

FOREWORD

The West Virginia Department of Education is pleased to prepare the Informal Guidelines for Implementing Public Education Bills Enacted in the Regular Session 2015 as a document to assist educators and others in understanding and implementing education bills enacted by this year's Legislature.

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

For each of the acts included in this publication, the format is as follows: bill number and title, effective date, code reference, and WVDE contact. 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 2015 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/2015greenbook.pdf>.

Please feel free to call or write if you need additional information regarding bills enacted during the 2015 regular session of the West Virginia Legislature.

Michael J. Martirano, Ed.D.
State Superintendent of Schools

CODE CHANGES

NEW CODE	REVISED CODE	
§5-10-21a	§5-10-2	§18A-3-1
§5-22-3	§5-10-14	§18A-3-1a
§8-22A-8a	§5-10-15	§18A-3-1b
§15-2-54	§5-10-15a	§18A-3-2a
§15-2A-23	§5-10-20	§18A-4-8
§15-5-6a	§5-10-21	§18A-4-8a
§16-2-16	§5-10-29	§18A-4-8b
§18-2-32	§5-10-44	§18C-4A-1
§18-2-40	§5-10A-2	§18C-4A-2
§18-7A-17a	§5-10A-6	§18C-4A-3
§18-7A-25b	§5-13-2	§21-5-1
§18-8-12	§5-16-13	§21-5-3
§18A-3-1c	§5A-3-1	§21-5-4
§18a-3-1d	§5A-3-3	§21-5A-1
§18A-3-1e	§7-14D-7a	§21-5A-2
§18A-3-1f	§8-22A-8	§21-5A-3
§18A-3-1g	§15-2A-21	§21-5A-5
§18A-3-1h	§16-3-4	§21-5A-6
§18A-3-1i	§16-3-5	§21-5A-8
§18A-4-2c	§16-3D-2	§21-5A-10
§18B-1B-7	§16-3D-3	§21-5A-11
§21-5A-12	§16-5V-8a	§49-1-201
§27-6-1	§18-2-5	§49-1-206
§49-2-126	§18-2-9	§49-2-803
§49-2-814	§18-2-26	§49-2-812
§49-2-912	§18-2E-5	§49-2-907
§49-2-913	§18-2E-7	§49-2-1002
§49-4-413	§18-5-11a	§49-2-1003
§49-4-702a	§18-5-18	§49-4-403
§49-4-724	§18-5-19	§49-4-406
§49-4-725	§18-5-19d	§49-4-409
§49-5-106	§18-7A-14C	§49-4-413
§51-9-18	§18-7A-17	§49-4-702
§55-7E-1	§18-7A-23	§49-4-711
§55-7E-2	§18-7A-25	§49-4-712
§55-7E-3	§18-7B-21	§49-4-714
§61-8-29	§18-8-4	§49-4-718
	§18-9A-7	§49-4-719
	§18-9A-10	§49-5-103
	§18-17D-6	§61-7-11a
	§18-20-2	§62-12-26
	§18A-2-3	

TABLE OF CONTENTS

BILL NUMBER	SUBJECT	PAGE NUMBERS
Regular Session Bills		
SB 7	Requiring CPR and care for conscious choking instruction in public school.....	1
	§18-2-9	
SB 12	Relating to payment of separated employee's outstanding wages	4
	§21-5-1 §21-5-4	
SB 60	Regulating food handlers	7
	§16-2-16	
SB 238	Limiting certain county board of education liability arising from unorganized recreation	9
	§18-5-19 §18-5-19d	
SB 243	Relating to school nutrition standards during state of emergency or preparedness.....	12
	§15-5-6a	
SB 286	Relating to compulsory immunizations of students; exemptions.....	14
	§16-3-4 §16-3-5	
SB 287	Providing posthumous high school diplomas	18
	§18-2-32	
SB 302	Relating to state retirement plans	20
	§5-10A-2 §5-10A-6	
SB 318	Relating to payment of wages by employers.....	23
	§21-5-3	
SB 342	Clarifying scope, application and requirements for error corrections by CPRB	25
	§5-10-44 §7-14D-7a §8-22A-8	
	§8-22A-8a §15-2-54 §15-2A-23	
	§16-5V-8a §18-7A-14c §18-7B-21	
	§51-9-18	
SB 344	Relating to duty to mitigate damages in employment claims	42
	§55-7E-1 §55-7E-2 §55-7E-3	
SB 361	Eliminating prevailing hourly wage requirement for construction of public improvements	44
	§21-5A-1 §21-5A-2 §21-5A-3	
	§21-5A-5 §21-5A-6 §21-5A-8	
	§21-5A-10 §21-5A-11 §21-5A-12	
SB 393	Reforming juvenile justice system.....	51
	§49-1-206 §49-2-907 §49-2-912	

	§49-2-913	§49-2-1002	§49-2-1003	
	§49-4-403	§49-4-406	§49-4-409	
	§49-4-413	§49-4-702	§49-4-702a	
	§49-4-711	§49-4-712	§49-4-714	
	§49-4-718	§49-4-719	§49-4-724	
	§49-4-725	§49-5-103	§49-5-106	
SB 409	Establishing Fair and Open Competition in Governmental Construction Act.....			85
	§5-22-3			
SB 447	Allowing issuance of diploma by public, private or home school administrator.....			88
	§18-8-12			
SB 529	Relating to PERS, SPRS and TRS benefits and costs			90
	§5-10-2	§5-10-14	§5-10-15	
	§5-10-15a	§5-10-20	§5-10-21	
	§5-10-21a	§5-10-29	§5-13-2	
	§5-16-13	§15-2A-21	§18-7A-17	
	§18-7A-17a	§18-7A-23	§18-7A-25	
	§18-7A-25b	§18-17D-6		
HB 2005	Relating to alternative programs for the education of teachers.....			126
	§18A-3-1	§18A-3-1a	§18A-3-1b	
	§18A-3-1c	§18A-3-1d	§18A-3-1e	
	§18A-3-1f	§18A-3-1g	§18A-3-1h	
	§18A-3-1i	§18A-3-2a		
HB 2025	Prohibiting certain sex offenders from loitering within one thousand feet of a school or child care facility.....			148
	§61-8-29	§62-12-26		
HB 2139	Relating to employment of retired teachers as substitutes in areas of critical need and shortage for substitutes.....			153
	§18A-2-3			
HB 2140	Building governance and leadership capacity of county board during period of state intervention.....			158
	§18-2E-5			
HB 2370	Increasing the powers of regional councils for governance of regional education service agencies.....			171
	§18-2-26			
HB 2377	Authorizing State Board of Education to approve certain alternatives with respect to instructional time			176
	§18-2-5			
HB 2381	Providing a teacher mentoring increment for classroom teachers with national board certification who teach and mentor at certain schools			181
	§18A-4-2c			
HB 2478	Relating to public school finance.....			183
	§18-9A-7			
HB 2502	Possessing deadly weapons on school buses or on the premises of educational facilities....			186
	§61-7-11a			

HB 2527	Creating a Task Force on Prevention of Sexual Abuse of Children; "Erin Merryn's Law"	190
	§49-2-126 §49-2-814	
HB 2535	Relating generally to suicide prevention training, "Jamie's Law"	195
	§18-2-40 §18B-1B-7 §27-6-1	
HB 2550	Increasing the number of unexcused absences of a student before action may be taken against the parent.....	198
	§18-8-4	
HB 2598	Ensuring that teachers of students with disabilities receive complete information about the school's plan for accommodating the child's disabilities	202
	§18-20-2	
HB 2632	Exempting the procurement of certain instructional materials for use in and in support of public schools from the division of purchasing requirements.....	205
	§5A-3-1 §5A-3-3 §18-2E-7	
	§18-9A-10	
HB 2645	Expanding the availability of the Underwood-Smith Teacher Loan Assistance Program	214
	§18C-4A-1 §18C-4A-2 §18C-4A-3	
HB 2669	Relating to compulsory tuberculosis testing	217
	§16-3D-2 §16-3D-3	
HB 2702	Redefining service personnel class titles of early childhood classroom assistant teacher	220
	§18-5-18 §18A-4-8 §18A-4-8a	
	§18-4-8b	
HB 2755	Relating to service and professional employee positions at jointly established schools	241
	§18-5-11a	
HB 2764	Making a supplementary appropriation to the State Department of Education - School Building Authority.....	245
	None	
HB 2939	Relating to requirements for mandatory reporting of sexual offenses on school premises involving students	247
	§49-1-201 §49-2-803 §49-2-812	
HB 3022	Making a supplementary appropriation to the Treasurer's Office, to the State Board of Education, to Mountwest Community and Technical College, to the West Virginia School of Osteopathic Medicine, and to West Virginia State University	253
	None	

Senate Bill 7 **Requiring CPR and care for conscious choking instruction in public schools**

Effective Date: July 1, 2015

Code Reference: Amends §18-2-9

WVDE Contact: Josh Grant, Office of Secondary Learning
jgrant@k12.wv.us; 304.558.5325

Major Provisions

- While CPR is currently being taught in WV schools, prior to the passage of the bill, there was no statutory requirement for students to receive instruction on CPR. The bill requires as part of health education, students receive a minimum of 30 minutes of CPR instruction, which is to include instruction in the care for conscious choking and recognition of symptoms of drug or alcohol overdose. The required 30 minutes of CPR instruction is a minimum requirement, and a local school district may offer CPR instruction for longer periods of time.
- The CPR instruction must be based on an instructional program established by the American Heart Association (AHA), the Red Cross, or another nationally recognized program. The required CPR instruction may be given by community members, such as EMTs, paramedics, police officers, firefighters, etc., or representatives of the AHA or Red Cross. The legislation encourages community members providing instruction to also provide necessary instructional resources at no costs to schools.
- In CPR course instruction that results in certification being earned, such instruction must be provided by an authorized CPR instructor.
- The bill removes the criminal penalty currently included in §18-2-9, which subjected a person to a misdemeanor offense for failure to ensure required courses of instruction were taught in accordance with this section of code.

§18-2-9. Required courses of instruction; ~~violation and penalty.~~

(a) In all public, private, parochial and denominational schools located within this state, there shall be given prior to the completion of the eighth grade at least one year of instruction in the history of the State of West Virginia. The schools shall require regular courses of instruction by the completion of the twelfth grade in the history of the United States, in civics, in the Constitution of the United States, and in the government of the State of West Virginia for the purpose of teaching, fostering and perpetuating the ideals, principles and spirit of political and economic democracy in America and increasing the knowledge of the organization and machinery of the government of the United States and of the State of West Virginia. The state board shall, with the advice of the state superintendent, prescribe the courses of study covering these subjects for the public schools. It shall be the duty of the officials or boards having authority over the respective private, parochial and denominational schools to prescribe courses of study for the schools under their control and supervision similar to those required for the public schools. To further such study, every high school student eligible by age for voter registration shall be afforded the opportunity to register to vote pursuant to section twenty-two, article two, chapter three of this code.

(b) The state board shall cause to be taught in all of the public schools of this state the subject of health education, including instruction in any of the grades six through twelve as considered appropriate by the county board, on: (1) The prevention, transmission and spread of acquired immune deficiency syndrome and other sexually transmitted diseases; (2) substance abuse, including the nature of alcoholic drinks and narcotics, tobacco products and other potentially harmful drugs, with special instruction as to their effect upon the human system and upon society in general; (3) the importance of healthy eating and physical activity to maintaining healthy weight; and (4) education concerning CPR cardiopulmonary resuscitation and first aid, including instruction in the care for conscious choking, and recognition of symptoms of drug or alcohol overdose. The course curriculum requirements and materials for the instruction shall be adopted by the state board by rule in consultation with the Department of Health and Human Resources. The state board shall prescribe a standardized health education assessment to be administered within health education classes to measure student health knowledge and program effectiveness.

(c) An opportunity shall be afforded to the parent or guardian of a child subject to instruction in the prevention, transmission and spread of acquired immune deficiency syndrome and other sexually transmitted diseases to examine the course curriculum requirements and materials to be used in the instruction. The parent or guardian may exempt the child from participation in the instruction by giving notice to that effect in writing to the school principal.

~~(c) Any Person violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not exceeding ten dollars for each violation, and each week during which there is a violation shall constitute a separate offense. If the person so convicted occupy a position in connection with the public schools, that person shall automatically be removed from that position and shall be ineligible for reappointment to that or a similar position for the period of one year.~~

(d) After July 1, 2015, the required instruction in cardiopulmonary resuscitation in subsection (b) of this section shall include at least thirty minutes of instruction for each student prior to graduation on the proper administration of cardiopulmonary resuscitation (CPR) and the psychomotor skills necessary to perform cardiopulmonary resuscitation. The term "psychomotor skills" means the use of hands-on practicing to support cognitive learning. Cognitive-only training does not qualify as "psychomotor skills". The CPR instruction must be based on an instructional program established by the American Heart Association or the American Red Cross or another program which is nationally recognized and uses the most current national evidence-based Emergency Cardiovascular Care guidelines and incorporates psychomotor skills development into the instruction. A licensed teacher is not required to be a certified trainer of cardiopulmonary resuscitation to facilitate, provide or oversee such instruction. The instruction may be given by community members, such as emergency medical technicians, paramedics, police officers, firefighters, licensed nurses and representatives of the American Heart Association or the American Red Cross. These community members are encouraged to provide necessary training and instructional resources such as cardiopulmonary resuscitation kits and other material at no cost to the schools. The

requirements of this subsection are minimum requirements. A local school district may offer CPR instruction for longer periods of time and may enhance the curriculum and training components, including, but not limited to, incorporating into the instruction the use of an automated external defibrillator (AED):
Provided, That any instruction that results in a certification being earned must be taught by an authorized CPR/AED instructor.

Bill Sponsors: Senators Stollings, Boley, Ferns, Gaunch, D. Hall, M. Hall, Walters, Blair, Plymale, Unger, Kirkendoll, Kessler, Facemire, Cole (Mr. President), Takubo and Williams

Senate Bill 12 **Relating to payment of separated employee's outstanding wages**

Effective Date: June 11, 2015

Code Reference: Amends §21-5-1 and §21-5-4

WVDE Contact: Amy Willard, Office of School Finance
awillard@k12.wv.us; 304.558.6300

Major Provisions

- Currently, all State employers must settle with employees once every two weeks. Upon the effective date of this bill, that time frame is extended from every two weeks to twice every month (which is the practice currently followed by every county board through a special blanket waiver issued by the State Division of Labor).
- A requirement has been added that mandates there be no more than nineteen (19) days between settlements.

§21-5-1. Definitions.

As used in this article:

(a) The term "firm" includes any partnership, association, joint-stock company, trust, division of a corporation, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same, or officer thereof, employing any person.

(b) The term "employee" or "employees" includes any person suffered or permitted to work by a person, firm or corporation.

(c) The term "wages" means compensation for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission or other basis of calculation. As used in sections four, five, eight-a, ten and twelve of this article, the term "wages" shall also include then accrued fringe benefits capable of calculation and payable directly to an employee: *Provided*, That nothing herein contained shall require fringe benefits to be calculated contrary to any agreement between an employer and his or her employees which does not contradict the provisions of this article.

(d) The term "commissioner" means Commissioner of Labor or his or her designated representative.

(e) The term "railroad company" includes any firm or corporation engaged primarily in the business of transportation by rail.

(f) The term "special agreement" means an arrangement filed with and approved by the commissioner whereby a person, firm or corporation is permitted upon a compelling showing of good cause to establish regular paydays less frequently than once in every two weeks: *Provided*, That in no event shall the employee be paid in full less frequently than once each calendar month on a regularly established schedule.

(g) The term "deductions" includes amounts required by law to be withheld, and amounts authorized for union or club dues, pension plans, payroll savings plans, credit unions, charities and hospitalization and medical insurance.

(h) The term "officer" shall include officers or agents in the management of a corporation or firm, who knowingly permit the corporation or firm to violate the provisions of this article.

(i) The term "wages due" shall include at least all wages earned up to and including the ~~fifth~~ twelfth day immediately preceding the regular payday.

(j) The term "construction" means the furnishing of work in the fulfillment of a contract for the construction, alteration, decoration, painting or improvement of a new or existing building, structure, roadway or pipeline, or any part thereof, or for the alteration, improvement or development of real property: *Provided*, That construction performed for the owner or lessee of a single family dwelling or a family farming enterprise is excluded.

(k) The term "minerals" means clay, coal, flagstone, gravel, limestone, manganese, sand, sandstone, shale, iron ore and any other metallurgical ore.

(l) The term "fringe benefits" means any benefit provided an employee or group of employees by an employer, or which is required by law, and includes regular vacation, graduated vacation, floating vacation, holidays, sick leave, personal leave, production incentive bonuses, sickness and accident benefits and benefits relating to medical and pension coverage.

(m) The term "employer" means any person, firm or corporation employing any employee.

(n) The term "doing business in this state" means having employees actively engaged in the intended principal activity of the person, firm or corporation in West Virginia.

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

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

(b) Whenever a person, firm or corporation discharges an employee, or whenever an employee quits or resigns from employment, the person, firm or corporation shall pay the employee's wages in full no later than due for work that the employee performed prior to the separation of employment on or before the next regular payday or four business days, whichever comes first. Payment shall be made through the regular pay channels or, if requested by the employee, by mail on which the wages would otherwise be due and payable: Provided, That fringe benefits, as defined in section one of this article, that are provided an employee pursuant to an agreement between the employee and employer and that are due, but pursuant to the terms of the agreement, are to be paid at a future date or upon additional conditions which are ascertainable are not subject to this subsection and are not payable on or before the next regular payday, but shall be paid according to the terms of the agreement. For purposes of this section, "business day" means any day other than Saturday, Sunday or any legal holiday as set forth in section one, article two, chapter two of this code.

(c) ~~Whenever an employee quits or resigns, the person, firm or corporation shall pay the employee's wages in full no later than the next regular payday. Payment shall be made under this section may be made in person in any manner permissible under section three of this article, through the regular pay channels or, if requested by the employee, by mail. However, If the employee gives at least one pay period's written notice of intention to quit, the person, firm or corporation shall pay all wages earned by the employee at the time of quitting requests that payment under this section be made by mail, that payment shall be considered to have been made on the date the mailed payment is postmarked.~~

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

(e) If a person, firm or corporation fails to pay an employee wages as required under this section, the person, firm or corporation, in addition to the amount which was unpaid when due, is liable to the employee for ~~three~~ two times that unpaid amount as liquidated damages. This section regulates the timing of wage payments upon separation from employment and not whether overtime pay is due. Liquidated damages that can be awarded under this section are not available to employees claiming they were misclassified as exempt from overtime under state and federal wage and hour laws. Every employee shall have a lien and all other rights and remedies for the protection and enforcement of his or her salary or wages, as he or she would have been entitled to had he or she rendered service therefor in the manner as last employed; except that, for the purpose of liquidated damages, the failure shall not be deemed to continue after the date of the filing of a petition in bankruptcy with respect to the employer if he or she is adjudicated bankrupt upon the petition.

Bill Sponsors: Senators Carmichael, Boley, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Mullins, Sypolt, Nohe, Trump, Blair and Cole (Mr. President)

Senate Bill 60 **Regulating food handlers**

Effective Date: June 12, 2015

Code Reference: Adds §16-2-16

WVDE Contact: Rick Goff, Office of Child Nutrition
rjgoff@k12.wv.us; 304.558.2709

Major Provisions

- Specifies that a food handler permit or card issued pursuant to the procedures of a local county health department shall be valid for at least one year but not longer than three years;
- Further specifies that the permit or card shall be valid in all counties of the State, if the applicant pays an additional fee, not to exceed \$10;
- States that if required (by a county health department), a permit or card shall be obtained within thirty days of a person being hired in a restaurant or other applicable food establishment;
- Requires the Bureau for Public Health to develop minimum guidelines for training programs for individuals seeking a food handler permit or card that may be adopted by local county health departments;
- Allows county health departments to use training courses developed by the American National Standards Institute or other nationally recognized entities for food safety training in lieu of state guidelines.

§16-2-16. Food handler examinations and cards.

A food handler permit or card issued pursuant to the procedures put in place by a local county health department shall be valid for at least one year but not longer than three years. The permit or card shall be valid in all counties of this state, if the applicant pays an additional fee not to exceed \$10. If required, a permit or card shall be obtained within thirty days of a person being hired in a restaurant or other applicable food establishment. The Bureau for Public Health shall develop minimum guidelines for training programs for individuals seeking a food handler permit or card that may be adopted by local county health departments. In lieu of state guidelines a local health department may use training courses developed by the American National Standards Institute or other nationally recognized entities for food safety training.

Bill Sponsors: Senators Williams and Sypolt

Senate Bill 238 **Limiting certain county board of education liability arising from unorganized recreation**

Effective Date: May 26, 2015

Code Reference: Amends §18-5-19 and §18-5-19d

WVDE Contact: Heather Hutchens, Office of Legal Services
hhutchens@k12.wv.us ; 304.558.3667

Major Provisions

- The bill aims to encourage county boards of education to open school facilities for unorganized recreational purposes by limiting the county board's liability for loss or injury that occurs when such facilities are being used for unorganized recreational purposes.
- A county board will be liable for loss or injury that occurs during the use of school facilities if the county board acts in a manner that constitutes "gross negligence" or "willful and wanton" conduct, and such actions are the proximate cause of the loss or injury sustained on the school facilities.

§18-5-19. Night schools and other school extension activities; use of school property for public meetings, etc.

County boards ~~shall have~~ may establish and maintain evening classes or night schools, continuation or part-time day schools, alternative schools, and vocational schools, wherever practicable to do so, and shall admit ~~thereto~~ adult persons and all other persons, including persons of foreign birth. County boards may admit school-age children and youth to these classes or schools under the circumstances prescribed by a State Board of Education policy governing alternative education programs. County boards ~~shall have authority to~~ may use school funds for the financial support of such schools and to use the schoolhouses and their equipment for ~~such~~ these purposes. Any such classes or schools shall be conducted in accordance with the rules of the state board.

County boards ~~shall have authority to~~ may provide for the free, comfortable and convenient use of any school property to promote and facilitate frequent meetings and associations of the people for discussion, study, recreation and other community activities, and may secure, assemble and house material for use in the study of farm, home and community problems, and may provide facilities for the dissemination of information useful on the farm, in the home or in the community.

In addition to the liability protection for organized use outlined in section nineteen-d of this article, county boards are not liable for any loss or injury arising from the use of school property made available for unorganized recreation. County boards are liable for their acts or omissions which constitute gross negligence or willful and wanton conduct which is the proximate cause of injury or property damage.

§18-5-19d. Conditional immunity from liability for community activities; liability insurance; authority of State Board of Risk and Insurance Management.

(a)(1) If the requirements of this subsection are met, the board of education is not liable under any theory of vicarious or imputed liability for the acts or omissions of:

(A) Any person, organization or association using school property for a community activity described in section nineteen of this article;

(B) Any member, employee or agent of such person, organization or association; or

(C) Any person attending or participating in the community activity other than an employee of the board while acting within the scope of employment.

(2) The limitation of liability extended the board of education pursuant to this subsection does not apply unless:

(A) The person, organization or association using school property for a community activity has in effect, at the time of the act or omission described in subdivision (1) of this subsection, a contract of insurance which provides general comprehensive liability coverage of any claim, demand, action, suit or judgment by reason of alleged negligence or other acts resulting in bodily injury or property damage to any person arising out of the use of school property for a community activity described in subdivision (1) of this subsection;

(B) The contract of insurance provides for the payment of any attorney fees, court costs and other litigation expenses incurred by the board in connection with any claim, demand, action, suit or judgment arising from such alleged negligence or other act; and

(C) The insurance coverage is in the amounts specified in the provisions of section five-a, article twelve, chapter twenty-nine of this code.

(3) (A) The insurance described in subdivision (2) of this subsection may be obtained privately or may be obtained pursuant to the provisions of this subdivision. If requested by any person, organization or

association seeking such insurance coverage, the State Board of Risk and Insurance Management is authorized to provide such insurance and to enter into any necessary contract of insurance to further the intent of this subdivision.

(B) Where provided by the State Board of Risk and Insurance Management, the cost of the insurance, as determined by the such board, shall be paid by the person, organization or association and may include administrative expenses. All funds received by such board shall be deposited with the West Virginia Board of Investments for investment purposes.

(C) The State Board of Risk and Insurance Management is hereby authorized and empowered to negotiate and effect settlement of any and all claims covered by the insurance provided by such board pursuant to this subdivision to the extent the board is authorized and empowered to negotiate and effect settlement of claims described in section five, article twelve, chapter twenty-nine of this code.

(4) As used in this subsection, "organization" or "association" means a bona fide, not for profit, tax-exempt, benevolent, educational, philanthropic, humane, patriotic, civic, eleemosynary, incorporated or unincorporated association or organization or a rescue unit or other similar volunteer community service organization or association, but does not include any nonprofit association or organization, whether incorporated or not, which is organized primarily for the purposes of influencing legislation or advocating or opposing the nomination, election or defeat of any candidate, or the passage or defeat of any issue, thing or item to be voted upon.

(b) In addition to the liability protection for organized use outlined in this section, county boards are not liable for any loss or injury arising from the use of school property made available for unorganized recreation. County boards are liable for their acts or omissions which constitute gross negligence or willful and wanton conduct which is the proximate cause of injury or property damage.

~~(b)~~ (c) Nothing in this section shall affect the rights, duties, defenses, immunities or causes of action under other statutes or the common law of this state which may be applicable to boards of education.

Bill Sponsors: Senators D. Hall, Nohe and Stollings

Senate Bill 243 **Relating to school nutrition standards during state of emergency or preparedness**

Effective Date: March 13, 2015

Code Reference: Adds §15-5-6a

WVDE Contact: Rick Goff, Office of Child Nutrition
rjgoff@k12.wv.us; 304.558.2709

Major Provisions

- During a declared state of emergency or state of preparedness, the Governor and Legislature have the authority to temporarily suspend legislative rules concerning public school nutrition standards. The suspension of such rules would on be effective for the geographic areas affected by the state of emergency or preparedness.
- Any food and beverages provided in such situations must be safe alternatives to foods and beverages meeting the established nutrition standards. Should legislative rules concerning public school nutrition be suspended, a report of the same must be made to the Joint Committee on Government and Finance.

§15-5-6a. Temporary suspension of nutrition standards in public schools.

This section is operative only during the existence of a state of emergency or state of preparedness proclaimed by the Governor or by concurrent resolution of the Legislature. During a state of emergency or state of preparedness, the Governor or the Legislature may, to facilitate uninterrupted days of instruction, temporarily suspend legislative rules establishing nutrition standards for foods and beverages distributed to students in public schools during the school day: *Provided*, That safe alternative foods and beverages are available for distribution to students: *Provided, however*, That the temporary suspension of nutrition standards permitted by this section is limited to the geographic area affected by the state of emergency or state of preparedness and a report of any such action be made to the Joint Committee on Government and Finance.

Bill Sponsors: Senators Cole (Mr. President) and Kessler, By Request of the Executive

Senate Bill 286 **Relating to compulsory immunizations of students; exemptions**

Effective Date: June 16, 2015

Code Reference: Amends §16-3-4 and §16-3-5

WVDE Contact: Becky King, Office of Special Programs
rjking@k12.wv.us; 304.558.8830

Major Provisions

- The bill adds the following communicable diseases that a child must be immunized against before entering school or a state-regulated child care center: chickenpox, hepatitis-b, measles, meningitis and mumps. (Diphtheria, polio, rubella, tetanus and whooping cough remain on this list.)
- A child may enter school or a state-regulated child care center without receiving one of the statutorily required vaccinations if a certification is obtained from the Commissioner for the Bureau of Public Health granting the child an exemption.
- Upon the effective date of the bill, in order to obtain an exemption, a request, accompanied by a certification from a doctor stating that the child's physical condition is such that immunization is "contraindicated or there exists a specific precaution to a particular vaccine," must be submitted to the Commissioner for the Bureau of Public Health. The bill allows the Commissioner to appoint an Immunization Officer to handle such requests. An Immunization Officer's decision on a request may be appealed to the State Health Officer. Prior to the enactment of this bill, the responsibility for allowing exemptions to statutory immunization requirements rested with the county health officer.
- The bill requires the Commissioner for the Bureau of Public Health to establish an Advisory Committee to advise the DHHR Secretary on the changing needs and opportunities for immunization from known diseases for all persons across their life span. The members of the Advisory Committee are to include representatives from the following groups: public health nursing, public health officers, primary health care providers, pediatricians, family practice physicians, health care administrators, pharmacists, the Commissioner, the health insurance industry, PEIA Director, the self-insured industry and at least three consumers.

§16-3-4. Compulsory immunization of school children; information disseminated; offenses; penalties.

(a) Whenever a resident birth occurs, the ~~state director of health~~ commissioner shall promptly provide parents of the newborn child with information on immunizations mandated by this state or required for admission to a public, private and parochial school in this state or a state-regulated child care center.

(b) ~~All children~~ Except as hereinafter provided, a child entering school for the first time or a state-regulated child care center in this state shall have been must be immunized against chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubeola, rubella, tetanus and whooping cough. Any person who cannot give satisfactory proof of having been immunized previously or a certificate from a reputable physician showing that an immunization for any or all diphtheria, polio, rubeola, rubella, tetanus and whooping cough is impossible or improper or sufficient reason why any or all immunizations should not be done, shall be immunized for diphtheria, polio, rubeola, rubella, tetanus and whooping cough prior to being admitted in any of the schools in the state.

(c) No child or person ~~shall be~~ may be admitted or received in any of the schools of the state or a state-regulated child care center until he or she has been immunized as hereinafter provided or produces a certificate from a reputable physician showing that an immunization for against chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubeola, rubella, tetanus and whooping cough ~~has been done or is impossible or improper or other sufficient reason why such immunizations have not been done~~ or produces a certificate from the commissioner granting the child or person an exemption from the compulsory immunization requirements of this section.

(d) Any ~~teacher~~ school or state-regulated child care center personnel having information concerning any person who attempts to enter be enrolled in a school for the first time or state-regulated child care center without having been immunized against chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubeola, rubella, tetanus and whooping cough shall report the names of all such persons to the ~~county health officer~~ commissioner.

(e) ~~It shall be the duty of the health officer in counties having a full-time health officer to see that such persons are immunized before entering school:~~ **Provided,** ~~That persons enrolling from schools outside of the state~~ Persons may be provisionally enrolled under minimum criteria established by the ~~director of the department of health~~ commissioner so that the person's immunization may be completed while missing a minimum amount of school.: **Provided, however,** ~~That~~ No person shall be allowed to enter school without at least one dose of each required vaccine.

(f) ~~In counties where there is no full-time health officer or district health officer, the county commission or municipal council shall appoint competent physicians to do the immunizations and fix their compensation.~~ County health departments shall furnish the biologicals for this immunization free of charge for children of parents or guardians who attest that they cannot afford or otherwise access vaccines elsewhere.

(g) Health officers and physicians who ~~shall do this immunization work~~ shall give to all persons and children provide vaccinations must present the person vaccinated with a certificate free of charge showing that they have been immunized against chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubeola, rubella, tetanus and whooping cough, or he or she may give the certificate to any person or child whom he or she knows to have been immunized against chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubeola, rubella, tetanus and whooping cough.

(h) The commissioner is authorized to grant, renew, condition, deny, suspend or revoke exemptions to the compulsory immunization requirements of this section, on a statewide basis, upon sufficient medical evidence that immunization is contraindicated or there exists a specific precaution to a particular vaccine.

(1) A request for an exemption to the compulsory immunization requirements of this section must be accompanied by the certification of a licensed physician stating that the physical condition of the child is such that immunization is contraindicated or there exists a specific precaution to a particular vaccine.

(2) The commissioner is authorized to appoint and employ an Immunization Officer to make determinations on request for an exemption to the compulsory immunization requirements of this section, on a statewide basis, and delegate to the Immunization Officer the authority granted to the commissioner by this subsection.

(3) A person appointed and employed as the Immunization Officer must be a physician licensed under the laws of this state to practice medicine.

(4) The Immunization Officer's decision on a request for an exemption to the compulsory immunization requirements of this section may be appealed to the State Health Officer.

(5) The final determination of the State Health Officer is subject to a right of appeal pursuant to the provisions of article five, chapter twenty-nine a of this code.

(i) If any A physician shall give who provides any person with a false certificate of immunization against chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubeola, rubella, tetanus and whooping cough, he or she shall be is guilty of a misdemeanor, and, upon conviction, shall be fined not less than \$25 nor more than \$100.

~~Any parent or guardian who refuses to permit his or her child to be immunized against diphtheria, polio, rubeola, rubella, tetanus and whooping cough, who cannot give satisfactory proof that the child or person has been immunized against diphtheria, polio, rubeola, rubella, tetanus and whooping cough previously, or a certificate from a reputable physician showing that immunization for any or all is impossible or improper, or sufficient reason why any or all immunizations should not be done, shall be guilty of a misdemeanor, and except as herein otherwise provided, shall, upon conviction, be punished by a fine of not less than ten nor more than fifty dollars for each offense.~~

§16-3-5. Distribution of free vaccine preventives of disease.

(a) Declaration of legislative findings and purpose. -- The Legislature finds and declares that early immunization for preventable diseases represents one of the most cost-effective means of disease prevention. The savings which can be realized from immunization, compared to the cost of health care necessary to treat the illness and lost productivity, are substantial. Immunization of children at an early age serves as a preventive measure both in time and money and is essential to maintain our children's health and well-being. The costs of childhood immunizations should not be allowed to preclude the benefits available from a comprehensive, medically supervised child immunization service. ~~Furthermore, the federal government has established goals that require ninety percent of all children to be immunized by age two and provided funding to allow uninsured children to meet this goal.~~

~~(b) The state director of health~~ Commissioner of the Bureau for Public Health shall acquire vaccine for the prevention of polio, measles, meningitis, mumps, rubella, chickenpox, diphtheria, pertussis, tetanus, hepatitis-b, haemophilus influenzae-b and other vaccine preventives of preventable diseases as may be deemed considered necessary or required by law, and shall distribute the same, free of charge, in such quantities as he or she may deem considers necessary, to county and municipal health officers public and private providers, to be used by them for the benefit of, ~~and without expense to the citizens within their respective jurisdictions,~~ to check contagions and control epidemics.

~~(c) The county and municipal health officer shall have~~ Commissioner of the Bureau for Public Health, through the immunization program, has the responsibility to properly store and distribute ensure the distribution, free of charge, of federally supplied vaccines to public and private medical or osteopathic physicians within their jurisdictions providers to be utilized used to check contagions and control epidemics: *Provided*, That the public and private medical or osteopathic physicians providers shall may not make a

charge for the vaccine itself when administering it to a patient. ~~The county and municipal health officers~~ Commissioner of the Bureau for Public Health, through the immunization program, shall provide a receipt to the state director of health for keep an accurate record of any vaccine delivered as ~~herein provided in~~ this section.

