inform future policy decisions. Notwithstanding any provision of this article to the contrary, the rating or potential rating of a child care provider participating in the study may not be individually disclosed. The secretary may modify and develop additional policies consistent with this article as appropriate.

(b) The secretary shall contract with an independent third- party evaluator to assist the department and the Quality Rating and Improvement System Advisory Council with establishing and evaluating the pilot project quality rating and improvement system and conducting research on statewide implementation. The secretary also may contract with the evaluator for ongoing evaluation and research for quality improvement. The evaluator shall have access to all project data including data in the management information system provided for in section two of this article.

(c) The secretary shall report annually to the Legislature on the progress on development and implementation of a child care quality rating and improvement system and its impact on improving the quality of child care in the state. The secretary may propose amendments to the rules and financial plan necessary to promote implementation of the quality rating and improvement system and improve the quality of child care and may recommend needed legislation. Nothing in this article requires the

implementation of a quality rating and improvement system unless funds are appropriated therefore. The secretary may prioritize the components of the financial plan for implementation and quality improvement for funding purposes. If insufficient funds are appropriated for full implementation of the quality rating and improvement system beginning on July 1, 2011, the rules shall provide for gradual implementation over a period of several years.

(d) The Legislature recognizes that expenditures, especially one-time types of expenditures or expenditures of a limited duration, may be funded with moneys derived through the American Recovery and Reinvestment Act of 2009. A study of the cost of implementing a quality rating and improvement system statewide is expected to be conducted over the next two years.

Senate Bill 540

Effective Date: Passed April 11, 2009, in effect from passage

Signed by Governor: May 7, 2009

Code Reference: Amends and reenacts §11-6I-3; 11-6I-5; §11-10-5e
§11-10-25; §11-13Q-22; §11-15-3c; §11-15-9m;
§11-21-21; §11-21-22; §11-21-23; §11-24-3a;
§11-24-4b; §18-9A-2a; §21-6-1c

Title: Relating to various taxes and the local share calculation

Major Provisions:

- Disqualifies taxpayers who are required to pay the federal alternative minimum tax from claiming a senior citizens' property tax payment deferral or the low-income family tax credit
- Eliminates the senior citizens' property tax relief credit as of January 1, 2009.
- Grants the tax commissioner discretion in designating the mailing method for a number of Tax Department documents.
- Allows the tax commissioner to provide an annualized cost of living adjustment indexed to inflation regarding the pay of jobs created under the Economic Opportunity Tax Credit.
- Exempts from the Consumers Sales and Use Tax:
 - o A number of "heavy duty trucks", including some Class B trucks, track tractors and road tractors over 55K lbs, as well as some equipment they may haul;
 - o Leased vehicles, but replaces the tax with a 5% tax on the monthly lease payments;
- Also exempts all motor vehicles sales from municipal sales and use taxes.
- Authorizes the tax commissioner to designate, by rule, those exemptions for which exemption certificates or direct pay permits are not required.

- Adds a number of definitions to the corporate net income tax section of the Code and revised other definitions.
- Completely rewrote WVC §11-24-4b to cause add back of the “dividend paid deduction”:
 - o With regard to “real investment trusts” only when the trust is a “captive real estate investment trust”;
 - o With regard to “regulated investment companies” only when the company is defined as a “qualified regulated investment company”.
- The section also now includes add-back provisions for “intangible expenses otherwise deductible” and “interest expenses otherwise deductible” as to all taxpayers subject to the corporate net income tax.
- Pushes back the effective date for increasing the local share percentage from 90% to 98% for the school districts in the counties where property is not being assessed at least at 54% of fair market value from July 1, 2010 to July 1, 2013.
- Authorizes state income tax withholdings from unemployment compensation payments.

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 540

(Senators Helmick and McCabe, *original sponsors*)

[Passed April 11, 2009; in effect ninety days from passage.]

AN ACT to amend and reenact §11-6I-3 and §11-6I-5 of the Code of West Virginia, 1931, as amended; to amend and reenact §11-10- 5e of said code; to amend said code by adding thereto a new section, designated §11-10-25; to amend and reenact §11-13Q-22 of said code; to amend and reenact §11-15-3c of said code; to amend said code by adding thereto a new section, designated §11-15-9m; to amend and reenact §11-21-21, §11-21-22 and §11- 21-23 of said code; to amend and reenact §11-24-3a and §11-24- 4b of said code; to amend and reenact §18-9A-2a of said code; and to amend and reenact §21A-6-1c of said code, all relating to taxation; specifying authority of the Tax Commissioner to designate Tax Division documents that may be sent by personal service, United States postal service, regular mail, certified mail or registered mail or other means; specifying statutory burden of proof and presumption against tax exemptions; specifying inflation adjustment for certain economic opportunity tax credit entitlement requirements; specifying exclusion of sales and use of certain motor vehicles and certain trailers and classes of vehicle and vehicular apparatus from state consumers sales and use tax on certain vehicles; specifying exclusion of sales and use of certain motor vehicles and certain trailers and classes of vehicle and vehicular apparatus from municipal and local consumers sales and service tax and use tax, or special downtown redevelopment district excise tax, or special district excise tax and other sales taxes; authorizing discretionary designation of per se exemptions from the consumers sales and service tax and use tax by the Tax Commissioner; specifying exclusion of federal alternative minimum income taxpayers from eligibility for property tax payment deferment and assessor's denial of deferment; disqualifying persons who pay the federal alternative minimum income tax in specified years from qualification for the senior citizens' tax credit; disqualifying persons who pay the federal alternative minimum income tax in specified years from qualification for the low- income family tax credit; disqualifying persons who pay the federal alternative minimum income tax in specified years from qualification for the refundable tax credit for real property taxes paid in excess of four percent of income; defining terms; specifying treatment of certain income and deduction items for certain regulated investment companies and real estate investment companies; delaying the effective date of alternative definition of levies for general current expenses purposes; authorizing state income tax withholding from the individual's payment of unemployment compensation; specifying

Be it enacted by the Legislature of West Virginia:

That §11-6I-3 and §11-6I-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §11-10-5e of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §11-10-25; that §11-13Q-22 of said code be amended and reenacted; that §11-15-3c of said code be

amended and reenacted; that said code be amended by adding thereto a new section, designated §11-15-9m; that §11-21-21, §11-21-22 and §11-21-23 of said code be amended and reenacted; that §11-24-3a and §11-24-4b of said code be amended and reenacted; that §18-9A-2a of said code be amended and reenacted; and that §21A-6-1c of said code be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 6I. SENIOR CITIZEN PROPERTY TAX PAYMENT DEFERMENT ACT.

§11-6I-3. Property tax payment deferment.

(a) The following homesteads shall qualify for the deferment provided in subsection ~~(b)~~ (c) of this section:

(1) Any homestead owned by an owner sixty-five years of age or older and used and occupied exclusively for residential purposes by the owner; and

(2) Any homestead that:

(A) Is owned by an owner sixty-five years of age or older who, as a result of illness, accident or infirmity, is residing with a family member or is a resident of a nursing home, personal care home, rehabilitation center or similar facility;

(B) Was most recently used and occupied exclusively for residential purposes by the owner or the owner's spouse; and

(C) Has been retained by the owner for noncommercial purposes.

~~(b) (1) A homestead which is owned, in whole or in part, by any person who is required to pay the federal alternative minimum income tax in the current tax year is disqualified from the deferment provided in this article.~~

~~(b) (c) (1)~~ For tax years commencing on or after ~~the first day of January 1, two thousand nine~~ 2009, the owner of a homestead meeting the qualifications set forth in subsection (a) of this section may apply for a deferment in the payment of the tax increment of ad valorem taxes assessed under the authority of article three of this chapter on the homestead: *Provided*, That the deferment may be authorized only when the tax increment is the greater of ~~three hundred dollars~~ \$300 or ten percent or more: *Provided, however*, That all deferred taxes are not subject to any rate of interest.