(d) ~~The director of the division of health commissioner~~ is charged with establishing a childhood an Immunization Advisory Committee ~~to plan for universal access, The advisory committee is to make recommendations on the distribution of vaccines acquired pursuant to this section, advise the secretary on the changing needs and opportunities for immunization from known diseases for all persons across their life span and tracking of immunization compliance in accordance with federal and state laws. The childhood immunization advisory committee~~ Members of the Immunization Advisory Committee shall be designated and appointed by the secretary of the department of health and human resources commissioner no later than July 1, one thousand nine hundred ninety-four, and 2015. The advisory committee shall be comprised of representatives from the following groups: Public health nursing, public health officers, primary health care providers, pediatricians, family practice physicians, health care administrators, state Medicaid program, pharmacists, the Commissioner of the Bureau for Medical Services, or his or her designee, the health insurance industry, the Director of the Public Employees Insurance Agency, or his or her designee, the self-insured industry and a minimum of three consumers. The state epidemiologist shall serve serves as an advisor to the committee. The commissioner, or his or her designee, serves as the chair of the advisory committee. Members of the advisory committee shall serve two four-year terms.

(e) An advisory committee member may not participate in a matter involving specific parties that will have a direct and predicable effect on their financial interest. An effect will not be direct in instances where the chain of causation is attenuated or is contingent upon the occurrence of events that are speculative.

~~(e)~~ (f) All health insurance policies and prepaid care policies issued in this state which provide coverage for the children of the insured shall provide coverage for child immunization services to include the cost of the vaccine, if incurred by the health care provider, and all costs of administration from birth through age sixteen eighteen years. These services shall be are exempt from any deductible, per-visit charge and/or copayment provisions which may be in force in these policies or contracts. This section does not exempt other health care services provided at the time of immunization from any deductible and/ or copayment provisions.

~~(f)~~ (g) Attending physicians, midwives, nurse practitioners, hospitals, birthing centers, clinics and other appropriate health care providers shall provide parents of newborns and preschool age children with information on the following immunizations: Diphtheria, polio, mumps, meningitis, measles, rubella, tetanus, hepatitis-b, haemophilus influenzae-b, chickenpox and whooping cough. This information should include the availability of free immunization services for children.

Bill Sponsors: Senators Ferns, Trump, D. Hall, Blair, Boley, Gaunch, Leonhardt, Mullins and Karnes

Senate Bill 287 **Providing posthumous high school diplomas**

Effective Date: June 16, 2015

Code Reference: Adds §18-2-34a

WVDE Contact: Betty Jo Jordan, Office of the Superintendent
bjordan@k12.wv.us; 304.558.2118

Major Provisions

- Upon request of a parent, guardian or custodian of a deceased student, the West Virginia Board of Education is to cause a high school diploma to be awarded to the deceased student if: (1) the student was enrolled in public school at the time of death; (2) the student was academically eligible, or on track to complete the requirements for graduation at the time of death; and (3) the student died after completion of the 11th grade.

§18-2-32. Posthumous high school diplomas.

(a) This section shall be known as “Todd’s Law”.

(b) Notwithstanding any provision of this code to the contrary, the state board shall provide for the awarding of a high school diploma to a deceased student, at the request of the parent, guardian or custodian, if the student:

(1) Was enrolled in a public school in this state at the time of death;

(2) Was academically eligible, or on track to complete the requirements for graduation at the time of death; and

(3) Died after the completion of the eleventh grade school year.

Bill Sponsors: Senators Takubo, Boley, Carmichael, Gaunch, Stollings, Walters, and Williams

Senate Bill 302 **Relating to state retirement plans**

Effective Date: May 21, 2015

Code Reference: Amends §5-10A-2 and §5-10A-6

WVDE Contact: Amy Willard, Office of School Finance
awillard@k12.wv.us; 304.558.6300

Major Provisions

- The legislation adds the West Virginia Municipal Police Officers and Firefighters Retirement System (WVMPFRS) to the definition of “retirement plan” as it relates to disqualification for public retirement plan benefits.
- The legislation specifies that any former member of the Teachers Defined Contribution Retirement System (TDC) who affirmatively elected to transfer to the State Teachers Retirement System (TRS) and whose benefits have been terminated pursuant to WVC §5-10A-5 for less than honorable service shall be refunded only the employee portion of the retirement contributions. Additionally, the earnings on those contributions and any vested employer contributions from the TDC shall remain in the TRS to be used to offset future employer contributions for each contributing employer.

§5-10A-2. Definitions.

As used in this article:

(a) "Retirement plan" or "plan" means the Public Employees Retirement Act pursuant to article ten of this chapter; each municipal employees retirement plan pursuant to article twenty-two, chapter eight of this code; each policemen's and firemen's pension and relief fund pursuant to article twenty-two, chapter eight of this code; the West Virginia Municipal Police Officers and Firefighters Retirement System pursuant to article twenty-two-a, chapter eight of this code; the West Virginia State Police Death, Disability and Retirement Fund pursuant to article two, chapter fifteen of this code; the West Virginia State Police Retirement System pursuant to article two-a, chapter fifteen of this code; the State Teachers Retirement System pursuant to article seven-a, chapter eighteen of this code; the Teachers' Defined Contribution Retirement System pursuant to article seven-b, chapter eighteen of this code; the Deputy Sheriff Retirement System pursuant to article fourteen-d, chapter seven of this code; the higher education retirement plan and supplemental retirement plans pursuant to section four-a, article twenty-three, chapter eighteen of this code; the Judges' Retirement System pursuant to article nine, chapter fifty-one of this code; the West Virginia Emergency Medical Services Retirement System pursuant to article five-v, chapter sixteen of this code; and any other plan established pursuant to this code for the payment of pension, annuity, disability or other benefits to any person by reason of his or her service as an officer or employee of this state or of any political subdivision, agency or instrumentality thereof, whenever the plan is supported, in whole or in part, by public funds.

(b) "Beneficiary" means any person eligible for or receiving benefits on account of the service for a public employer by a participant or former participant in a retirement plan.

(c) "Benefits" means pension, annuity, disability or any other benefits granted pursuant to a retirement plan.

(d) "Conviction" means a conviction on or after the effective date of this article in any federal or state court of record whether following a plea of guilty, not guilty or nolo contendere and whether or not the person convicted was serving as an officer or employee of a public employer at the time of the conviction.

(e) "Former participant" means any person who is no longer eligible to receive any benefit under a retirement plan because full distribution has occurred.

(f) "Less than honorable service" means:

(1) Impeachment and conviction of a participant or former participant under the provisions of section nine, article four of the Constitution of West Virginia, except for a misdemeanor;

(2) Conviction of a participant or former participant of a felony for conduct related to his or her office or employment which he or she committed while holding the office or during the employment; or

(3) Conduct of a participant or former participant which constitutes all of the elements of a crime described in either subdivision (1) or (2) of this subsection but for which the participant or former participant was not convicted because:

(i) Having been indicted or having been charged in an information for the crime, he or she made a plea bargaining agreement pursuant to which he or she pleaded guilty to or nolo contendere to a lesser crime: *Provided*, That the lesser crime is a felony containing all the elements described in subdivision (1) or (2) of this subsection; or

(ii) having been indicted or having been charged in an information for the crime, he or she was granted immunity from prosecution for the crime.

(g) "Participant" means any person eligible for or receiving any benefit under a retirement plan on account of his or her service as an officer or employee for a public employer.

(h) "Public employer" means the State of West Virginia and any political subdivision, agency, or instrumentality thereof for which there is established a retirement plan.

(i) "Supervisory board" or "board" means the Consolidated Public Retirement Board; the board of trustees of any municipal retirement fund; the board of trustees of any policemen's or firemen's retirement plan; the governing board of any supplemental retirement plan instituted pursuant to authority granted by the previous provisions of section four-a, article twenty-three, chapter eighteen of this code; and any other board, commission or public body having the duty to supervise and operate any retirement plan.

§5-10A-6. Refund of contributions.

The supervisory board shall refund to a participant or beneficiary terminated from benefits by section five of this article the contributions of the participant in the same manner and with the same interest as provided to those participants or beneficiaries otherwise eligible to withdraw the participant's contributions under the retirement plan, less the amount of any benefits which the participant or his or her beneficiaries have previously received: *Provided*, That a member of the Teachers' Defined Contribution Retirement System whose benefits have been terminated pursuant to section five of this article shall be refunded only his or her employee contributions and the earnings on those contributions; and any vested employer contributions shall remain in the Teachers' Defined Contribution Retirement System and be used to offset future employer contributions for each contributing employer; *Provided, however*, That any former member of the Teachers' Defined Contribution Retirement System who affirmatively elected to transfer to the State Teachers' Retirement System pursuant to article seven-d, chapter eighteen of this code and whose benefits have been terminated pursuant to section five of this article shall be refunded only his or her employee contributions and the earnings on those contributions; and any vested employer contributions from the Teachers' Defined Contribution Retirement System shall remain in the State Teachers Retirement System to be used to offset future employer contributions for each contributing employer.

Bill Sponsors: Senators Gaunch and Trump

Senate Bill 318 **Relating to payment of wages by employers**

Effective Date: June 12, 2015

Code Reference: Amends §21-5-3

WVDE Contact: Amy Willard, Office of School Finance
awillard@k12.wv.us; 304.558.6300

Major Provisions

- Upon the effective date of the bill, the time frame that State employers must settle with its employees is extended from every two weeks to twice every month (which is the practice currently followed by every county board through a special blanket waiver issued by the State Division of Labor).
- The bill adds a requirement that there can be no more than nineteen (19) days between settlements.

§21-5-3. Payment of wages by employers other than railroads; assignments of wages.

(a) Every person, firm or corporation doing business in this state, except railroad companies as provided in section one of this article, shall settle with its employees at least ~~once in every two weeks~~ twice every month and with no more than nineteen days between settlements, unless otherwise provided by special agreement, and pay them the wages due, less authorized deductions and authorized wage assignments, for their work or services.

(b) Payment required in subsection (a) of this section shall be made:

(1) In lawful money of the United States;

(2) By cash order as described and required in section four of this article;

(3) By deposit or electronic transfer of immediately available funds into an employee's payroll card account in a federally insured depository institution. The term "payroll card account" means an account in a federally insured depository institution that is directly or indirectly established through an employer and to which electronic fund transfers of the employee's wages, salary, commissions or other compensation are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution or another person. "Payroll card" means a card, code or combination thereof or other means of access to an employee's payroll card account, by which the employee may initiate electronic fund transfers or use a payroll card to make purchases or payments. Payment of employee compensation by means of a payroll card must be agreed upon in writing by both the person, firm or corporation paying the compensation and the person being compensated; or

(4) By any method of depositing immediately available funds in an employee's demand or time account in a bank, credit union or savings and loan institution that may be agreed upon in writing between the employee and such person, firm or corporation, which agreement shall specifically identify the employee, the financial institution, the type of account and the account number: *Provided*, That nothing herein contained shall be construed in a manner to require any person, firm or corporation to pay employees by depositing funds in a financial institution.

(c) If, at any time of payment, any employee shall be absent from his or her regular place of labor and shall not receive his or her wages through a duly authorized representative, he or she shall be entitled to payment at any time thereafter upon demand upon the proper paymaster at the place where his or her wages are usually paid and where the next pay is due.

(d) Nothing herein contained shall affect the right of an employee to assign part of his or her claim against his or her employer except as in subsection (e) of this section.

(e) No assignment of or order for future wages shall be valid for a period exceeding one year from the date of the assignment or order. An assignment or order shall be acknowledged by the party making the same before a notary public or other officer authorized to take acknowledgments, and any order or assignment shall specify thereon the total amount due and collectible by virtue of the same and three fourths of the periodical earnings or wages of the assignor shall at all times be exempt from such assignment or order and no assignment or order shall be valid which does not so state upon its face: *Provided*, That no such order or assignment shall be valid unless the written acceptance of the employer of the assignor to the making thereof; is endorsed thereon: *Provided, however*, That nothing herein contained shall be construed as affecting the right of employer and employees to agree between themselves as to deductions to be made from the payroll of employees.

Bill Sponsors: Senators Trump, Karnes, Carmichael and Blair

Senate Bill 342 **Clarifying scope, application and requirements for error corrections by CPRB**

Effective Date: June 10, 2015

Code Reference: Adds § 8-22A-8a, §15-2-54, §15-2A-23 and §51-9-18
Amends §5-10-44, §7-14D-7a, §8-22A-8, §16-5V-8a,
§18-7A-14c and §18-7B-21

WVDE Contact: Amy Willard, Office of School Finance
awillard@k12.wv.us; 304.558.6300

Major Provisions

- The bill provides detail on how the correction of errors in overpayments or underpayments of employee or employer contributions, annuities or other benefit payments made to or by any of the West Virginia public employees retirement systems are to be corrected, including the West Virginia Public Employees Retirement System, the Deputy Sheriff Retirement System, the Municipal Police Officers and Firefighters Retirement System, the Emergency Medical Services Retirement System, the State Teachers' Retirement System, the Teachers' Defined Contribution Retirement System, the State Police Death, Disability and Retirement System, the State Police Retirement System, and the Judges' Retirement System.
- Upon learning of any errors, the Consolidated Public Retirement Board (CPRB) is to correct them in a timely manner with the intent of placing the affected individual, entity and retirement board in the position each would have been in had the error not occurred, regardless of whether the error was the fault of an individual, entity or board.
- When a correction is being made for an overpayment to the retirement system by an employer, the CPRB shall credit the employer with the overpayment to be offset against future employer contributions.
- When a correction is being made for an overpayment to the retirement system by an employer, where the employer has no future liability of employer contributions, CPRB is to refund the erroneous contributions directly to the employer; no earnings or interest on the overpayment are to be returned.
- When a correction is being made for an overpayment of employee contributions to the retirement system, where the employee does not have a future liability, a refund is to be made directly to the employee.
- When a correction is being made for an overpayment to a member, retirant, beneficiary, entity or other individual, CPRB must correct such error in a timely manner. If the correction occurs after annuity payments have commenced, the CPRB is to prospectively adjust the payment of the benefit to the correct amount; no interest will accumulate on any corrective payment.
- When a correction is being made for an underpayment to a member, retirant, beneficiary, entity or other individual, CPRB must correct the error in a timely manner. If the correction occurs after annuity payments have commenced, the CPRB is to prospectively make the payment in a lump sum; no interest will be paid on any corrective payment.
- In an event where CPRB discovers that an individual, employer, or both, are not eligible to participate, CPRB must notify the parties involved and terminate the participation. Any erroneous payments are to be returned to the employer or individual, and any erroneous service credited to an individual will not be removed.
- In an event where CPRB discovers that an individual, employer, or both, were eligible and required

to participate, but are not participants, CPRB must notify the parties involved and require that they prospectively commence participation. Service credit for service prior to the commencement of participation will be granted only if CPRB receives the required employer and employee contributions for such time period.

§5-10-44. Correction of errors; underpayments; overpayments.

(a) ~~General rule: If any change or employer error in the records of any participating public employer or the retirement system results in any member, retirant or beneficiary receiving from the system more or less than he or she would have been entitled to receive had the records been correct. Upon learning of any errors, the board shall correct the error. If correction of the error occurs after the effective date of retirement date of a retirant, and as far as is practicable, the board shall adjust the payment of the benefit in a manner that the actuarial equivalent of the benefit to which the retirant was correctly entitled shall be paid errors in the retirement system in a timely manner whether an individual, entity or board was at fault for the error with the intent of placing the affected individual, entity and retirement board in the position each would have been in had the error not occurred.~~

(b) ~~Underpayments to the retirement system: Any error resulting in an underpayment to the retirement system of required contributions may be corrected by the member or retirant remitting the required employee contribution or underpayment and the participating public employer remitting the required employer contribution or underpayment. Interest shall accumulate in accordance with the legislative rule 162 CSR 7 concerning retirement board refund, reinstatement, retroactive service, loan and correction of error interest factors and any accumulating interest owed on the employee and employer contributions or underpayments resulting from an 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. If the correction of an error involving an underpayment of required contributions to the retirement system will result in increased payments to the retirement system paying a retirant, including increases to payments already made, any adjustments an additional amount, this additional payment shall be made only after the board receives full payment of all required employee and employer contributions or underpayments, including interest.~~

(c) ~~Overpayments to the retirement system by an employer: (1) When mistaken or excess employer contributions, including any or other employer overpayments, have been made to the retirement system by a participating public employer, due to error or other reason, the board shall credit the participating public employer with an amount equal to the erroneous contributions overpayment, to be offset against the participating public employer's future liability for employer contributions to the system. If the employer has no future liability for employer contributions to the retirement system, the board shall refund the erroneous contributions directly to the employer. Earnings or interest shall not be returned, offset or credited to the employer under any of the means used by the board for returning employer overpayments to the retirement system.~~

(2) ~~(d) Overpayments to the retirement system by an employee: When mistaken or excess employee contributions, including any or overpayments, have been made to the retirement system, due to error or other reason, the board shall have sole authority for determining the means of return, offset or credit to or for the benefit of the individual making the mistaken or excess employee contribution of the amounts, and may use any means authorized or permitted under the provisions of section 401(a), et seq. of the Internal Revenue Code and guidance issued thereunder applicable to governmental plans. Alternatively, in its full and complete discretion, the board may require the participating public employer employing the individual to pay the employee individual the amounts as wages, with the board crediting the participating public employer with a corresponding amount to offset against its future contributions to the plan. If the employer has no future liability for employer contributions to the retirement system, the board shall refund said amount directly to the employer. Provided, That the wages paid to the employee individual shall not be considered compensation for any purposes of under this article. Earnings or interest shall not be returned, offset, or credited under any of the means utilized used by the board for returning mistaken or excess employee contributions, including any overpayments, to an employee.~~

(e) ~~Overpayments from the retirement system: If any error results in any member, retirant, beneficiary, entity or other individual receiving from the system more than he would have been entitled to receive had the error not occurred, the board shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall~~

prospectively adjust the payment of the benefit to the correct amount. In addition, the member, retirant, beneficiary, entity or other person who received the overpayment from the retirement system shall repay the amount of any overpayment to the retirement system in any manner permitted by the board. Interest shall not accumulate on any corrective payment made to the retirement system pursuant to this subsection.

(f) Underpayments from the retirement system: If any error results in any member, retirant, beneficiary, entity or other individual receiving from the retirement system less than he would have been entitled to receive had the error not occurred, the board shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the board shall pay the amount of such underpayment to the member, retirant, beneficiary or other individual in a lump sum. Interest shall not be paid on any corrective payment made by the retirement system pursuant to this subsection.

(g) Eligibility errors: If the board finds that an individual, employer, or both individual and employer currently or formerly participating in the retirement system is not eligible to participate, the board shall notify the individual and his or her employer of the determination and terminate participation in the retirement system. Any erroneous payments to the retirement system shall be returned to the employer and individual in accordance with the methods described in subsections (c) and (d) of this section and any erroneous payments from the retirement system to such individual shall be returned to the retirement system in accordance with the methods described in subsection (e) of this section. Any erroneous service credited to the individual shall be removed. If the board determines that an individual or employer, or both, has not been participating in the retirement system, but was eligible to and required to be participating in the retirement system, the board shall as soon as practicable notify the individual and his or her employer of the determination and the individual and his or her employer shall prospectively commence participation in the retirement system as soon as practicable. Service credit for service prior to the date on which the individual prospectively commences participation in the retirement system shall be granted only if the board receives the required employer and employee contributions for such service, in accordance with subsection (b) of this section, including interest.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-7a. Correction of errors; underpayments; overpayments.

~~(a) General rule: If any change or employer error in the records of any participating public employer or the plan results in any member, retirant or beneficiary receiving from the plan more or less than he or she would have been entitled to receive had the records been correct. Upon learning of errors, the board shall correct error errors in the retirement plan in a timely manner whether the individual, entity or board was at fault for the error with the intent of placing the affected individual, entity and board in the position each would have been in had the error not occurred. If correction of the error occurs after the effective retirement date of a retirant, and as far as is practicable, the board shall adjust the payment of the benefit in a manner that the actuarial equivalent of the benefit to which the retirant was correctly entitled shall be paid.~~

~~(b) Underpayments to the plan: Any error resulting in an underpayment to the retirement system of required contributions plan may be corrected by the member or retirant remitting the required employee contribution or underpayment and the participating public employer remitting the required employer contribution or underpayment. Interest shall accumulate in accordance with the legislative rule 162 CSR 7 concerning retirement board refund, reinstatement, retroactive service, loan and employer correction of error interest factors and any accumulating interest owed on the employee and employer contributions or underpayments resulting from an 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. If the correction of an error involving an underpayment of required~~

~~contributions to the retirement system plan will result in increased payments to the plan paying a retirant, including increases to payments already made, any adjustments an additional amount, this additional payment shall be made only after the board receives full payment of all required employee and employer contributions or underpayments, including interest.~~

~~(c) Overpayments to the plan by an employer: (4) When mistaken or excess employer contributions, including any or other employer overpayments, have been made to the retirement system by a participating public employer, due to error or other reason plan, the board shall credit the participating public employer with an amount equal to the erroneous contributions overpayment, to be offset against the participating public employer's future liability for employer contributions to the system plan. If the employer has no future liability for employer contributions to the retirement system, the board shall refund the erroneous contributions directly to the employer. Earnings or interest shall not be returned, offset or credited to the employer under any of the means used by the board for returning employer overpayments made to the plan.~~

~~(2) (d) Overpayments to the plan by an employee: When mistaken or excess employee contributions, including any or overpayments, have been made to the retirement system, due to error or other reason, the board shall have sole authority for determining the means of return, offset or credit to or for the benefit of the employee individual making the mistaken or excess employee contribution of the amounts, and may use any means authorized or permitted under the provisions of section 401(a), et seq. of the Internal Revenue Code and guidance issued thereunder applicable to governmental plans. Alternatively, in its full and complete discretion, the board may require the participating public employer employing the individual to pay the employee individual the amounts as wages, with the board crediting the participating public employer with a corresponding amount to offset against its future contributions to the plan. If the employer has no future liability for employer contributions to the plan, the board shall refund said amount directly to the employer: Provided, That the wages paid to the employee individual shall not be considered compensation for any purposes under of this article. Earnings or interest shall not be returned, offset, or credited under any of the means utilized used by the board for returning mistaken or excess employee contributions, including any overpayments, to an employee.~~

~~(e) Overpayments from the plan: If any error results in any member, retirant, beneficiary, entity or other individual receiving from the system more than he would have been entitled to receive had the error not occurred the board shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the member, retirant, beneficiary, entity or other person who received the overpayment from the plan shall repay the amount of any overpayment to the plan in any manner permitted by the board. Interest shall not accumulate on any corrective payment made to the plan pursuant to this subsection.~~

~~(f) Underpayments from the plan: If any error results in any member, retirant, beneficiary, entity or other individual receiving from the plan less than he would have been entitled to receive had the error not occurred, the board, upon learning of the error, shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the board shall pay the amount of such underpayment to the member, retirant, beneficiary or other individual in a lump sum. Interest shall not be paid on any corrective payment made by the plan pursuant to this subsection.~~

~~(g) Eligibility errors: If the board finds that an individual, employer, or both individual and employer formerly or currently participating in the plan is not eligible to participate, the board shall notify the individual and his or her employer of the determination, and terminate participation in the plan. Any erroneous payments to the retirement system shall be returned to the employer and individual in accordance with the methods described in subsections (c) and (d) of this section and any erroneous payments from the plan to such individual shall be returned to the plan in accordance with the methods described in subsection (e) of this section. Any erroneous service credited to the individual shall be removed. If the board determines that an individual or employer, or both, has not been participating in the plan, but was eligible to and required to be participating in the plan, the board shall as soon as practicable notify the individual and his or her~~

employer of the determination, and the individual and his or her employer shall prospectively commence participation in the plan as soon as practicable. Service credit for service prior to the date on which the individual prospectively commences participation in the plan shall be granted only if the board receives the required employer and employee contributions for such service, in accordance with subsection (b) of this section, including interest.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 22A. WEST VIRGINIA MUNICIPAL POLICE OFFICERS AND FIREFIGHTERS RETIREMENT SYSTEM.

§8-22A-8. Members' contributions; employer contributions; ~~correction of errors.~~

(a)(1) There shall be deducted from the monthly salary of each member and paid into the fund an amount equal to eight and one-half percent ~~or ten and one-half percent, if applicable~~ of his or her monthly salary. An additional amount shall be paid to the fund by the municipality or municipal subdivision in which the member is employed in covered employment in an amount determined by the board: *Provided*, That in no year may the total of the employer contributions provided in this section, to be paid by the municipality or municipal subdivision, exceed ten and one-half percent of the total payroll for the members in the employ of the municipality or municipal subdivision. Any active member who has concurrent employment in an additional job or jobs and the additional employment requires the police officer or firefighter to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to article ten-d, chapter five of this code shall contribute to the fund the sum of eight and one-half percent ~~or ten and one-half percent, if applicable~~ of his or her monthly salary earned as a municipal police officer or firefighter as well as the sum of eight and one-half percent ~~or ten and one-half percent, if applicable~~ of his or her monthly salary earned from any additional employment which additional employment requires the police officer or firefighter to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to article ten-d, chapter five of this code. An additional amount as determined by the board, not to exceed ten and one-half percent of the monthly salary of each member, shall be paid to the fund by the concurrent employer by which the member is employed.

(2) The board may, on the recommendation of the board's actuary, increase the employees' contribution rate from eight and one-half percent to ten and one-half percent should the plan not be seventy percent funded by July 1, 2014. The board shall decrease the contribution rate to eight and one-half percent on July 1 following the acceptance by the board of an actuarial valuation determining that the plan is seventy-five percent funded. If the plan funding level at a later actuarial valuation date falls below seventy percent, the employee rate of contribution shall be increased to ten and one-half percent of salary until the seventy-five percent level of funding is achieved. The board shall change the employee contribution rate on July 1 following the board's acceptance of the actuarial valuation. At no time may the rate of employee contribution exceed the rate of employer contribution.

(b) All required deposits shall be remitted to the board no later than fifteen days following the end of the calendar month for which the deposits are required. If the board on the recommendation of the board actuary finds that the benefits provided by this article can be actuarially funded with a lesser contribution, then the board shall reduce the required member and employer contributions proportionally. Any municipality or municipal subdivision which fails to make any payment due the Municipal Police Officers and Firefighters Retirement Fund by the fifteenth day following the end of each calendar month in which contributions are due may be required to pay the actuarial rate of interest lost on the total amount owed for each day the payment is delinquent. Accrual of the loss of earnings owed by the delinquent municipality or municipal subdivision commences after the fifteenth day following the end of the calendar month in which contributions are due and continues until receipt of the delinquent amount. Interest compounds daily and the minimum surcharge is \$50.

~~c) If any change or employer error in the records of any participating public employer or the retirement system results in any member or retirant 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 or retirant was correctly entitled shall be paid. Any employer error resulting in an underpayment to the retirement system may be corrected by the member or retirant remitting the required employee contribution and the participating public employer remitting the required employer contribution. Interest shall accumulate in accordance with the legislative rule 162-CSR-7 (retirement board reinstatement interest) 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.

§8-22A-8a. Correction of errors; underpayments; overpayments.

(a) General rule: Upon learning of errors, the board shall correct errors in the plan in a timely manner whether the individual, entity or board was at fault for the error with the intent of placing the affected individual, entity and retirement board in the position each would have been in had the error not occurred.

(b) Underpayments to the plan: Any error resulting in an underpayment to the plan may be corrected by the member or retirant remitting the required employee contribution or underpayment and the employer remitting the required employer contribution or underpayment. Interest shall accumulate in accordance with the legislative rule 162-CSR-7 concerning retirement board refund, reinstatement, retroactive service, loan and correction of error interest factors, and any accumulating interest owed on the employee and employer contributions or underpayments resulting from an employer error shall be the responsibility of the employer. The employer may remit total payment and the employee reimburse the employer through payroll deduction over a period equivalent to the time period during which the employer error occurred. If the correction of an error involving an underpayment to the plan will result in the plan correcting an erroneous underpayment from the plan, the correction of the underpayment from the plan shall be made only after the board receives full payment of all required employee and employer contributions or underpayments, including interest.

(c) Overpayments to the plan by the employer: When mistaken or excess employer contributions, including any overpayments have been made to the retirement system by the employer, the board shall credit the employer with an amount equal to the overpayment, to be offset against the employer's future liability for employer contributions to the system. If the employer has no future liability for employer contributions to the plan, the board shall refund the erroneous contributions directly to the employer. Earnings or interest shall not be returned, offset or credited to the employer under any of the means used by the board for returning employer overpayments to the plan.

(d) Overpayments to the plan by an employee: When mistaken or excess employee contributions or overpayments have been made to the plan, the board shall have sole authority for determining the means of return, offset or credit to or for the benefit of the individual making the mistaken or excess employee contribution of the amounts, and may use any means authorized or permitted under the provisions of section 401(a), et seq. of the Internal Revenue Code and guidance issued thereunder applicable to governmental plans. Alternatively, in its full and complete discretion, the board may require the employer employing the individual to pay the individual the amounts as wages, with the board crediting the employer with a corresponding amount to offset against its future contributions to the plan. If the employer has no future liability for employer contributions to the plan, the board shall refund said amount directly to the employer: *Provided*, That the wages paid to the individual shall not be considered compensation for any purposes of this article. Earnings or interest shall not be returned, offset, or credited under any of the means used by the board for returning employee overpayments.

(e) Overpayments from the plan: If any error results in any member, retirant, beneficiary, entity or other individual receiving from the plan more than he would have been entitled to receive had the error not occurred the board after learning of the error shall correct the error in a timely manner. If correction of the

error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the member, retirant, beneficiary, entity or other person who received the overpayment from the plan shall repay the amount of any overpayment to the retirement system in any manner permitted by the board. Interest shall not accumulate on any corrective payment made to the plan pursuant to this subsection.

(f) Underpayments from the plan: If any error results in any member, retirant, beneficiary, entity or other individual receiving from the plan less than he would have been entitled to receive had the error not occurred, the board, upon learning of the error, shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the board shall pay the amount of such underpayment to the member, retirant, beneficiary or other individual in a lump sum. Interest shall not be paid on any corrective payment made by the retirement system pursuant to this subsection.

(g) Eligibility errors: If the board finds that an individual, employer, or both individual and employer formerly or currently participating in the plan is not eligible to participate, the board shall notify the individual and his or her employer of the determination, and terminate participation in the plan. Any erroneous payments to the plan shall be returned to the employer and individual in accordance with the methods described in subsections (c) and (d) of this section, and any erroneous payments from the plan to such individual shall be returned to the plan in accordance with the methods described in subsection (e) of this section. Any erroneous service credited to the individual shall be removed. If the board determines that an individual or employer, or both, has not been participating in the retirement plan, but was eligible to and required to be participating in the plan, the board shall as soon as practicable notify the individual and his or her employer of the determination, and the individual and his or her employer shall prospectively commence participation in the plan as soon as practicable. Service credit for service prior to the date on which the individual prospectively commences participation in the plan shall be granted only if the board receives the required employer and employee contributions for such service, in accordance with subsection (b) of this section, including interest.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-54. Correction of errors; underpayments; overpayments.

(a) General rule: Upon learning of any errors, the board shall correct errors in the system in a timely manner whether the individual, entity or board was at fault for the error with the intent of placing the affected individual, entity and retirement board in the position each would have been in had the error not occurred.

(b) Underpayments to the system: Any error resulting in an underpayment to the system may be corrected by the member or retirant remitting the required employee contribution or underpayment and the employer remitting the required employer contribution or underpayment. Interest shall accumulate in accordance with the legislative rule 162 CSR 7 concerning retirement board refund, reinstatement, retroactive service, loan and correction of error interest factors and any accumulating interest owed on the employee and employer contributions or underpayments resulting from an employer error is the responsibility of the employer. The employer may remit total payment and the employee reimburse the employer through payroll deduction over a period equivalent to the time period during which the employer error occurred. If the correction of an error involving an underpayment to the system will result in the system correcting an erroneous underpayment from the system, the correction of the underpayment from the system shall be made only after the board receives full payment of all required employee and employer contributions or underpayments, including interest.

(c) Overpayments to the system by an employer: When mistaken or excess employer contributions, including any overpayments have been made to the system by the employer, the board shall

credit the employer with an amount equal to the overpayment, to be offset against the employer's future liability for employer contributions to the system. If the employer has no future liability for employer contributions to the retirement system, the board shall refund the erroneous contributions directly to the employer. Earnings or interest shall not be returned, offset or credited to the employer under any of the means used by the board for returning employer overpayments to the retirement system.

(d) Overpayments to the system by an employee: When mistaken or excess employee contributions or overpayments have been made to the system, the board shall have sole authority for determining the means of return, offset or credit to or for the benefit of the individual making the mistaken or excess employee contribution of the amounts, and may use any means authorized or permitted under the provisions of section 401(a), et seq. of the Internal Revenue Code and guidance issued thereunder applicable to governmental plans. Alternatively, in its full and complete discretion, the board may require the employer employing the individual to pay the individual the amounts as wages, with the board crediting the employer with a corresponding amount to offset against its future contributions to the plan. If the employer has no future liability for employer contributions to the system, the board shall refund said amount directly to the employer: *Provided*, That the wages paid to the individual shall not be considered compensation for any purposes of this article. Earnings or interest shall not be returned, offset, or credited under any of the means used by the board for returning employee overpayments.

(e) Overpayments from the system: If any error results in any member, retirant, beneficiary, entity or other individual receiving from the system more than he would have been entitled to receive had the error not occurred the board, upon learning of the error, shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the member, retirant, beneficiary, entity or other person who received the overpayment from the system shall repay the amount of any overpayment to the system in any manner permitted by the board. Interest shall not accumulate on any corrective payment made to the system pursuant to this subsection.

(f) Underpayments from the system: If any error results in any member, retirant, beneficiary, entity or other individual receiving from the retirement system less than he would have been entitled to receive had the error not occurred, the board, upon learning of the error, shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the board shall pay the amount of such underpayment to the member, retirant, beneficiary or other individual in a lump sum. Interest shall not be paid on any corrective payment made by the system pursuant to this subsection.

(g) Eligibility errors: If the board finds that an individual, employer, or both individual and employer currently or formerly participating in the retirement system is not eligible to participate, the board shall notify the individual and his or her employer of the determination, and terminate participation in the system. Any erroneous payments to the system shall be returned to the employer and individual in accordance with the methods described in subsections (c) and (d) of this section and any erroneous payments from the system to such individual shall be returned to the system in accordance with the methods described in subsection (e) of this section. Any erroneous service credited to the individual shall be removed. If the board determines that an individual or employer, or both, has not been participating in the system, but was eligible to and required to be participating in the system, the board shall as soon as practicable notify the individual and his or her employer of the determination, and the individual and his or her employer shall prospectively commence participation in the system as soon as practicable. Service credit for service prior to the date on which the individual prospectively commences participation in the system shall be granted only if the board receives the required employer and employee contributions for such service, in accordance with subsection (b) in this section, including interest.

ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.

§15-2A-23. Correction of errors; underpayments; overpayments.