(2) In lieu of the deferment of the tax increment authorized pursuant to this article, a taxpayer entitled to ~~such~~ the deferment may elect to instead apply the senior citizen property tax relief credit authorized under section twenty-four, article twenty-one of this chapter. Any taxpayer making such election shall be fully subject to the terms and limitations set forth in section twenty-four, article twenty-one of this chapter.

§11-6I-5. Determination; notice of denial of application for deferment.

(a) The assessor shall, as soon as practicable after an application for deferment is filed, review that application and either approve or deny it. The assessor shall approve or disapprove an application for deferment within thirty days of receipt. Any application not approved or denied within thirty days is deemed approved. If the application is denied, the assessor shall promptly, but not later than ~~the first day of January 1~~, serve the owner with written notice explaining why the application was denied and furnish a form for filing with the county commission, should the owner desire to take an appeal. The notice required or authorized by this section shall be served on the owner or his or her authorized representative either by personal service or by certified mail.

(b) In the event that the assessor has information sufficient to form a reasonable belief that an owner, after having been originally granted a deferment, is no longer eligible for the deferment, he or she shall, within thirty days after forming this reasonable belief, revoke the deferment and serve the owner with written notice explaining the reasons for

the revocation and furnish a form for filing with the county commission should the owner desire to take an appeal.

(c) The assessor shall deny any application made by or for an owner who is required to pay the federal alternative minimum income tax in the current tax year. The application may contain an affirmation, prescribed by the Tax Commissioner, whereby the applicant shall indicate whether the applicant is required to pay the federal alternative minimum income tax in the current tax year. Failure to truthfully indicate whether the applicant is required to pay the federal alternative minimum income tax in the current tax year shall be subject to the applicable penalties of articles nine and ten of this chapter.

ARTICLE 10. TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-5e. Service of notice.

~~Notices of assessments and administrative decisions shall be served upon the taxpayer either by personal or substituted service or by certified mail. Service of notice by personal or substituted service shall be valid if made by any method authorized by Rule 4 of the West Virginia Rules of Civil Procedure. Notwithstanding any other provision of this code, the Tax Commissioner may designate those assessments, notices, statements of account or other Tax Division documents which shall be sent by personal service or United States Postal Service regular mail, or certified mail or registered mail or by any other means at the discretion of the Tax Commissioner, pursuant to any provision of this chapter. Any service of notice addressed by United States Postal Service regular mail is presumed to be accepted upon mailing unless proven otherwise by the taxpayer. Any service of notice by certified mail shall be valid if accepted by the taxpayer, or if addressed to and mailed to the taxpayer's usual place of business or usual place of abode or last known address and accepted by any officer, partner, employee, spouse or child of the taxpayer over the age of eighteen. Any notice addressed and mailed in the above manner and accepted by any person, shall be presumed to be accepted by such person unless proven otherwise by the taxpayer. Any notice addressed and mailed in the above manner, and which is refused or not claimed, may then be served by regular mail if such notice is subsequently mailed by first class mail, postage prepaid, to the same address; and the date of posting in the United States mail shall be the date of service.~~

§11-10-25. Taxpayer must show tax exemption applies; presumption.

(a) The burden of proving that a tax exemption applies to any tax administered by the Tax Commissioner shall be upon the taxpayer. Tax exemptions administered by the Tax Commissioner shall be strictly construed against the taxpayer and for the payment of any applicable tax.

(b) To prevent evasion, it is presumed that a tax exemption does not apply until the contrary is clearly established by a preponderance of the evidence.

ARTICLE 13Q. ECONOMIC OPPORTUNITY TAX CREDIT.

§11-13Q-22. Credit available for taxpayers which do not satisfy the new jobs percentage requirement.

(a) Notwithstanding any provision of this article to the contrary, a taxpayer engaged in one or more of the industries or business activities specified in section nineteen of this article which does not satisfy the new jobs percentage requirement prescribed in subsection (c), section nine, of this article, or, if the taxpayer is a small business as defined in section ten of this article, does not create at least ten new jobs within twelve months after placing qualified investment into service as required by section ten of this article, but which otherwise fulfills the requirements prescribed in this article, is permitted to claim a credit against the taxes specified in section seven of this article in

the order so specified that are attributable to and the consequence of the taxpayer's business operations in this state, which result in the creation of net new jobs. Credit under this section is allowed in the amount of ~~three thousand dollars~~ \$3,000 per year, per new job created and filled by a new employee; as those terms are defined in section three of this article for a period of five consecutive years beginning in the tax year when the new employee is first hired. In no case may the number of new employees determined for purposes of this section exceed the total net increase in the taxpayer's employment in this state. Credit allowed under this section shall be allowed beginning in the tax year when the new employee is first hired: *Provided*, That each new job:

(1) Pays at least ~~thirty-two thousand dollars~~ \$32,000 annually. Beginning January 1, 2010, and on January 1 of each year thereafter, the commissioner shall prescribe an amount that shall apply in lieu of the \$32,000 amount during that calendar year. This amount is prescribed by increasing the \$32,000 figure by the cost-of-living adjustment for that calendar year;

(2) Provides health insurance and may offer benefits including child care, retirement or other benefits; and

(3) Is a full-time, permanent position, as those terms are defined in section three, of this article.

Jobs that pay less than ~~thirty-two thousand dollars~~ \$32,000 annually, or less than the amount prescribed by the commissioner pursuant to subdivision (1) of this subsection, whichever is higher, or that pay that salary but do not also provide benefits in addition to the salary, do not qualify for the credit authorized by this section. Jobs that are less than full-time, permanent positions do not qualify for the credit authorized by this section. The employer having obtained entitlement to the credit shall not be required to raise wages of employees currently employed in jobs upon which the initial credit was based by reason of the cost- of-living adjustment.

(b) For purposes of this section, the following definitions apply:

(1) Cost-of-living adjustment. -- For purposes of subsection (a) of this section, the cost-of-living adjustment for any calendar year is the percentage (if any) by which the consumer price index for the preceding calendar year exceeds the consumer price index for the calendar year 2009.

(2) Consumer price index for any calendar year. -- For purposes of subdivision (1) of this subsection, the consumer price index for any calendar year is the average of the federal consumer price index as of the close of the twelve-month period ending on August 31 of that calendar year.

(3) Consumer price index. -- For purposes of subdivision (2) of this subsection, the term "federal consumer price index" means the most recent consumer price index for all urban consumers published by the United States Department of Labor.

(4) Rounding. -- If any increase under subdivision (1) of this subsection is not a multiple of \$50, the increase shall be rounded to the next lowest multiple of \$50.

~~(b)~~ (c) Unused credit remaining in any tax year after application against the taxes specified in section seven of this article is forfeited and does not carry forward to any succeeding tax year and does not carry back to a prior tax year.

~~(e)~~ (d) The tax credit authorized by this section may be taken in addition to any credits allowable under articles thirteen-c, thirteen-d, thirteen-e, thirteen-f, thirteen-g, thirteen-j, thirteen-r or thirteen-s of this chapter.

~~(d)~~ (e) Reduction in number of employees credit forfeiture. -- If, during the year when a new job was created for which credit was granted under this section or during any of the

next succeeding four tax years thereafter, net jobs that are attributable to and the consequence of the taxpayer's business operations in this state decrease, counting both new jobs for which credit was granted under this section and preexisting jobs, then the total amount of credit to which the taxpayer is entitled under this section shall be decreased and forfeited in the amount of ~~three thousand dollars~~ \$3,000 for each net job lost.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-3c. Imposition of consumers sales tax on motor vehicle sales; rate of tax; use of motor vehicle purchased out of state; definition of sale; definition of motor vehicle; exemptions; collection of tax by Division of Motor Vehicles; dedication of tax to highways; legislative and emergency rules.

(a) Notwithstanding any provision of this article or article fifteen-a of this chapter to the contrary, beginning on ~~the first day of July 1, two thousand eight~~ 2008, all motor vehicle sales to West Virginia residents shall be subject to the consumers sales tax imposed by this article.