(a) General rule: Upon learning of any errors, the board shall correct errors in the retirement system in a timely manner whether the individual, entity or board was at fault for the error with the intent of placing the affected individual, entity and retirement board in the position each would have been in had the error not occurred.

(b) Underpayments to the system: Any error resulting in an underpayment to the system, may be corrected by the member or retirant remitting the required employee contribution or underpayment and the employer remitting the required employer contribution or underpayment. Interest shall accumulate in accordance with the legislative rule 162 CSR 7 concerning retirement board refund, reinstatement, retroactive service, loan and correction of error interest factors and any accumulating interest owed on the employee and employer contributions or underpayments resulting from an employer error shall be the responsibility of the employer. The employer may remit total payment and the employee reimburse the employer through payroll deduction over a period equivalent to the time period during which the employer error occurred. If the correction of an error involving an underpayment to the system will result in the system correcting an erroneous underpayment from the system, the correction of the underpayment from the system shall be made only after the board receives full payment of all required employee and employer contributions or underpayments, including interest.

(c) Overpayments to the system by an employer: When mistaken or excess employer contributions or other overpayments have been made to the system by an employer, the board shall credit the employer with an amount equal to the overpayment, to be offset against the employer's future liability for employer contributions to the system. If the employer has no future liability for employer contributions to the retirement system, the board shall refund the erroneous contributions directly to the employer. Earnings or interest shall not be returned, offset or credited to the employer under any of the means used by the board for returning employer overpayments to the retirement system.

(d) Overpayments to the system by an employee: When mistaken or excess employee contributions or overpayments have been made to the system, the board shall have sole authority for determining the means of return, offset or credit to or for the benefit of the individual making the mistaken or excess employee contribution of the amounts, and may use any means authorized or permitted under the provisions of section 401(a), *et seq.* of the Internal Revenue Code and guidance issued thereunder applicable to governmental plans. Alternatively, in its full and complete discretion, the board may require the employer employing the individual to pay the individual the amounts as wages, with the board crediting the employer with a corresponding amount to offset against its future contributions to the plan. If the employer has no future liability for employer contributions to the retirement system, the board shall refund said amount directly to the employer: *Provided*, That the wages paid to the individual shall not be considered compensation for any purposes of this article. Earnings or interest shall not be returned, offset, or credited under any of the means used by the board for returning employee overpayments.

(e) Overpayments from the system: If any error results in any member, retirant, beneficiary, entity or other individual receiving from the system more than he would have been entitled to receive had the error not occurred the board, upon learning of the error, shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the member, retirant, beneficiary, entity or other person who received the overpayment from the system shall repay the amount of any overpayment to the system in any manner permitted by the board. Interest shall not accumulate on any corrective payment made to the system pursuant to this subsection.

(f) Underpayments from the system: If any error results in any member, retirant, beneficiary, entity or other individual receiving from the system less than he would have been entitled to receive had the error not occurred, the board shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the board shall pay the amount of such underpayment to the member, retirant, beneficiary or other individual in a lump sum. Interest shall not be paid on any corrective payment made by the system pursuant to this subsection.

(g) Eligibility errors: If the board finds that an individual, employer, or both individual and employer currently or formerly participating in the system is not eligible to participate, the board shall notify the individual and his or her employer of the determination, and terminate participation in the system. Any erroneous payments to the system shall be returned to the employer and individual in accordance with the methods described in subsections (c) and (d) of this section and any erroneous payments from the system to such individual shall be returned to the system in accordance with the methods described in subsection (e) of this section. Any erroneous service credited to the individual shall be removed. If the board determines that an individual or employer, or both, has not been participating in the system, but was eligible to and required to be participating in the system, the board shall as soon as practicable notify the individual and his or her employer of the determination, and the individual and his or her employer shall prospectively commence participation in the system as soon as practicable. Service credit for service prior to the date on which the individual prospectively commences participation in the system shall be granted only if the board receives the required employer and employee contributions for such service, in accordance with subsection (b) in this section, including interest.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5V. EMERGENCY MEDICAL SERVICES RETIREMENT SYSTEM ACT.

§16-5V-8a. Correction of errors; underpayments; overpayments.

~~(a) General rule: If any change or employer error in the records of any participating public employer or the plan results in any member, retirant or beneficiary receiving from the plan more or less than he or she would have been entitled to receive had the records been correct, Upon learning of any errors, the board shall correct the error errors in the retirement system in a timely manner whether the individual, entity or board was at fault for the error with the intent of placing the affected individual, entity and retirement board in the position each would have been in had the error not occurred. If correction of the error occurs after the effective retirement date of a retirant, and as far as is practicable, the board shall adjust the payment of the benefit in a manner that the actuarial equivalent of the benefit to which the retirant was correctly entitled shall be paid.~~

~~(b) Underpayments to the plan: Any error resulting in an underpayment to the retirement system of required contributions plan, may be corrected by the member or retirant remitting the required employee contribution or underpayment and the participating public employer remitting the required employer contribution or underpayment. Interest shall accumulate in accordance with the legislative rule 162 CSR 7 concerning retirement board refund, reinstatement, retroactive service, loan and employer correction of error interest factors and any accumulating interest owed on the employee and employer contributions or underpayments resulting from an 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. If the correction of an error involving an underpayment of required contributions to the retirement system will result in increased payments to a retirant, including increases to payments already made, any adjustments the plan paying the retirant an additional amount, this additional payment shall be made only after the board receives full payment of all required employee and employer contributions or underpayments, including interest.~~

~~(c) Overpayments to the plan by an employer: (4) When mistaken or excess employer contributions, including any or other employer overpayments, have been made to the retirement system by a participating public employer plan, due to error or other reason, the board shall credit the participating public employer with an amount equal to the erroneous contributions overpayment, to be offset against the participating public employer's future liability for employer contributions to the system plan. If the employer has no future liability for employer contributions to the plan, the board shall refund the erroneous contributions directly to the employer. Earnings or interest shall not be credited to the employer returned, offset or credited to the employer under any of the means used by the board for returning employer overpayments to the retirement system.~~

~~(2) (d) Overpayments to the plan by an employee: When mistaken or excess employee contributions, including any or overpayments, have been made to the retirement system plan, due to error or other reason, the board shall have sole authority for determining the means of return, offset or credit to or for the benefit of the employee individual making the mistaken or excess employee contribution of the amounts, and may use any means authorized or permitted under the provisions of section 401(a), et seq. of the Internal Revenue Code and guidance issued thereunder applicable to governmental plans. Alternatively, in its full and complete discretion, the board may require the participating public employer employing the individual to pay the employee individual the amounts as wages, with the board crediting the participating public employer with a corresponding amount to offset against its future contributions to the plan. If the employer has no future liability for employer contributions to the plan, the board shall refund said amount directly to the employer: Provided, That the wages paid to the employee individual shall not be considered compensation for any purposes under of this article. Earnings or interest shall not be returned, offset, or credited under any of the means utilized used by the board for returning mistaken or excess employee contributions, including any overpayments, to an employee.~~

(e) Overpayments from the plan: If any error results in any member, retirant, beneficiary, entity or other individual receiving from the system more than he would have been entitled to receive had the error not occurred the board upon learning of the error shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the member, retirant, beneficiary, entity or other person who received the overpayment from the plan shall repay the amount of any overpayment to the plan in any manner permitted by the board. Interest shall not accumulate on any corrective payment made to the plan pursuant to this subsection.

(f) Underpayments from the retirement system: If any error results in any member, retirant, beneficiary, entity or other individual receiving from the plan less than he would have been entitled to receive had the error not occurred, the board, upon learning of the error, shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the board shall pay the amount of such underpayment to the member, retirant, beneficiary or other individual in a lump sum. Interest shall not be paid on any corrective payment made by the plan pursuant to this subsection.

(g) Eligibility errors: If the board finds that an individual, employer, or both individual and employer, participating in the plan is not eligible to participate, the board shall notify the individual and his or her employer of the determination and terminate participation in the plan. Any erroneous payments to the plan shall be returned to the employer and individual in accordance with the methods described in subsections (c) and (d) of this section and any erroneous payments from the plan to such individual shall be returned to the plan in accordance with the methods described in subsection (e) of this section. Any erroneous service credited to the individual shall be removed. If the board determines that an individual or employer, or both, has not been participating in the plan, but was eligible to and required to be participating in the plan, the board shall as soon as practicable notify the individual and his or her employer of the determination, and the individual and his or her employer shall prospectively commence participation in the plan as soon as practicable. Service credit for service prior to the date on which the individual prospectively commences participation in the plan shall be granted only if the board receives the required employer and employee contributions for such service, in accordance with subsection (b) of this section, including interest.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-14c. Correction of errors; underpayments; overpayments.

(a) General rule: If any change or employer error in the records of any employer or the retirement system results in any member, retirant or beneficiary receiving from the plan more or less than he or she would have been entitled to receive had the records been correct, Upon learning of any errors, the

~~retirement board shall correct the error errors in the retirement system in a timely manner whether the individual, entity or board was at fault for the error with the intent of placing the affected individual, entity and retirement board in the position each would have been in had the error not occurred. If correction of the error occurs after the effective retirement date of a retirant, and as far as is practicable, the retirement board shall adjust the payment of the benefit in a manner that the actuarial equivalent of the benefit to which the retirant was correctly entitled shall be paid.~~

(b) Underpayments to the retirement system: Any error resulting in an underpayment to the retirement system ~~of required contributions,~~ may be corrected by the member or retirant remitting the required ~~member employee contribution or underpayment and the participating public employer remitting the required employer contribution or underpayment.~~ Interest shall accumulate in accordance with the legislative rule 162 CSR 7 concerning retirement board refund, reinstatement, retroactive service, loan and ~~employer correction of error interest factors and any accumulating interest owed on the member employee and employer contributions or underpayments~~ resulting from an employer error shall be the responsibility of the participating public employer. The participating public employer may remit total payment and the ~~member employee~~ reimburse the participating public employer through payroll deduction over a period equivalent to the time period during which the employer error occurred. If the correction of an error involving an underpayment ~~of required contributions~~ to the retirement system will result in ~~increased payments to a~~ the plan paying the retirant, including increases to payments already made, any adjustments an additional amount, this additional payment shall be made only after the retirement board receives full payment of all required member employee and employer contributions or underpayments, including interest.

(c) Overpayments to the retirement system by an employer: ~~(1)~~ When mistaken or excess employer contributions, ~~including any, or other employer overpayments,~~ have been made to the retirement system ~~by an employer, due to error or other reason,~~ the retirement board shall credit the employer with an amount equal to the erroneous ~~contributions overpayment,~~ to be offset against the employer's future liability for employer contributions to the retirement system. If the employer has no future liability for employer contributions to the retirement system, the retirement board shall refund the erroneous contributions directly to the employer. Earnings or interest shall not be ~~returned, offset or credited to the employer under any of the means used by the retirement board for returning employer overpayments to the retirement system.~~

~~(2)~~ (d) Overpayments to the retirement system by an employee: When mistaken or excess employee contributions ~~or overpayments, including any overpayments,~~ have been made to the retirement system, ~~due to error or other reason,~~ the retirement board shall have sole authority for determining the means of return, offset or credit to or for the benefit of the ~~member individual making the mistaken or excess employee contribution~~ of the amounts, and may use any means authorized or permitted under the provisions of section 401(a), *et seq.* of the Internal Revenue Code and guidance issued thereunder applicable to governmental plans. Alternatively, in its full and complete discretion, the ~~retirement board~~ may require the employer employing the individual to pay the ~~member individual~~ the amounts as wages, with the retirement board crediting the participating public employer with a corresponding amount to offset against its future contributions to the ~~retirement system plan.~~ If the employer has no future liability for employer contributions to the retirement system, the retirement board shall refund said amount directly to the employer: Provided, That the wages paid to the member individual shall not be considered compensation for any purposes under of this article. Earnings or interest shall not be returned, offset, or credited under any of the means used by the retirement board for returning ~~mistaken or excess member contributions, including any member overpayments, to a member.~~

(e) Overpayments from the retirement system: If any error results in any member, retirant, beneficiary, entity or other individual receiving from the system more than he would have been entitled to receive had the error not occurred the board, upon learning of the error, shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the member, retirant, beneficiary, entity or other person who received the overpayment from the retirement system shall repay the amount of any overpayment to the retirement system in any manner

permitted by the board. Interest shall not accumulate on any corrective payment made to the retirement system pursuant to this subsection.

(f) Underpayments from the retirement system: If any error results in any member, retirant, beneficiary, entity or other individual receiving from the retirement system less than he would have been entitled to receive had the error not occurred, the board, upon learning of the error, shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the board shall pay the amount of such underpayment to the member, retirant, beneficiary or other individual in a lump sum. Interest shall not be paid on any corrective payment made by the retirement system pursuant to this subsection.

(g) Eligibility errors: If the board finds that an individual, employer, or both individual and employer currently or formerly participating in the retirement system is not eligible to participate, the board shall notify the individual and his or her employer of the determination, and terminate participation in the retirement system. Any erroneous payments to the retirement system shall be returned to the employer and individual in accordance with the methods described in subsections (c) and (d) of this section and any erroneous payments from the retirement system to such individual shall be returned to the retirement system in accordance with the methods described in subsection (e) of this section. Any erroneous service credited to the individual shall be removed. If the board determines that an individual or employer, or both, has not been participating in the retirement system, but was eligible to and required to be participating in the retirement system, the board shall as soon as practicable notify the individual and his or her employer of the determination, and the individual and his or her employer shall prospectively commence participation in the retirement system as soon as practicable. Service credit for service prior to the date on which the individual prospectively commences participation in the retirement system shall be granted only if the board receives the required employer and employee contributions for such service, in accordance with subsection (b) of this section, including interest.

ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§18-7B-21. Correction of errors; underpayments; overpayments

~~(a) General rule: If any change or employer error in the records of any existing employer or the retirement system results in a member, retirant or beneficiary receiving from the system more or less than he or she would have been entitled to receive had the records been correct. Upon learning of any errors, the board shall correct the error errors in the retirement system in a timely manner whether the individual, entity or board was at fault for the error with the intent of placing the affected individual, entity and retirement board in the position each would have been in had the error not occurred. If the correction of the error occurs after retirement, the board shall adjust the payment of the benefit in an amount computed by the board to which the retirant was correctly entitled.~~

~~(b) Underpayments to the system: Any error resulting in an underpayment to the retirement system of required contributions, may be corrected by the member or retirant remitting the required employee contribution or underpayment and the existing employer remitting the required employer contribution or underpayment. Interest accumulates shall accumulate in accordance with the board's Rule legislative rule 162 CSR 7 concerning retirement board, Refund, Reinstatement, Retroactive Service, Loan and Employer Correction of Error Interest Factors, 162 CSR 7, and any accumulating interest owed on the employee and employer contributions or underpayments resulting from an employer error is shall be the responsibility of the participating public employer. The existing participating public employer may remit total payment and the employee may reimburse the existing participating public employer through payroll deduction over a period equivalent to the time period during which the employer error occurred. If the correction of an error involving an underpayment of required contributions to the retirement system will result in increased payments to a the system paying the retirant, including increases to payments already made, any adjustments may an additional amount, this additional payment shall be made only after the board receives full payment of all required employee and employer contributions or underpayments, including interest.~~

(c) Overpayments to the system by an employer: (4) When mistaken or excess employer contributions, including any or other employer overpayments, have been made to the retirement system by an existing employer, due to error or other reason, the board shall credit the existing employer with an amount computed by the board, to be offset against the existing employer's future liability for employer contributions to the system. If the employer has no future liability for employer contributions to the retirement system, the board shall refund the erroneous contributions directly to the employer.

(2) (d) Overpayments to the retirement system by an employee: When mistaken or excess employee contributions or overpayments, including any overpayments, have been made to the retirement system, due to error or other reason, the board has shall have sole authority for determining the means of return, offset or credit to or for the benefit of the employee individual making the mistaken or excess employee contribution of the amounts, and may use any means authorized or permitted under the provisions of section 401(a), et seq. of the Internal Revenue Code and guidance issued thereunder applicable to governmental plans. Alternatively, in its full and complete discretion, the board may require the existing employer employing the individual to pay the employee individual the amounts as wages, with the board crediting the existing participating public employer with an a corresponding amount to offset against its future contributions to the plan. If the employer has no future liability for employer contributions to the retirement system, the board shall refund said amount directly to the employer: Provided, That the wages paid to the employee individual are not considered compensation for any purposes under of this article.

(e) Overpayments from the retirement system: If any error results in any member, retirant beneficiary, entity or other individual receiving from the system more than he would have been entitled to receive had the error not occurred the board upon learning of the error shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the member, retirant, beneficiary, entity or other person who received the overpayment from the retirement system shall repay the amount of any overpayment to the retirement system in any manner permitted by the board. Interest shall not accumulate on any corrective payment made to the retirement system pursuant to this subsection.

(f) Underpayments from the retirement system: If any error results in any member, retirant, beneficiary, entity or other individual receiving from the retirement system less than he would have been entitled to receive had the error not occurred, the board, upon learning of the error, shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the board shall pay the amount of such underpayment to the member, retirant, beneficiary or other individual in a lump sum. Interest shall not be paid on any corrective payment made by the retirement system pursuant to this subsection.

(g) Eligibility errors: If the board finds that an individual, employer, or both individual and employer currently or formerly participating in the retirement system is not eligible to participate, the board shall notify the individual and his or her employer of the determination, and terminate participation in the retirement system. Any erroneous payments to the retirement system shall be returned to the employer and individual in accordance with the methods described in subsections (c) and (d) of this section and any erroneous payments from the retirement system to such individual shall be returned to the retirement system in accordance with the methods described in subsection (e) of this section. Any erroneous service credited to the individual shall be removed. Service credit for service prior to the date on which the individual prospectively commences participation in the retirement system shall be granted only if the board receives the required employer and employee contributions for such service, in accordance with subsection (b) of this section, including interest.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.

§51-9-18. Correction of errors; underpayments; overpayments.

(a) General rule: Upon learning of any errors, the board shall correct errors in the retirement system in a timely manner whether the individual, entity or board was at fault for the error with the intent of placing the affected individual, entity and retirement board in the position each would have been in had the error not occurred.

(b) Underpayments to the system: Any error resulting in an underpayment to the system, may be corrected by the member or retirant remitting the required employee contribution or underpayment and the participating public employer remitting the required employer contribution or underpayment. Interest shall accumulate in accordance with the legislative rule 162 CSR 7 concerning retirement board refund, reinstatement, retroactive service, loan and correction of error interest factors and any accumulating interest owed on the employee and employer contributions or underpayments resulting from an 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. If the correction of an error involving an underpayment to the system will result in the system correcting an erroneous underpayment from the system, the correction of the underpayment from the system shall be made only after the board receives full payment of all required employee and employer contributions or underpayments, including interest.

(c) Overpayments to the retirement system by an employer: When mistaken or excess employer contributions, including any overpayments have been made to the retirement system by a participating public employer, the board, upon learning of the error, shall credit the participating public employer with an amount equal to the overpayment, to be offset against the employer's future liability for employer contributions to the system. If the employer has no future liability for employer contributions to the retirement system, the board shall refund the erroneous contributions directly to the employer. Earnings or interest shall not be returned, offset or credited to the employer under any of the means used by the board for returning employer overpayments to the retirement system.

(d) Overpayments to the retirement system by an employee: When mistaken or excess employee contributions or overpayments have been made to the retirement system, the board, upon learning of the error, shall have sole authority for determining the means of return, offset or credit to or for the benefit of the individual making the mistaken or excess employee contribution of the amounts, and may use any means authorized or permitted under the provisions of section 401(a), *et seq.* of the Internal Revenue Code and guidance issued thereunder applicable to governmental plans. Alternatively, in its full and complete discretion, the board may require the participating public employer employing the individual to pay the individual the amounts as wages, with the board crediting the participating public employer with a corresponding amount to offset against its future contributions to the plan. If the employer has no future liability for employer contributions to the retirement system, the board shall refund said amount directly to the employer: *Provided*, That the wages paid to the individual shall not be considered compensation for any purposes of this article. Earnings or interest shall not be returned, offset, or credited under any of the means used by the board for returning employee overpayments.

(e) Overpayments from the retirement system: If any error results in any member, retirant, beneficiary, entity or other individual receiving from the system more than he would have been entitled to receive had the error not occurred the board, upon learning of the error, shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the member, retirant, beneficiary, entity or other person who received the overpayment from the retirement system shall repay the amount of any overpayment to the retirement system in any manner permitted by the board. Interest shall not accumulate on any corrective payment made to the retirement system pursuant to this subsection.

(f) Underpayments from the retirement system: If any error results in any member, retirant, beneficiary, entity or other individual receiving from the retirement system less than he would have been

entitled to receive had the error not occurred, the board, upon learning of the error, shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the board shall pay the amount of such underpayment to the member, retirant, beneficiary or other individual in a lump sum. Interest shall not be paid on any corrective payment made by the retirement system pursuant to this subsection.

(g) Eligibility errors: If the board finds that an individual, employer, or both individual and employer, participating in the system is not eligible to participate, the board shall notify the individual and his or her employer of the determination, and terminate participation in the system. Any erroneous payments to the system shall be returned to the employer and individual in accordance with the methods described in subsections (c) and (d) of this section and any erroneous payments from the system to such individual shall be returned to the system in accordance with the methods described in subsection (e) of this section. Any erroneous service credited to the individual shall be removed. If the board determines that an individual or employer, or both, has not been participating in the system, but was eligible to and required to be participating in the system, the board shall as soon as practicable notify the individual and his or her employer of the determination, and the individual and his or her employer shall prospectively commence participation in the retirement system as soon as practicable. Service credit for service prior to the date on which the individual prospectively commences participation in the system shall be granted only if the board receives the required employer and employee contributions for such service, in accordance with subsection (b) of this section, including interest.

Bill Sponsors: Senators Gaunch, Trump and Plymale

Senate Bill 344 **Relating to duty to mitigate damages in employment claims**

Effective Date: June 8, 2015

Code Reference: Adds §55-7E-1, §55-7E-2 and §55-7E-3

WVDE Contact: Heather Hutchens, Office of Legal Services
hhutchens@k12.wv.us; 304.558.3667

Major Provisions

- The stated purpose of the bill is to provide a framework for adequate and reasonable compensation to individuals subjected to unlawful employment action, while at the same time ensuring that compensation to that individual does not far exceed the goal of making the employee whole.
- In all employment law causes of action, the bill imposes an affirmative duty on employees to mitigate past and future lost wages, regardless of whether the employee can establish his or her employer acted with malice or malicious intent, or in willful disregard of the employee's rights.
- The bill specifically abolishes the malice exception to an employee's duty to mitigate damages, and prohibits courts, commissions, and juries from awarding unmitigated or flat back pay or front pay. Any back pay or front pay awarded must be reduced by the amount of interim earnings or the amount the plaintiff employee could have earned in the interim with reasonable diligence. The burden rests on the defendant employer to prove lack of reasonable diligence.
- The trial court is responsible for making a preliminary ruling on the appropriateness of a reinstatement remedy versus a front pay remedy, if both remedies are sought by the plaintiff employee. In instances where front pay is determined to be the appropriate remedy, the trial judge is to determine the amount, if any, of front pay to be awarded.

§55-7E-1. Definitions.

In this article:

(a) “Back pay” means the wages that an employee would have earned, had the employee not suffered from an adverse employment action, from the time of the adverse employment action through the time of trial.

(b) “Front pay” means the wages that an employee would have earned, had the employee not suffered from an adverse employment action, from the time of trial through a future date.

§55-7E-2. Legislative findings and declaration of purpose.

(a) The Legislature finds that:

(1) Employees of this state are entitled to be free from unlawful discrimination, wrongful discharge and unlawful retaliation in the workplace. Employers are often confronted with difficult choices in the hiring, discipline, promotion, layoff and discharge of employees.

(2) The citizens and employers of this state are entitled to a legal system that provides adequate and reasonable compensation to those persons who have been subjected to unlawful employment actions, a legal system that is fair, predictable in its outcomes, and a legal system that functions within the mainstream of American jurisprudence.

(3) The goal of compensation remedies in employment law cases is to make the victim of unlawful workplace actions whole, including back pay; reinstatement or some amount of front pay in lieu of reinstatement; and under certain statutes, attorney’s fees for the successful plaintiff.

(4) In West Virginia, the amount of damages recently awarded in statutory and common law employment cases have been inconsistent with established federal law and the law of surrounding states. This lack of uniformity in the law puts our state and its businesses at a competitive disadvantage.

(b) The purpose of this article is to provide a framework for adequate and reasonable compensation to those persons who have been subjected to an unlawful employment action, but to ensure that compensation does not far exceed the goal of making a wronged employee whole.

§55-7E-3. Statutory or common law employment claims; duty to mitigate damages.

(a) In any employment law cause of action against a current or former employer, regardless of whether the cause of action arises from a statutory right created by the Legislature or a cause of action arising under the common law of West Virginia, the plaintiff has an affirmative duty to mitigate past and future lost wages, regardless of whether the plaintiff can prove the defendant employer acted with malice or malicious intent, or in willful disregard of the plaintiff’s rights. The malice exception to the duty to mitigate damages is abolished. Unmitigated or flat back pay and front pay awards are not an available remedy. Any award of back pay or front pay by a commission, court or jury shall be reduced by the amount of interim earnings or the amount earnable with reasonable diligence by the plaintiff. It is the defendant’s burden to prove the lack of reasonable diligence.

(b) In any employment law claim or cause of action, the trial court shall make a preliminary ruling on the appropriateness of the remedy of reinstatement versus front pay if such remedies are sought by the plaintiff. If front pay is determined to be the appropriate remedy, the amount of front pay, if any, to be awarded shall be an issue for the trial judge to decide.

Bill Sponsors: Senators Trump, Carmichael and Blair

Senate Bill 361 **Eliminating prevailing hourly wage requirement for construction of public improvements**

Effective Date: April 13, 2015

Code Reference: Adds §21-5A-12
Amends §21-5A-1, §21-5A-2, §21-5A-3, §21-5A-5,
§21-5A-6, §21-5A-8, §21-5A-10 and §21-5A-11

WVDE Contact: Amy Willard, Office of School Finance
awillard@k12.wv.us; 304.558.6300

Major Provisions

- The bill transfers the responsibility for determining the fair minimum rate of wages for the construction of public improvements from the Commissioner of Labor to Workforce West Virginia.
- The bill specifies that the prevailing wage requirements of the statute apply only to public improvements whose cost is in excess of \$500,000.
- Workforce West Virginia, in coordination with the West Virginia University Bureau of Business of Economic Research and the Center for Business and Economic Research at Marshall University, will determine the prevailing hourly rate of wages in the regions of the state. No later than June 1, 2015, these entities must determine the methodology to be used in determining the prevailing wage and present such methodology to the Joint Committee on Government and Finance. The Joint Committee will review the methodology and recommend to the Legislature any statutory changes necessary to clarify the method for determining prevailing wages.
- No later than July 1, 2015, Workforce West Virginia, in coordination with the West Virginia University Bureau of Business of Economic Research and the Center for Business and Economic Research at Marshall University, will determine the prevailing hourly rate of wages to be used for the remainder of 2015.
- On or before September 30 each year, Workforce West Virginia, in coordination with the West Virginia University Bureau of Business of Economic Research and the Center for Business and Economic Research at Marshall University, will determine the prevailing hourly rate of wages for the following year using the approved methodology.
- Additionally, no later than September 30, 2018, Workforce West Virginia, in coordination with the West Virginia University Bureau of Business of Economic Research and the Center for Business and Economic Research at Marshall University, will review the methodology for determining the prevailing wage and submit the findings of such review to the Joint Committee on Government and Finance. The Joint Committee on Government and Finance is required to review the methodology and recommend to the Legislature any statutory changes needed to clarify the method.
- Any confidential, individual proprietor-level data submitted to Workforce West Virginia, the West Virginia University Bureau of Business of Economic Research or the Center for Business and Economic Research at Marshall University for the purpose of determining the prevailing rate of wages may not be used for any other purpose, however, the information may be made available for purposes of an appeals process.
- The bill removes the appeals process that presently exists before the State Division of Labor. In its place, the bill requires that the Executive Director of Workforce West Virginia propose legislative rules that: (1) Establish an appeals process for hearing objections regarding the annual

determination of the prevailing wage; and (2) implement any necessary provisions to implement statutory provisions.

§21-5A-1. Definitions.

(1) The term "public authority", as used in this article, shall mean any officer, board or commission or other agency of the State of West Virginia, or any political subdivision thereof, authorized by law to enter into a contract for the construction of a public improvement, including any institution supported, in whole or in part, by public funds of the State of West Virginia or its political subdivisions, ~~and this article shall apply to expenditures of such institutions made in whole or in part from such public funds.~~

(2) The term "construction", as used in this article, shall mean any construction, reconstruction, improvement, enlargement, painting, decorating or repair of any public improvement let to contract. The term "construction" shall not be construed to include temporary or emergency repairs.

~~(3) The term "locality" means the county where the construction is to be performed, except that if there is not available in the county a sufficient number of competent skilled laborers, workmen and mechanics to perform such construction efficiently and properly, and may include one or more counties in this state adjacent to the one in which the construction is to be performed and from which such skilled laborers, workmen and mechanics may be obtained in sufficient numbers to perform the construction. With respect to construction of public improvements with the state road commission, "locality" may be construed to include one or more counties in this state adjacent to the one in which the construction or public improvement is to be performed and from which skilled laborers, workmen and mechanics may be accessible for work on such construction on public improvements.~~ "regions of this state", as used in this article, means the breakup of regions within the state as determined by Workforce West Virginia for the purposes of developing a methodology pursuant to the sections of this article.

(4) The term "public improvement", as used in this article, shall include all buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, airports, and all other structures upon which construction may be let to contract by the State of West Virginia or any political subdivision thereof.

(5) The term "construction industry", as used in this article, shall mean that industry which is composed of employees and employers engaged in construction of buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, airports, and all other structures or works, whether private or public, on which construction work as defined in subsection (2) of this section is performed.

~~(6) The term "board" shall mean the minimum wage board as constituted in this article.~~ "employee", for the purposes of this article, shall not be construed to include such persons as are employed or hired by the public authority on a regular or temporary basis or engaged in making temporary or emergency repairs.

~~(7) The term "employee", for purposes of this article, shall not be construed to include such persons as are employed or hired by the public authority on a regular or temporary basis or engaged in making temporary or emergency repairs.~~ "public money" means funds obtained by a public authority through taxes, fees, fines or penalties. For purposes of this article, public money does not include funds obtained by private donation, contribution, fundraising or insurance proceeds.

~~(8) The term "wages" means the hourly rate paid for work performed by an employee for an employer.~~

§21-5A-2. Policy declared.

It is hereby declared to be the policy of the State of West Virginia that a wage of no less than the prevailing hourly rate of wages for work of a similar character in the ~~locality in~~ regions of this state in which the construction is performed, shall be paid to all ~~workmen~~ workers employed by or on behalf of any public authority engaged in the construction of public improvements.

§21-5A-3. Fair minimum rate of wages; determination; filing; schedule of wages part of specifications.

Any public authority authorized to let to contract the construction of a public improvement, shall, before advertising for bids for the construction thereof, ascertain from ~~the state commissioner of labor~~ Workforce West Virginia, the fair minimum rate of wages, ~~including fair minimum overtime and holiday pay,~~ to be paid by the successful bidder to the laborers, ~~workmen~~ workers or mechanics in the various branches or classes of the construction to be performed; and such schedule of wages shall be made a part of the specifications for the construction and shall be published in an electronic or other medium and incorporated in the bidding blanks by reference when approved by ~~the commissioner of labor~~ Workforce West Virginia where the construction is to be performed by contract. The "fair minimum rate of wages," for the intents and purposes of this article, shall be the prevailing rate of wages paid in the ~~locality in~~ regions of this state as hereinbefore defined to the ~~majority of workmen~~ workers, laborers or mechanics in the same trade or occupation in the construction industry. ~~The commissioner of labor or a member of his or her department designated by him or her~~ Workforce West Virginia shall assemble the data as to the fair minimum wage rates and shall file wage rates. Rates shall be established and filed as hereinafter provided on January 1, of each year, unless otherwise specified within this article. These rates shall prevail as the minimum wage rate ~~on~~ for all public improvements for which bids are asked during the year beginning with the date when such new rates are filed and, until the new rates are filed, the rates for the preceding year shall remain in effect: *Provided*, That such rates shall not remain in effect for a period longer than fifteen months from the date they are published, but, this provision shall not affect construction of a public improvement then underway: *Provided, however*, That this section applies only to contracts let for public improvements whose cost at the time the contract is awarded will be paid with public money in an amount greater than \$500,000.

§21-5A-5. Prevailing wages established at regular specified intervals; how determined; filing; ~~objections of determination; hearing; final determination; appeals to board; judicial review~~ legislative review.

(1) ~~The department of labor, from time to time,~~ Workforce West Virginia, in coordination with the West Virginia University Bureau of Business and Economic Research and the Center for Business and Economic Research at Marshall University in furtherance of section four, article three, chapter eighteen-b of this code, shall investigate and determine the prevailing hourly rate of wages in the ~~localities in~~ regions of this state. Determinations thereof shall be made annually on January 1 of each year, unless otherwise specified within this article, and shall remain in effect during the successive year: *Provided, however*, That such rates shall not remain in effect for a period longer than fifteen months from the date they are published. A copy of the determination so made, certified by Workforce West Virginia, shall be filed immediately with the Secretary of State.

~~In determining such prevailing rates, the department of labor may ascertain and consider the applicable wage rates established by collective bargaining agreements, if any, and such rates as are paid generally within the locality in this state where the construction of the public improvement is to be performed.~~

(2) ~~A copy of the determination so made, certified by the secretary of the board, shall be filed immediately with the secretary of state and with the department of labor. Copies shall be supplied to all persons requesting same within ten days after such filing. On or before June 1, 2015, Workforce West Virginia, in coordination with the West Virginia University Bureau of Business and Economic Research and the Center for Business and Economic Research at Marshall University, shall determine the methodology for annually calculating the prevailing hourly rate of wages as evidenced by all appropriate economic data, including, but not limited to, the average rate of wages published by the U. S. Bureau of Labor Statistics and the actual rate of wages paid in the regions of this state to the workers, laborers or mechanics in the same trade or occupation in the construction industry, regardless of the wages listed in collective bargaining agreements, to ascertain the prevailing rate of wages paid in the regions of the state in which the construction of the public improvement is to be performed. Workforce West Virginia shall present such methodology for the determination of the prevailing hourly rate of wages to the Joint Committee on Government and Finance, which shall review the methodology being used to determine annually the~~

prevailing hourly rate of wages and recommend to the Legislature any statutory changes needed to clarify the method for determining prevailing wages.