(b) *Rate of tax on motor vehicles.* -- Notwithstanding any provision of this article or article fifteen-a of this chapter to the contrary, the rate of tax on the sale and use of a motor vehicle shall be five percent of its sale price, as defined in section two, article fifteen-b of this chapter: *Provided*, That so much of the sale price or consideration as is represented by the exchange of other vehicles on which the tax imposed by this section or section four, article three, chapter seventeen-a of this code has been paid by the purchaser shall be deducted from the total actual sale price paid for the motor vehicle, whether the motor vehicle be new or used.

(c) *Motor vehicles purchased out of state.* -- Notwithstanding this article or article fifteen-a to the contrary, the tax imposed by this section shall apply to all motor vehicles, used as defined by section one, article fifteen-a, of this chapter, within this state, regardless of whether the vehicle was purchased in a state other than West Virginia.

(d) *Definition of sale.* -- Notwithstanding any provision of this article or article fifteen-a of this chapter to the contrary, for purposes of this section, "sale", "sales" or "selling" means any transfer or lease of the possession or ownership of a motor vehicle for consideration, including isolated transactions between individuals not being made in the ordinary course of repeated and successive business and also including casual and occasional sales between individuals not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions.

(e) *Definition of motor vehicle.* -- For purposes of this section, "motor vehicle" means every propellable device in, or upon which any person or property is or may be transported or drawn upon a highway including, but not limited to: ~~a~~Automobiles; buses; motor homes; motorcycles; motorboats; all-terrain vehicles; snowmobiles; low-speed vehicles; trucks, truck tractors and road tractors having a weight of less than fifty-five thousand pounds; trailers, semitrailers, full trailers, pole trailers and converter gear having a gross weight of less than two thousand pounds; and motorboat trailers, fold-down camping trailers, traveling trailers, house trailers and motor homes; except that the term "motor vehicle" does not include: ~~m~~Modular homes, manufactured homes, mobile homes, similar nonmotive propelled vehicles susceptible of being moved upon the highways but primarily designed for habitation and occupancy; devices operated regularly for the transportation of persons for compensation under a certificate of convenience and necessity or contract carrier permit issued by the Public Service Commission; mobile equipment as defined in section one, article one, chapter seventeen-a of this code; special mobile equipment as defined in section one, article

one, chapter seventeen-a of this code; trucks, truck tractors and road tractors having a gross weight of fifty-five thousand pounds or more; trailers, semitrailers, full trailers, pole trailers and converter gear, having weight of two thousand pounds or greater: *Provided*, That notwithstanding the provisions of section nine, article fifteen, chapter eleven of this code, the exemption from tax under this section for mobile equipment as defined in section one, article one, chapter seventeen-a of this code; special mobile equipment defined in section one, article one, chapter seventeen-a of this code; Class B trucks, truck tractors and road tractors registered at a gross weight of fifty-five thousand pounds or more; and Class C trailers, semitrailers, full trailers, pole trailers and converter gear, having weight of two thousand pounds or greater; does not subject the sale or purchase of the vehicle to the consumer sales and service tax imposed by section three of this article.

(f) *Exemptions.* -- Notwithstanding any other provision of this code to the contrary, the tax imposed by this section shall not be subject to any exemption in this code other than the following:

(1) The tax imposed by this section does not apply to any passenger vehicle offered for rent in the normal course of business by a daily passenger rental car business as licensed under the provisions of article six-d, chapter seventeen-a of this chapter code. For purposes of this section, a daily passenger car means a motor vehicle having a gross weight of eight thousand pounds or less and is registered in this state or any other state. In lieu of the tax imposed by this section, there is hereby imposed a tax of not less than ~~one dollar~~ \$1 nor more than ~~one dollar and fifty cents~~ \$1.50 for each day or part of the rental period. The Commissioner of Motor Vehicles shall propose an emergency rule in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish this tax.

(2) The tax imposed by this section does not apply where the motor vehicle has been acquired by a corporation, partnership or limited liability company from another corporation, partnership or limited liability company that is a member of the same controlled group and the entity transferring the motor vehicle has previously paid the tax on that motor vehicle imposed by this section. For the purposes of this section, control means ownership, directly or indirectly, of stock or equity interests possessing fifty percent or more of the total combined voting power of all classes of the stock of a corporation or equity interests of a partnership or limited liability company entitled to vote or ownership, directly or indirectly, of stock or equity interests possessing fifty percent or more of the value of the corporation, partnership or limited liability company.

(3) The tax imposed by this section does not apply where motor vehicle has been acquired by a senior citizen service organization which is exempt from the payment of income taxes under the United States Internal Revenue Code, Title 26 U. S. C. §501(c)(3) and which is recognized to be a bona fide senior citizen service organization by the Bureau of Senior Services existing under the provisions of article five, chapter sixteen of this code.

(4) The tax imposed by this section does not apply to any active duty military personnel stationed outside of West Virginia who acquires a motor vehicle by sale within nine months from the date the person returns to this state.

(5) The tax imposed by this section does not apply to motor vehicles acquired by registered dealers of this state for resale only.

(6) The tax imposed by this section does not apply to motor vehicles acquired by this state or any political subdivision thereof, or by any volunteer fire department or duly

chartered rescue or ambulance squad organized and incorporated under the laws of this state as a nonprofit corporation for protection of life or property.

(7) The tax imposed by this section does not apply to motor vehicles acquired by an urban mass transit authority, as defined in article twenty-seven, chapter eight of this code, or a nonprofit entity exempt from federal and state income tax under the Internal Revenue Code, for the purpose of providing mass transportation to the public at large or designed for the transportation of persons and being operated for the transportation of persons in the public interest.

(8) The tax imposed by this section does not apply to the registration of a vehicle owned and titled in the name of a resident of this state if the applicant:

(A) Was not a resident of this state at the time the applicant purchased or otherwise acquired ownership of the vehicle;

(B) Presents evidence as the Commissioner of Motor Vehicles may require of having titled the vehicle in the applicant's previous state of residence;

(C) Has relocated to this state and can present such evidence as the Commissioner of Motor Vehicles may require to show bona fide residency in this state; and

(D) ~~Presents an affidavit, completed by the assessor of the applicant's county of residence, establishing that the vehicle has been properly reported and is on record in the office of the assessor as personal property; and~~ (E) Makes application to the Division of Motor Vehicles for a title and registration and pays all other fees required by chapter seventeen-a of this code within thirty days of establishing residency in this state as prescribed in subsection (a), section one-a of this article.

(9) On and after January 1, 2009, the tax imposed by this section does not apply to Class B trucks, truck tractors and road tractors registered at a gross weight of fifty-five thousand pounds or more or to Class C trailers, semitrailers, full trailers, pole trailers and converter gear having a weight of two thousand pounds or greater. If an owner of a vehicle has previously titled the vehicle at a declared gross weight of fifty-five thousand pounds or more and the title was issued without the payment of the tax imposed by this section, then before the owner may obtain registration for the vehicle at a gross weight less than fifty-five thousand pounds, the owner shall surrender to the commissioner the exempted registration, the exempted certificate of title and pay the tax imposed by this section based upon the current market value of the vehicle.

(10) The tax imposed by this section does not apply to vehicles leased by residents of West Virginia. On or after January 1, 2009, a tax is imposed upon the monthly payments for the lease of any motor vehicle leased under a written contract of lease by a resident of West Virginia for a contractually specified continuous period of more than thirty days, which tax is equal to five percent of the amount of the monthly payment, applied to each payment, and continuing for the entire term of the initial lease period. The tax shall be remitted to the Division of Motor Vehicles on a monthly basis by the lessor of the vehicle. Leases of thirty days or less are taxable under the provisions of this article and article fifteen-a of this chapter without reference to this section.

(g) *Division of Motor Vehicles to collect.*-- Notwithstanding any provision of this article, article fifteen-a, and article ten of this chapter to the contrary, the Division of Motor Vehicles shall collect the tax imposed by this section: *Provided*, That such tax is imposed upon the monthly payments for the lease of any motor vehicle leased by a resident of West Virginia, which tax is equal to five percent of the amount of the monthly payment, applied to each payment, and continuing for the entire term of the initial lease

period. The tax shall be remitted to the Division of Motor Vehicles on a monthly basis by the lessor of the vehicle.

(h) *Dedication of tax to highways.* -- Notwithstanding any provision of this article or article fifteen-a of this chapter to the contrary, all taxes collected pursuant to this section, after deducting the amount of any refunds lawfully paid, shall be deposited in the State Road Fund in the State Treasury, and expended by the Commissioner of Highways for design, maintenance and construction of roads in the state highway system.

(i) *Legislative rules; emergency rules.* -- Notwithstanding any provision of this article, article fifteen-a and article ten of this chapter to the contrary, the Commissioner of Motor Vehicles shall promulgate legislative rules explaining and implementing this section, which rules shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code and should include a minimum taxable value and set forth instances when a vehicle is to be taxed at fair market value rather than its purchase price. The authority to promulgate rules includes authority to amend or repeal those rules. If proposed legislative rules for this section are filed in the State Register before ~~the fifteenth day of June 15, two thousand eight 2008~~, those rules may be promulgated as emergency legislative rules, as provided in article three, ~~chapter twenty-nine-a~~ of said ~~this chapter~~ code.

(j) Notwithstanding any other provision of this code, effective January 1, 2009, no municipal sales or use tax or local sales or use tax or special downtown redevelopment district excise tax or special district excise tax shall be imposed under article twenty-two, chapter seven of this code or article thirteen, chapter eight of this code or article thirteen-b of said chapter or article thirty-eight of said chapter or any other provision of this code, except this section, on sales of motor vehicles as defined in this article or on any tangible personal property excepted or exempted from tax under this section. Nothing in this subsection shall be construed to prevent the application of the municipal business and occupation tax on motor vehicle retailers and leasing companies.

§11-15-9m. Discretionary designation of per se exemptions.

Notwithstanding any other provision of this code, the Tax Commissioner may, by rule, specify those exemptions authorized in this article or in other provisions of this code or applicable federal law for which exemption certificates or direct pay permits are not required.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-21. Senior citizens' tax credit for property tax paid on first ~~ten thousand dollars~~ \$10,000 of taxable assessed value of a homestead in this state; tax credit for property tax paid on the first ~~twenty thousand dollars~~ \$20,000 of value for property tax years after December 31, 2006.

(a) *Allowance of credit.* --

(1) A low-income person who is allowed a ~~twenty thousand dollar~~ \$20,000 homestead exemption from the assessed value of his or her homestead for ad valorem property tax purposes, as provided in section three, article six-b of this chapter, shall be allowed a refundable credit against the taxes imposed by this article equal to the amount of ad valorem property taxes paid on up to the first ~~ten thousand dollars~~ \$10,000 of taxable assessed value of the homestead for property tax years that begin on or after ~~the first day of January 1, two thousand three 2003~~, except as provided in subdivision (2) of this subsection.

(2) For tax years beginning on or after ~~the first day of January 1, two thousand seven 2007~~, a low-income person who is allowed a ~~twenty thousand dollar~~ \$20,000

homestead exemption from the assessed value of his or her homestead for ad valorem property tax purposes, as provided in section three, article six-b of this chapter, shall be allowed a refundable credit against the taxes imposed by this article equal to the amount of ad valorem property taxes paid on up to the first ~~twenty thousand dollars~~ \$20,000 of taxable assessed value of the homestead for property tax years that begin on or after ~~the first day of January 1, two thousand seven 2007~~: Provided, That for tax years beginning on and after January 1, 2009, any person who is required to pay the federal alternative minimum income tax in the current tax year is disqualified from receiving any tax credit provided under this section.

(3) Due to the administrative cost of processing, the refundable credit authorized by this section may not be refunded if less than ~~ten dollars~~ \$10.

(4) The credit for each property tax year shall be claimed by filing a claim for refund within three years after the due date for the personal income tax return upon which the credit is first available.

(b) *Terms defined.* –

For purposes of this section:

(1) "Low income" means federal adjusted gross income for the taxable year that is one hundred fifty percent or less of the federal poverty guideline for the year in which property tax was paid, based upon the number of individuals in the family unit residing in the homestead, as determined annually by the United States Secretary of Health and Human Services.

(2) (A) For tax years beginning before ~~the first day of January 1, two thousand seven 2007~~, "taxes paid" means the aggregate of regular levies, excess levies and bond levies extended against not more than ~~ten thousand dollars~~ \$10,000 of the taxable assessed value of a homestead that are paid during the calendar year determined after application of any discount for early payment of taxes but before application of any penalty or interest for late payment of property taxes for a property tax year that begins on or after ~~the first day of January 1, two thousand three 2003~~, except as provided in paragraph (B) of this subdivision.

(B) For tax years beginning on or after ~~the first day of January 1, two thousand seven 2007~~, "taxes paid" means the aggregate of regular levies, excess levies and bond levies extended against not more than ~~twenty thousand dollars~~ \$20,000 of the taxable assessed value of a homestead that are paid during the calendar year determined after application of any discount for early payment of taxes but before application of any penalty or interest for late payment of property taxes for a property tax year that begins on or after ~~the first day of January 1, two thousand seven 2007~~.

(c) *Legislative rule.* –

The Tax Commissioner shall propose a legislative rule for promulgation as provided in article three, chapter twenty-nine-a of this code to explain and implement this section.

(d) *Confidentiality.* –

The Tax Commissioner shall utilize property tax information in the statewide electronic data processing system network to the extent necessary for the purpose of administering this section, notwithstanding any provision of this code to the contrary.

§11-21-22. Low-income family tax credit.

In order to eliminate West Virginia personal income tax on families with incomes below the federal poverty guidelines and to reduce the West Virginia personal income tax on families with incomes that are immediately above the federal poverty guidelines, there is hereby created a nonrefundable tax credit, to be known as the low-income family tax credit, against the West Virginia personal income tax. The low-income family tax credit

is based upon family size and the federal poverty guidelines and reduces. ~~†~~The low-income tax credit reduces the tax imposed by the provisions of this article on families with modified federal adjusted gross income below or near the federal poverty guidelines: Provided, That for tax years beginning on and after January 1, 2009, any person who is required to pay the federal alternative minimum income tax in the current tax year is disqualified from receiving any tax credit provided under this section.

§11-21-23. Refundable credit for real property taxes paid in excess of four percent of income.

(a) For the tax years beginning on or after ~~the first day of~~ January 1, ~~two thousand eight 2008~~, any homeowner living in his or her homestead shall be allowed a refundable credit against the taxes imposed by this article equal to the amount of real property taxes paid in excess of four percent of their income. If the refundable credit provided in this section exceeds the amount of taxes imposed by this article, the ~~S~~state Department of Revenue shall refund that amount to the homeowner.

(b) Due to the administrative cost of processing, the refundable credit authorized by this section may not be refunded if less than ~~ten dollars~~ \$10.

(c) The credit for each property tax year shall be claimed by filing a claim for refund within twelve months after the real property taxes are paid on the homestead.

(d) For the purposes of this section:

(1) "Gross household income" is defined as federal adjusted gross income plus the sum of the following:

(A) Modifications in subsection (b), section twelve of this article increasing federal adjusted gross income;

(B) Federal tax-exempt interest reported on federal tax return;

(C) Workers' compensation and loss of earnings insurance; and

(D) Nontaxable Social Security benefits; and

(2) For the tax years beginning before ~~the first day of~~ January 1, ~~two thousand eight 2008~~, "real property taxes paid" means the aggregate of regular levies, excess levies and bond levies extended against the homestead that are paid during the calendar year and determined after any application of any discount for early payment of taxes but before application of any penalty or interest for late payment of property taxes for property tax years that begin on or after ~~the first day of~~ January 1, ~~two thousand eight 2008~~.