~~(3) At any time within fifteen days the certified copies of the determination have been filed with the secretary of state and the department of labor, any person who may be affected thereby may object in writing to the determination or such part thereof as he deems objectionable by filing a written notice with the department of labor stating the specific grounds of the objection. On or before July 1, 2015, Workforce West Virginia, in coordination with the West Virginia University Bureau of Business and Economic Research and the Center for Business and Economic Research at Marshall University, shall determine the prevailing hourly rate of wages for the remainder of 2015 in accordance with the approved methodology set forth in subsection (2) of this section: *Provided*, That if the determination is not in place on July 1, 2015, for any reason, no prevailing hourly rate of wages shall be in effect until the determination is made: *Provided, however*, That in the event the determination is not in place on July 1, 2015, the Joint Committee on Government and Finance may extend the deadline to a date thereafter, but, in any event, no later than September 30, 2015. During the extension period only, the prevailing wage in place prior to July 1, 2015, shall remain the prevailing wage: *Provided further*, That in the event the determination is not in place at the conclusion of such extension period, no prevailing hourly rate of wages shall be in effect until the determination is made.~~

~~(4) Within ten days of the receipt of the objection, the department of labor shall set a date for a hearing on the objection. The date for the hearing shall be within thirty days after the receipt of the objection. Written notice of the time and place of the hearing shall be given to the objectors at least ten days prior to the date set for the hearing and at a time so as to enable the objectors to be present. On or before September 30 of every year, Workforce West Virginia, in coordination with the West Virginia University Bureau of Business and Economic Research and the Center for Business and Economic Research at Marshall University, shall determine the prevailing hourly rate of wages for the following year in accordance with the approved methodology set forth in subsection (2) of this section.~~

~~(5) The department of labor at its discretion may hear such written objection separately or consolidate for hearing any two or more written objections. At the hearing the department of labor shall introduce into evidence the results of the investigation it instituted and such other facts which were considered at the time of the original determination of the fair minimum prevailing hourly rate including the sources which formed the basis for its determination. The department of labor or any objectors thereafter may introduce such further evidence as may be material to the issues. On or before September 30, 2018, and in every third year thereafter, Workforce West Virginia shall review the methodology for determining the prevailing hourly rate of wages, as set forth in subsection (2) of this section, with the West Virginia University Bureau of Business and Economic Research and the Center for Business and Economic Research at Marshall University, and present such review and make any recommendations regarding such methodology to the Joint Committee on Government and Finance. The Joint Committee on Government and Finance shall review the methodology being used to determine the prevailing hourly rate of wages and recommend to the Legislature any statutory changes needed to clarify the method for determining prevailing wages.~~

~~(6) Within ten days of the conclusion of the hearing, the department must rule on the written objections and make such final determination as shall be established by a preponderance of the evidence. Immediately upon such final determination, the department of labor shall file a certified copy of its final determination with the secretary of state and with the department of labor and shall serve a copy of the final determination on all parties to the proceedings by personal service or by registered mail. Any confidential, individual proprietor-level data submitted to Workforce West Virginia, the West Virginia University Bureau of Business and Economic Research or the Center for Business and Economic Research at Marshall University for the purpose of determining the prevailing rates may not be used for any purpose other than the calculation of the prevailing wage rates: *Provided*, That any such data may be available for purposes of the appeals process referenced in section eleven of this article: *Provided, however*, That any confidential, individual proprietor-level data submitted to Workforce West Virginia, the West Virginia University Bureau of Business and Economic Research or the Center for Business and Economic Research at Marshall~~

University for the purpose of determining the prevailing wage rates shall not be considered a public record for purposes of section three, article one, chapter twenty-nine-b of this code.

~~(7) Any person affected by the final determination of the department of labor, whether or not such person participated in the proceedings resulting in such final determination, may appeal to the board from the final determination of the department of labor within ten days from the filing of the copy of the final determination with the secretary of state. The board shall hear the appeal within twenty days from the receipt of notice of appeal. The hearing by the board shall be held in Charleston. The hearing by the board shall be upon the record compiled in the hearing before the department of labor and the board shall have the authority to affirm, reverse, amend, or remand for further evidence, the final determination of the department of labor. The board shall render its decision within ten days after the conclusion of its hearing.~~

~~(8) Any party to the proceeding before the board or any person affected thereby may within thirty days after receipt of the notice of its decision, appeal the board's decision to the circuit court of the county wherever the construction of a public improvement is to be performed, which shall consider the case on the record made before the commissioner of labor and before the board. The decision of such circuit court may be appealed to the supreme court of appeals of West Virginia by any party to the proceedings or by any person affected thereby in the manner provided by law for appeals in civil actions.~~

~~(9) Pending the decision on appeal, the rates for the preceding year shall remain in effect.~~

§21-5A-6. Contracts to contain provisions relative to minimum wages to be paid; exceptions.

In all cases where any public authority has ascertained a fair minimum rate or rates of wages as herein provided, and construction of a public improvement is let to contract, the contract executed between the public authority and the successful bidder shall contain a provision requiring the successful bidder and all his or her subcontractors to pay a rate or rates of wages which shall not be less than the fair minimum rate or rates of wages as provided by this article: Provided, That the provisions of this article only apply to contracts let for public improvements whose cost at the time the contract is awarded will be paid with public money in an amount greater than \$500,000.

§21-5A-8. Wage records to be kept by contractor, subcontractor, etc.; contents; open to inspection.

The contractor and each subcontractor or the officer of the public authority in charge of the construction of a public improvement shall keep an accurate record showing the names and occupations of all such skilled laborers, ~~workmen~~ workers and mechanics employed by them, in connection with the construction on the public improvement and showing also the actual wages paid to each of the skilled laborers, ~~workmen~~ workers and mechanics, which record shall be open at all reasonable hours to the inspection of ~~the department of labor~~ Workforce West Virginia and the public authority which let the contract, its officers and agents. It shall not be necessary to preserve such record for a period longer than three years after the termination of the contract.

§21-5A-10. Existing contracts.

This article shall apply only to contracts for construction on public improvements let after the effective date of this article, and to construction on public improvements for which there has been determined, pursuant to section five of this article, the fair minimum wage rates as provided in this article, and such determination has not been appealed from as may be provided by this article.

§21-5A-11. ~~Provisions of article severable~~ Rulemaking.

~~Each section of this article and every part thereof is hereby declared to be an independent section or part of a section, and if any section, subsection, sentence, clause or phrase of this article shall for any reason be held unconstitutional, the validity of the remaining phrases, clauses, sentences, subsections, and sections of this article shall not be affected thereby.~~

(a) The Executive Director of Workforce West Virginia shall promulgate emergency rules and propose, for legislative promulgation, legislative rules pursuant to the provisions of article three, chapter twenty-nine-a of this code to effectuate the provisions of this article. All rules, whether emergency or not, promulgated pursuant to this section shall at a minimum:

(1) Define the regions of the state as used in the article;

(2) Establish a process for addressing written objections regarding the methodology for calculating the prevailing hourly rate of wages and the calculation of the hourly rate of wages: *Provided*, That Workforce West Virginia may consolidate written objections for hearing and final determination purposes; and

(3) Propose any other rules necessary to effectuate the purposes of this article.

(b) Any legislative rule in effect prior to the effective date of this article implementing the provisions of this article is hereby repealed.

§21-5A-12. Provisions of article severable.

Each section of this article, and every part thereof, is hereby declared to be an independent section or part of a section and if any section, subsection, sentence, clause or phrase of this article shall for any reason be held unconstitutional, the validity of the remaining phrases, clauses, sentences, subsections and sections of this article shall not be affected thereby.

Bill Sponsor: Senator Blair

Senate Bill 393 Reforming juvenile justice system

Effective Date: May 17, 2015

Code Reference: §49-1-206, 49-2-907, 49-2-912, 49-2-913, 49-2-1002, 49-2-1003, 49-4-403, 49-4-406, 49-4-409, 49-4-413, 49-4-702, 49-4-702a, 49-4-711, 49-4-712, 49-4-714, 49-4-718, 49-4-719, 49-4-724, 49-4-725, 49-5-103, 49-5-106

WVDE Contact: Sarah Stewart, Office of the Superintendent
sarah.a.stewart@k12.wv.us; 304.558.3762

Major Provisions

Youth Reporting Centers

- The bill mandates the Division of Juvenile Services (DJS) to operate community-based youth reporting centers to provide services to youth involved in the juvenile justice system as an alternative to detention, corrections or out-of-home placements. DJS is required to operate at least 15 centers by July 1, 2016, and 19 centers by July 1, 2018. DJS is required to collaborate with county boards of education to provide educational services to youth referred to youth reporting centers, whenever feasible.

Juvenile Justice Reform Oversight Committee

- The bill establishes the Juvenile Justice Reform Oversight Committee to oversee the implementation of reform measures to improve the state's juvenile justice system; unless reauthorized, the committee will sunset December 31, 2020. The committee is responsible for:
 - Guiding and evaluating the implementation of this bill
 - Obtaining and reviewing the juvenile recidivism and program outcome data collected
 - Calculate state expenditures that have been avoided by reductions in number of out-of-home placements
 - Institute a reform process for developing and reviewing performance measurement and outcome measures through data analysis
 - Ensure accountability and monitor fidelity of implementation efforts
 - Study topics relating to continued improvement of juvenile justice system
 - Issue annual report before November 30th of each year

Programs and Services Provided by the Division of Juvenile Services (DJS) and the Department of Health and Human Resources (DHHR)

- By January 1, 2017, DJS must allocate at least 50% of all community services funding for the implementation of policies, procedures, programs and practices demonstrated by research to reliably produce reductions in the likelihood of a youth reoffending.
- DHHR is current required to establish an individualized program of rehabilitation for each status offender referred and each alleged juvenile delinquent. The bill requires that for the program for any juvenile in out-of-home placement must:
 - Include a plan to return the juvenile to his or her home and transition the juvenile into community services to continue his or her rehabilitation.
 - The plan for transitioning must begin upon juvenile's entry into the residential facility; the transition process must begin 30 days after admission to the residential facility and conclude no later than three months after admission.
 - DHHR staff shall ensure that rehabilitation programs include a plan for transition.

- If further time in residential placement is necessary, DHHR must provide information to the MDT team. Upon a finding of clear and convincing evidence that an extension is in the best interest of the child, the Court may then order an extension of time in the residential placement prior to the juvenile's transition to the community. Without such a finding, the court must order that the transition to community services proceed.
- The bill allows DHHR to enter into cooperative agreements with private or state agencies to fulfill its duties in maintaining rehabilitative facilities for status offenders. However, after January 1, 2016, DHHR may not enter into such agreements with DJS.

Multidisciplinary Treatment (MDT) Teams

- The bill modifies the language concerning MDT team meetings after juvenile cases have been initiated. The modification requires DHHR to coordinate with counsel representing juveniles to designate at least one day per month on which MDT team meetings for that judicial circuit are to be held. This does not prevent additional MDT team meetings to be held on days other than such designated day.
- In instances where DHHR is required to convene a MDT team to assess juvenile delinquents, juvenile status offenders or juveniles committed to the custody of DJS, part of the assessment must include a risk needs assessment, which is defined as a validated, standardized actuarial tool which identifies specific risk factors that increase the likelihood of reoffending and the factors that, when properly addressed, can reduce the likelihood of reoffending.
- The bill modifies the composition of MDT teams by replacing the "appropriate school official" member with the county school superintendent or the superintendent's designee, and adding to the team a treatment or service provider with training and clinical experience coordinating behavioral or mental health treatment.
- In addition to a MDT team's current responsibilities, the bill requires the MDT team to advise the court on the individual treatment and rehabilitation plan recommended for a child for either out-of-home placement or community supervision. The plan may focus on reducing the likelihood of reoffending, requirements for the child to take responsibility for his or her actions, completion of evidence based services or programs or any other relevant goal for the child; the plan may include opportunities to incorporate the child's family into the treatment and rehabilitation process. The MDT team must monitor the progress of the plan by reviewing progress at regular meetings held at least every three months, unless shorter intervals are ordered by the court. The MDT team is to report to the court on the progress of the plan or if additional modifications are necessary.
- For juveniles ordered to probation supervision, the juvenile's probation officer must implement an individualized case plan developed in consultation with the juvenile's parents and other appropriate parties, and based upon the results of a risk and needs assessment. The individualized case plan must include at a minimum:
 - Actions the juvenile and, if appropriate, juvenile's parents, must take to ensure future lawful conduct and compliance with court's disposition order
 - Services that will be provided to address: mental health and substance abuse issues; education; individual, group and family counseling services; community restoration; or other relevant concerns identified by the probation officer

Individualized Case Planning

- For juveniles in an out-of-home placement, DHHR must ensure that the residential service provider develops and implements an individualized case plan based upon recommendations of the MDT team and the results of a risk and needs assessment. The individualized case plan must include at a minimum:

- Treatment goals and actions to be taken by juvenile to demonstrate attainment of each goal
 - Services to be provided
 - Detailed plan to assure appropriate reintegration of the juvenile to his family, school and community following satisfactory completion of the plan treatment goals, including a protocol and timeline for engaging parents prior to the juvenile's release
- For juveniles committed to DJS, DJS must develop and implement an individualized case plan based upon recommendations of the MDT team and the results of a risk and needs assessment. The individualized case plan must include at a minimum:
 - Treatment goals and actions to be taken by juvenile to demonstrate attainment of each goal
 - Services to be provided
 - Detailed plan to assure appropriate reintegration of the juvenile to his family, school and community following satisfactory completion of the plan treatment goals, including a protocol and timeline for engaging parents prior to the juvenile's release

Prepetition Diversion

- The bill allows the court to refer a juvenile petition to a truancy diversion specialist (in addition to case workers and probation officers) for preliminary inquiry before the petition is formally filed.
- For juvenile petitions involving truancy offenses, the prosecutor must refer the matter to a DHHR worker, a probation officer or truancy diversion specialist to develop a diversion program.
- For juvenile petitions involving a status offense other than truancy, the prosecutor must refer the juvenile to a case worker or probation officer to develop a diversion program.
- For juvenile petitions involving nonviolent misdemeanor offenses that the prosecutor determines may be resolved informally through a diversion program, the prosecutor must refer the matter to a case worker or probation officer to develop a diversion program.
- A prosecutor is not required to refer juvenile petitions for development of a diversion program if:
 - The juvenile has a prior adjudication for a status or delinquency offense
 - There exists significant and likely risk of harm to the juvenile, family members or the public
- The bill outlines steps for developing a diversion program, which include:
 - Conducting an assessment of the juvenile
 - Creating a diversion agreement, which may include:
 - Referral to: (1) community services to address assessed needs; (2) services for parents; or (3) community work service programs
 - Service providers are to make reasonable efforts to contact juvenile/parents within 72 hours of referral
 - Requirement that juvenile regularly attend school
 - Community-based sanctions to address noncompliance
 - Any other efforts which may reasonably benefit the community, juvenile and his or her parents
 - Obtaining consent from the juvenile and his or her parents to the terms of the diversion agreement
 - If consent cannot be obtained, the petition may be filed with the court

- Referring the juvenile and, if necessary, his or her parents, to services in the community pursuant to the diversion agreement
- Upon a case worker, probation officer or truancy diversion specialist's request, court may enter reasonable and relevant orders to juvenile's parents that have consented to the diversion agreement as necessary to carry out the agreement
- Referral to a prepetition diversion program tolls the statute of limitations for status and delinquency offenses
- Case workers, probation officers and/or truancy diversion specialists must monitor the juvenile's compliance with a diversion agreement
 - The juvenile petition will not be filed with the court if the juvenile successfully completes the diversion agreement
 - If the juvenile is unsuccessful in or noncompliant with the diversion agreement, it will be referred to a prepetition review team convened by the case worker, probation officer or truancy diversion specialist. The prepetition review team may consist of:
 - Case worker knowledgeable about community services available
 - Service provider
 - School superintendent or designee
 - Any other person who may assist in providing recommendations on community services for the needs of the juvenile and his or her family
 - If a new delinquency offense occurs, a petition may be filed with the court.
- A prepetition review team convened must determine whether other appropriate services are available to meet the needs of the juvenile or his or her family; such determination must be made within 14 days of referral by a case worker, probation officer or truancy diversion specialist. The prepetition review team has the following options:
 - Refer a modified diversion agreement back to the case worker, probation officer or truancy diversion specialist
 - Advise for a petition to be filed with the court
 - Advise that an abuse and neglect investigation should be opened

Informal Adjustment Periods

- Before a petition is formally filed with the court, a probation officer may refer the parties to an informal adjust period, for no more than six months unless extended by the court, if:
 - The court has jurisdiction over the matter
 - Informal adjustment period would be in the best interest of the child
 - Juvenile and his or her parent's consent to informal adjust period with knowledge that consent is not obligatory
- During the disposition of juveniles adjudicated to be delinquents and status offenders, the court must consider the results of the juvenile's risk and needs assessment.

Court Intervention when Services Being Provided by DHHR

- Presently, DHHR make petition the court to intervene in situations where DHHR provides services to juveniles adjudicated as status offenders, and the juvenile, or his or her parents, fails to comply with the services. The bill modifies the manner in which the court may intervene in the following ways:
 - First time status offenders may not be placed in an out-of-home placement unless placement stems from an abuse and neglect situation or the court finds by clear and convincing evidence

the existence of a significantly and likely risk of harm to the juvenile, a family member or the public and continued placement in the home is contrary to the best interest of the juvenile. The court must also find that DHHR must have made all reasonable efforts to prevent removal of the juvenile from his or her home, or that reasonable efforts are not required due to an emergent situation.

- The bill clarifies that the court may include reasonable and relevant orders to parents of juveniles as necessary and proper when acting upon a DHHR petition.
- When the court finds that placement in a residential facility is necessary to provide services, the court must specifically include in the order the factors that indicate (1) the likely effectiveness of placement in a residential facility and (2) community services were previously attempted.
- Beginning January 1, 2016, juveniles adjudicated solely as status offenders may not be placed in a DJS facility.

Disposition of juvenile delinquents

- The bill allows the court, to assist with disposition, to order the use of a standardized screener. A standardized screener is defined in the bill as a brief, validated nondiagnostic inventory or questionnaire designed to identify juveniles in need of further assessment for medical, substance abuse, emotional, psychological, behavioral, or educational issues, or other conditions.
- Presently, examination and investigative reports are not to be made available to the court until after the adjudicatory hearing. The bill changes this to say that such reports shall not be relied upon by the court in making an adjudication determination.
- When conducting disposition of a juvenile, the bill requires that the court receive and consider the results of a risk and needs assessment. The bill clarifies that disposition may include reasonable and relevant orders to parents as is necessary and proper to effectuate disposition.
- When determining the disposition of a juvenile, the bill requires the court to make all reasonable efforts to place the juvenile in the least restrictive alternative appropriate to the needs of the juvenile and the community.
 - Juveniles adjudicated delinquent for nonviolent misdemeanor offenses cannot be placed with DJS or DHHR if the juvenile has no prior adjudications or no prior dispositions to a pre-adjudicatory improvement period/probation for the current matter.
 - Juveniles can be referred to out-of-home placements only when the placement stems from an abuse and neglect situation or the court finds by clear and convincing evidence the existence of a significantly and likely risk of harm to the juvenile, a family member or the public and continued placement in the home is contrary to the best interest of the juvenile. The court must also find that DHHR must have made all reasonable efforts to prevent removal of the juvenile from his or her home, or that reasonable efforts are not required due to an emergent situation.
- For disposition orders that include probation, the juvenile's probation officer must submit an overview to the court of the juvenile's compliance with the conditions of probation and goals of his or her case plan every 90 days.
 - Probation officer must submit discharge from probation supervision if juvenile is compliant and no longer in need of supervision; court is permitted to order early termination of probation term if warranted
 - For juveniles not compliant with probation conditions or failing to meet goals, the probation officer must include in report to court recommendations with additional or changed conditions or goals necessary to achieve compliance.

Juvenile probation officers

- The bill authorizes the West Virginia Supreme Court of Appeals to develop a system of community-based juvenile probation sanctions and incentives that probation officers may use in response to violations of probation terms and conditions and to award incentives for positive behavior.
- Purpose of system is to reduce amount of resources and time spent by court addressing probation violations, reduce likelihood of new status or delinquent act, and to encourage and reward positive behavior by the juvenile on probation prior to any attempt to put in juvenile in an out-of-home placement.

Restorative Justice Programs

- The bill establishes restorative justice programs to which a court or prosecuting attorney may divert a juvenile referred to the court for a status offense or a nonviolent misdemeanor offense prior to adjudication.
- Restorative justice programs must:
 - Emphasize repairing the harm against the victim and community caused
 - Include victim-offender dialogue or family group conferencing, attended voluntarily by the victim, juvenile, victim advocate, community members or supporters to provide an opportunity for the offender to accept responsibility for the harm caused and participate in setting consequences to repair the harm
 - Implement sanctions for the juvenile
- The petition filed against the juvenile will be dismissed if the juvenile that successfully completes a restorative justice program.
- No information obtained in a restorative justice program may be used in a subsequent proceeding.

Data and Records

- The bill authorizes a copy of a juvenile's record to be disclosed to DJS for purposes of planning for the juvenile and his or her parents.
- DJS, DHHR and WVSCA are required to jointly establish procedures to collect and compile data necessary to calculate juvenile recidivism and the outcomes of programs.
- For youth referred to truancy diversion specialists or other truancy diversion programs operated or funded by WVSCA, DJS, DHHR WVDE or other political subdivision, that agency is required to develop procedures to track and record outcomes of each program, and to evaluate the effectiveness in reducing unexcused absences for youth referred to the program. The outcome data is required to include, at a minimum:
 - Number of youth successfully completing the truancy diversion program
 - Number of youth referred to the court system after failing to complete a truancy diversion program
 - Number of youth who, after successfully completing a truancy diversion program, accumulate five or more unexcused absences in the current or subsequent school year
- WVSCA, DJS, DHHR and WVDE must also establish procedures to jointly collect and compile data relating to disproportionate minority contact, defined as the proportion of minority youth who come into contact with the juvenile justice system in relation to the proportion of minority youth in the general population, and the compilation shall include data including the prevalence of such disproportionality in each county. The bill instructs that the data must include, at a minimum, the race and gender of youth arrested or referred to court, entered into a diversion program, adjudicated and disposed.

§49-1-206. Definitions related, but not limited, to child advocacy, care, residential and treatment programs.

When used in this chapter, terms defined in this section have the meanings ascribed to them that relate to, but are not limited to, child advocacy, care, residential and treatment programs, except in those instances where a different meaning is provided or the context in which the word is used clearly indicates that a different meaning is intended.

“Child advocacy center (CAC)” means a community-based organization that is a member in good standing with the West Virginia Child Abuse Network, Inc., as set forth in section one hundred one, article three of this chapter.

“Child care” means responsibilities assumed and services performed in relation to a child’s physical, emotional, psychological, social and personal needs and the consideration of the child’s rights and entitlements, but does not include secure detention or incarceration under the jurisdiction of the Division of Juvenile Services pursuant to part nine, article two of this chapter. It includes the provision of child care services or residential services.

“Child care center” means a facility maintained by the state or any county or municipality thereof, or any agency or facility maintained by an individual, firm, corporation, association or organization, public or private for the care of thirteen or more children for child care services in any setting, if the facility is open for more than thirty days per year per child.

“Child care services” means direct care and protection of children during a portion of a twenty-four hour day outside of the child’s own home which provides experiences to children that foster their healthy development and education.

“Child placing agency” means a child welfare agency organized for the purpose of placing children in private family homes for foster care or for adoption. The function of a child-placing agency may include the investigation and certification of foster family homes and foster family group homes as provided in this chapter. The function of a child placing agency may also include the supervision of children who are sixteen or seventeen years old and living in unlicensed residences.

“Child welfare agency” means any agency or facility maintained by the state or any county or municipality thereof, or any agency or facility maintained by an individual, firm, corporation, association or organization, public or private, to receive children for care and maintenance or for placement in residential care facilities, including, without limitation, private homes or any facility that provides care for unmarried mothers and their children. A child welfare agency does not include juvenile detention facilities or juvenile correctional facilities operated by or under contract with the Division of Juvenile Services, pursuant to part nine, article two of this chapter, nor any other facility operated by that division for the secure housing or holding of juveniles committed to its custody.

“Community based” means a facility, program or service located near the child’s home or family and involving community participation in planning, operation and evaluation and which may include, but is not limited to, medical, educational, vocational, social and psychological guidance, training, special education, counseling, substance abuse and any other treatment or rehabilitation services.

“Community-based juvenile probation sanctions” means any of a continuum of nonresidential accountability measures, programs and sanctions in response to a technical violation of probation, as part of a system of community-based juvenile probation sanctions and incentives, that may include, but are not limited to:

- (A) Electronic monitoring;
- (B) Drug and alcohol screening, testing or monitoring;

(C) Youth reporting centers;

(D) Reporting and supervision requirements;

(E) Community service; and

(F) Rehabilitative interventions such as family counseling, substance abuse treatment, restorative justice programs and behavioral or mental health treatment.

“Community services” means nonresidential prevention or intervention services or programs that are intended to reduce delinquency and future court involvement.

“Evidence-based practices” means policies, procedures, programs and practices demonstrated by research to reliably produce reductions in the likelihood of reoffending.

“Facility” means a place or residence, including personnel, structures, grounds and equipment used for the care of a child or children on a residential or other basis for any number of hours a day in any shelter or structure maintained for that purpose. Facility does not include any juvenile detention facility or juvenile correctional facility operated by or under contract with the Division of Juvenile Services for the secure housing or holding of juveniles committed to its custody. “Family child care facility” means any facility which is used to provide nonresidential child care services for compensation for seven to twelve children, including children who are living in the household, who are under six years of age. No more than four of the total number of children may be under twenty-four months of age. A facility may be in a provider’s residence or a separate building.

“Family child care home” means a facility which is used to provide nonresidential child care services for compensation in a provider’s residence. The provider may care for four to six children, at one time including children who are living in the household, who are under six years of age. No more than two of the total number of children may be under twenty-four months of age. “Family resource network” means:

(A) A local community organization charged with service coordination, needs and resource assessment, planning, community mobilization and evaluation, and which has met the following criteria:

(i) Agreeing to a single governing entity;

(ii) Agreeing to engage in activities to improve service systems for children and families within the community;

(iii) Addressing a geographic area of a county or two or more contiguous counties;

(iv) Having nonproviders, which include family representatives and other members who are not employees of publicly funded agencies, as the majority of the members of the governing body, and having family representatives as the majority of the nonproviders;

(v) Having representatives of local service agencies, including, but not limited to, the public health department, the behavioral health center, the local health and human resources agency and the county school district, on the governing body; and

(vi) Accepting principles consistent with the cabinet’s mission as part of its philosophy.

(B) A family resource network may not provide direct services, which means to provide programs or services directly to children and families.

“Family support”, for the purposes of part six, article two of this chapter, means goods and services needed by families to care for their family members with developmental disabilities and to enjoy a quality of life comparable to other community members.

“Family support program” means a coordinated system of family support services administered by the Department of Health and Human Resources through contracts with behavioral health agencies throughout the state.

“Foster family home” means a private residence which is used for the care on a residential basis of no more than five children who are unrelated by blood, marriage or adoption to any adult member of the household.

“Health care and treatment” means:

- (A) Developmental screening;
- (B) Mental health screening;
- (C) Mental health treatment;
- (D) Ordinary and necessary medical and dental examination and treatment;
- (E) Preventive care including ordinary immunizations, tuberculin testing and well-child care; and

(F) Nonemergency diagnosis and treatment. However, nonemergency diagnosis and treatment does not include an abortion. “Home-based family preservation services” means services dispensed by the Division of Human Services or by another person, association or group who has contracted with that division to dispense services when those services are intended to stabilize and maintain the natural or surrogate family in order to prevent the placement of children in substitute care. There are two types of home-based family preservation services and they are as follows:

- (A) Intensive, short-term intervention of four to six weeks; and
- (B) Home-based, longer-term after care following intensive intervention.

“Informal family child care” means a home that is used to provide nonresidential child care services for compensation for three or fewer children, including children who are living in the household, who are under six years of age. Care is given in the provider’s own home to at least one child who is not related to the caregiver.

“Nonsecure facility” means any public or private residential facility not characterized by construction fixtures designed to physically restrict the movements and activities of individuals held in lawful custody in that facility and which provides its residents access to the surrounding community with supervision.

“Nonviolent misdemeanor offense” means a misdemeanor offense that does not include any of the following:

- (A) An act resulting in bodily injury or death;
- (B) The use of a weapon in the commission of the offense;
- (C) A domestic abuse offense involving a significant or likely risk of harm to a family member or household member;
- (D) A criminal sexual conduct offense; or
- (E) Any offense for driving under the influence of alcohol or drugs.

“Out-of-home placement” means a post-adjudication placement in a foster family home, group home, nonsecure facility, emergency shelter, hospital, psychiatric residential treatment facility, staff-secure facility, hardware secure facility, detention facility or other residential placement other than placement in the home of a parent, custodian or guardian.

“Out-of-school time” means a child care service which offers activities to children before and after school, on school holidays, when school is closed due to emergencies and on school calendar days set aside for teacher activities.

“Placement” means any temporary or permanent placement of a child who is in the custody of the state in any foster home, group home or other facility or residence.

“Pre-adjudicatory community supervision” means supervision provided to a youth prior to adjudication, a period of supervision up to one year for an alleged status or delinquency offense.

“Regional family support council” means the council established by the regional family support agency to carry out the responsibilities specified in part six, article two of this chapter.

“Relative family child care” means a home that provides nonresidential child care services only to children related to the caregiver. The caregiver is a grandparent, great grandparent, aunt, uncle, great-aunt, great-uncle or adult sibling of the child or children receiving care. Care is given in the provider’s home.

“Residential services” means child care which includes the provision of nighttime shelter and the personal discipline and supervision of a child by guardians, custodians or other persons or entities on a continuing or temporary basis. It may include care and/or treatment for transitioning adults. Residential services does not include or apply to any juvenile detention facility or juvenile correctional facility operated by the Division of Juvenile Services, created pursuant to this chapter, for the secure housing or holding of juveniles committed to its custody.

“Risk and needs assessment” means a validated, standardized actuarial tool which identifies specific risk factors that increase the likelihood of reoffending and the factors that, when properly addressed, can reduce the likelihood of reoffending.

“Secure facility” means any public or private residential facility which includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility.

“Staff-secure facility” means any public or private residential facility characterized by staff restrictions of the movements and activities of individuals held in lawful custody in such facility and which limits its residents' access to the surrounding community, but is not characterized by construction fixtures designed to physically restrict the movements and activities of residents.

“Standardized screener” means a brief, validated nondiagnostic inventory or questionnaire designed to identify juveniles in need of further assessment for medical, substance abuse, emotional, psychological, behavioral, or educational issues, or other conditions.

“State family support council” means the council established by the Department of Health and Human Resources pursuant to part six, article two of this chapter to carry out the responsibilities specified in article two of this chapter.

“Time-limited reunification services” means individual, group and family counseling, inpatient, residential or outpatient substance abuse treatment services, mental health services, assistance to address domestic violence, services designed to provide temporary child care and therapeutic services for families, including crisis nurseries and transportation to or from those services, provided during fifteen of the most recent twenty-two months a child or juvenile has been in foster care, as determined by the earlier date of

the first judicial finding that the child is subjected to abuse or neglect, or the date which is sixty days after the child or juvenile is removed from home.

“Technical violation” means an act that violates the terms or conditions of probation or a court order that does not constitute a new delinquent offense.

“Truancy diversion specialist” means a school-based probation officer or truancy social worker within a school or schools who, among other responsibilities, identifies truants and the causes of the truant behavior, and assists in developing a plan to reduce the truant behavior prior to court involvement.

§49-2-907. Examination, diagnosis classification and treatment; period of custody.

(a) As a part of the disposition for a juvenile who has been adjudicated delinquent, and who has been determined by a risk and needs assessment to be high risk or who has committed an act or acts of violence, the court may, upon its own motion or upon request of counsel, order the juvenile to be delivered into the custody of the Director of the Division of Juvenile Services, who shall cause the juvenile to be transferred to a juvenile diagnostic center for a period not to exceed thirty days. During this period, the juvenile shall undergo examination, diagnosis, classification and a complete medical examination and shall at all times be kept apart from the general juvenile inmate population in the director’s custody.

(b) During the examination period established by subsection (a) of this section, the director, or his or her designee, shall convene and direct a multidisciplinary treatment team for the juvenile which team will include the juvenile, if appropriate, the juvenile’s probation officer, the juvenile’s case worker, if any, the juvenile’s custodial parent or parents, the juvenile’s guardian, attorneys representing the juvenile or the parents, the guardian ad litem, if any, the prosecuting attorney and an appropriate school official or representative. The team may also include, where appropriate, a court-appointed special advocate, a member of a child advocacy center and any other person who may assist in providing recommendations for the particular needs of the juvenile and the family.

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

§49-2-912. Youth reporting centers.

(a) The Division of Juvenile Services shall operate community-based youth reporting centers to provide services to youth involved in the juvenile justice system as an alternative to detention, corrections or out-of-home placement.

(b) Based upon identifiable need, the Division of Juvenile Services shall operate a total of at least fifteen youth reporting centers by July 1, 2016.

(c) Based upon identifiable need, the Division of Juvenile Services shall operate a total of at least nineteen youth reporting centers by July 1, 2018.

(d) The Division of Juvenile Services shall promulgate guidelines, policies and procedures regarding referrals, assessments, case management, services, education and connection to services in the community.

(e) The Division of Juvenile Services shall collaborate with county boards of education to provide education services to certain youth referred to youth reporting centers, whenever feasible.

(f) The Division of Juvenile Services may convene local or regional advisory boards for youth reporting centers.

§49-2-913. Juvenile Justice Reform Oversight Committee.

(a) The Juvenile Justice Reform Oversight Committee is hereby created to oversee the implementation of reform measures intended to improve the state's juvenile justice system.

(b) The committee shall be comprised of seventeen members, including the following individuals:

(1) The Governor, or his or her designee, who shall preside as chair of the committee;

(2) Two members from the House of Delegates, appointed by the Speaker of the House of Delegates, who shall serve as nonvoting, ex officio members;

(3) Two members from the Senate, appointed by the President of the Senate, who shall serve as nonvoting, ex officio members;

(4) The Secretary of the Department of Health and Human Resources, or his or her designee;

(5) The Director of the Division of Juvenile Services, or his or her designee;

(6) The Superintendent of the State Board of Education, or his or her designee;

(7) The Administrative Director of the Supreme Court of Appeals, or his or her designee, who shall serve as nonvoting, ex officio member;

(8) The Director of the Division of Probation Services, or his or her designee;

(9) Two circuit court judges, appointed by the Chief Justice of the Supreme Court of Appeals, who shall serve as nonvoting, ex officio members;

(10) One community member juvenile justice stakeholder, appointed by the Governor;

(11) One juvenile crime victim advocate, appointed by the Governor;

(12) One member from the law-enforcement agency, appointed by the Governor;

(13) One member from a county prosecuting attorney's office, appointed by the Governor; and

(14) The Director of the Juvenile Justice Commission.