(e) A homeowner is eligible to benefit from this section or section twenty-one of this article, whichever section provides the most benefit as determined by the homeowner. No homeowner may receive benefits under both this section and section twenty-one of this article during the same taxable year. For tax years beginning on and after January 1, 2009, any person who is required to pay the federal alternative minimum income tax in the current tax year is disqualified from receiving any tax credit provided under this section. Nothing in this section denies those entitled to the homestead exemption provided in section three, article six-b of this chapter.

(f) No homeowner may receive a refundable tax credit imposed by this article in excess of ~~one thousand dollars~~ \$1,000. This amount shall be reviewed annually by the Legislature to determine if an adjustment is necessary.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3a. Specific terms defined.

(a) For purposes of this article:

(1) *Aggregate effective rate of tax.*-- The term "aggregate effective rate of tax" shall mean the sum of the effective rates of tax imposed by a state or United States possession or any combination thereof on a related member.

(4) ~~(2)~~ *Business income.*-- The term "business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management and disposition of the property or the rendering of services in connection therewith constitute integral parts of the taxpayer's regular trade or business operations and includes all income which is apportionable under the Constitution of the United States.

(3) *Captive real estate investment trust.* -- The term "captive real estate investment trust" shall mean a real estate investment trust, the shares or beneficial interests of which:

(A) Are not regularly traded on an established securities market and:

(B) Are more than fifty percent of the voting power or value of the beneficial interests or shares of which are owned or controlled, directly or indirectly or constructively, by a single entity that is:

(i) Treated as an association taxable as a corporation under the Internal Revenue Code of 1986, as amended; and

(ii) Not exempt from federal income tax pursuant to the provisions of Section 501(a) of the Internal Revenue Code of 1986, as amended;

(C) For purposes of applying subparagraph (i), paragraph (B) of this subdivision, the following entities are not considered an association taxable as a corporation:

(i) Any real estate investment trust as defined in Section 856 of the Internal Revenue Code of 1986, as amended, other than a "captive real estate investment trust";

(ii) Any qualified real estate investment trust subsidiary under Section 856(i) of the Internal Revenue Code of 1986, as amended, other than a qualified real estate investment trust subsidiary of a "captive real estate investment trust";

(iii) Any listed Australian property trust, meaning an Australian unit trust registered as a "managed investment scheme" under the Australian Corporations Act in which the principal class of units is listed on a recognized stock exchange in Australia and is regularly traded on an established securities market, or an entity organized as a trust, provided that a listed Australian property trust owns or controls, directly or indirectly, seventy- five percent or more of the voting power or value of the beneficial interests or shares of the trust; or

(iv) Any qualified foreign entity, meaning a corporation, trust, association or partnership organized outside the laws of the United States and which satisfies the following criteria:

(1) At least seventy-five percent of the entity's total asset value at the close of its taxable year is represented by real estate assets as defined in Section 856(c)(5)(B) of the Internal Revenue Code of 1986, as amended, thereby including shares or certificates of beneficial interest in any real estate investment trust, cash and cash equivalents and United States government securities;

(2) The entity is not subject to tax on amounts distributed to its beneficial owners or is exempt from entity-level taxation;

(3) The entity distributes at least eighty-five percent of its taxable income as computed in the jurisdiction in which it is organized to the holders of its shares or certificates of beneficial interest on an annual basis;

(4) Not more than ten percent of the voting power or value in the entity is held directly or indirectly or constructively by a single entity or individual or the shares or beneficial

interests of the entity are regularly traded on an established securities market; and

(5) The entity is organized in a country which has a tax treaty with the United States.

(D) A real estate investment trust that is intended to be regularly traded on an established securities market, and that satisfies the requirements of Section 856(a)(5) and (6) of the U. S. Internal Revenue Code by reason of Section 856(h)(2) of the Internal Revenue Code is not considered a captive real estate investment trust within the meaning of this section.

(E) A real estate investment trust that does not become regularly traded on an established securities market within one year of the date on which it first becomes a real estate investment trust is not considered not to have been regularly traded on an established securities market, retroactive to the date it first became a real estate investment trust, and shall file an amended return reflecting the retroactive designation for any tax year or part year occurring during its initial year of status as a real estate investment trust. For purposes of this section, a real estate investment trust becomes a real estate investment trust on the first day that it has both met the requirements of Section 856 of the Internal Revenue Code and has elected to be treated as a real estate investment trust pursuant to Section 856(c)(1) of the Internal Revenue Code.

~~(2)~~ (4) Combined group. -- The term "combined group" means the group of all persons whose income and apportionment factors are required to be taken into account pursuant to subsection ~~(a)~~ (j) or ~~(b)~~ (k), section thirteen-a of this article in determining the taxpayer's share of the net business income or loss apportionable to this state.

~~(3)~~ (5) Commercial domicile.-- The term "commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed: *Provided*, That the commercial domicile of a financial organization, which is subject to regulation as such, shall be at the place designated as its principal office with its regulating authority.

~~(4)~~ (6) Compensation.-- The term "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

~~(5)~~ (7) Corporation. -- "Corporation" means any corporation as defined by the laws of this state or organization of any kind treated as a corporation for tax purposes under the laws of this state, wherever located, which if it were doing business in this state would be a "taxpayer" subject to the tax imposed by this article. The business conducted by a partnership which is directly or indirectly held by a corporation shall be considered the business of the corporation to the extent of the corporation's distributive share of the partnership income, inclusive of guaranteed payments to the extent prescribed by regulation. The term "corporation" includes a joint-stock company and any association or other organization which is taxable as a corporation under the federal income tax law.

~~(6)~~ (8) Delegate.-- The term "delegate" in the phrase "or his or her delegate", when used in reference to the Tax Commissioner, means any officer or employee of the State Tax Division duly authorized by the Tax Commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article or regulations promulgated thereunder.

~~(7)~~ (9) Domestic corporation.-- The term "domestic corporation" means any corporation organized under the laws of West Virginia and certain corporations organized under the laws of the state of Virginia before ~~the twentieth day of June 20, one thousand eight hundred sixty-three~~ 1863. Every other corporation is a foreign corporation.

(10) Effective rate of tax. -- The term "effective rate of tax" means, as to any state or United States possession, the maximum statutory rate of tax imposed by the state or possession on a related member's net income multiplied by the apportionment

percentage, if any, applicable to the related member under the laws of said jurisdiction. For purposes of this definition, the effective rate of tax as to any state or United States possession is zero where the related member's net income tax liability in said jurisdiction is reported on a combined or consolidated return including both the taxpayer and the related member where the reported transactions between the taxpayer and the related member are eliminated or offset. Also, for purposes of this definition, when computing the effective rate of tax for a jurisdiction in which a related member's net income is eliminated or offset by a credit or similar adjustment that is dependent upon the related member either maintaining or managing intangible property or collecting interest income in that jurisdiction, the maximum statutory rate of tax imposed by said jurisdiction shall be decreased to reflect the statutory rate of tax that applies to the related member as effectively reduced by the credit or similar adjustment.

~~(8)~~ (11) *Engaging in business.* -- The term "engaging in business" or "doing business" means any activity of a corporation which enjoys the benefits and protection of government and laws in this state.

~~(9)~~ (12) *Federal Form 1120.* -- The term "Federal Form 1120" means the annual federal income tax return of any corporation made pursuant to the United States Internal Revenue Code of 1986, as amended, or in successor provisions of the laws of the United States, in respect to the federal taxable income of a corporation, and filed with the federal Internal Revenue Service. In the case of a corporation that elects to file a federal income tax return as part of an affiliated group, but files as a separate corporation under this article, then as to such corporation Federal Form 1120 means its pro forma Federal Form 1120.

(13) *Fiduciary.* -- The term "fiduciary" means, and includes, a guardian, trustee, executor, administrator, receiver, conservator or any person acting in any fiduciary capacity for any person.

~~(14)~~ (14) *Financial organization.* -- The term "financial organization" means:

(A) A holding company or a subsidiary thereof. As used in this section "holding company" means a corporation registered under the federal Bank Holding Company Act of 1956 or registered as a savings and loan holding company other than a diversified savings and loan holding company {as defined in Section 408(a)(1)(F) of the federal National Housing Act, 12 U. S. C. §1730(a)(1)(F)};

(B) A regulated financial corporation or a subsidiary thereof. As used in this section "regulated financial corporation" means:

~~(4)~~ (i) An institution, the deposits, shares or accounts of which are insured under the Federal Deposit Insurance Act or by the federal Savings and Loan Insurance Corporation;

~~(2)~~ (ii) An institution that is a member of a federal home loan bank;

~~(3)~~ (iii) Any other bank or thrift institution incorporated or organized under the laws of a state that is engaged in the business of receiving deposits;

~~(4)~~ (iv) A credit union incorporated and organized under the laws of this state;

~~(5)~~ (v) A production credit association organized under 12 U. S. C. §2071;

~~(6)~~ (vi) A corporation organized under 12 U. S. C. §611 through §631 (an Edge ~~a~~Act corporation); or

~~(7)~~ (vii) A federal or state agency or branch of a foreign bank {as defined in 12 U. S. C. §3101}; or

(C) A corporation which derives more than fifty percent of its gross business income from one or more of the following activities:

~~(4)~~ (i) Making, acquiring, selling or servicing loans or extensions of credit. Loans and extensions of credit include:

(I) Secured or unsecured consumer loans;

(II) Installment obligations;

(III) Mortgages or other loans secured by real estate or tangible personal property;

(IV) Credit card loans;

(V) Secured and unsecured commercial loans of any type; and

(VI) Loans arising in factoring;

~~(2)~~ (ii) Leasing or acting as an agent, broker or advisor in connection with leasing real and personal property that is the economic equivalent of an extension of credit (as defined by the Federal Reserve Board in 12 CFR 225.25(b)(5));

~~(3)~~ (iii) Operating a credit card business;

~~(4)~~ (iv) Rendering estate or trust services;

~~(5)~~ (v) Receiving, maintaining or otherwise handling deposits;

~~(6)~~ (vi) Engaging in any other activity with an economic effect comparable to those activities described in ~~item subparagraph (i)~~ ~~(4)~~ (i), ~~(2)~~ (ii), ~~(3)~~ (iii), ~~(4)~~ (iv) or ~~(5)~~ (v) of this subparagraph.

~~(42)~~ (15) *Fiscal year.* -- The term "fiscal year" means an accounting period of twelve months ending on any day other than the last day of December and on the basis of which the taxpayer is required to report for federal income tax purposes.

~~(43)~~ (16) *Includes and including.* -- The terms "includes" and "including", when used in a definition contained in this article, shall do not be deemed to exclude other things otherwise within the meaning of the term being defined.

(17) *Insurance company.* -- The term "insurance company" means any corporation subject to taxation under section twenty-two, article three, chapter twenty-nine of this code or chapter thirty- three of this code or an insurance carrier subject to the surcharge imposed by subdivision (1) or (3), subsection (f), section three, article two-c, chapter twenty-three of this code or any corporation that would be subject to taxation under any of those provisions were its business transacted in this state.

(18) *Intangible expense.* -- The term "intangible expense" includes: (A) Expenses, losses and costs for, related to or in connection directly or indirectly with the direct or indirect acquisition, use, maintenance or management, ownership, sale, exchange or any other disposition of intangible property to the extent those amounts are allowed as deductions or costs in determining taxable income before operating loss deductions and special deductions for the taxable year under the Internal Revenue Code; (B) amounts directly or indirectly allowed as deductions under Section 163 of the Internal Revenue Code for purposes of determining taxable income under the Internal Revenue Code to the extent those expenses and costs are directly or indirectly for, related to or in connection with the expenses, losses and costs referenced in subdivision (A) of this subsection; (C) losses related to, or incurred in connection directly or indirectly with, factoring transactions or discounting transactions; (D) royalty, patent, technical and copyright fees; (E) licensing fees; and (F) other similar expenses and costs.

(19) *Intangible property.* -- "Intangible property" includes patents, patent applications, trade names, trademarks, service marks, copyrights, mask works, trade secrets and similar types of intangible assets.

(20) *Interest expense.* -- "Interest expense" means amounts directly or indirectly allowed as deductions under Section 163 of the Internal Revenue Code for purposes of determining taxable income under the Internal Revenue Code.

~~(14)~~ (21) "Internal Revenue Code" means Title 26 of the United States Internal Revenue Code as defined in section three of this article, as amended, and in effect for the taxable year and without regard to application of federal treaties unless expressly made applicable to states of the United States.

~~(15)~~ (22) Nonbusiness income.-- The term "nonbusiness income" means all income other than business income.

(23) Ownership. -- In determining the ownership of stock, assets or net profits of any person, the constructive ownership of Section 318(a) of the Internal Revenue Code of 1986, as amended, as modified by Section 856(d)(5) of the Internal Revenue Code of 1986, as amended, shall apply.

~~(16)~~ (24) "Partnership" means a general or limited partnership, or organization of any kind treated as a partnership for tax purposes under the laws of this state.

~~(17)~~ (25) Person. -- The term "person" is deemed considered interchangeable with the term "corporation" in this section. The term "person" means any individual, firm, partnership, general partner of a partnership, limited liability company, registered limited liability partnership, foreign limited liability partnership, association, corporation (whether or not the corporation is, or would be if doing business in this state, subject to the tax imposed by this article), company, syndicate, estate, trust, business trust, trustee, trustee in bankruptcy, receiver, executor, administrator, assignee or organization of any kind.

~~(18)~~ (26) Pro forma return. -- The term "pro forma return" when used in this article means the return which the taxpayer would have filed with the Internal Revenue Service had it not elected to file federally as part of an affiliated group.

~~(19)~~ (27) Public utility. -- The term "public utility" means any business activity to which the jurisdiction of the Public Service Commission of West Virginia extends under section one, article two, chapter twenty-four of this code.

(28) Qualified regulated investment company. -- The term "qualified regulated investment company" means any regulated investment company other than a regulated investment company where more than fifty percent of the voting power or value of the beneficial interests or share of which are owned or controlled, directly or indirectly, constructively or otherwise, by a single entity that is:

(A) Subject to the provision of subchapter C, chapter 1, subtitle A, Title 26 of the United States Code, as amended;

(B) Not exempt from federal income tax pursuant to the provision of Section 501 of the Internal Revenue Code of 1986, as amended; and

(C) Not a regulated investment company as defined in Section 3 of the Investment Company Act of 1940, as amended, 15 U. S. C.80a-3: Provided, That a regulated invested company, the shares of which are held in a segregated asset account of a life insurance corporation (as described in Section 817 of the Internal Revenue Code of 1986, as amended), shall be treated as a qualified regulated investment company.

(29) Real estate investment trust.-- The term "real estate investment trust" has the meaning ascribed to such term in Section 856 of the Internal Revenue Code of 1986, as amended.

(30) Regulated investment company.-- The term "regulated investment company" has the same meaning as ascribed to such term in Section 851 of the Internal Revenue Code of 1986, as amended.

(31) Related entity. -- "Related entity" means: (A) A stockholder who is an individual or a member of the stockholder's family set forth in Section 318 of the Internal Revenue Code if the stockholder and the members of the stockholder's family own, directly,

indirectly, beneficially or constructively, in the aggregate, at least fifty percent of the value of the taxpayer's outstanding stock; (B) a stockholder, or a stockholder's partnership, limited liability company, estate, trust or corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates, trusts and corporations own directly, indirectly, beneficially or constructively, in the aggregate, at least fifty percent of the value of the taxpayer's outstanding stock; or (C) a corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of the Internal Revenue Code if the taxpayer owns, directly, indirectly, beneficially or constructively, at least fifty percent of the value of the corporation's outstanding stock. The attribution rules of the Internal Revenue Code shall apply for purposes of determining whether the ownership requirements of this definition have been met.