(c) The committee shall perform the following duties:

(1) Guide and evaluate the implementation of the provisions adopted in the year 2015 relating to juvenile justice reform;

(2) Obtain and review the juvenile recidivism and program outcome data collected pursuant to section one hundred six, article five of this chapter;

(3) Calculate any state expenditures that have been avoided by reductions in the number of youth placed in out-of-home placements by the Division of Juvenile Services or the Department of Health and Human Resources as reported under section one hundred six, article five of this chapter; and

(4) Institute a uniform process for developing and reviewing performance measurement and outcome measures through data analysis. The uniform process shall include:

(A) The performance and outcome measures for the court, the Department of Health and Human Resources and the Division of Juvenile Services; and

(B) The deadlines and format for the submission of the performance and outcome measures; and

(5) Ensure system accountability and monitor the fidelity of implementation efforts or programs;

(6) Study any additional topics relating to the continued improvement of the juvenile justice system;
and

(7) Issue an annual report to the Governor, the President of the Senate, the Speaker of the House of Delegates and the Chief Justice of the Supreme Court of Appeals of West Virginia on or before November 30th of each year, starting in 2016, which shall include:

(A) An assessment of the progress made in implementation of juvenile justice reform efforts;

(B) A summary of the committee's efforts in fulfilling its duties as set forth in this section; and

(C) An analysis of the recidivism data obtained by the committee under this section;

(D) A summary of the averted costs calculated by the committee under this section and a recommendation for any reinvestment of the averted costs to fund services or programs to expand West Virginia's continuum of alternatives for youth who would otherwise be placed in out-of-home placement;

(E) Recommendations for continued improvements to the juvenile justice system.

(d) The Division of Justice and Community Services shall provide staff support for the committee. The committee may request and receive copies of all data, reports, performance measures and other evaluative material regarding juvenile justice submitted from any agency, branch of government or political subdivision to carry out its duties.

(e) The committee shall meet within ninety days after appointment and shall thereafter meet at least quarterly, upon notice by the chair. Eight members shall be considered a quorum.

(f) After initial appointment, members appointed to the committee by the Governor, the President of the Senate, the Speaker of the House of Delegates or the Chief Justice of the Supreme Court of Appeals, pursuant to subsection (b) of this section, shall serve for a term of two years from his or her appointment and shall be eligible for reappointment to that position. All members appointed to the committee shall serve until his or her successor has been duly appointed.

(g) The committee shall sunset on December 31, 2020, unless reauthorized by the Legislature.

§49-2-1002. Responsibilities of the Department of Health and Human Resources and Division of Juvenile Services of the Department of Military Affairs and Public Safety; programs and services; rehabilitation; cooperative agreements.

(a) The Department of Health and Human Resources and the Division of Juvenile Services of the Department of Military Affairs and Public Safety shall establish programs and services designed to prevent juvenile delinquency, to divert juveniles from the juvenile justice system, to provide community-based alternatives to juvenile detention and correctional facilities and to encourage a diversity of alternatives within the child welfare and juvenile justice system. The development, maintenance and expansion of programs and services may include, but not be limited to, the following:

(1) Community-based programs and services for the prevention and treatment of juvenile delinquency through the development of foster-care and shelter-care homes, group homes, halfway

houses, homemaker and home health services, 24-hour intake screening, volunteer and crisis home programs, day treatment and any other designated community-based diagnostic, treatment or rehabilitative service;

(2) Community-based programs and services to work with parents and other family members to maintain and strengthen the family unit so that the juvenile may be retained in his or her home;

(3) Youth service bureaus and other community-based programs to divert youth from the juvenile court or to support, counsel or provide work and recreational opportunities for status offenders, juvenile delinquents and other youth to help prevent delinquency;

(4) Projects designed to develop and implement programs stressing advocacy activities aimed at improving services for and protecting rights of youth affected by the juvenile justice system;

(5) Educational programs or supportive services designed to encourage status offenders, juvenile delinquents and other youth to remain in elementary and secondary schools or in alternative learning situations;

(6) Expanded use of professional and paraprofessional personnel and volunteers to work effectively with youth;

(7) Youth-initiated programs and outreach programs designed to assist youth who otherwise would not be reached by traditional youth assistance programs;

(8) A statewide program designed to reduce the number of commitments of juveniles to any form of juvenile facility as a percentage of the state juvenile population; to increase the use of nonsecure community-based facilities as a percentage of total commitments to juvenile facilities; and to discourage the use of secure incarceration and detention; and

(9) Transitional programs designed to assist juveniles who are in the custody of the state upon reaching the age of eighteen years.

(b) By January 1, 2017, the department and the Division of Juvenile Services shall allocate at least fifty percent of all community services funding, as defined in section two hundred six, article one of this chapter, either provided directly or by contracted service providers, for the implementation of evidence-based practices, as defined in section two hundred six, article one of this chapter.

(c) (1) The Department of Health and Human Resources shall establish an individualized program of rehabilitation for each status offender referred to the department and to each alleged juvenile delinquent referred to the department after being allowed a pre-adjudatory community supervision period by the juvenile court, and for each adjudicated juvenile delinquent who, after adjudication, is referred to the department for investigation or treatment or whose custody is vested in the department.

(2) An individualized program of rehabilitation shall take into account the programs and services to be provided by other public or private agencies or personnel which are available in the community to deal with the circumstances of the particular juvenile.

(3) For alleged juvenile delinquents and status offenders, an individualized program of rehabilitation shall be furnished to the juvenile court and made available to counsel for the juvenile; it may be modified from time to time at the direction of the department or by order of the juvenile court.

(4) The department may develop an individualized program of rehabilitation for any juvenile referred for noncustodial counseling under section seven hundred two-a, article four of this chapter or for any juvenile upon the request of a public or private agency.

(d) (1) The individualized program of rehabilitation required by the provisions of subsection (c) of this section shall, for any juvenile in out-of-home placement, include a plan to return the juvenile to his or her home setting and transition the juvenile into community services to continue his or her rehabilitation.

(2) Planning for the transition shall begin upon the juvenile's entry into the residential facility. The transition process shall begin thirty days after admission to the residential facility and conclude no later than three months after admission.

(3) The Department of Health and Human Resources staff shall, during its monthly site visits at contracted residential facilities, ensure that the individualized programs of rehabilitation include a plan for transition in accordance with this subsection.

(4) If further time in residential placement is necessary and the most effective method of attaining the rehabilitation goals identified by the rehabilitation individualized plan created under subsection (c) of this section, then the department shall provide information to the multidisciplinary team to substantiate that further time in a residential facility is necessary. The court, in consultation with the multidisciplinary team, may order an extension of time in residential placement prior to the juvenile's transition to the community if the court finds by clear and convincing evidence that an extension is in the best interest of the child. If the court finds that the evidence does not support an extension, the court shall order that the transition to community services proceed.

(e) The Department of Health and Human Resources and the Division of Juvenile Services are directed to enter into cooperative arrangements and agreements with each other and with private agencies or with agencies of the state and its political subdivisions to fulfill their respective duties under this article and chapter.

§49-2-1003. Rehabilitative facilities for status offenders; requirements; educational instruction.

(a) The Department of Health and Human Resources shall establish and maintain one or more rehabilitative facilities to be used exclusively for the lawful custody of status offenders. Each facility will be a nonsecure facility having as its purpose the rehabilitation of status offenders. The facility will have a bed capacity for not more than twenty juveniles and shall minimize the institutional atmosphere and prepare the juvenile for reintegration into the community.

(b) Rehabilitative programs and services shall be provided by or through each facility and may include, but not be limited to, medical, educational, vocational, social and psychological guidance, training, counseling, substance abuse treatment and other rehabilitative services. The Department of Health and Human Resources shall provide to each status offender committed to the facility a program of treatment and services consistent with the individualized program of rehabilitation developed for the juvenile. In the case of any other juvenile residing at the facility, the department shall provide those programs and services as may be proper in the circumstances including, but not limited to, any programs or services directed to be provided by the court.

(c) The board of education of the county in which the facility is located shall provide instruction for juveniles residing at the facility. Residents who can be permitted to do so shall attend local schools and instruction shall otherwise take place at the facility.

(d) Facilities established pursuant to this section shall be structured as community-based facilities.

(e) The Department of Health and Human Resources may enter into cooperative arrangements and agreements with private agencies or with agencies of the state and its political subdivisions to fulfill its duties under this section: *Provided*, That after January 1, 2016, the department shall not enter into an agreement with the Division of Juvenile Services to house juvenile status offenders.

§49-4-403. Multidisciplinary treatment planning process; coordination; access to information.

(a) (1) A multidisciplinary treatment planning process for cases initiated pursuant to part six and part seven of article four of this chapter shall be established within each county of the state, either separately or in conjunction with a contiguous county, by the secretary of the department with advice and assistance from the prosecutor's advisory council as set forth in section four, article four, chapter seven of this code. In each circuit, the department shall coordinate with the prosecutor's office, the public defender's office or other counsel representing juveniles to designate, with the approval of the court, at least one day per month on which multidisciplinary team meetings for that circuit shall be held: *Provided*, That multidisciplinary team meetings may be held on days other than the designated day or days when necessary. The Division of Juvenile Services shall establish a similar treatment planning process for delinquency cases in which the juvenile has been committed to its custody, including those cases in which the juvenile has been committed for examination and diagnosis.

(2) This section does not require a multidisciplinary team meeting to be held prior to temporarily placing a child or juvenile out-of-home under exigent circumstances or upon a court order placing a juvenile in a facility operated by the Division of Juvenile Services.

(b) The case manager in the Department of Health and Human Resources for the child, family or juvenile or the case manager in the Division of Juvenile Services for a juvenile shall convene a treatment team in each case when it is required pursuant to this article.

(1) Prior to disposition, in each case in which a treatment planning team has been convened, the team shall advise the court as to the types of services the team has determined are needed and the type of placement, if any, which will best serve the needs of the child. If the team determines that an out-of-home placement will best serve the needs of the child, the team shall first consider placement with appropriate relatives then with foster care homes, facilities or programs located within the state. The team may only recommend placement in an out-of-state facility if it concludes, after considering the best interests and overall needs of the child, that there are no available and suitable in-state facilities which can satisfactorily meet the specific needs of the child.

(2) Any person authorized by the provisions of this chapter to convene a multidisciplinary team meeting may seek and receive an order of the circuit court setting such meeting and directing attendance. Members of the multidisciplinary team may participate in team meetings by telephone or video conferencing. This subsection does not prevent the respective agencies from designating a person other than the case manager as a facilitator for treatment team meetings. Written notice shall be provided to all team members of the availability to participate by videoconferencing.

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

(d) The multidisciplinary treatment team shall be afforded access to information in the possession of the Department of Health and Human Resources, Division of Juvenile Services, law-enforcement agencies and other state, county and local agencies. Those agencies shall cooperate in the sharing of information as may be provided in article five of this chapter or any other relevant provision of law. Any multidisciplinary team member who acquires confidential information may not disclose the information except as permitted by the provisions of this code or court rules.

§49-4-406. Multidisciplinary treatment process for status offenders or delinquents; requirements; custody; procedure; reports; cooperation; inadmissibility of certain statements.

(a) When a juvenile is adjudicated as a status offender pursuant to section seven hundred eleven of this article, the Department of Health and Human Resources shall promptly convene a multidisciplinary treatment team and conduct an assessment, utilizing a standard uniform comprehensive assessment instrument or protocol, including a risk and needs assessment, to determine the juvenile's mental and physical condition, maturity and education level, home and family environment, rehabilitative needs and recommended service plan, which shall be provided in writing to the court and team members. Upon

completion of the assessment, the treatment team shall prepare and implement a comprehensive, individualized service plan for the juvenile.

(b) When a juvenile is adjudicated as a delinquent or has been granted a preadjudicatory community supervision period pursuant to section seven hundred eight of this article, the court, either upon its own motion or motion of a party, may require the Department of Health and Human Resources to convene a multidisciplinary treatment team and conduct an assessment, utilizing a standard uniform comprehensive assessment instrument or protocol, including a risk and needs assessment, to determine the juvenile's mental and physical condition, maturity and education level, home and family environment, rehabilitative needs and recommended service plan, which shall be provided in writing to the court and team members. A referral to the Department of Health and Human Resources to convene a multidisciplinary treatment team and to conduct such an assessment shall be made when the court is considering placing the juvenile in the department's custody or placing the juvenile out-of-home at the department's expense pursuant to section seven hundred fourteen of this article. In any delinquency proceeding in which the court requires the Department of Health and Human Resources to convene a multidisciplinary treatment team, the probation officer shall notify the department at least fifteen working days before the court proceeding in order to allow the department sufficient time to convene and develop an individualized service plan for the juvenile.

(c) When a juvenile has been adjudicated and committed to the custody of the Director of the Division of Juvenile Services, including those cases in which the juvenile has been committed for examination and diagnosis, the Division of Juvenile Services shall promptly convene a multidisciplinary treatment team and conduct an assessment, utilizing a standard uniform comprehensive assessment instrument or protocol, including a risk and needs assessment, to determine the juvenile's mental and physical condition, maturity and education level, home and family environment, rehabilitative needs and recommended service plan. Upon completion of the assessment, the treatment team shall prepare and implement a comprehensive, individualized service plan for the juvenile, which shall be provided in writing to the court and team members. In cases where the juvenile is committed as a post-sentence disposition to the custody of the Division of Juvenile Services, the plan shall be reviewed quarterly by the multidisciplinary treatment team. Where a juvenile has been detained in a facility operated by the Division of Juvenile Services without an active service plan for more than sixty days, the director of the facility may call a multidisciplinary team meeting to review the case and discuss the status of the service plan.

(d) (1) The rules of juvenile procedure shall govern the procedure for obtaining any assessment of a juvenile, preparing an individualized service plan and submitting the plan and any assessment to the court.

(2) In juvenile proceedings conducted pursuant to part seven of this article, the following representatives shall serve as members and attend each meeting of the multidisciplinary treatment team, so long as they receive notice at least seven days prior to the meeting:

(A) The juvenile;

(B) The juvenile's case manager in the Department of Health and Human Resources or the Division of Juvenile Services;

(C) The juvenile's parent, guardian or custodian;

(D) The juvenile's attorney;

(E) Any attorney representing a member of the multidisciplinary treatment team;

(F) The prosecuting attorney or his or her designee;

(G) The county school superintendent or the superintendent's designee;

(H) A treatment or service provider with training and clinical experience coordinating behavioral or mental health treatment; and

(I) Any other person or agency representative who may assist in providing recommendations for the particular needs of the juvenile and family, including domestic violence service providers. In delinquency proceedings, the probation officer shall be a member of a multidisciplinary treatment team. When appropriate, the juvenile case manager in the Department of Health and Human Resources and the Division of Juvenile Services shall cooperate in conducting multidisciplinary treatment team meetings when it is in the juvenile's best interest.

(3) Prior to disposition, in each case in which a treatment planning team has been convened, the team shall advise the court as to the types of services the team has determined are needed and type of placement, if any, which will best serve the needs of the child. If the team determines that an out-of-home placement will best serve the needs of the child, the team shall first consider placement at facilities or programs located within the state. The team may only recommend placement in an out-of-state facility if it concludes, after considering the best interests and overall needs of the child, that there are no available and suitable in-state facilities which can satisfactorily meet the specific needs of the child. The multidisciplinary treatment team shall also determine and advise the court as to the individual treatment and rehabilitation plan recommended for the child for either out-of-home placement or community supervision. The plan may focus on reducing the likelihood of reoffending, requirements for the child to take responsibility for his or her actions, completion of evidence-based services or programs or any other relevant goal for the child. The plan may also include opportunities to incorporate the family, custodian or guardian into the treatment and rehabilitation process.

(4) The multidisciplinary treatment team shall submit written reports to the court as required by applicable law or by the court, shall meet with the court at least every three months, as long as the juvenile remains in the legal or physical custody of the state, and shall be available for status conferences and hearings as required by the court. The multidisciplinary treatment team shall monitor progress of the plan identified in subdivision (3) of this subsection and review progress of the plan at the regular meetings held at least every three months pursuant to this section, or at shorter intervals, as ordered by the court, and shall report to the court on the progress of the plan or if additional modification is necessary.

(5) In any case in which a juvenile has been placed out of his or her home except for a temporary placement in a shelter or detention center, the multidisciplinary treatment team shall cooperate with the state agency in whose custody the juvenile is placed to develop an after-care plan. The rules of juvenile procedure and section four hundred nine of this article govern the development of an after-care plan for a juvenile, the submission of the plan to the court and any objection to the after-care plan.

(6) If a juvenile respondent admits the underlying allegations of the case initiated pursuant to part VII of this article, in the multidisciplinary treatment planning process, his or her statements may not be used in any juvenile or criminal proceedings against the juvenile, except for perjury or false swearing.

§49-4-409. After-care plans; contents; written comments; contacts; objections; courts.

(a) Prior to the discharge of a child from any out-of-home placement to which the juvenile was committed pursuant to this chapter, the department or the Division of Juvenile Services shall convene a meeting of the multidisciplinary treatment team to which the child has been referred or, if no referral has been made, convene a multidisciplinary treatment team for any child for which a multidisciplinary treatment plan is required by this article and forward a copy of the juvenile's proposed after-care plan to the court which committed the juvenile. A copy of the plan shall also be sent to: (1) The child's parent, guardian or custodian; (2) the child's lawyer; (3) the child's probation officer or community mental health center professional; (4) the prosecuting attorney of the county in which the original commitment proceedings were held; and (5) the principal of the school which the child will attend. The plan shall have a list of the names and addresses of these persons attached to it.

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

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

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

(e) If adverse comments or objections regarding the plan are submitted to the circuit court, it shall, within forty-five days of receiving the plan, hold a hearing to consider the plan and the adverse comments or objections. Any person, organization or agency which has responsibilities in executing the plan, or their representatives, may be required to appear at the hearing unless they are excused by the circuit court. Within five days of the hearing, the circuit court shall issue an order which adopts the plan as submitted or as modified in response to any comments or objections.

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

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

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

§49-4-413. Individualized case planning.

(a) For any juvenile ordered to probation supervision pursuant to section seven hundred fourteen, article four of this chapter, the probation officer assigned to the juvenile shall develop and implement an individualized case plan in consultation with the juvenile's parents, guardian or custodian, and other appropriate parties, and based upon the results of a risk and needs assessment conducted within the last six months prior to the disposition to probation. The probation officer shall work with the juvenile and his or her family, guardian or custodian to implement the case plan following disposition. At a minimum, the case plan shall:

(1) Identify the actions to be taken by the juvenile and, if appropriate, the juvenile's parents, guardian or custodian to ensure future lawful conduct and compliance with the court's disposition order; and

(2) Identify the services to be offered and provided to the juvenile and, if appropriate, the juvenile's parents, guardian or custodian and may include services to address: Mental health and substance abuse issues; education; individual, group and family counseling services; community restoration; or other relevant concerns identified by the probation officer.

(b) For any juvenile disposed to an out-of-home placement with the department, the department shall ensure that the residential service provider develops and implements an individualized case plan based upon the recommendations of the multidisciplinary team pursuant to section four hundred six, article four of this chapter and the results of a risk and needs assessment. At a minimum, the case plan shall include:

(1) Specific treatment goals and the actions to be taken by the juvenile in order to demonstrate satisfactory attainment of each goal;

(2) The services to be offered and provided by the residential service providers; and

(3) A detailed plan designed to assure appropriate reintegration of the juvenile to his or her family, guardian, school and community following the satisfactory completion of the case plan treatment goals, including a protocol and timeline for engaging the parents, guardians or custodians prior to the release of the juvenile.

(c) For any juvenile committed to the Division of Juvenile Services, the Division of Juvenile Services shall develop and implement an individualized case plan based upon the recommendations made to the court by the multidisciplinary team pursuant to section four hundred six, article four of this chapter and the results of a risk and needs assessment. At a minimum, the case plan shall include:

(1) Specific correctional goals and the actions to be taken by the juvenile to demonstrate satisfactory attainment of each goal;

(2) The services to be offered and provided by the Division of Juvenile Services and any contracted service providers; and

(3) A detailed plan designed to assure appropriate reintegration of the juvenile to his or her family, guardian, school and community following the satisfactory completion of the case plan treatment goals, including a protocol and timeline for engaging the parents, guardians or custodians prior to the release of the juvenile.

§49-4-702. Prepetition diversion to informal resolution; mandatory prepetition diversion program for status offenses and misdemeanor offenses; prepetition review team.

(a) Before a juvenile petition is formally filed with the court, the court may refer the matter to a case worker, probation officer or truancy diversion specialist for preliminary inquiry to determine whether the matter can be resolved informally without the formal filing of a petition with the court.

(b) (1) If the matter is for a truancy offense, the prosecutor shall refer the matter to a state department worker, probation officer or truancy diversion specialist who shall develop a diversion program pursuant to subsection (d) of this section.

(2) If the matter is for a status offense other than truancy, the prosecutor shall refer the juvenile to a case worker or probation officer who shall develop a diversion program pursuant to subsection (d) of this section.

(3) The prosecutor is not required to refer the juvenile for development of a diversion program pursuant to subdivision (1) or (2) of this subsection and may proceed to file a petition with the court if he or she determines:

(A) The juvenile has a prior adjudication for a status or delinquency offense; or

(B) There exists a significant and likely risk of harm to the juvenile, a family member or the public.

(c) If the matter is for a nonviolent misdemeanor offense, the prosecutor shall determine whether the case can be resolved informally through a diversion program without the filing of a petition. If the prosecutor determines that a diversion program is appropriate, it shall refer the matter to a case worker or probation officer who shall develop a diversion program pursuant to subsection (d) of this section.

(d) (1) When developing a diversion program, the case worker, probation officer or truancy diversion specialist shall:

(A) Conduct an assessment of the juvenile to develop a diversion agreement;

(B) Create a diversion agreement;

(C) Obtain consent from the juvenile and his or her parent, guardian or custodian to the terms of the diversion agreement;

(D) Refer the juvenile and, if necessary, his or her parent, guardian or custodian to services in the community pursuant to the diversion agreement.

(2) A diversion agreement may include:

(A) Referral to community services as defined in section two hundred six, article one of this chapter for the juvenile to address the assessed need;

(B) Referral to services for the parent, guardian or custodian of the juvenile;

(C) Referral to one or more community work service programs for the juvenile;

(D) A requirement that the juvenile regularly attend school;

(E) Community-based sanctions to address noncompliance; or

(F) Any other efforts which may reasonably benefit the community, the juvenile and his or her parent, guardian or custodian.

(3) When a referral to a service provider occurs, the service provider shall make reasonable efforts to contact the juvenile and his or her parent, custodian or guardian within seventy-two hours of the referral.

(4) Upon request by the case worker, probation officer or truancy diversion specialist, the court may enter reasonable and relevant orders to the parent, custodian or guardian of the juvenile who have consented to the diversion agreement as is necessary and proper to carry out the agreement.

(5) If the juvenile and his or her parent, custodian or guardian do not consent to the terms of the diversion agreement created by the case worker, probation officer or truancy diversion specialist, the petition may be filed with the court.

(6) Referral to a prepetition diversion program shall toll the statute of limitations for status and delinquency offenses.

(7) Probation officers may be authorized by the court to participate in a diversion program.

(e) The case worker, probation officer or truancy diversion specialist shall monitor the juvenile's compliance with any diversion agreement.

(1) If the juvenile successfully completes the terms of the diversion agreement, a petition shall not be filed with the court and no further action shall be taken.

(2) If the juvenile is unsuccessful in or noncompliant with the diversion agreement, the diversion agreement shall be referred to a prepetition review team convened by the case worker, probation officer or the truancy diversion specialist: *Provided*, That if a new delinquency offense occurs, a petition may be filed with the court.

(f) (1) The prepetition review team may be a subset of a multidisciplinary team established pursuant to section four hundred six, article four of this chapter.

(2) The prepetition review team may consist of:

(A) A case worker knowledgeable about community services available and authorized to facilitate access to services;

(B) A service provider;

(C) A school superintendent or his or her designee; or

(D) Any other person, agency representative, member of the juvenile's family, or a custodian or guardian who may assist in providing recommendations on community services for the particular needs of the juvenile and his or her family.

(3) The prepetition review team shall review the diversion agreement and the service referrals completed and determine whether other appropriate services are available to address the needs of the juvenile and his or her family.

(4) The prepetition review shall occur within fourteen days of referral from the state department worker, probation officer or truancy diversion specialist.

(5) After the prepetition review, the prepetition review team may:

(A) Refer a modified diversion agreement back to the case worker, probation officer or truancy diversion specialist;

(B) Advise the case worker, probation officer or truancy diversion specialist to file a petition with the court; or

(C) Advise the case worker to open an investigation for child abuse or neglect.

(g) The requirements of this section are not mandatory until July 1, 2016: *Provided*, That nothing in this section prohibits a judicial circuit from continuing to operate a truancy or other juvenile treatment program that existed as of January 1, 2015: *Provided, however*, That any judicial circuit desiring to create a diversion program after the effective date of this section and prior to July 1, 2016, may only do so pursuant to this section.

§49-4-702a. Noncustodial counseling or community services provided to a juvenile; prepetition counsel and advice.

(a) The court at any time, or the department or other official upon a request from a parent, guardian or custodian, may, before a petition is filed under this article, refer a juvenile alleged to be a delinquent or a status offender to a counselor at the department or a community mental health center, other professional counselor in the community or to a truancy diversion specialist. In the event the juvenile refuses to respond to this referral, the department may serve a notice by first class mail or personal service of process upon the juvenile, setting forth the facts and stating that a noncustodial order will be sought from the court directing the juvenile to submit to counseling or community services. The notice shall set forth the time and place for the hearing on the matter. The court or referee after a hearing may direct the juvenile to participate in a noncustodial period of counseling or community services that may not exceed six months.

Upon recommendation of the department or request by the juvenile's parent, custodian or guardian, the court or referee may allow or require the parent, custodian or guardian to participate in this noncustodial counseling or community services. No information obtained as the result of counseling or community services is admissible in a subsequent proceeding under this article.

(b) Before a petition is formally filed with the court, the probation officer or other officer of the court designated by it, subject to its direction, may give counsel and advice to the parties with a view to an informal adjustment period if it appears:

(1) The admitted facts bring the case within the jurisdiction of the court;

(2) Counsel and advice without an adjudication would be in the best interest of the public and the juvenile; and

(3) The juvenile and his or her parents, guardian or other custodian consent thereto with knowledge that consent is not obligatory.

(c) The giving of counsel and advice pursuant to this section may not continue longer than six months from the day it is commenced unless extended by the court for an additional period not to exceed six months.

§49-4-711. Adjudication for alleged status offenders and delinquents; mandatory initial disposition of status offenders.

At the outset of an adjudicatory hearing, the court shall inquire of the juvenile whether he or she wishes to admit or deny the allegations in the petition. The juvenile may elect to stand silent, in which event the court shall enter a general denial of all allegations in the petition.

(1) If the respondent juvenile admits the allegations of the petition, the court shall consider the admission to be proof of the allegations if the court finds: (1) The respondent fully understands all of his or her rights under this article; (2) the respondent voluntarily, intelligently and knowingly admits all facts requisite for an adjudication; and (3) the respondent in his or her admission has not set forth facts which constitute a defense to the allegations.

(2) If the respondent juvenile denies the allegations, the court shall dispose of all pretrial motions and the court or jury shall proceed to hear evidence.

(3) If the allegations in a petition alleging that the juvenile is delinquent are admitted or are sustained by proof beyond a reasonable doubt, the court shall schedule the matter for disposition pursuant to section seven hundred four of this article. The court shall receive and consider the results of the risk and needs assessment prior to or at the disposition pursuant to section seven hundred twenty-four, article four of this chapter.

(4) If the allegations in a petition alleging that the juvenile is a status offender are admitted or sustained by clear and convincing evidence, the court shall consider the results of the risk and needs assessment prior to or at the disposition pursuant to section seven hundred twenty-four, article four of this chapter and refer the juvenile to the Department of Health and Human Resources for services, pursuant to section seven hundred twelve of this article, and order the department to report back to the court with regard to the juvenile's progress at least every ninety days or until the court, upon motion or sua sponte, orders further disposition under section seven hundred twelve of this article or dismisses the case from its docket: *Provided*, That in a judicial circuit operating a truancy program, a circuit judge may, in lieu of referring truant juveniles to the department, order that the juveniles be supervised by his or her probation office: *Provided, however*, That a circuit judge may also refer a truant juvenile to a truancy diversion specialist.

(5) If the allegations in a petition are not sustained by evidence as provided in subsections (c) and (d) of this section, the petition shall be dismissed and the juvenile shall be discharged if he or she is in custody.

(6) Findings of fact and conclusions of law addressed to all allegations in the petition shall be stated on the record or reduced to writing and filed with the record or incorporated into the order of the court. The record shall include the treatment and rehabilitation plan the court has adopted after recommendation by the multidisciplinary team as provided for in section four hundred six, article four of this chapter.

§49-4-712. Intervention and services by the department pursuant to initial disposition for status offenders; enforcement; further disposition; detention; out-of-home placement; department custody; least restrictive alternative; appeal; prohibiting placement of status offenders in a Division of Juvenile Services facility on or after January 1, 2016.

(a) The services provided by the department for juveniles adjudicated as status offenders shall be consistent with part ten, article two of this chapter and shall be designed to develop skills and supports within families and to resolve problems related to the juveniles or conflicts within their families. Services may include, but are not limited to, referral of juveniles and parents, guardians or custodians and other family members to services for psychiatric or other medical care, or psychological, welfare, legal, educational or other social services, as appropriate to the needs of the juvenile and his or her family.

(b) If the juvenile, or his or her parent, guardian or custodian, fails to comply with the services provided in subsection (a) of this section, the department may petition the circuit court:

(1) For a valid court order, as defined in section two hundred seven, article one of this chapter, to enforce compliance with a service plan or to restrain actions that interfere with or defeat a service plan; or

(2) For a valid court order to place a juvenile out of home in a nonsecure or staff-secure setting, and/or to place a juvenile in custody of the department: *Provided*, That a juvenile adjudicated as a status offender may not be placed in an out-of-home placement, excluding placements made for abuse and neglect, if that juvenile has had no prior adjudications for a status or delinquency offense, or no prior disposition to a pre-adjudatory improvement period or probation for the current matter: *Provided, however*, That if the court finds by clear and convincing evidence the existence of a significant and likely risk of harm to the juvenile, a family member or the public and continued placement in the home is contrary to the best interests of the juvenile, such juvenile may be ordered to an out-of-home placement: *Provided further*, That the court finds the department has made all reasonable efforts to prevent removal of the juvenile from his or her home, or that such reasonable efforts are not required due to an emergent situation.

(c) In ordering any further disposition under this section, the court is not limited to the relief sought in the department's petition and shall make reasonable efforts to prevent removal of the juvenile from his or her home or, as an alternative, to place the juvenile in a community-based facility which is the least restrictive alternative appropriate to the needs of the juvenile and the community. The disposition may include reasonable and relevant orders to the parents, guardians or custodians of the juvenile as is necessary and proper to effectuate the disposition.

(d) (1) If the court finds that placement in a residential facility is necessary to provide the services under subsection (a) of this section, except as prohibited by subdivision (2), subsection (b) of this section, the court shall make findings of fact as to the necessity of this placement, stated on the record or reduced to writing and filed with the record or incorporated into the order of the court.

(2) The findings of fact shall include the factors that indicate:

(A) The likely effectiveness of placement in a residential facility for the juvenile; and

(B) The community services which were previously attempted.

(e) The disposition of the juvenile may not be affected by the fact that the juvenile demanded a trial by jury or made a plea of not guilty. Any order providing disposition other than mandatory referral to the department for services is subject to appeal to the Supreme Court of Appeals.

(f) Following any further disposition by the court, the court shall inquire of the juvenile whether or not appeal is desired and the response shall be transcribed; a negative response may not be construed as a waiver. The evidence shall be transcribed as soon as practicable and made available to the juvenile or his or her counsel, if it is requested for purposes of further proceedings. A judge may grant a stay of execution pending further proceedings.

(g) A juvenile adjudicated solely as a status offender on or after January 1, 2016, may not be placed in a Division of Juvenile Services facility.

§49-4-714. Disposition of juvenile delinquents; appeal.

(a) In aid of disposition of juvenile delinquents, the juvenile probation officer assigned to the juvenile shall, upon request of the court, make an investigation of the environment of the juvenile and the alternative dispositions possible. The court, upon its own motion, or upon request of counsel, may order the use of a standardized screener, as defined in section two hundred six, article one of this chapter or, if additional information is necessary, a psychological examination of the juvenile. The report of an examination and other investigative and social reports shall not be relied upon the court in making a determination of adjudication. Unless waived, copies of the report shall be provided to counsel for the petitioner and counsel for the juvenile no later than seventy-two hours prior to the dispositional hearing.

(b) Following the adjudication, the court shall receive and consider the results of a risk and needs assessment conducted pursuant to section seven hundred twenty-four, article four of this chapter and shall conduct the disposition, giving all parties an opportunity to be heard. The disposition may include reasonable and relevant orders to the parents, custodians or guardians of the juvenile as is necessary and proper to effectuate the disposition. At disposition the court shall not be limited to the relief sought in the petition and shall, in electing from the following alternatives, consider the best interests of the juvenile and the welfare of the public:

(1) Dismiss the petition;

(2) Refer the juvenile and the juvenile's parent or custodian to a community agency for needed assistance and dismiss the petition;

(3) Upon a finding that the juvenile is in need of extra-parental supervision: (A) Place the juvenile under the supervision of a probation officer of the court or of the court of the county where the juvenile has his or her usual place of abode or other person while leaving the juvenile in custody of his or her parent or custodian; and (B) prescribe a program of treatment or therapy or limit the juvenile's activities under terms which are reasonable and within the child's ability to perform, including participation in the litter control program established pursuant to section three, article fifteen-a, chapter twenty-two of this code or other appropriate programs of community service;

(4) Upon a finding that a parent or custodian is not willing or able to take custody of the juvenile, that a juvenile is not willing to reside in the custody of his or her parent or custodian or that a parent or custodian cannot provide the necessary supervision and care of the juvenile, the court may place the juvenile in temporary foster care or temporarily commit the juvenile to the department or a child welfare agency. The court order shall state that continuation in the home is contrary to the best interest of the juvenile and why; and whether or not the department made a reasonable effort to prevent the placement or that the emergency situation made those efforts unreasonable or impossible. Whenever the court transfers custody of a youth to the department, an appropriate order of financial support by the parents or guardians

shall be entered in accordance with part eight, article four of this chapter and guidelines promulgated by the Supreme Court of Appeals;

(5) (A) Upon a finding that the best interests of the juvenile or the welfare of the public require it, and upon an adjudication of delinquency, the court may commit the juvenile to the custody of the Director of the Division of Juvenile Services for placement in a juvenile services facility for the treatment, instruction and rehabilitation of juveniles. The court maintains discretion to consider alternative sentencing arrangements.