(32) *Related member.* -- "Related member" means a person that, with respect to the taxpayer during all or any portion of the taxable year, is: (A) A related entity; (B) a component member as defined in subsection (b), Section 1563 of the Internal Revenue Code; (C) a person to or from whom there is attribution of stock ownership in accordance with subsection (e), Section 1563 of the Internal Revenue Code; or (D) a person that, notwithstanding its form or organization, bears the same relationship to the taxpayer as a person described in subdivisions (A) through (C), inclusive, of this subsection.

~~(20)~~ (33) *Sales.*-- The term "sales" means all gross receipts of the taxpayer that are "business income", as defined in this section.

~~(21)~~ (34) *State.*-- The term "state" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States and any foreign country or political subdivision thereof.

~~(23)~~ (35) *Tax.*-- The term "tax" includes, within its meaning, interest and additions to tax, unless the intention to give it a more limited meaning is disclosed by the context.

~~(22)~~ (36) *Taxable year, tax year.* -- The term "taxable year" or "tax year" means the taxable year for which the taxable income of the taxpayer is computed under the federal income tax law.

~~(24)~~ (37) *Tax Commissioner.*-- The term "Tax Commissioner" means the Tax Commissioner of the State of West Virginia or his or her delegate.

~~(24)~~ (38) *Tax haven.* -- The term "tax haven" means a jurisdiction that, for a particular tax year in question: (A) Is identified by the Organization for Economic Cooperation and Development as a tax haven or as having a harmful preferential tax regime; or (B) a jurisdiction that has no, or nominal, effective tax on the relevant income and: (i) That has laws or practices that prevent effective exchange of information for tax purposes with other governments regarding taxpayers subject to, or benefitting from, the tax regime; (ii) that lacks transparency. For purposes of this definition, a tax regime lacks transparency if the details of legislative, legal or administrative provisions are not open to public scrutiny and apparent; or are not consistently applied among similarly situated taxpayers; (iii) facilitates the establishment of foreign-owned entities without the need for a local substantive presence or prohibits these entities from having any commercial impact on the local economy; (iv) explicitly or implicitly excludes the jurisdiction's resident taxpayers from taking advantage of the tax regime's benefits or prohibits enterprises that benefit from the regime from operating in the jurisdiction's domestic market; or (v) has created a tax regime which is favorable for tax avoidance, based upon an overall assessment of relevant factors, including whether the jurisdiction has a

significant untaxed offshore financial or other services sector relative to its overall economy. For purposes of this definition, the phrase "tax regime" means a set or system of rules, laws, regulations or practices by which taxes are imposed on any person, corporation or entity, or on any income, property, incident, indicia or activity pursuant to governmental authority.

~~(26)~~ (39) *Taxpayer.* -- The term "taxpayer" means any person subject to the tax imposed by this article.

~~(27)~~ (40) *This code.* -- The term "this code" means the Code of West Virginia, ~~one thousand nine hundred thirty-one~~ 1931, as amended.

~~(28)~~ (41) *This state.* -- The term "this state" means the State of West Virginia.

~~(29)~~ (42) "United States" means the United States of America and includes all of the states of the United States, the District of Columbia and United States territories and possessions.

~~(30)~~ (43) "Unitary business" means a single economic enterprise that is made up either of separate parts of a single business entity or of a commonly controlled group of business entities that are sufficiently interdependent, integrated and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts. For purposes of this article and article twenty-three of this chapter, any business conducted by a partnership shall be treated as conducted by its partners, whether directly held or indirectly held through a series of partnerships, to the extent of the partner's distributive share of the partnership's income, regardless of the percentage of the partner's ownership interest or the percentage of its distributive or any other share of partnership income. A business conducted directly or indirectly by one corporation through its direct or indirect interest in a partnership is unitary with that portion of a business conducted by one or more other corporations through their direct or indirect interest in a partnership if there is a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts and the corporations are members of the same commonly controlled group.

~~(31)~~ (44) *West Virginia taxable income.* -- The term "West Virginia taxable income" means the taxable income of a corporation as defined by the laws of the United States for federal income tax purposes, adjusted, as provided in this article: *Provided*, That in the case of a corporation having income from business activity which is taxable without this state, its "West Virginia taxable income" shall be ~~such~~ the portion of its taxable income as ~~so~~ defined and adjusted as is allocated or apportioned to this state under the provisions of this article.

(45) *Valid business purpose.* -- " Valid business purpose" means one or more business purposes, other than the avoidance or reduction of taxation, which alone or in combination constitute the primary motivation for a business activity or transaction, which activity or transaction changes in a meaningful way, apart from tax effects, the economic position of the taxpayer. The economic position of the taxpayer includes an increase in the market share of the taxpayer or the entry by the taxpayer into new business markets.

(b) *Effective date.* -- The amendments to this section made in the year 2009 are retroactive and are effective for tax years beginning on and after January 1, 2009.

§11-24-4b. Regulated investment companies and real estate investment trusts subject to tax Dividends paid deduction to be added back in determining net income for captive real estate investment trusts and regulated investment

companies; deductible intangible expenses and deductible interest paid to be added back in determining net income of certain entities.

~~(a) The tax imposed by this article shall be imposed upon regulated investment companies as defined by this article, and shall be computed only upon that part of the net income of the regulated investment company which is subject to federal income tax as provided in Sections 852 and 4982 of the Internal Revenue Code of 1986, as amended, except as otherwise provided in this section. The dividend paid deduction otherwise allowed by federal law in computing net income of a real estate investment trust that is subject to federal income tax shall be added back in computing the tax imposed by this article if the real estate investment trust is a captive real estate investment trust.~~

(b) The dividend paid deduction otherwise allowed by federal law in computing net income of a regulated investment company that is subject to federal income tax shall be added back in computing the tax imposed by this article unless the regulated ~~invested~~ investment company is a qualified regulated investment company; as defined in this article.

~~(c) The tax imposed by this article shall be imposed upon real estate investment trusts and shall be computed only upon that part of the net income of the real estate investment trust which is subject to federal income tax as provided in Sections 857 and 858 of the Internal Revenue Code of 1986, as amended, except as otherwise provided in this section. *Intangible expenses otherwise deductible to be added back for certain taxpayers.* –~~

~~(1) For purposes of computing its net income under this chapter, a taxpayer shall add back otherwise deductible intangible expense directly or indirectly paid, accrued or incurred in connection with one or more direct or indirect transactions with one or more related members.~~

~~(2) If the related member was subject to tax in this state or another state or possession of the United States or a foreign nation or some combination thereof on a tax base that included the intangible expense paid, accrued or incurred by the taxpayer, the taxpayer shall receive a credit against tax due in this state in an amount equal to the higher of the tax paid by the related member with respect to the portion of its income representing the intangible expense paid, accrued or incurred by the taxpayer, or the tax that would have been paid by the related member with respect to that portion of its income if: (A) That portion of its income had not been offset by expenses or losses; or (B) the tax liability had not been offset by a credit or credits. The credit determined shall be multiplied by the apportionment factor of the taxpayer in this state. However, in no case shall the credit exceed the taxpayer's liability in this state attributable to the net income taxed as a result of the adjustment required by subdivision (1) of this subsection.~~

~~(3) (A) The adjustment required in subdivision (1) of this subsection and the credit allowed in subdivision (2) of this subsection shall not apply to the portion of the intangible expense that the taxpayer establishes by clear and convincing evidence meets both of the following requirements: (i) The related member during the same taxable year directly or indirectly paid, accrued or incurred a portion to a person that is not a related member; and (ii) the transaction giving rise to the intangible expense between the taxpayer and the related member was undertaken for a valid business purpose.~~

~~(B) The adjustment required in subdivision (1) of this subsection and the credit allowed in subdivision (2) of this subsection shall not apply if the taxpayer establishes by clear and convincing evidence of the type and in the form specified by the Tax Commissioner~~

that: (i) The related member was subject to tax on its net income in this state or another state or possession of the United States or some combination thereof; (ii) the tax base for said tax included the intangible expense paid, accrued or incurred by the taxpayer; and (iii) the aggregate effective rate of tax applied to the related member is no less than the tax rate imposed under this article.

(C) The adjustment required in subdivision (1) of this subsection and the credit allowed in subdivision (2) of this subsection shall not apply if the taxpayer establishes by clear and convincing evidence of the type and in the form specified by the commissioner that:

(i) The intangible expense was paid, accrued or incurred to a related member organized under the laws of a country other than the United States; (ii) the related member's income from the transaction was subject to a comprehensive income tax treaty between that country and the United States; (iii) the related member's income from the transaction was taxed in that country at a tax rate at least equal to that imposed by this state; and (iv) the intangible expense was paid, accrued or incurred pursuant to a transaction that was undertaken for a valid business purpose and using terms that reflect an arm's length relationship.

(D) The adjustment required in subdivision (1) of this subsection and the credit allowed in subdivision (2) of this subsection shall not apply if the corporation and the commissioner agree in writing to the application or use of alternative adjustments or computations. The commissioner may, in his or her discretion, agree to the application or use of alternative adjustments or computations when he or she concludes that in the absence of agreement the income of the taxpayer would not be reflected accurately.

~~(d) The dividend paid deduction otherwise allowed by federal law in computing net income of real estate investment trusts that is subject to federal income tax shall be added back in computing the tax imposed by this article unless the real estate investment trust is either:~~

~~(1) Publicly traded on an established securities market; or,~~

~~(2) A qualified real estate investment trust, as defined in this article.~~

Interest expense otherwise deductible to be added back for certain taxpayers. --

(1) For purposes of computing its net income under this chapter, a taxpayer shall add back otherwise deductible interest paid, accrued or incurred to a related member during the taxable year.

(2) If the related member was subject to tax in this state or another state or possession of the United States or a foreign nation or some combination thereof on a tax base that included the interest expense paid, accrued or incurred by the taxpayer, the taxpayer shall receive a credit against tax due in this state equal to the higher of the tax paid by the related member with respect to the portion of its income representing the interest expense paid, accrued or incurred by the taxpayer, or the tax that would have been paid by the related member with respect to that portion of its income if: (A) That portion of its income had not been offset by expenses or losses; or (B) the tax liability had not been offset by a credit or credits. The credit determined shall be multiplied by the apportionment factor of the taxpayer in this state. However, in no case shall the credit exceed the taxpayer's liability in this state attributable to the tax imposed under this article as a result of the adjustment required by subdivision (1) of this subsection.

(3) (A) The adjustment required in subdivision (1) of this subsection and the credit allowed in subdivision (2) of this subsection shall not apply if the taxpayer establishes by clear and convincing evidence, of the type and in the form determined by the commissioner, that: (i) The transaction giving rise to interest expense between the

taxpayer and the related member was undertaken for a valid business purpose; and (ii) the interest expense was paid, accrued or incurred using terms that reflect an arm's length relationship.

(B) The adjustment required in subdivision (1) of this subsection and the credit allowed in subdivision (2) of this subsection shall not apply if the taxpayer establishes by clear and convincing evidence of the type and in the form specified by the commissioner that: (i) The related member was subject to tax on its net income in this state or another state or possession of the United States or some combination thereof; (ii) the tax base for said tax included the interest expense paid, accrued or incurred by the taxpayer; and (iii) the aggregate effective rate of tax applied to the related member is no less than the statutory rate of tax applied to the taxpayer under this chapter.

(C) The adjustment required in subdivision (1) of this subsection and the credit allowed in subdivision (2) of this subsection shall not apply if the taxpayer establishes by clear and convincing evidence of the type and in the form specified by the commissioner that: (i) The interest expense is paid, accrued or incurred to a related member organized under the laws of a country other than the United States; (ii) the related member's income from the transaction is subject to a comprehensive income tax treaty between that country and the United States; (iii) the related member's income from the transaction is taxed in that country at a tax rate at least equal to that imposed by this state; and (iv) the interest expense was paid, accrued or incurred pursuant to a transaction that was undertaken for a valid business purpose and using terms that reflect an arm's length relationship.

(D) The adjustment required in subdivision (1) of this subsection and the credit allowed in subdivision (2) of this subsection shall not apply if the corporation and the commissioner agree in writing to the application or use of alternative adjustments or computations. The commissioner may, in his or her discretion, agree to the application or use of alternative adjustments or computations when he or she concludes that in the absence of agreement the income of the taxpayer would not be properly reflected.

(e) Nothing in this subsection shall be construed to limit or negate the commissioner's authority to otherwise enter into agreements and compromises otherwise allowed by law.

(f) *Effective date.* -- The amendments to this section made in the year 2009 are retroactive and are effective for tax years beginning on and after January 1, 2009.

CHAPTER 18. EDUCATION.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-2a. Definition of levies for general current expense purposes.

(a) For the purposes of this section only, "property" means only Classes II, III and IV properties exclusive of natural resources property as defined in section ten, article one-c, chapter eleven of this code, personal property, farmland, managed timberland, public utility property or any other centrally assessed property provided in paragraphs (A), (B), (C) and (D), subdivision (2), subsection (a), section five, article one-c, chapter eleven of this code: *Provided*, That nothing in this subsection may be construed to require that levies for general current expense purposes be applied only to those properties that are included in this definition.

(b) For the purposes of this section only, the median ratio of the assessed values to actual selling prices in the assessment ratio study applicable to the immediately preceding fiscal year shall be used as the indicator to determine the percentage market value that properties are being assessed at.

(c) Notwithstanding any other provision of this section or section two of this article, effective ~~the first day of July 1, two thousand ten~~ 2013, for any county that is not assessing property at least at fifty-four percent of market value, "levies for general current expense purposes" means ninety-eight percent of the levy rate for county boards of education set by the Legislature pursuant to section six-f, article eight, chapter eleven of this code.

(d) Any county that receives additional state aid due to its using a percentage less than ninety-eight percent in the calculation of levies for general current expense purposes, shall report to the state board how the additional state aid was used. The state board shall compile the reports from all the county boards into a single report, and shall report to the Legislative Oversight Commission on Education Accountability how the county boards used this additional state aid. The report shall be made annually as soon as practical after the end of each fiscal year.

CHAPTER 21A. UNEMPLOYMENT COMPENSATION.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-1c. Voluntary withholding program.

(a) An individual filing a new claim for unemployment compensation shall, at the time of filing ~~such~~ the claim, be advised by the appropriate bureau employee that:

(1) Unemployment compensation is subject to federal and state income tax;

(2) Requirements exist pertaining to estimated tax payments;

(3) The individual may elect to have federal and state income tax deducted and withheld from the individual's payment of unemployment compensation at the ~~amount specified in the appropriate federal internal revenue code~~ and state withholding rate; and

(4) The individual may change a previously elected withholding status.

(b) Amounts deducted and withheld from unemployment compensation shall remain in the unemployment fund until transferred to the appropriate federal or state taxing authority as payment of income tax.

(c) The commissioner shall follow all procedures specified by the United States ~~d~~Department of ~~L~~abor, ~~and the federal i~~nternal ~~r~~evenue ~~s~~ervice and the West Virginia State Tax Division pertaining to the deducting and withholding of income tax.

(d) Amounts shall be deducted and withheld in accordance with the priorities established in rules developed by the commissioner.

(e) Effective date. -- The amendments made to ~~T~~his section regarding withholding for state income tax shall ~~not~~ be effective for payments made on and after ~~the thirty-first day of December,~~ January 1, one thousand nine hundred and ninety-six 2010.



Dr. Steven L. Paine
State Superintendent of Schools