(B) Notwithstanding any provision of this code to the contrary, in the event that the court determines that it is in the juvenile's best interests or required by the public welfare to place the juvenile in the custody of the Division of Juvenile Services, the court shall provide the Division of Juvenile Services with access to all relevant court orders and records involving the underlying offense or offenses for which the juvenile was adjudicated delinquent, including sentencing and presentencing reports and evaluations, and provide the division with access to school records, psychological reports and evaluations, risk and needs assessment results, medical reports and evaluations or any other such records as may be in the court's possession as would enable the Division of Juvenile Services to better assess and determine the appropriate counseling, education and placement needs for the juvenile offender.

(C) Commitments may not exceed the maximum term for which an adult could have been sentenced for the same offense and any such maximum allowable term of confinement to be served in a juvenile correctional facility shall take into account any time served by the juvenile in a detention center pending adjudication, disposition or transfer. The order shall state that continuation in the home is contrary to the best interests of the juvenile and why; and whether or not the state department made a reasonable effort to prevent the placement or that the emergency situation made those efforts unreasonable or impossible; or

(6) After a hearing conducted under the procedures set out in subsections (c) and (d), section four, article five, chapter twenty-seven of this code, commit the juvenile to a mental health facility in accordance with the juvenile's treatment plan; the director of the mental health facility may release a juvenile and return him or her to the court for further disposition. The order shall state that continuation in the home is contrary to the best interests of the juvenile and why; and whether or not the state department made a reasonable effort to prevent the placement or that the emergency situation made those efforts unreasonable or impossible.

The court shall make all reasonable efforts to place the juvenile in the least restrictive alternative appropriate to the needs of the juvenile and the community: *Provided*, That a juvenile adjudicated delinquent for a nonviolent misdemeanor offense may not be placed in an out-of-home placement within the Division of Juvenile Services or the department if that juvenile has no prior adjudications as either a status offender or as a delinquent, or no prior dispositions to a pre-adjudicatory improvement period or probation for the current matter, excluding placements made for abuse or neglect: *Provided, however*, That if the court finds by clear and convincing evidence that there is a significant and likely risk of harm, as determined by a risk and needs assessment, to the juvenile, a family member or the public and that continued placement in the home is contrary to the best interest of the juvenile, such juvenile may be ordered to an out-of-home placement: *Provided further*, That the department has made all reasonable efforts to prevent removal of the juvenile from his or her home, or that reasonable efforts are not required due to an emergent situation.

(c) In any case in which the court decides to order the juvenile placed in an out-of-state facility or program, it shall set forth in the order directing the placement the reasons the juvenile was not placed in an in-state facility or program.

(d) The disposition of the juvenile shall not be affected by the fact that the juvenile demanded a trial by jury or made a plea of not guilty. Any disposition is subject to appeal to the Supreme Court of Appeals.

(e) Following disposition, the court shall inquire whether the juvenile wishes to appeal and the response shall be transcribed; a negative response shall not be construed as a waiver. The evidence shall be transcribed as soon as practicable and made available to the juvenile or his or her counsel, if the same is requested for purposes of further proceedings. A judge may grant a stay of execution pending further proceedings.

(f) Following a disposition under subdivision (4), (5) or (6), subsection (b) of this section, the court shall include in the findings of fact the treatment and rehabilitation plan the court has adopted upon recommendation of the multidisciplinary team under section four hundred six, article four of this chapter.

(g) Notwithstanding any other provision of this code to the contrary, if a juvenile charged with delinquency under this chapter is transferred to adult jurisdiction and there tried and convicted, the court may make its disposition in accordance with this section in lieu of sentencing the person as an adult.

§49-4-718. Modification of dispositional orders; motions; hearings.

(a) A dispositional order of the court may be modified:

(1) Upon the motion of the probation officer, a department official, the director of the Division of Juvenile Services or prosecuting attorney; or

(2) Upon the request of the juvenile or a juvenile's parent, guardian or custodian who alleges a change of circumstances relating to disposition of the juvenile.

(b) Upon such a motion or request, the court shall conduct a review hearing, except that if the last dispositional order was within the previous six months, the court may deny a request for review. Notice in writing of a review hearing shall be given to the juvenile, the juvenile's parent, guardian or custodian and all counsel not less than seventy-two hours prior to the proceeding. The court shall review the performance of the juvenile, the juvenile's parent or custodian, the juvenile's case worker and other persons providing assistance to the juvenile or juvenile's family. If the motion or request for review of disposition is based upon an alleged violation of a court order, the court may modify the disposition order and impose a more restrictive alternative if it finds clear and convincing proof of substantial violation. In the absence of such evidence, the court may decline to modify the dispositional order or may modify the order and impose one of the less restrictive alternatives set forth in section seven hundred twelve of this article. A juvenile may not be required to seek a modification order as provided in this section in order to exercise his or her right to seek relief by habeas corpus.

(c) In a hearing for modification of a dispositional order, or in any other dispositional hearing, the court shall consider the best interests of the child and the welfare of the public.

(d) (1) For dispositional orders that include probation, the juvenile's probation officer shall submit an overview to the court of the juvenile's compliance with the conditions of probation and goals of his or her case plan every ninety days.

(2) If the juvenile is compliant and no longer in need of probation supervision, the probation officer shall submit a recommendation for discharge from probation supervision. If the court determines that early termination of the probation term is warranted, it may issue an order discharging the juvenile from probation without conducting a review hearing.

(3) If the juvenile is not compliant with the conditions or has not met his or her goals, the probation officer shall include an accompanying recommendation to the court with additional or changed conditions or goals necessary to achieve compliance. If the court determines that changes to the conditions of probation are warranted, the court shall conduct a review hearing in accordance with subsection (b) of this section.

§49-4-719. Juvenile probation officers; appointment; salary; facilities; expenses; duties; powers.

(a) (1) Each circuit court, subject to the approval of the Supreme Court of Appeals and in accordance with the rules of the Supreme Court of Appeals, shall appoint one or more juvenile probation officers and clerical assistants for the circuit. A probation officer or clerical assistant may not be related by blood or marriage to the appointing judge.

(2) The salary for juvenile probation officers and clerical assistants shall be determined and fixed by the Supreme Court of Appeals. All expenses and costs incurred by the juvenile probation officers and their staff shall be paid by the Supreme Court of Appeals in accordance with its rules. The county commission of each county shall provide adequate office facilities for juvenile probation officers and their staff. All equipment and supplies required by juvenile probation officers and their staff shall be provided by the Supreme Court of Appeals.

(3) A juvenile probation officer may not be considered a law-enforcement official under this chapter.

(b) The clerk of a court shall notify, if practicable, the chief probation officer of the county, or his or her designee, when a juvenile is brought before the court or judge for proceedings under this article. When notified, or if the probation officer otherwise obtains knowledge of such fact, he or she or one of his or her assistants shall:

(1) Make investigation of the case; and

(2) Furnish information and assistance that the court or judge may require.

(c) (1) The Supreme Court of Appeals may develop a system of community-based juvenile probation sanctions and incentives to be used by probation officers in response to violations of terms and conditions of probation and to award incentives for positive behavior.

(2) The community-based juvenile probation sanctions and incentives may consist of a continuum of responses from the least restrictive to the most restrictive, designed to respond swiftly, proportionally and consistently to violations of the terms and conditions of probation and to reward compliance therewith.

(3) The purpose of community-based juvenile probation sanctions and incentives is to reduce the amount of resources and time spent by the court addressing probation violations, to reduce the likelihood of a new status or delinquent act, and to encourage and reward positive behavior by the juvenile on probation prior to any attempt to place a juvenile in an out-of-home placement.

§49-4-724. Standardized risk and needs assessment.

(a) The Supreme Court of Appeals is requested to adopt a risk and needs assessment to be used for juvenile dispositions. A validation study of the risk and needs assessment may be conducted at least every three years to ensure that the risk and needs assessment is predictive of the risk of reoffending.

(b) Each juvenile adjudicated for a status or delinquency offense in accordance with this chapter shall undergo a risk and needs assessment prior to disposition to identify specific factors that predict a juvenile's likelihood of reoffending and, when appropriately addressed, may reduce the likelihood of reoffending. The risk and needs assessment may be conducted by a probation officer, other court official or the state department worker trained to conduct the risk and needs assessment.

(c) Each multidisciplinary team convened pursuant to section four hundred six, article four of this chapter shall receive and consider the results of the risk and needs assessment of the juvenile.

(d) The results of the risk and needs assessment shall be provided to the court prior to disposition or at the time of the dispositional hearing.

§49-4-725. Restorative justice programs.

(a) The court or prosecuting attorney may divert a juvenile referred to the court for a status offense or for a nonviolent misdemeanor offense to a restorative justice program, where available, prior to adjudication.

(b) A restorative justice program shall:

(1) Emphasize repairing the harm against the victim and the community caused by the juvenile;

(2) Include victim-offender dialogues or family group conferencing attended voluntarily by the victim, the juvenile offender, a facilitator, a victim advocate, community members, or supporters of the victim or the juvenile offender that provide an opportunity for the offender to accept responsibility for the harm caused to those affected by the crime and to participate in setting consequences to repair the harm; and

(3) Implement sanctions for the juvenile, including, but not limited to, restitution to the victim, restitution to the community, services for the victim or the community, or any other sanction intended to provide restitution to the victim or the community.

(c) If a juvenile is referred to, and successfully completes, a restorative justice program, the petition against the juvenile shall be dismissed.

(d) No information obtained as the result of a restorative justice program is admissible in a subsequent proceeding under this article.

§49-5-103. Confidentiality of juvenile records; permissible disclosures; penalties; damages.

(a) Any findings or orders of the court in a juvenile proceeding shall be known as the juvenile record and shall be maintained by the clerk of the court.

(b) Records of a juvenile proceeding conducted under this chapter are not public records and shall not be disclosed to anyone unless disclosure is otherwise authorized by this section.

(c) Notwithstanding the provisions of subsection (b) of this section, a copy of a juvenile's records shall automatically be disclosed to certain school officials, subject to the following terms and conditions:

(1) Only the records of certain juveniles shall be disclosed. These include, and are limited to, cases in which:

(A) The juvenile has been charged with an offense which:

(i) Involves violence against another person;

(ii) Involves possession of a dangerous or deadly weapon; or

(iii) Involves possession or delivery of a controlled substance as that term is defined in section one hundred one, article one, chapter sixty-a of this code; and

(B) The juvenile's case has proceeded to a point where one or more of the following has occurred:

(i) A circuit court judge or magistrate has determined that there is probable cause to believe that the juvenile committed the offense as charged;

(ii) A circuit court judge or magistrate has placed the juvenile on probation for the offense;

(iii) A circuit court judge or magistrate has placed the juvenile into a preadjudicatory community supervision period in accordance with section seven hundred eight, article four of this chapter; or

(iv) Some other type of disposition has been made of the case other than dismissal.

(2) The circuit court for each judicial circuit in West Virginia shall designate one person to supervise the disclosure of juvenile records to certain school officials.

(3) If the juvenile attends a West Virginia public school, the person designated by the circuit court shall automatically disclose all records of the juvenile's case to the county superintendent of schools in the county in which the juvenile attends school and to the principal of the school which the juvenile attends, subject to the following:

(A) At a minimum, the records shall disclose the following information:

(i) Copies of the arrest report;

(ii) Copies of all investigations;

(iii) Copies of any psychological test results and any mental health records;

(iv) Copies of any evaluation reports for probation or facility placement; and

(v) Any other material that would alert the school to potential danger that the juvenile may pose to himself, herself or others;

(B) The disclosure of the juvenile's psychological test results and any mental health records shall only be made in accordance with subdivision (14) of this subsection;

(C) If the disclosure of any record to be automatically disclosed under this section is restricted in its disclosure by the Health Insurance Portability and Accountability Act of 1996, PL 104-191, and any amendments and regulations under the act, the person designated by the circuit court shall provide the superintendent and principal any notice of the existence of the record that is permissible under the act and, if applicable, any action that is required to obtain the record; and

(D) When multiple disclosures are required by this subsection, the person designated by the circuit court is required to disclose only material in the juvenile record that had not previously been disclosed to the county superintendent and the principal of the school which the juvenile attends.

(4) If the juvenile attends a private school in West Virginia, the person designated by the circuit court shall determine the identity of the highest ranking person at that school and shall automatically disclose all records of a juvenile's case to that person.

(5) If the juvenile does not attend school at the time the juvenile's case is pending, the person designated by the circuit court may not transmit the juvenile's records to any school. However, the person designated by the circuit court shall transmit the juvenile's records to any school in West Virginia which the juvenile subsequently attends.

(6) The person designated by the circuit court may not automatically transmit juvenile records to a school which is not located in West Virginia. Instead, the person designated by the circuit court shall contact the out-of-state school, inform it that juvenile records exist and make an inquiry regarding whether the laws of that state permit the disclosure of juvenile records. If so, the person designated by the circuit court shall consult with the circuit judge who presided over the case to determine whether the juvenile records should be disclosed to the out-of-state school. The circuit judge has discretion in determining whether to disclose the juvenile records and shall consider whether the other state's law regarding disclosure provides for sufficient confidentiality of juvenile records, using this section as a guide. If the

circuit judge orders the juvenile records to be disclosed, they shall be disclosed in accordance with subdivision (7) of this subsection.

(7) The person designated by the circuit court shall transmit the juvenile's records to the appropriate school official under cover of a letter emphasizing the confidentiality of those records and directing the official to consult this section of the code. A copy of this section of the code shall be transmitted with the juvenile's records and cover letter.

(8) Juvenile records are absolutely confidential by the school official to whom they are transmitted and nothing contained within the juvenile's records may be noted on the juvenile's permanent educational record. The juvenile records are to be maintained in a secure location and are not to be copied under any circumstances. However, the principal of a school to whom the records are transmitted shall have the duty to disclose the contents of those records to any teacher who teaches a class in which the subject juvenile is enrolled and to the regular driver of a school bus in which the subject juvenile is regularly transported to or from school, except that the disclosure of the juvenile's psychological test results and any mental health records may only be made in accordance with subdivision (14) of this subsection. Furthermore, any school official to whom the juvenile's records are transmitted may disclose the contents of those records to any adult within the school system who, in the discretion of the school official, has the need to be aware of the contents of those records.

(9) If for any reason a juvenile ceases to attend a school which possesses that juvenile's records, the appropriate official at that school shall seal the records and return them to the circuit court which sent them to that school. If the juvenile has changed schools for any reason, the former school shall inform the circuit court of the name and location of the new school which the juvenile attends or will be attending. If the new school is located within West Virginia, the person designated by the circuit court shall forward the juvenile's records to the juvenile's new school in the same manner as provided in subdivision (7) of this subsection. If the new school is not located within West Virginia, the person designated by the circuit court shall handle the juvenile records in accordance with subdivision (6) of this subsection.

If the juvenile has been found not guilty of an offense for which records were previously forwarded to the juvenile's school on the basis of a finding of probable cause, the circuit court may not forward those records to the juvenile's new school. However, this does not affect records related to other prior or future offenses. If the juvenile has graduated or quit school or will otherwise not be attending another school, the circuit court shall retain the juvenile's records and handle them as otherwise provided in this article.

(10) Under no circumstances may one school transmit a juvenile's records to another school.

(11) Under no circumstances may juvenile records be automatically transmitted to a college, university or other post-secondary school.

(12) No one may suffer any penalty, civil or criminal, for accidentally or negligently attributing certain juvenile records to the wrong person. However, that person has the affirmative duty to promptly correct any mistake that he or she has made in disclosing juvenile records when the mistake is brought to his or her attention. A person who intentionally attributes false information to a certain person shall be subjected to both criminal and civil penalties in accordance with subsection (e) of this section.

(13) If a circuit judge or magistrate has determined that there is probable cause to believe that a juvenile has committed an offense but there has been no final adjudication of the charge, the records which are transmitted by the circuit court shall be accompanied by a notice which clearly states in bold print that there has been no determination of delinquency and that our legal system requires a presumption of innocence.

(14) The county superintendent shall designate the school psychologist or psychologists to receive the juvenile's psychological test results and any mental health records. The psychologist designated shall review the juvenile's psychological test results and any mental health records and, in the psychologist's professional judgment, may disclose to the principal of the school that the juvenile attends and other school

employees who would have a need to know the psychological test results, mental health records and any behavior that may trigger violence or other disruptive behavior by the juvenile. Other school employees include, but are not limited to, any teacher who teaches a class in which the subject juvenile is enrolled and the regular driver of a school bus in which the subject juvenile is regularly transported to or from school.

(d) Notwithstanding the provisions of subsection (b) of this section, juvenile records may be disclosed, subject to the following terms and conditions:

(1) If a juvenile case is transferred to the criminal jurisdiction of the circuit court pursuant to the provisions of subsection (c) or (d), section seven hundred ten, article four of this chapter, the juvenile records are open to public inspection.

(2) If a juvenile case is transferred to the criminal jurisdiction of the circuit court pursuant to the provisions of subsection (e), (f) or (g), section seven hundred ten, article four of this chapter, the juvenile records are open to public inspection only if the juvenile fails to file a timely appeal of the transfer order, or the Supreme Court of Appeals refuses to hear or denies an appeal which has been timely filed.

(3) If a juvenile is fourteen years of age or older and a court has determined there is a probable cause to believe the juvenile committed an offense set forth in subsection (g), section seven hundred ten, article four of this chapter, but the case is not transferred to criminal jurisdiction, the juvenile records are open to public inspection pending trial only if the juvenile is released on bond and no longer detained or adjudicated delinquent of the offense.

(4) If a juvenile is younger than fourteen years of age and a court has determined there is probable cause to believe that the juvenile committed the crime of murder under section one, two or three, article two, chapter sixty-one of this code, or the crime of sexual assault in the first degree under section three, article eight-b of chapter sixty-one, but the case is not transferred to criminal jurisdiction, the juvenile records shall be open to public inspection pending trial only if the juvenile is released on bond and no longer detained or adjudicated delinquent of the offense.

(5) Upon a written petition and pursuant to a written order, the circuit court may permit disclosure of juvenile records to:

(A) A court, in this state or another state, which has juvenile jurisdiction and has the juvenile before it in a juvenile proceeding;

(B) A court, in this state or another state, exercising criminal jurisdiction over the juvenile which requests records for the purpose of a presentence report or disposition proceeding;

(C) The juvenile, the juvenile's parents or legal guardian, or the juvenile's counsel;

(D) The officials of a public institution to which the juvenile is committed if they require those records for transfer, parole or discharge; or

(E) A person who is conducting research. However, juvenile records may be disclosed for research purposes only upon the condition that information which would identify the subject juvenile or the juvenile's family may not be disclosed.

(6) Notwithstanding any other provision of this code, juvenile records shall be disclosed, or copies made available, to a probation officer upon his or her request. Any probation officer may access relevant juvenile case information contained in any electronic database maintained by or for the Supreme Court of Appeals and share it with any other probation officer.

(7) Notwithstanding any other provision of this code, juvenile records shall be disclosed, or copies made available, in response to any lawfully issued subpoena from a federal court or federal agency.

(8) Notwithstanding any other provision of this code, juvenile records shall be disclosed, or copies made available, to the department or the Division of Juvenile Services for purposes of case planning for the juvenile and his or her parents, custodians or guardians.

(e) Any records open to public inspection pursuant to this section are subject to the same requirements governing the disclosure of adult criminal records.

(f) Any person who willfully violates this section is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$1,000, or confined in jail for not more than six months, or both fined and confined. A person who violates this section is also liable for damages in the amount of \$300 or actual damages, whichever is greater.

§49-5-106. Data collection.

(a) The Division of Juvenile Services, the department and the Supreme Court of Appeals shall establish procedures to jointly collect and compile data necessary to calculate juvenile recidivism and the outcome of programs.

(b) For each juvenile who enters into a diversion agreement, is placed on an improvement period, is placed on probation or is placed in an out-of-home placement as defined by section two hundred six, article one of this chapter, the data and procedures developed in subsection (a) shall include:

(1) New offense referrals to juvenile court or criminal court within three years of completion of the diversion agreement, release from court jurisdiction or release from agency custody;

(2) Adjudications for a delinquent or status offense by a juvenile or a conviction by a criminal court within three years of completion of the diversion agreement, release from court jurisdiction or release from agency custody;

(3) Commitments to the Division of Juvenile Services, the department, excluding out-of-home placements made for child welfare or abuse and neglect purposes, or incarceration with the Division of Corrections within three years of completion of the diversion agreement, release from court jurisdiction or release from agency custody; and

(4) The number of out-of-home placements ordered where the judge found by clear and convincing evidence the existence of a significant and likely risk of harm to the juvenile, a family member or the public.

(c) For youth placed in programs operated or funded by the Division of Juvenile Services, the department or the Supreme Court of Appeals, including youth reporting centers, juvenile drug courts, restorative justice programs and teen courts, the division, department and Supreme Court shall develop procedures using, at a minimum, the measures in subsection (b) of this section to track and record outcomes of each program, and to demonstrate that the program reduces the likelihood of reoffending for the youth referred to the program.

(d) For youth referred to truancy diversion specialists or other truancy diversion programs operated or funded by the Supreme Court of Appeals, the Division of Juvenile Services, the Department of Health and Human Resources, the Department of Education or other political subdivisions, that branch of government or agency shall develop procedures to track and record outcomes of each program, and to evaluate the effectiveness in reducing unexcused absences for the youth referred to the program. At a minimum, this outcome data shall include:

(1) The number of youth successfully completing the truancy diversion program;

(2) The number of youth who are referred to the court system after failing to complete a truancy diversion program; and

(3) The number of youth who, after successfully completing a truancy diversion program, accumulate five or more unexcused absences in the current or subsequent school year.

(e) The Supreme Court of Appeals, the Division of Juvenile Services, the Department of Health and Human Resources and the Department of Education shall also establish procedures to jointly collect and compile data relating to disproportionate minority contact, which is defined as the proportion of minority youth who come into contact with the juvenile justice system in relation to the proportion of minority youth in the general population, and the compilation shall include data indicating the prevalence of such disproportionality in each county. Data shall include, at a minimum, the race and gender of youth arrested or referred to court, entered into a diversion program, adjudicated and disposed.

Bill Sponsors: Senators Cole (Mr. President) and Kessler, By Request of the Executive

Senate Bill 409 Establishing Fair and Open Competition in Governmental Construction Act

Effective Date: June 10, 2015

Code Reference: Adds §5-22-3

WVDE Contact: Amy Willard, Office of School Finance
awillard@k12.wv.us; 304.558.6300

Major Provisions

- Commencing July 1, 2015, the bill prohibits a governmental entity or a construction manager acting on behalf of a governmental entity, seeking a construction bid, solicitation, awarding or obligating funds to a construction contract, from including the following in the bid specifications, bid requests, project agreements or any other controlling documents for a construction project:
 - A requirement or prohibition that a bidder, offeror, contractor or subcontractor must enter into or adhere to a project labor agreement
 - A term, clause or statement that infers, either directly or indirectly, that a bidder, offeror, contractor or subcontractor must enter into or adhere to a project labor agreement
 - A term, clause or statement that rewards or punishes a bidder, offeror, contractor or subcontractor for becoming or remaining, or refusing to become or remain a signatory to, or for adhering or refusing to adhere to, a project labor agreement
 - Any other provision dealing with project labor agreements
- Prohibits a governmental entity from awarding a grant, tax abatement or tax credit for construction that is conditioned upon a requirement that the awardee include any prohibited provision set out in the preceding paragraph.
- The bill clarifies that the statute does not:
 - Prohibit a governmental entity from awarding a contract, grant tax abatement or tax credit to a private owner, bidder, contractor, or subcontractor who enters into or who is party to an agreement with a labor organization
 - Prohibit a private owner, bidder, contractor or subcontractor from voluntarily entering into or complying with an agreement entered into with one or more labor organizations
 - Prohibit employers or other parties from entering into agreements or engaging in any other activity protected by the National Labor Relations Act
 - Interfere with labor relations of parties that are left unregulated under the National Labor Relations Act
- The bill specifies that the head of a governmental entity may exempt a particular project, contract, subcontract, grant, tax abatement or tax credit from the requirements of any or all of the provisions or prohibitions discussed in the preceding paragraphs if the governmental unit finds, after public notice and a hearing, that special circumstances require an exemption to avert an imminent threat to public health or safety.

§5-22-3. Certain labor requirements not to be imposed on contractor or subcontractor.

(a) This section may be known and cited as The Fair and Open Competition in Governmental Construction Act.

(b) Legislative findings. -- The Legislature finds that to promote and ensure fair competition on governmental, governmental funded or governmental assisted construction projects that open competition in governmental construction contracts is necessary. The Legislature also finds that when a governmental entity awards a grant, tax abatement or tax credit that it should be an open and fair process. Therefore, to prevent discrimination against governmental bidders, offerors, contractors or subcontractors based upon labor affiliation or the lack thereof, the Legislature declares that project labor agreements should not be part of the competitive bid process or be a condition for a grant, tax abatement or tax credit.

(c) Definitions. -- For purposes of this section:

(1) "Construction" means the act, trade or process of building, erecting, constructing, adding, repairing, remodeling, rehabilitating, reconstructing, altering, converting, improving, expanding or demolishing of a building, structure, facility, road or highway, and includes the planning, designing and financing of a specific construction project.

(2) "Governmental entity" means the state, a political subdivision or any agency or spending unit thereof.

(3) "Project labor agreement" means any pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project.

(d) Prohibition - Competitive bid. -- Commencing July 1, 2015, a governmental entity or a construction manager acting on behalf of a governmental entity, seeking a construction bid solicitation, awarding a construction contract or obligating funds to a construction contract, shall not include the following in the bid specifications, bid requests, project agreements or any other controlling documents for the construction project:

(1) A requirement or prohibition that a bidder, offeror, contractor or subcontractor must enter into or adhere to a project labor agreement;

(2) A term, clause or statement that infers, either directly or indirectly, that a bidder, offeror, contractor or subcontractor must enter into or adhere to a project labor agreement;

(3) A term, clause or statement that rewards or punishes a bidder, offeror, contractor or subcontractor for becoming or remaining, or refusing to become or remain a signatory to, or for adhering or refusing to adhere to, a project labor agreement; or

(4) Any other provision dealing with project labor agreements.

(e) Prohibition - Grant, tax abatement or tax credit. -- Commencing July 1, 2015, a governmental entity may not award a grant, tax abatement or tax credit for construction that is conditioned upon a requirement that the awardee include any prohibited provision set out in subsection (d) of this section.

(f) Exclusions. -- This section does not:

(1) Prohibit a governmental entity from awarding a contract, grant, tax abatement or tax credit to a private owner, bidder, contractor or subcontractor who enters into or who is party to an agreement with a labor organization, if being or becoming a party or adhering to an agreement with a labor organization is not a condition for award of the contract, grant, tax abatement or tax credit, and if the governmental entity does not discriminate against a private owner, bidder, contractor or subcontractor in the awarding of that

contract, grant, tax abatement or tax credit based upon the status as being or becoming, or the willingness or refusal to become, a party to an agreement with a labor organization.

(2) Prohibit a private owner, bidder, contractor or subcontractor from voluntarily entering into or complying with an agreement entered into with one or more labor organizations in regard to a contract with a governmental entity or funded, in whole or in part, from a grant, tax abatement or tax credit from the governmental entity.

(3) Prohibit employers or other parties from entering into agreements or engaging in any other activity protected by the National Labor Relations Act, 29 U. S. C. §§151 to 169.

(4) Interfere with labor relations of parties that are left unregulated under the National Labor Relations Act, 29 U. S. C. §§151 to 169.

(g) Exemptions. -- The head of a governmental entity may exempt a particular project, contract, subcontract, grant, tax abatement or tax credit from the requirements of any or all of the provisions of subsections (d) and (e) of this section if the governmental unit finds, after public notice and a hearing, that special circumstances require an exemption to avert an imminent threat to public health or safety. A finding of special circumstances under this subsection may not be based on the possibility or presence of a labor dispute concerning the use of contractors or subcontractors who are nonsignatories to, or otherwise do not adhere to, agreements with one or more labor organizations or concerning employees on the project who are not members of or affiliated with a labor organization.

Bill Sponsors: Senators Carmichael, Blair, Boso, Gaunch, M. Hall, Walters and Williams

Senate Bill 447 **Allowing issuance of diploma by public, private or home school administrator**

Effective Date: June 12, 2015

Code Reference: Adds §18-8-12

WVDE Contact: Betty Jo Jordan, Office of the Superintendent
bjordan@k12.wv.us; 304.558.2118

Major Provisions

- The bill allows any person that administers a program of secondary education at a public school, private school or home school, which meets the requirements of chapter 18, to issue a diploma to a student completing the secondary education program.
- The bill acknowledges that home school diplomas are legally sufficient to demonstrate that the student meets the definition of having a high school diploma or its equivalent.
- The bill prohibits state agencies and institutions of higher learning from rejecting such diplomas or treating students who have obtained such diplomas differently. However, agencies and institutions of higher learning are specifically authorized to inquire into the substance and content of the secondary education program underlying the award of such diplomas for purposes of determining whether a student meets other specific requirements.

§18-8-12. Issuance of a diploma or other appropriate credential by public, private or home school administrator.

A person who administers a program of secondary education at a public, private or home school that meets the requirements of this chapter may issue a diploma or other appropriate credential to a person who has completed the program of secondary education. Such diploma or credential is legally sufficient to demonstrate that the person meets the definition of having a high school diploma or its equivalent. No state agency or institution of higher learning in this state may reject or otherwise treat a person differently solely on the grounds of the source of such a diploma or credential. Nothing in this section prevents any agency or institution of higher learning from inquiring into the substance or content of the program to assess the content thereof for the purposes of determining whether a person meets other specific requirements.

Bill Sponsors: Senators Karnes, Boley, Gaunch and Leonhardt

Senate Bill 529 **Relating to PERS, SPRS and TRS benefits and costs**

Effective Date: March 18, 2015

Code Reference: Adds §18-7A-17a and §18-7A-25b
Amends §5-10-2, §5-10-14, §5-10-15, §5-10-15a, §5-10-20,
§5-10-21, §5-10-21a, §5-10-29, §5-13-2, §5-16-13,
§15-2A-21, §18-7A-17, §18-7A-23, §18-7A-25 and
§18-17D-6

WVDE Contact: Amy Willard, Office of School Finance
awillard@k12.wv.us; 304.558.6300

Major Provisions

- The length of time used for calculating the “final average salary” for members of the Public Employees Retirement System (PERS) employed on or after July 1, 2015 is increased from the average of any three consecutive years of credited service in the latest fifteen years of employment to the average of any five consecutive years in the latest fifteen years of employment.
- The bill eliminates the ability to earn a full year of credited service for having between ten to twelve months of service for the members of PERS who first became members on or after July 1, 2015.
- The bill clarifies that for members of PERS, military service credit is to be granted for any time served on active duty in the armed forces of the United States, including active duty in the National Guard, to a member of PERS employed prior to July 1, 2015, regardless of whether the person was a public employee at the time of the military service.
- The bill deletes the proviso that the military service credit had to be during any period of compulsory military service or during a period of armed conflict.
- The bill specifies that any member of PERS who first becomes an employee of a participating public employer on or after July 1, 2015 does not earn credited service for military duty, but authorizes the employee to purchase up to sixty months of military service credit for time served in active military duty prior to first becoming an employee of a participating public employer, provided that the employee was honorably discharged from the military service, and provided further that all of the following conditions are met:
 - The member has completed at least twelve consecutive months of contributory service upon first becoming an employee of a participating public employer;
 - The active military duty occurs prior to the date on which the member first becomes an employee of a participating public employer; and
 - The employee pays to the retirement system the actuarial reserve purchase amount within forty-eight months after the date on which employer and employee contributions are first received by the retirement system for the member and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system.
- Any member of PERS who first becomes an employee of a participating public employer on or after July 1, 2015 may purchase military service credit for time served on active military duty on or after the date the member first becomes an employee of a participating public employer if all of the following conditions are met, provided that the employee was honorably discharged from the military service, and provided further that the maximum military service credit, including the portion of military service completed prior to employment, does not exceed sixty months:

- The member was an employee of a participating public employer, terminated employment and experienced a break in contributing service in the retirement system of one or more months, performed active military service while not an employee of the participating public employer and not contributing to the retirement system, then again becomes an employee of a participating public employer and completes at least twelve consecutive months of contributory service;
 - The member does not qualify for military service credit for such active military duty pursuant to WVC §5-10-15 (d), which states, in part, that: “*** contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code and the federal Uniformed Services Employment and Reemployment Rights Act (USERRA), and regulations promulgated thereunder, as the same may be amended from time to time. ***”, and;
 - The member pays to the retirement system the actuarial reserve lump sum purchase amount within forty-eight months after the date on which employer and employee contributions are first received by the retirement system for the member after he or she again becomes an employee of a participating public employer immediately following the period of active military duty and break in service and completes at least twelve consecutive months of contributory service and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system.
- The bill provides special considerations for employees or elected officials who do not remain employed for at least twelve consecutive months
 - The bill excludes those members of PERS who first became members on or after July 1, 2015 from using accrued annual or sick leave to acquire additional credited service.
 - The bill increases the age at which a member of PERS who first becomes a member on or after July 1, 2015 may retire with full retirement benefits from sixty to sixty-two years of age, increases the number of years of credited service when such application may be submitted from five to ten years, and specifies that all ten years must be actual contributing service.
 - The bill specifies that a member of PERS who first becomes a member on or after July 1, 2015 who leaves the employ of a participating public employer prior to attaining the age of sixty-two for any reason except disability or death and who elects to receive a deferred retirement benefit is entitled to receive a full retirement annuity at the following ages: for a member with ten or more years of contributing service - at age sixty-four; for a member with twenty or more years of contributing service – at age sixty-three.
 - The bill specifies that any member of PERS who first becomes a member on or after July 1, 2015 who is currently employed and who elects to receive an early retirement benefit prior to attaining the age of sixty-two, which means retirement following attainment of age sixty but prior to attaining age sixty-two, is entitled to receive a reduced retirement annuity at the following ages: for a member with ten or more years of contributed service – age sixty; for a member with twenty or more years of contributed service - age fifty-seven; and for a member with thirty years of contributed service – age fifty-five.
 - It increases the employee’s contribution rate for the members of PERS who first become members on or after July 1, 2015 from four and one-half percent to six percent.
 - A proviso is added to the definition of “reciprocal service credit”, that a member of PERS who first become members on or after July 1, 2015 that the member must be employed and have contributed to the system for ten years or more in each system in order to receive reciprocal service credit.

- A proviso is added to the definition of “Teacher final average salary” that for a person who first become a member of PERS on or after July 1, 2015, that no compensation for services rendered in positions covered by the public retirement system may be used to compute his or her teacher system final average salary.
- The bill specifies that for a person who first becomes a member of the Teachers Retirement System (TRS) on or after July 1, 2015, accrued annual and sick leave may not be applied for retirement service credit.
- The bill specifies that for a person who first becomes a member of the West Virginia State Police Retirement System on or after July 1, 2015, accrued annual and sick leave may not be applied for retirement service credit.
- It clarifies that for members of TRS, prior service credit for military service is to be granted only for any time served on active duty in any of the armed forces of the United States in any period of national emergency within which a federal Selective Service Act was in effect.
- The bill specifies that any member of TRS who became an employee of a participating public employer before July 1, 2015, but whose military service was not during any period of national emergency within which a federal Selective Service Act was in effect, and any member who first becomes an employee of a participating public employer on or after July 1, 2015, does not earn credited service for military duty, but authorizes such employee to purchase up to sixty months of military service credit for time served in active military duty if all of the following conditions are met:
 - The member has completed a complete fiscal year of contributory service;
 - The active military duty occurs prior to the date on which the member first becomes an employee of a participating public employer; and
 - The employee pays to the retirement system the actuarial reserve purchase amount within forty-eight months after the date on which employer and employee contributions are first received by the retirement system for the member and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system, or within forty-eight months of July 1, 2015, whichever is later.
- The bill further specifies that any member of TRS who first becomes an employee of a participating public employer on or after July 1, 2015 may purchase military service credit for time served in active military duty on or after the date the member first becomes an employee of a participating public employer if all of the following conditions are met, provided that the employee was honorably discharged from the military service, and provided further that the maximum military service credit, including the portion of military service completed prior to employment, does not exceed sixty months:
 - The member was an employee of a participating public employer, terminated employment and experienced a break in contributing service in the retirement system of one or more months, performed active military service while not an employee of the participating public employer and not contributing to the retirement system, then again becomes an employee of a participating public employer and completes at least twelve consecutive months of contributory service;
 - The member does not qualify for military service credit for such active military duty pursuant to WVC §5-10-15 (d), which states, in part, that: “*** contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code and the federal Uniformed Services Employment and Reemployment Rights Act (USERRA), and regulations promulgated thereunder, as the same may be amended from time to time. ***”, and;

- The member pays to the retirement system the actuarial reserve lump sum purchase amount within forty-eight months after the date on which employer and employee contributions are first received by the retirement system for the member after he or she again becomes an employee of a participating public employer immediately following the period of active military duty and break in service and completes at least twelve consecutive months of contributory service and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system.
- The bill specifies that the age at which a member of TRS who first becomes a member on or after July 1, 2015 may retire with full retirement benefits from sixty to sixty-two years of age, eliminates the option of retiring with full benefits with thirty-five years of service regardless of age, increases the number of years of credited service when such application may be submitted from five to ten years, and specifies that all ten years must be actual contributing service.
- A member of TRS who first becomes a member on or after July 1, 2015 who leaves the employ of a participating public employer prior to attaining the age of sixty-four for any reason except disability or death and who elects to receive a deferred retirement benefit is entitled to receive a full retirement annuity at the following ages: for a member with ten or more years of contributed service - age sixty-four; for a member with twenty or more years of contributed service – age sixty-three.
- A member of TRS who first becomes a member on or after July 1, 2015 who is currently employed and who elects to receive an early retirement benefit, which is defined as a retirement following attainment of age sixty but prior to age sixty-two, is entitled to receive a reduced retirement annuity at the following ages: for a member with ten or more years of contributed service – age sixty; for a member with twenty or more years of contributed service - age fifty-seven; and for a member with thirty years of contributed service – age fifty-five.

§5-10-2. Definitions.

Unless a different meaning is clearly indicated by the context, the following words and phrases as used in this article have the following meanings:

(1) "Accumulated contributions" means the sum of all amounts deducted from the compensations of a member and credited to his or her individual account in the members' deposit fund, together with regular interest on the contributions;

(2) "Accumulated net benefit" means the aggregate amount of all benefits paid to or on behalf of a retired member;

(3) "Actuarial equivalent" means a benefit of equal value computed upon the basis of a mortality table and regular interest adopted by the board of trustees from time to time: *Provided*, That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, "actuarial equivalent" shall be computed using the mortality tables and interest rates required to comply with those requirements;

(4) "Annuity" means an annual amount payable by the retirement system throughout the life of a person. All annuities shall be paid in equal monthly installments, rounding to the upper cent for any fraction of a cent;

(5) "Annuity reserve" means the present value of all payments to be made to a retirant or beneficiary of a retirant on account of any annuity, computed upon the basis of mortality and other tables of experience, and regular interest, adopted by the board of trustees from time to time;

(6) "Beneficiary" means any person, except a retirant, who is entitled to, or will be entitled to, an annuity or other benefit payable by the retirement system;

(7) "Board of Trustees" or "board" means the Board of Trustees of the West Virginia Consolidated Public Retirement System;

(8) "Compensation" means the remuneration paid a member by a participating public employer for personal services rendered by the member to the participating public employer. In the event a member's remuneration is not all paid in money, his or her participating public employer shall fix the value of the portion of the remuneration which is not paid in money: ~~*Provided*, That members hired in a position for the first time on or after July 1, 2014, who receive nonmonetary remuneration shall not have nonmonetary remuneration included in compensation for retirement purposes and nonmonetary remuneration may not be used in calculating a member's final average salary.~~ Any lump sum or other payments paid to members that do not constitute regular salary or wage payments are not considered compensation for the purpose of withholding contributions for the system or for the purpose of calculating a member's final average salary. These payments include, but are not limited to, attendance or performance bonuses, one-time flat fee or lump sum payments, payments paid as a result of excess budget, or employee recognition payments. The board shall have final power to decide whether the payments shall be considered compensation for purposes of this article;

(9) "Contributing service" means service rendered by a member within this state and for which the member made contributions to a public retirement system account of this state, to the extent credited him or her as provided by this article;

(10) "Credited service" means the sum of a member's prior service credit, military service credit, workers' compensation service credit and contributing service credit standing to his or her credit as provided in this article;

(11) "Employee" means any person who serves regularly as an officer or employee, full time, on a salary basis, whose tenure is not restricted as to temporary or provisional appointment, in the service of,

and whose compensation is payable, in whole or in part, by any political subdivision, or an officer or employee whose compensation is calculated on a daily basis and paid monthly or on completion of assignment, including technicians and other personnel employed by the West Virginia National Guard whose compensation, in whole or in part, is paid by the federal government: *Provided*, That an employee of the Legislature whose term of employment is otherwise classified as temporary and who is employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who has been or is employed during regular sessions or during the interim between regular sessions in seven or more consecutive calendar years, as certified by the clerk of the house in which the employee served, is an employee, any provision to the contrary in this article notwithstanding, and is entitled to credited service in accordance with provisions of section fourteen, ~~article ten, chapter five~~ of this ~~code~~ article and: *Provided, however*, That members of the legislative body of any political subdivision and judges of the state Court of Claims are employees receiving one year of service credit for each one-year term served and prorated service credit for any partial term served, anything contained in this article to the contrary notwithstanding: ~~*Provided further*, That only a compensated board member of a participating public employer appointed to a board of a nonlegislative body for the first time on or after July 1, 2014, who normally is required to work twelve months per year and one thousand forty hours of service per year is an employee.~~ . In any case of doubt as to who is an employee within the meaning of this article, the board of trustees shall decide the question;

(12) "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;

(13) "Final average salary" means either of the following: *Provided*, That salaries for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with section seven, ~~article ten-d, chapter five~~ of this ~~code~~ chapter and Section 401 (a) (17) of the Internal Revenue Code: *Provided, however*, That the provisions of section twenty-two-h of this article are not applicable to the amendments made to this subdivision during the 2011 regular session of the Legislature;

(A) The average of the highest annual compensation received by a member, ~~(including a member of the Legislature who participates in the retirement system in the year 1971 or thereafter)~~, during any period of three consecutive years of credited service contained within the member's fifteen years of credited service immediately preceding the date his or her employment with a participating public employer last terminated: *Provided*, That for persons who were first hired on or after July 1, 2015, any period of five consecutive years of contributing service contained within the member's fifteen years of credited service immediately preceding the date his or her employment with a participating public employer last terminated; or

(B) If the member has less than five years of credited service, the average of the annual rate of compensation received by the member during his or her total years of credited service; and in determining the annual compensation, under either paragraph (A) or (B) of this subdivision, of a member of the Legislature who participates in the retirement system as a member of the Legislature in the year 1971, or in any year thereafter, his or her actual legislative compensation (the total of all compensation paid under sections two, three, four and five, ~~article two-a, chapter four~~ of this code), in the year 1971, or in any year thereafter, plus any other compensation he or she receives in any year from any other participating public employer including the State of West Virginia, without any multiple in excess of one times his or her actual legislative compensation and other compensation, shall be used: *Provided*, That "final average salary" for any former member of the Legislature or for any member of the Legislature in the year 1971, who, in either event, was a member of the Legislature on November 30, 1968, or November 30, 1969, or November 30, 1970, or on November 30 in any one or more of those three years and who participated in the retirement system as a member of the Legislature in any one or more of those years means: (i) Either, ~~(notwithstanding the provisions of this subdivision preceding this proviso),~~ \$1,500 multiplied by eight, plus

the highest other compensation the former member or member received in any one of the three years from any other participating public employer including the State of West Virginia; or (ii) "final average salary" determined in accordance with paragraph (A) or (B) of this subdivision, whichever computation produces the higher final average salary, ~~and in determining the annual compensation under subparagraph (ii) of this previse paragraph, the legislative compensation of the former member shall be computed on the basis of \$1,500 multiplied by eight, and the legislative compensation of the member shall be computed on the basis set forth in the provisions of this subdivision immediately preceding this previse paragraph or on the basis of \$1,500 multiplied by eight, whichever computation as to the member produces the higher annual compensation~~};

(14) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, codified at Title 26 of the United States Code;

(15) "Limited credited service" means service by employees of the West Virginia Educational Broadcasting Authority, in the employment of West Virginia University, during a period when the employee made contributions to another retirement system, as required by West Virginia University, and did not make contributions to the Public Employees Retirement System: *Provided*, That while limited credited service can be used for the formula set forth in subsection (e), section twenty-one of this article, it may not be used to increase benefits calculated under section twenty-two of this article;

(16) "Member" means any person who has accumulated contributions standing to his or her credit in the members' deposit fund;

(17) "Participating public employer" means the State of West Virginia, any board, commission, department, institution or spending unit, and includes any agency created by rule of the Supreme Court of Appeals having full-time employees, which for the purposes of this article is considered a department of state government; and any political subdivision in the state which has elected to cover its employees, as defined in this article, under the West Virginia Public Employees Retirement System;

(18) "Plan year" means the same as referenced in section forty-two of this article;

(19) "Political subdivision" means the State of West Virginia, a county, city or town in the state; a school corporation or corporate unit; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; and any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns: *Provided*, That any mental health agency participating in the Public Employees Retirement System before July 1, 1997, is considered a political subdivision solely for the purpose of permitting those employees who are members of the Public Employees Retirement System to remain members and continue to participate in the retirement system at their option after July 1, 1997: *Provided, however*, That the Regional Community Policing Institute which participated in the Public Employees Retirement System before July 1, 2000, is considered a political subdivision solely for the purpose of permitting those employees who are members of the Public Employees Retirement System to remain members and continue to participate in the Public Employees Retirement System after July 1, 2000;

(20) "Prior service" means service rendered prior to July 1, 1961, to the extent credited a member as provided in this article;

(21) "Regular interest" means the rate or rates of interest per annum, compounded annually, as the board of trustees adopts from time to time;

(22) "Required beginning date" means April 1 of the calendar year following the later of: (A) The calendar year in which the member attains age seventy and one-half years of age; or (B) the calendar year in which a member who has attained the age seventy and one-half years of age and who ceases providing service covered under this system to a participating employer;

(23) "Retirant" means any member who commences an annuity payable by the retirement system;

(24) "Retirement" means a member's withdrawal from the employ of a participating public employer and the commencement of an annuity by the retirement system;

(25) "Retirement system" or "system" means the West Virginia Public Employees Retirement System created and established by this article;

(26) "Retroactive service" means: (1) Service between July 1, 1961, and the date an employer decides to become a participating member of the Public Employees Retirement System; (2) service prior to July 1, 1961, for which the employee is not entitled to prior service at no cost in accordance with 162 CSR 5.13; and (3) service of any member of a legislative body or employees of the state Legislature whose term of employment is otherwise classified as temporary for which the employee is eligible, but for which the employee did not elect to participate at that time;

(27) "Service" means personal service rendered to a participating public employer by an employee of a participating public employer; and

(28) "State" means the State of West Virginia.

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

(a) The board of trustees shall credit each member with the prior service and contributing service to which he or she is entitled based upon rules adopted by the board of trustees and based upon the following:

(1) In no event may less than ten days of service rendered by a member in any calendar month be credited as a month of service: *Provided*, That for employees of the state Legislature whose term of employment is otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who have been or are so employed during regular sessions or during the interim between regular sessions in seven consecutive calendar years, service credit of one month shall be awarded for each ten days employed in the interim between regular sessions, which interim days shall be cumulatively calculated so that any ten days, regardless of calendar month or year, shall be calculated toward any award of one month of service credit;

(2) Except for hourly employees, and those persons who first become members of the retirement system on or after July 1, 2015, ten or more months of service credit earned in any calendar year shall be credited as a year of service: *Provided*, That no more than one year of service may be credited to any member for all service rendered by him or her in any calendar year and no days may be carried over by a member from one calendar year to another calendar year where the member has received a full-year credit for that year; and

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

(b) The board of trustees shall grant service credit to employees of boards of health, the Clerk of the House of Delegates and the Clerk of the State Senate or to any former and present member of the State Teachers Retirement System who have been contributing members ~~in the Public Employees Retirement System~~ for more than three years, for service previously credited by the State Teachers Retirement System and shall require the transfer of the member's ~~accumulated~~ contributions to the system and shall also require a deposit, with ~~reinstatement~~ interest ~~as set forth in the Board's Rule, Refund, Reinstatement, Retroactive Service, Loan And Employer Error Interest Factors, 162 C. S. R. 7.~~, of any withdrawals of contributions any time prior to the member's retirement. Repayment of withdrawals shall be as directed by the board of trustees.

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

(d) Active members who previously worked in Comprehensive Employment and Training Act (CETA) may receive service credit for time served in that capacity: *Provided*, That in order to receive service credit under the provisions of this subsection the following conditions must be met: (1) The member must have moved from temporary employment with the participating employer to permanent full-time employment with the participating employer within one hundred twenty days following the termination of the member's CETA employment; (2) the board must receive evidence that establishes to a reasonable degree of certainty as determined by the board that the member previously worked in CETA; and (3) the member shall pay to the board an amount equal to the employer and employee contribution plus interest at the amount set by the board for the amount of service credit sought pursuant to this subsection: *Provided, however*, That the maximum service credit that may be obtained under the provisions of this subsection is two years: *Provided further*, That a member must apply and pay for the service credit allowed under this subsection and provide all necessary documentation by March 31, 2003: *And provided further*, That the board shall exercise due diligence to notify affected employees of the provisions of this subsection.

(e) (1) Employees of the state Legislature whose terms of employment are otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim time between regular sessions shall receive service credit for the time served in that capacity in accordance with the following: For purposes of this section, the term "regular session" means day one through day sixty of a sixty-day legislative session or day one through day thirty of a thirty-day legislative session. Employees of the state Legislature whose term of employment is otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim time between regular sessions and who have been or are employed during regular sessions or during the interim time between regular sessions in seven consecutive calendar years, as certified by the clerk of the house in which the employee served, shall receive service credit of six months for all regular sessions served, as certified by the clerk of the house in which the employee served, or shall receive service credit of three months for each regular thirty-day session served prior to 1971: *Provided*, That employees of the state Legislature whose term of employment is otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions and who have been or are employed during the regular sessions in thirteen consecutive calendar years as either temporary employees or full-time employees or a combination thereof, as certified by the clerk of the house in which the employee served, shall receive a service credit of twelve months for each regular session served, as certified by the clerk of the house in which the employee served: *Provided, however*, That the amendments made to this subsection during the 2002 regular session of the Legislature only apply to employees of the Legislature who are employed by the Legislature as either temporary employees or full-time employees as of January 1, 2002, or who become employed by the Legislature as temporary or full-time employees for the first time after January 1, 2002. Employees of the State Legislature whose terms of employment are otherwise classified as temporary and who are employed to perform services required by the Legislature during the interim time between regular sessions shall receive service credit of one month for each ten days served during the interim between regular sessions, which interim days shall be cumulatively calculated so that any ten days, regardless of calendar month or year, shall be calculated toward any award of one month of service credit: *Provided further*, That no more than one year of service may be credited to any temporary legislative employee for all service rendered by that employee in any calendar year and no days may be carried over by a temporary legislative employee from one calendar year to another calendar year where the member has received a full year credit for that year. Service credit awarded for legislative employment pursuant to this section shall be used for the purpose of calculating that member's retirement annuity, pursuant to section twenty-two of this article, and determining eligibility as it relates to credited service, notwithstanding any other provision of this section. Certification of employment for a complete legislative session and for interim days shall be determined by the clerk of the house in which the employee served, based upon employment records. Service of fifty-five days of a regular session constitutes an absolute presumption of service for a complete legislative session and service of twenty-seven days of a thirty-day regular session occurring prior to 1971 constitutes an absolute presumption of service for a complete legislative session. Once a legislative employee has been employed during regular

sessions for seven consecutive years or has become a full-time employee of the Legislature, that employee shall receive the service credit provided in this section for all regular and interim sessions and interim days worked by that employee, as certified by the clerk of the house in which the employee served, regardless of when the session or interim legislative employment occurred: *And provided further*, That regular session legislative employment for seven consecutive years may be served in either or both houses of the Legislature.

(2) For purposes of this section, employees of the Joint Committee on Government and Finance are entitled to the same benefits as employees of the House of Delegates or the Senate: *Provided*, That for joint committee employees whose terms of employment are otherwise classified as temporary, employment in preparation for regular sessions, certified by the legislative manager as required by the Legislature for its regular sessions, shall be considered the same as employment during regular sessions to meet service credit requirements for sessions served.

(f) Any employee may purchase retroactive service credit for periods of employment in which contributions were not deducted from the employee's pay. In the purchase of service credit for employment prior to ~~the year~~ 1989 in any department, including the Legislature, which operated from the General Revenue Fund and which was not expressly excluded from budget appropriations in which blanket appropriations were made for the state's share of public employees' retirement coverage in the years prior to ~~the year~~ 1989, the employee shall pay the employee's share. Other employees shall pay the state's share and the employee's share to purchase retroactive service credit. Where an employee purchases service credit for employment which occurred after 1988, that employee shall pay for the employee's share and the employer shall pay its share for the purchase of retroactive service credit: *Provided*, That no legislative employee and no current or former member of the Legislature may be required to pay any interest or penalty upon the purchase of retroactive service credit in accordance with the provisions of this section where the employee was not eligible to become a member during the years for which he or she is purchasing retroactive credit or had the employee attempted to contribute to the system during the years for which he or she is purchasing retroactive service credit and such contributions would have been refused by the board: *Provided, however*, That a ~~current~~ legislative employee purchasing retroactive credit under this section does so within twenty-four months of ~~beginning contributions to the retirement~~ becoming a member of the system or no later than December 31, ~~2013~~ 2008, whichever occurs last: *Provided further*, That once a legislative employee becomes a member of the retirement system, he or she may purchase retroactive service credit for any time he or she was employed by the Legislature and did not receive service credit. Any service credit purchased shall be credited as six months for each sixty-day session worked, three months for each thirty-day session worked or twelve months for each sixty-day session for legislative employees who have been employed during regular sessions in thirteen consecutive calendar years, as certified by the clerk of the house in which the employee served, and credit for interim employment as provided in this subsection: *And provided further*, That this legislative service credit shall also be used for months of service in order to meet the sixty-month requirement for the payments of a temporary legislative employee member's retirement annuity: *And provided further*, That no legislative employee may be required to pay for any service credit beyond the actual time he or she worked regardless of the service credit which is credited to him or her pursuant to this section: *And provided further*, That any legislative employee may request a recalculation of his or her credited service to comply with the provisions of this section at any time.

(g) (1) Notwithstanding any provision to the contrary, the seven consecutive calendar years requirement and the thirteen consecutive calendar years requirement and the service credit requirements set forth in this section shall be applied retroactively to all periods of legislative employment prior to the passage of this section, including any periods of legislative employment occurring before the seven consecutive and thirteen consecutive calendar years referenced in this section: *Provided*, That the employee has not retired prior to the effective date of the amendments made to this section in the 2002 regular session of the Legislature.

(2) The requirement of seven consecutive years and the requirement of thirteen consecutive years apply retroactively to all legislative employment prior to the effective date of the 2006 amendments to this section.

(h) The board of trustees shall grant service credit to any former or present member of the State Police Death, Disability and Retirement Fund who has been a contributing member of this system for more than three years for service previously credited by the State Police Death, Disability and Retirement Fund if the member transfers all of his or her contributions ~~from~~ to the State Police Death, Disability and Retirement Fund to the system created in this article, including repayment of any amounts withdrawn any time from the State Police Death, Disability and Retirement Fund by the member seeking the transfer allowed in this subsection: *Provided*, That there shall be added by the member to the amounts transferred or repaid under this subsection an amount which shall be sufficient to equal the contributions he or she would have made had the member been under the Public Employees Retirement System during the period of his or her membership in the State Police Death, Disability and Retirement Fund, excluding contributions on lump sum payment for annual leave, plus interest at a rate determined by the board.

(i) The provisions of section twenty-two-h of this article are not applicable to the amendments made to this section during the 2006 regular session.

§5-10-15. Military service credit; qualified military service.

(a) (1) The Legislature recognizes the men and women of this state who have served in the armed forces of the United States during times of war, conflict and danger. It is the intent of this subsection to confer military service credit upon persons who are eligible at any time for public employees retirement benefits for any time served in active duty in the armed forces of the United States when the duty was during any period of compulsory military service or during a period of armed conflict, as defined in this section, regardless of whether the person was a public employee at the time of entering the military service.

(2) In addition to any benefit provided by federal law, any member of the retirement system who has previously served in or enters the active service of the armed forces of the United States during any period of compulsory military service or during a period of armed conflict shall receive credited service from the time spent in the Armed Forces of the United States, including active duty in the National Guard performed pursuant to Title 10 or Title 32 of the United States Code, shall receive credited service for the time spent in the armed forces of the United States, not to exceed five years, if the member:

(A) Has been honorably discharged from the armed forces; and

(B) Substantiates by appropriate documentation or evidence his or her active military service ~~and entry into military service during any period of compulsory military service or during periods of armed conflict.~~

(3) ~~Any~~ If a member of the retirement system who enters the active service of the armed forces of the United States, the member's contributions to the retirement system are suspended during any the period of compulsory military service or during a period of armed conflict shall receive the credit provided by this section regardless of whether he or she was a public employee at the time of entering the military service the active service and until the member's return to the employ of a participating public employer,

(4) ~~If a member of the Public Employees Retirement System enters active service of the United States and serves during any period of compulsory military service or during any period of armed conflict, during the period of the armed service and until the member's return to the employ of a participating public employer, the member's contributions to the retirement system is suspended and any credit balance remaining in the member's deposit fund shall be accumulated at accumulate regular interest: *Provided*, That notwithstanding any provision in this article to the contrary, if an employee of a participating political subdivision serving on active duty in the military service during any period of compulsory military service or armed conflict has accumulated credited service prior to the last entry into military service, in an amount that, added to the time in active military service while an employee equals nine or more years, and the member is unable to resume employment with a participating employer upon completion of duty due to death during or as a result of active service, all time spent in active military service, up to and including a~~

total of five years, is considered to be credited service and death benefits are vested in the member: *Provided, however,* That the active service during the time the member is an employee must be as a result of an order or call to duty, and not as a result of volunteering for assignment or volunteering to extend the time in service beyond the time required by order or call.

~~(5) No member may receive duplicate credit for service for a period of compulsory military service which falls under a period of armed conflict.~~

~~(6) In any case of doubt as to the period of service to be credited a member under the provisions of this section, the board of trustees have final power to determine the period.~~

~~(7) The Board may consider a petition by any member whose tour of duty, in a territory that would reasonably be considered hostile and dangerous, was extended beyond the period in which an armed conflict was officially recognized, if that tour of duty commenced during a period of armed conflict, and the member was assigned to duty stations within the hostile territory throughout the period for which service credit is being sought. The Board has the authority to evaluate the facts and circumstances peculiar to the petition, and rule on whether granting service credit for the extended tour of duty is consistent with the objectives of this article. In determination, the Board may grant full credit for the period under petition subject to the limitations otherwise applicable, or to grant credit for any part of the period as the board considers appropriate, or to deny credit altogether.~~

~~(8) The Board of Trustees may propose legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code to administer the provisions of this section.~~

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

~~(1) "Period of armed conflict" means the Spanish-American War, the Mexican border period, World War I, World War II, the Korean conflict, the Vietnam era, the Persian Gulf War and any other period of armed conflict by the United States, including, but not limited to, those periods sanctioned by a declaration of war by the United States Congress or by executive or other order of the President.~~

~~(2) "Spanish-American War" means the period beginning on the twenty first day of April, one thousand eight hundred ninety-eight, and ending on the fourth day of July, one thousand nine hundred two, and includes the Philippine Insurrection, the Boxer Rebellion, and in the case of a veteran who served with the United States military forces engaged in hostilities in the Moro Province, means the period beginning on the twenty first day of April, one thousand eight hundred ninety-eight, and ending on the fifteenth day of July, one thousand nine hundred three.~~

~~(3) "The Mexican border period" means the period beginning on the ninth day of May, one thousand nine hundred sixteen, and ending on the fifth day of April, one thousand nine hundred seventeen, in the case of a veteran who during the period served in Mexico, on its borders or in the waters adjacent to it.~~

~~(4) "World War I" means the period beginning on the sixth day of April, one thousand nine hundred seventeen, and ending on the eleventh day of November, one thousand nine hundred eighteen, and in the case of a veteran who served with the United States military forces in Russia, means the period beginning on the sixth day of April, one thousand nine hundred seventeen, and ending on the first day of April, one thousand nine hundred twenty.~~

~~(5) "World War II" means the period beginning on the seventh day of December, one thousand nine hundred forty-one, and ending on the thirty-first day of December, one thousand nine hundred forty-six.~~

~~(6) "Korean conflict" means the period beginning on the twenty-seventh day of June, one thousand nine hundred fifty, and ending on the thirty-first day of January, one thousand nine hundred fifty-five.~~

~~(7) "The Vietnam era" means the period beginning on the twenty-eighth day of February, one thousand nine hundred sixty-one, and ending on the seventh day of May, one thousand nine hundred seventy-five, in the case of a veteran who served in the Republic of Vietnam during that period; and the fifth day of August, one thousand nine hundred sixty-four, and ending on the seventh day of May, one thousand nine hundred seventy-five, in all other cases.~~

~~(8) "Persian Gulf War" means the period beginning on the second day of August, one thousand nine hundred ninety, and ending on the eleventh day of April, one thousand nine hundred ninety-one.~~

(b) Subsection (a) of this section does not apply to any member who first becomes an employee of a participating public employer on or after July 1, 2015. This subsection does not apply to any member who first became an employee of a participating public employer before July 1, 2015.

(1) A member who first becomes an employee of a participating public employer on or after July 1, 2015, may purchase up to sixty months of military service credit for time served in active military duty prior to first becoming an employee of a participating public employer if all of the following conditions are met:

(A) The member has completed at least twelve consecutive months of contributory service upon first becoming an employee of a participating public employer;

(B) The active military duty occurs prior to the date on which the member first becomes an employee of a participating public employer; and

(C) The employee pays to the retirement system the actuarial reserve purchase amount within forty-eight months after the date on which employer and employee contributions are first received by the retirement system for the member and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system: Provided, That any employee who ceases employment with a participating public employer before completing the required actuarial reserve purchase amount in full shall not be eligible to purchase the military service.

(2) Notwithstanding paragraph (A), subdivision (1) of this subsection, a member who first becomes an employee of a participating public employer on or after July 1, 2015, but who does not remain employed and contributing to the retirement system for at least twelve consecutive months after his or her initial employment, shall be considered to have met the requirement of paragraph (A), subdivision (1) of this subsection the first time he or she becomes an employee of a participating public employer and completes at least twelve consecutive months of contributing service. Such a member shall be considered to have met the requirement of paragraph (C), subdivision (1) of this subsection if he or she pays to the retirement system the actuarial reserve purchase amount within forty-eight months after the date on which employer and employee contributions are first received by the retirement system for the member the first time he or she becomes an employee of a participating public employer and completes at least twelve consecutive months of contributing service, and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system.

(3) Notwithstanding paragraph (A), subdivision (1) of this subsection, a member who first becomes an employee of a participating public employer on or after July 1, 2015, as an elected official, shall be considered to have met the requirement of paragraph (A), subdivision (1) of this subsection after remaining employed for the first twelve consecutive months of his or her term and first becoming an employee, regardless of whether a salary is paid to the employee for each such month. An elected official who does not elect to begin participating in the retirement system upon first becoming an employee of a participating public employer as an elected official is not eligible to purchase military service credit pursuant to subdivision (1) of this subsection.

(4) A member who first becomes an employee of a participating public employer on or after July 1, 2015, may purchase military service credit for active military duty performed on or after the date he or she first becomes an employee of a participating public employer only if all of the following conditions are met: *Provided*, That the maximum military service credit such member may purchase shall take into account any

military service credit purchased for active military duty pursuant to subdivision (1) of this subsection in addition to any military service credit purchased pursuant to this subdivision:

(A) The member was an employee of a participating public employer, terminated employment and experienced a break in contributing service in the retirement system of one or more months, performed active military service while not an employee of the participating public employer and not contributing to the retirement system, then again becomes an employee of a participating public employer and completes at least twelve consecutive months of contributory service;

(B) The member does not qualify for military service credit for such active military duty pursuant to subsection (d) of this section; and

(C) The member pays to the retirement system the actuarial reserve lump sum purchase amount within forty-eight months after the date on which employer and employee contributions are first received by the retirement system for the member after he or she again becomes an employee of a participating public employer immediately following the period of active military duty and break in service and completes at least twelve consecutive months of contributory service and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system.

(5) Notwithstanding paragraph (A), subdivision (4) of this subsection, a member who otherwise meets the requirements of said paragraph, but who does not remain employed and contributing to the retirement system for at least twelve consecutive months when he or she first becomes an employee of a participating public employer after the period of active military duty and break in service, shall be considered to have met the requirement of paragraph (A), subdivision (4) of this subsection the first time he or she again becomes an employee of a participating public employer and completes at least twelve consecutive months of contributing service. Such a member shall be considered to have met the requirement of paragraph (C), subdivision (4) of this subsection if he or she pays to the retirement system the actuarial reserve lump sum purchase amount within forty-eight months after the date on which employer and employee contributions are first received by the retirement system for the member for the first time he or she again becomes an employee of a participating public employer and completes at least twelve consecutive months of contributing service, and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system.

(6) Notwithstanding paragraph (A), subdivision (4) of this subsection, a member who becomes an employee of a participating public employer after such a period of active military duty and break in service as an elected official shall be considered to have met the requirement of paragraph (A), subdivision (4) of this subsection after remaining employed for the first twelve consecutive months of his or her term after again becoming an employee, regardless of whether a salary is paid to the employee for each such month. Such an individual must elect to begin participating in the retirement system immediately upon again becoming an employee of a participating public employer after the period of active military duty and break in service.

(7) For purposes of this subsection, the following definitions apply:

(A) "Active military duty" means full-time active duty in the armed forces of the United States for a period of thirty or more consecutive calendar days. Active military duty does not include inactive duty of any kind.

(B) "Actuarial reserve purchase amount" means the purchase annuity rate multiplied by the purchase accrued benefit, calculated as of the calculation month, plus annual interest accruing at seven and one-half percent from the calculation month through the purchase month, compounded monthly; *Provided*, That if the employee elects to pay the full purchase amount on an installment or partial payment basis, the actuarial reserve purchase amount will include the lump sum payment plus additional interest accruing at seven and one-half percent until the purchase amount is paid in full.

(C) "Armed forces of the United States" means the Army, Navy, Air Force, Marine Corps and Coast Guard, the reserve components thereof, and the National Guard of the United States or the National Guard of a state or territory when members of the same are on full-time active duty pursuant to Title 10 or Title 32 of the United States Code.

(D) "Calculation month" means the month immediately following the month in which the member completes the twelve consecutive months of contributory service with a participating public employer required by this subsection, as applicable.

(E) "Purchase accrued benefit" means two percent times the purchase military service times the purchase average monthly salary.

(F) "Purchase age" means the age of the employee in years and completed months as of the first day of the calculation month.

(G) "Purchase annuity rate" means the actuarial lump sum annuity factor calculated as of the calculation month based on the following actuarial assumptions: Interest rate of seven and one-half percent; mortality of the 1971 group annuity mortality table, fifty percent blended male and female rates, applied on a unisex basis to all members; if purchase age is under age sixty-two, a deferred annuity factor with payments commencing at age sixty-two; and if purchase age is sixty-two or over, an immediate annuity factor with payments starting at the purchase age.

(H) "Purchase average monthly salary" means the average monthly salary of the member during the months two through twelve of the twelve consecutive month period required by this subsection of this section, as applicable.

(I) "Purchase military service" means the amount of military service being purchased by the employee in months up to the sixty-month maximum, calculated in accordance with subdivision (9) of this subsection.

(J) "Purchase month" means the month in which the employee deposits the actuarial reserve lump sum purchase amount in full payment of the service credit being purchased or makes the final payment of the actuarial reserve purchase amount into the plan trust fund in full payment of the service credit being purchased.

(8) A member may purchase military service credit for a period of active military duty pursuant to this subsection only if the member received an honorable discharge for such period. Anything other than an honorable discharge, including, but not limited to, a general or under honorable conditions discharge, an entry-level separation discharge, an other than honorable conditions discharge or a dishonorable discharge, shall disqualify the member from receiving military service credit for the period of service.

(9) To calculate the amount of military service credit a member may purchase, the board shall add the total number of days in each period of a member's active military duty eligible to be purchased, divide the total by thirty, and round up or down to the nearest integer (fractions of 0.5 shall be rounded up), in order to yield the total number of months of military service credit a member may purchase, subject to the sixty-month maximum. A member may purchase all or part of the maximum amount of military service credit he or she is eligible for in one-month increments.

(10) To receive credit, a member must submit a request to purchase military service credit to the board, on such form or in such other manner as shall be required by the board, within the twelve consecutive month period required by this subsection, as applicable. The board shall then calculate the actuarial reserve lump sum purchase amount, which amount must be paid by the member within the 48-month period required by this subsection, as applicable. A member purchasing military service credit pursuant to this subsection must do so in a single, lump sum payment: *Provided*, That the board may accept partial, installment or other similar payments if the employee executes a contract with the board specifying the amount of military service to be purchased and the payments required: *Provided, however*,

That any failure to pay the contract amount in accordance with this section shall be treated as an overpayment or excess contribution subject to section forty-four of this article and no military service shall be credited.

(11) The board shall require a member requesting military service credit to provide official documentation establishing that the requirements set forth in this subsection have been met.

(12) Military service credit purchased pursuant to this subsection may not be considered contributing service credit or contributory service for purposes of this article.

(13) If a member who has purchased military service credit pursuant to this subsection is eligible for and requests a withdrawal of accumulated contributions pursuant to the provisions of this article, he or she shall also receive a refund of the actuarial reserve purchase amount he or she paid to the retirement system to purchase military service credit, together with regular interest on such amount.

(c) No period of military service may be used to obtain credit in more than one retirement system administered by the board and once used in any system, a period of military service may not be used again in any other system.

(d) Notwithstanding the preceding provisions of this section, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code and the federal Uniformed Services Employment and Reemployment Rights Act (USERRA), and regulations promulgated thereunder, as the same may be amended from time to time. For purposes of this section, "qualified military service" has the same meaning as in Section 414(u) of the Internal Revenue Code.

(e) In any case of doubt as to the period of service to be credited a member under the provisions of this section, the board has final power to determine the period. Notwithstanding the provisions of section three-a of this article, the provisions of this section are not subject to liberal construction. ~~No military service credit may be used in more than one retirement system administered by the Consolidated Public Retirement Board and once used in any system, may not be used again in any other system.~~ The board is authorized to determine all questions and make all decisions relating to this section and, pursuant to the authority granted to the board in section one, article ten-d of this chapter, may ~~promulgate~~ propose rules relating to contributions, benefits and service credit to comply with Section 414(u) of the Internal Revenue Code to administer this section for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code.

§5-10-15a. Retirement credited service through member's use, as option, of accrued annual or sick leave days.

(a) Any member accruing annual leave or sick leave days may, after ~~the effective date of this section~~ June 27, 1988, elect to use the days at the time of retirement to acquire additional credited service in this retirement system. ~~Such~~ Except as provided in subsection (b) of this section, the accrued days shall be applied on the basis of two workdays credit granted for each one day of such accrued annual or sick leave days, with each month of retirement service credit to equal twenty workdays and with any remainder of ten workdays or more to constitute a full month of additional credit and any remainder of less than ten workdays to be dropped and not used, notwithstanding any provisions of the code to the contrary, including section twelve, article sixteen of this chapter. Such credited service shall be allowed and not deemed to controvert the requirement of no more than twelve months credited service in any year's period.

(b) For those persons who first become members of the retirement system on or after July 1, 2015, accrued annual or sick days may not be applied to acquire additional credited service.

§5-10-20. Voluntary retirement.

(a) Except as provided in subsection (b) of this section, any member who has attained or attains age sixty years and has five or more years of credited service in force, at least one year of which he or she was a contributing member of the retirement system, may retire upon his or her written application filed with the board of trustees setting forth at what time, not less than thirty days nor more than ninety days subsequent to the execution and filing thereof he the member desires to be retired: *Provided*, That on and after June 1, 1986, any person who becomes a new member of this retirement system shall, in qualifying for retirement hereunder, have five or more years of service, all of which years shall be actual, contributory ones. Upon retirement, the member shall receive an annuity provided for in section twenty-two of this article.

(b) Any person who first becomes a member of the retirement system on or after July 1, 2015, may retire upon written application as provided in subsection (a) of this section upon attaining the age of sixty-two with ten or more years of service, all of which must be actual, contributing years.

§5-10-21. Deferred retirement and early retirement.

(a) ~~Any member~~ Except as provided in section twenty-one-a of this article, any member who first becomes a member of the retirement system before July 1, 2015, and who has five or more years of credited service in force, of which at least three years are contributing service, and who leaves the employ of a participating public employer prior to his or her attaining age sixty years for any reason except his or her disability retirement or death, is entitled to an annuity computed according to section twenty-two of this article, as that section was in force as of the date of his or her separation from the employ of a participating public employer: *Provided*, That he or she does not withdraw his or her accumulated contributions from the members' deposit fund: *Provided, however*, That on and after July 1, 2002, any person who becomes a new member of this retirement system shall, in qualifying for retirement under this section, have five or more years of service, all of which years shall be actual, contributory ones. His or her annuity shall begin the first day of the calendar month next following the month in which his or her application for same is filed with the board of trustees on or after his or her attaining age sixty-two years.

(b) Any member who qualifies for deferred retirement benefits in accordance with subsection (a) of this section and has ten or more years of credited service in force and who has attained age fifty-five as of the date of his or her separation, may, prior to the effective date of his or her retirement, but not thereafter, elect to receive the actuarial equivalent of his or her deferred retirement annuity as a reduced annuity commencing on the first day of any calendar month between his or her date of separation and his or her attainment of age sixty-two years and payable throughout his or her life.

(c) Any member who qualifies for deferred retirement benefits in accordance with subsection (a) of this section and has twenty or more years of credited service in force may elect to receive the actuarial equivalent of his or her deferred retirement annuity as a reduced annuity commencing on the first day of any calendar month between his or her fifty-fifth birthday and his or her attainment of age sixty-two years and payable throughout his or her life.

(d) Notwithstanding any of the other provisions of this section or of this article, except sections twenty-seven-a and twenty-seven-b of this article, and pursuant to rules promulgated by the board, and except for a person who first becomes a member of the retirement system on or after July 1, 2015, any member who has thirty or more years of credited service in force, at least three of which are contributing service, and who elects to take early retirement, which for the purposes of this subsection means retirement prior to age sixty, whether an active employee or a separated employee at the time of application, is entitled to the full computation of annuity according to section twenty-two of this article, as that section was in force as of the date of retirement application, but with the reduced actuarial equivalent of the annuity the member would have received if his or her benefit had commenced at age sixty when he or she would have been entitled to full computation of benefit without any reduction.

(e) Notwithstanding any of the other provisions of this section or of this article, except sections twenty-seven-a and twenty-seven-b of this article, and except for a person who first becomes a member of the retirement system on or after July 1, 2015, any member of the retirement system may retire with full

pension rights, without reduction of benefits, if he or she is at least fifty-five years of age and the sum of his or her age plus years of contributing service and limited credited service, as defined in section two of this article, equals or exceeds eighty: *Provided*, That on and after July 1, 2011, any person who becomes a new member of this retirement system shall, in qualifying for retirement under this subsection, have five or more years of service, all of which years shall be actual, contributory ones. The member's annuity shall begin the first day of the calendar month immediately following the calendar month in which his or her application for the annuity is filed with the board.

§5-10-21a. Deferred retirement and early retirement for new members as of July 1, 2015.

(a) Any person who first becomes a member of the retirement system on or after July 1, 2015, who has ten or more years of contributing service and who leaves the employ of a participating public employer prior to attaining age sixty-two years for any reason except his or her disability or death, is entitled to an annuity computed according to section twenty-two of this article, as that section was in force as of the date of his or her separation from the employ of a participating public employer: *Provided*, That he or she does not withdraw his or her accumulated contributions from the members' deposit fund: *Provided*, *however*, That his or her annuity shall begin the first day of the calendar month next following the month in which his or her application for same is filed with the board of trustees on or after his or her attaining age sixty-four years.

(b) Any member who qualifies for deferred retirement benefits in accordance with subsection (a) of this section and has twenty or more years of contributing service in force is entitled to an annuity computed as in subsection (a) of this section: *Provided*, That his or her annuity shall begin the first day of the calendar month next following the month in which his or her application for same is filed with the board of trustees on or after his or her attaining age sixty-three.

(c) Notwithstanding any of the other provisions of this section or of this article, except sections twenty-seven-a and twenty-seven-b of this article, and pursuant to rules promulgated by the board, any member who first becomes a member of the retirement system on or after July 1, 2015, has ten or more years of contributing service in force, is currently employed by a participating public employer and who elects to take early retirement, which for the purposes of this subsection means retirement following attainment of age sixty but prior to attaining age sixty-two, is entitled to the full computation of annuity according to section twenty-two of this article but with the reduced actuarial equivalent of the annuity the member would have received if his or her benefit had commenced at age sixty-two when he or she would have been entitled to full computation of benefit without any reduction: *Provided*, That his or her annuity shall begin the first day of the calendar month next following the month in which his or her application for same is filed with the board of trustees on or after his or her attaining age sixty.

(d) Any member who first becomes a member of the retirement system on or after July 1, 2015, and has twenty or more years of contributing service in force, is currently employed by a participating public employer and who elects to take early retirement, which for the purposes of this subsection means retirement following attainment of age fifty-seven but prior to attaining age sixty-two, is entitled to the full computation of annuity according to section twenty-two of this article but with the reduced actuarial equivalent of the annuity the member would have received if his or her benefit had commenced at age sixty-two when he or she would have been entitled to full computation of benefit without any reduction: *Provided*, That his or her annuity shall begin the first day of the calendar month next following the month in which his or her application for same is filed with the board of trustees on or after his or her attaining age fifty-seven.

(e) Any member who first becomes a member of the retirement system on or after July 1, 2015, and has thirty or more years of contributing service in force, and who elects to take early retirement, which for the purposes of this subsection means retirement following attainment of age fifty-five but prior to attaining age sixty-two, is entitled to the full computation of annuity according to section twenty-two of this article but with the reduced actuarial equivalent of the annuity the member would have received if his or her benefit had commenced at age sixty-two when he or she would have been entitled to full computation of benefit without any reduction: *Provided*, That his or her annuity shall begin the first day of the calendar

month next following the month in which his or her application for same is filed with the board of trustees on or after his or her attaining age fifty-five.

§5-10-29. Members' deposit fund; members' contributions; forfeitures.

(a) The members' deposit fund is hereby created. It shall be the fund in which shall be accumulated, at regular interest, the contributions deducted from the compensation of members, and from which refunds of accumulated contributions shall be paid and transfers made as provided in this section.

(b) The contributions of a member to the retirement system (including any member of the Legislature, except as otherwise provided in subsection (g) of this section) shall be a sum of not less than three and five-tenths percent of his or her annual compensations but not more than four and five-tenths percent of his or her annual compensations, as determined by the board of trustees; Provided, That for persons who first become members of the retirement system on or after July 1, 2015, the contributions to the system shall be six percent of his or her annual compensation beginning July 1, 2015. The said contributions shall be made notwithstanding that the minimum salary or wages provided by law for any member shall be thereby changed. Each member shall be deemed to consent and agree to the deductions made and provided for herein. Payment of a member's compensation less said deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for services rendered by him or her to a participating public employer, except as to benefits provided by this article.

(c) The officer or officers responsible for making up the payrolls for payroll units of the state government and for each of the other participating public employers shall cause the contributions, provided in subsection (b) of this section, to be deducted from the compensations of each member in the employ of the participating public employer, on each and every payroll, for each and every payroll period, from the date the member enters the retirement system to the date his or her membership terminates. When deducted, each of said amounts shall be paid by the participating public employer to the retirement system; said payments to be made in such manner and form, and in such frequency, and shall be accompanied by such supporting data, as the board of trustees shall from time to time prescribe. When paid to the retirement system, each of said amounts shall be credited to the members' deposit fund account of the member from whose compensations said contributions were deducted.

(d) In addition to the contributions deducted from the compensations of a member, as heretofore provided, a member shall deposit in the members' deposit fund, by a single contribution or by an increased rate of contribution as approved by the board of trustees, the amounts he or she may have withdrawn therefrom and not repaid thereto, together with regular interest from the date of withdrawal to the date of repayment. In no case shall a member be given credit for service rendered prior to the date he or she withdrew his or her contributions or accumulated contributions, as the case may be, until he or she returns to the members' deposit fund all amounts due the said fund by him or her.

(e) Upon the retirement of a member, or if a survivor annuity becomes payable on account of his or her death, in either event his or her accumulated contributions standing to his or her credit in the members' deposit fund shall be transferred to the retirement reserve fund.

(f) In the event an employee's membership in the retirement system terminates and no annuity becomes or will become payable on his or her account, any accumulated contributions standing to his or her credit in the members' deposit fund, unclaimed by the said employee, or his or her legal representative, within three years from and after the date his or her membership terminated, shall be transferred to the income fund.

(g) Any member of the Legislature who is a member of the retirement system and with respect to whom the term "final average salary" includes a multiple of eight, pursuant to the provisions of subdivision ~~(15)~~ (13), section two of this article, shall contribute to the retirement system on the basis of his or her legislative compensation the sum of \$540 each year he or she participates in the retirement system as a member of the Legislature.

(h) Notwithstanding any other provisions of this article, forfeitures under the system shall not be applied to increase the benefits any member would otherwise receive under the system.

ARTICLE 13. PUBLIC EMPLOYEES' AND TEACHERS' RECIPROCAL SERVICE CREDIT ACT.

§5-13-2. Definitions.

The following words and phrases as used in this article, unless a different meaning is clearly indicated by the context, shall have the following meanings:

(a) "Accumulated contributions" means the sum of the amounts deducted from the compensation of a member and credited to his or her individual account in a state system, together with interest, if any, credited thereto.

(b) "Annuity" means the annuity payable by a state system.

(c) "Member" means a member of either the West Virginia Public Employees Retirement System or the State Teachers Retirement System. The term "member" does not include any person who has retired under either state system.

(d) "Public final average salary" means a member's final average salary computed according to the law governing the public system. In computing his or her public final average salary, the compensation, if any, received by the member for services rendered in positions covered by the teacher system shall be used in the same manner as if the compensation were received for services covered by the public system; Provided, That for persons who first became members of the retirement system on or after July 1, 2015, no compensation for services rendered in positions covered by the teacher system may be used to compute his or her public system final average salary.

(e) "Public system" means the West Virginia Public Employees Retirement System established in article ten, ~~chapter five~~ of this code chapter.

(f) "Reciprocal service credit" for a member of the public system who subsequently becomes a member of the teacher system, or vice versa, means the sum of his or her credited service in force acquired as a member of the public system and his or her credited service in force acquired as a member of the teacher system; Provided, That persons who first became members of the public system or teacher system on or after July 1, 2015, must be employed and contributed for ten years or more in each system to receive reciprocal service credit.

(g) "State system" means the West Virginia Public Employees Retirement System and the State Teachers Retirement System.

(h) "Teacher final average salary" means a member's final average salary computed according to the law governing the teacher system. In computing his or her teacher final average salary, the compensation, if any, received by the member for services rendered in positions covered by the public system shall be used in the same manner as if the compensation were received for services covered by the teacher system; Provided, That for persons who first became members of the retirement system on or after July 1, 2015, no compensation for services rendered in positions covered by the public system may be used to compute his or her teacher system final average salary.

(i) "Teacher system" means the State Teachers Retirement System established in article seven-a, chapter eighteen of this code.

(j) The masculine gender includes the feminine, and words of the singular number with respect to persons include the plural number, and vice versa.

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-13. Payment of costs by employer and employee; spouse and dependent coverage; involuntary employee termination coverage; conversion of annual leave and sick leave authorized for health or retirement benefits; authorization for retiree participation; continuation of health insurance for surviving dependents of deceased employees; requirement of new health plan, limiting employer contribution.

(a) *Cost-sharing.* -- The director shall provide under any contract or contracts entered into under the provisions of this article that the costs of any group hospital and surgical insurance, group major medical insurance, group prescription drug insurance, group life and accidental death insurance benefit plan or plans shall be paid by the employer and employee.

(b) *Spouse and dependent coverage.* -- Each employee is entitled to have his or her spouse and dependents included in any group hospital and surgical insurance, group major medical insurance or group prescription drug insurance coverage to which the employee is entitled to participate: *Provided,* That the spouse and dependent coverage is limited to excess or secondary coverage for each spouse and dependent who has primary coverage from any other source. For purposes of this section, the term "primary coverage" means individual or group hospital and surgical insurance coverage or individual or group major medical insurance coverage or group prescription drug coverage in which the spouse or dependent is the named insured or certificate holder. For the purposes of this section, "dependent" includes an eligible employee's unmarried child or stepchild under the age of twenty-five if that child or stepchild meets the definition of a "qualifying child" or a "qualifying relative" in Section 152 of the Internal Revenue Code. The director may require proof regarding spouse and dependent primary coverage and shall adopt rules governing the nature, discontinuance and resumption of any employee's coverage for his or her spouse and dependents.

(c) *Continuation after termination.* -- If an employee participating in the plan is terminated from employment involuntarily or in reduction of work force, the employee's insurance coverage provided under this article shall continue for a period of three months at no additional cost to the employee and the employer shall continue to contribute the employer's share of plan premiums for the coverage. An employee discharged for misconduct shall not be eligible for extended benefits under this section. Coverage may be extended up to the maximum period of three months, while administrative remedies contesting the charge of misconduct are pursued. If the discharge for misconduct be upheld, the full cost of the extended coverage shall be reimbursed by the employee. If the employee is again employed or recalled to active employment within twelve months of his or her prior termination, he or she shall not be considered a new enrollee and may not be required to again contribute his or her share of the premium cost, if he or she had already fully contributed such share during the prior period of employment.

(d) *Conversion of accrued annual and sick leave for extended insurance coverage upon retirement for employees who elected to participate in the plan before July, 1988.* -- Except as otherwise provided in subsection (g) of this section, when an employee participating in the plan, who elected to participate in the plan before July 1, 1988, is compelled or required by law to retire before reaching the age of sixty-five, or when a participating employee voluntarily retires as provided by law, that employee's accrued annual leave and sick leave, if any, shall be credited toward an extension of the insurance coverage provided by this article, according to the following formulae: The insurance coverage for a retired employee shall continue one additional month for every two days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his or her retirement. For a retired employee, his or her spouse and dependents, the insurance coverage shall continue one additional month for every three days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his or her retirement.

(e) *Conversion of accrued annual and sick leave for extended insurance coverage upon retirement for employees who elected to participate in the plan after June, 1988.* -- Notwithstanding subsection (d) of this section, and except as otherwise provided in subsections (g) and (l) of this section, when an employee participating in the plan who elected to participate in the plan on and after July 1, 1988, is compelled or required by law to retire before reaching the age of sixty-five, or when the participating employee voluntarily

retires as provided by law, that employee's annual leave or sick leave, if any, shall be credited toward one half of the premium cost of the insurance provided by this article, for periods and scope of coverage determined according to the following formulae: (1) One additional month of single retiree coverage for every two days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his or her retirement; or (2) one additional month of coverage for a retiree, his or her spouse and dependents for every three days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his or her retirement. The remaining premium cost shall be borne by the retired employee if he or she elects the coverage. For purposes of this subsection, an employee who has been a participant under spouse or dependent coverage and who reenters the plan within twelve months after termination of his or her prior coverage shall be considered to have elected to participate in the plan as of the date of commencement of the prior coverage. For purposes of this subsection, an employee shall not be considered a new employee after returning from extended authorized leave on or after July 1, 1988.

(f) *Increased retirement benefits for retired employees with accrued annual and sick leave.* -- In the alternative to the extension of insurance coverage through premium payment provided in subsections (d) and (e) of this section, the accrued annual leave and sick leave of an employee participating in the plan may be applied, on the basis of two days' retirement service credit for each one day of accrued annual and sick leave, toward an increase in the employee's retirement benefits with those days constituting additional credited service in computation of the benefits under any state retirement system: Provided, That for a person who first becomes a member of the Teachers Retirement System as provided in article seven-a, chapter eighteen of this code on or after July 1, 2015, accrued annual and sick leave of an employee participating in the plan may not be applied for retirement service credit. However, the additional credited service shall not be used in meeting initial eligibility for retirement criteria, but only as additional service credited in excess thereof.

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

(h) Any employee who retired prior to April 21, 1972, and who also otherwise meets the conditions of the "retired employee" definition in section two of this article, shall be eligible for insurance coverage under the same terms and provisions of this article. The retired employee's premium contribution for any such coverage shall be established by the finance board.

(i) *Retiree participation.* -- All retirees under the provisions of this article, including those defined in section two of this article; those retiring prior to April 21, 1972; and those hereafter retiring are eligible to obtain health insurance coverage. The retired employee's premium contribution for the coverage shall be established by the finance board.

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

(k) *Elected officials.* -- In construing the provisions of this section or any other provisions of this code, the Legislature declares that it is not now nor has it ever been the Legislature's intent that elected public officials be provided any sick leave, annual leave or personal leave, and the enactment of this section is based upon the fact and assumption that no statutory or inherent authority exists extending sick leave, annual leave or personal leave to elected public officials and the very nature of those positions preclude the arising or accumulation of any leave, so as to be thereafter usable as premium paying credits for which the officials may claim extended insurance benefits.

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

(m) *Prohibition on conversion of accrued annual and sick leave for extended coverage upon retirement for new employees who elect to participate in the plan after June, 2001.* -- Any employee hired on or after July 1, 2001, who elects to participate in the plan may not apply accrued annual or sick leave toward the cost of premiums for extended insurance coverage upon his or her retirement. This prohibition does not apply to the conversion of accrued annual or sick leave for increased retirement benefits, as authorized by this section: *Provided*, That any person who has participated in the plan prior to July 1, 2001, is not a new employee for purposes of this subsection if he or she becomes reemployed with an employer participating in the plan within two years following his or her separation from employment and he or she elects to participate in the plan upon his or her reemployment.

(n) *Prohibition on conversion of accrued years of teaching service for extended coverage upon retirement for new employees who elect to participate in the plan July, 2009.* -- Any employee hired on or after July 1, 2009, who elects to participate in the plan may not apply accrued years of teaching service toward the cost of premiums for extended insurance coverage upon his or her retirement.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.

§15-2A-21. Retirement credited service through member's use, as option, of accrued annual or sick leave days.

Any member accruing annual leave or sick leave days may, after ~~the effective date of this section April 9, 2005,~~ elect to use the days at the time of retirement to acquire additional credited service in this retirement system. The days shall be applied on the basis of two workdays' credit granted for each one day of accrued annual or sick leave days, with each month of retirement service credit to equal twenty workdays and with any remainder of ten workdays or more to constitute a full month of additional credit and any remainder of less than ten workdays to be dropped and not used, notwithstanding any provisions of the code to the contrary: *Provided*, That for a person who first becomes a member of the retirement system on or after July 1, 2015, accrued annual and sick leave days may not be applied to acquire additional credited service. The credited service shall be allowed and not considered to controvert the requirement of no more than twelve months' credited service in any year's period.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

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

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

~~(b) For the purpose of this article, the retirement board shall grant prior service credit to members of the retirement system who were honorably discharged from active duty service in any of the Armed Forces of the United States in any period of national emergency within which a federal Selective Service Act was in effect. For purposes of this section, "Armed Forces" includes Women's Army Corps, women's appointed volunteers for emergency service, Army Nurse Corps, SPARS, Women's Reserve and other similar units official parts of the military service of the United States. The military service is considered equivalent to public school teaching, and the salary equivalent for each year of that service is the actual salary of the member as a teacher for his or her first year of teaching after discharge from military service. Prior service credit for military service shall not exceed ten years for any one member, nor shall exceed twenty-five percent of total service at the time of retirement. Notwithstanding the preceding provisions of this subsection, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 141(u) of the Internal Revenue Code. For purposes of this section, "qualified military service" has the same meaning as in Section 414(u) of the Internal Revenue Code. The retirement board is authorized to determine all questions and make all decisions relating to this section and, pursuant to the authority granted to the retirement board in section one, article ten-d, chapter five of this code, may promulgate rules relating to contributions, benefits and service credit to comply with Section 414(u) of the Internal Revenue Code. No military service credit may be used in more than one retirement system administered by the Consolidated Public Retirement Board. For service as a teacher in the employment of the federal government, or a state or territory of the United States, or a governmental subdivision of that state or territory, credit to the retirement board shall grant : *Provided*, That the member shall pay to the system twelve percent of that member's gross salary earned during the first full year of current employment whether a member of the Teachers Retirement System or the Teachers' Defined Contribution Retirement System, times the number of years for which credit is granted, plus interest at a rate to be determined by the retirement board. The interest shall be deposited in the reserve fund and service credit granted at the time of retirement shall not exceed the lesser of ten years or fifty percent of the member's total service as a teacher in West Virginia. Any purchase of out-of-state service, as provided in this article, shall not be used to establish eligibility for a retirement allowance and the retirement board shall grant credit for the purchased service as additional service only: *Provided, however*, That a purchase of out-of-state service is prohibited if the service is used to obtain a retirement benefit from another retirement system: *Provided further*, That salaries paid to members for service prior to entrance into the retirement system shall not be used to compute the average final salary of the member under the retirement system.~~

(c) ~~For service as a teacher in the employment of the federal government, or a state or territory of the United States, or a governmental subdivision of that state or territory, the retirement board shall grant credit to the member: *Provided*, That the member shall pay to the system twelve percent of that member's gross salary earned during the first full year of current employment whether a member of the Teachers' Retirement System or the Teachers' Defined Contribution Retirement System, times the number of years for which credit is granted, plus interest at a rate to be determined by the retirement board. The interest shall be deposited in the reserve fund and service credit granted at the time of retirement shall not exceed the lesser of ten years or fifty percent of the member's total service as a teacher in West Virginia. Any purchase of out-of-state service, as provided in this article, shall not be used to establish eligibility for a retirement allowance and the retirement board shall grant credit for the purchased service as additional service only: *Provided, however*, That a purchase of out-of-state service is prohibited if the service is used to obtain a retirement benefit from another retirement system: *Provided further*, That salaries paid to members for service prior to entrance into the retirement system shall not be used to compute the average final salary of the member under the retirement system. No members shall be considered absent from service while serving as a member or employee of the Legislature of the State of West Virginia during any duly constituted session of that body or while serving as an elected member of a county commission during any duly constituted session of that body.~~

~~(d) No member shall be considered absent from service while serving as a member or employee of the Legislature of the State of West Virginia during any duly constituted session of that body or while serving as an elected member of a county commission during any duly constituted session of that body teacher or nonteacher while serving as an officer with a statewide professional teaching association, or who has served in that capacity, and no retirant, who served in that capacity while a member, shall be considered to have been absent from service as a teacher by reason of that service: *Provided*, That the period of service credit granted for that service shall not exceed ten years: *Provided, however*, That a member or retirant who is serving or has served as an officer of a statewide professional teaching association shall make deposits to the Teachers Retirement System, for the time of any absence, in an amount double the amount which he or she would have contributed in his or her regular assignment for a like period of time.~~

~~(e) No member shall be considered absent from service as a teacher or nonteacher while serving as an officer with a statewide professional teaching association, or who has served in that capacity, and no retirant, who served in that capacity while a member, shall be considered to have been absent from service as a teacher by reason of that service: *Provided*, That the period of service credit granted for that service shall not exceed ten years: *Provided, however*, That a member or retirant who is serving or has served as an officer of a statewide professional teaching association shall make deposits to the Teachers Retirement System, for the time of any absence, in an amount double the amount which he or she would have contributed in his or her regular assignment for a like period of time. The Teachers Retirement System shall grant service credit to any former or present member of the West Virginia Public Employees Retirement System who has been a contributing member of the Teachers Retirement System for more than three years, for service previously credited by the Public Employees Retirement System upon his or her written request and: (1) Shall require the transfer of the member's Public Employees Retirement System accumulated contributions to the Teachers Retirement System; or (2) shall require a repayment of the amount withdrawn from the Public Employees Retirement System, plus interest at a rate to be determined by the retirement board, compounded annually from the date of withdrawal to the date of payment, any time prior to the member's effective retirement date: *Provided*, That there shall be added by the member to the amounts transferred or repaid under this subsection an amount which shall be sufficient to equal the contributions he or she would have made had the member been under the Teachers Retirement System during the period of his or her membership in the Public Employees Retirement System, plus interest at a rate determined by the retirement board, compounded annually from the date the additional contribution would have been made had the member been under the Teachers Retirement System to the date of payment. All interest paid or transferred shall be deposited in the reserve fund.~~

~~(f) The Teachers Retirement System shall grant service credit to any former or present member of the West Virginia Public Employees Retirement System who has been a contributing member of the Teachers Retirement System for more than three years, for service previously credited by the Public Employees Retirement System upon his or her written request and: (1) Shall require the transfer of the member's Public Employees Retirement System accumulated contributions to the Teachers Retirement System; or (2) shall require a repayment of the amount withdrawn from the Public Employees Retirement System, plus interest at a rate to be determined by the retirement board, compounded annually from the date of withdrawal to the date of payment, any time prior to the member's effective retirement date: *Provided*, That there shall be added by the member to the amounts transferred or repaid under this subsection an amount which shall be sufficient to equal the contributions he or she would have made had the member been under the Teachers Retirement System during the period of his or her membership in the Public Employees Retirement System, plus interest at a rate determined by the retirement board, compounded annually from the date the additional contribution would have been made had the member been under the Teachers Retirement System to the date of payment. All interest paid or transferred shall be deposited in the reserve fund. For service as a teacher in an elementary or secondary parochial school, located within this state and fully accredited by the West Virginia Department of Education, the retirement board shall grant credit to the member: *Provided*, That the member shall pay to the system twelve percent of that member's gross salary earned during the first full year of current employment whether a member of the Teachers Retirement System or the Teachers' Defined Contribution Retirement System, times the number of years for which credit is granted, plus interest at a rate to be determined by the retirement board.~~

The interest shall be deposited in the reserve fund and service granted at the time of retirement shall not exceed the lesser of ten years or fifty percent of the member's total service as a teacher in the West Virginia public school system. Any purchase of parochial school service, as provided in this section, may not be used to establish eligibility for a retirement allowance and retirement board shall grant credit for the purchase as additional service only: *Provided, however,* That a purchase of parochial school service is prohibited if the service is used to obtain a retirement benefit from another retirement system.

(g) For service as a teacher in an elementary or secondary parochial school, located within this state and fully accredited by the West Virginia Department of Education, the retirement board shall grant credit to the member: *Provided,* That the member shall pay to the system twelve percent of that member's gross salary earned during the first full year of current employment whether a member of the Teachers' Retirement System or the Teachers' Defined Contribution Retirement System, times the number of years for which credit is granted, plus interest at a rate to be determined by the retirement board. The interest shall be deposited in the reserve fund and service granted at the time of retirement shall not exceed the lesser of ten years or fifty percent of the member's total service as a teacher in the West Virginia public school system. Any purchase of parochial school service, as provided in this section, may not be used to establish eligibility for a retirement allowance and retirement board shall grant credit for the purchase as additional service only: *Provided, however,* That a purchase of parochial school service is prohibited if the service is used to obtain a retirement benefit from another retirement system. Active members who previously worked in Comprehensive Employment and Training Act (CETA) may receive service credit for time served in that capacity: *Provided,* That in order to receive service credit under the provisions of this subsection the following conditions must be met: (1) The member must have moved from temporary employment with the participating employer to permanent full-time employment with the participating employer within one hundred twenty days following the termination of the member's CETA employment; (2) the retirement board must receive evidence that establishes to a reasonable degree of certainty as determined by the retirement board that the member previously worked in CETA; and (3) the member shall pay to the retirement board an amount equal to the employer and employee contribution plus interest at the amount set by the retirement board for the amount of service credit sought pursuant to this subsection: *Provided, however,* That the maximum service credit that may be obtained under the provisions of this subsection is two years: *Provided further,* That a member must apply and pay for the service credit allowed under this subsection and provide all necessary documentation by March 31, 2003: *And provided further,* That the retirement board shall exercise due diligence to notify affected employees of the provisions of this subsection.

(h) Active members who previously worked in CETA (Comprehensive Employment and Training Act) may receive service credit for time served in that capacity: *Provided,* That in order to receive service credit under the provisions of this subsection the following conditions must be met: (1) The member must have moved from temporary employment with the participating employer to permanent full-time employment with the participating employer within one hundred twenty days following the termination of the member's CETA employment; (2) the retirement board must receive evidence that establishes to a reasonable degree of certainty as determined by the retirement board that the member previously worked in CETA; and (3) the member shall pay to the retirement board an amount equal to the employer and employee contribution plus interest at the amount set by the retirement board for the amount of service credit sought pursuant to this subsection: *Provided, however,* That the maximum service credit that may be obtained under the provisions of this subsection is two years: *Provided further,* That a member must apply and pay for the service credit allowed under this subsection and provide all necessary documentation by March 31, 2003: *And provided further,* That the retirement board shall exercise due diligence to notify affected employees of the provisions of this subsection. If a member is not eligible for prior service credit or pension as provided in this article, then his or her prior service shall not be considered a part of his or her total service.

(i) If a member is not eligible for prior service credit or pension as provided in this article, then his or her prior service shall not be considered a part of his or her total service. A member who withdrew from membership may regain his or her former membership rights as specified in section thirteen of this article only in case he or she has served two years since his or her last withdrawal.

~~(j) A member who withdrew from membership may regain his or her former membership rights as specified in section thirteen of this article only in case he or she has served two years since his or her last withdrawal. Subject to the provisions of subsections (a) through (k), inclusive, of this section, the retirement board shall verify as soon as practicable the statements of service submitted. The retirement board shall issue prior service certificates to all persons eligible for the certificates under the provisions of this article. The certificates shall state the length of the prior service credit, but in no case shall the prior service credit exceed forty years.~~

~~(k) Subject to the provisions of subsections (a) through (l), inclusive, of this section, the retirement board shall verify as soon as practicable the statements of service submitted. The retirement board shall issue prior service certificates to all persons eligible for the certificates under the provisions of this article. The certificates shall state the length of the prior service credit, but in no case shall the prior service credit exceed forty years. Notwithstanding any provision of this article to the contrary, when a member is or has been elected to serve as a member of the Legislature, and the proper discharge of his or her duties of public office require that member to be absent from his or her teaching or administrative duties, the time served in discharge of his or her duties of the legislative office are credited as time served for purposes of computing service credit: *Provided*, That the retirement board may not require any additional contributions from that member in order for the retirement board to credit him or her with the contributing service credit earned while discharging official legislative duties: *Provided, however*, That nothing in this section may be construed to relieve the employer from making the employer contribution at the member's regular salary rate or rate of pay from that employer on the contributing service credit earned while the member is discharging his or her official legislative duties. These employer payments shall commence as of June 1, 2000: *Provided further*, That any member to which the provisions of this subsection apply may elect to pay to the retirement board an amount equal to what his or her contribution would have been for those periods of time he or she was serving in the Legislature. The periods of time upon which the member paid his or her contribution shall then be included for purposes of determining his or her final average salary as well as for determining years of service: *And provided further*, That a member using the provisions of this subsection is not required to pay interest on any contributions he or she may decide to make.~~

~~(l) Notwithstanding any provision of this article to the contrary, when a member is or has been elected to serve as a member of the Legislature, and the proper discharge of his or her duties of public office require that member to be absent from his or her teaching or administrative duties, the time served in discharge of his or her duties of the legislative office are credited as time served for purposes of computing service credit: *Provided*, That the retirement board may not require any additional contributions from that member in order for the retirement board to credit him or her with the contributing service credit earned while discharging official legislative duties: *Provided, however*, That nothing in this section may be construed to relieve the employer from making the employer contribution at the member's regular salary rate or rate of pay from that employer on the contributing service credit earned while the member is discharging his or her official legislative duties. These employer payments shall commence as of June 1, 2000: *Provided further*, That any member to which the provisions of this subsection apply may elect to pay to the retirement board an amount equal to what his or her contribution would have been for those periods of time he or she was serving in the Legislature. The periods of time upon which the member paid his or her contribution shall then be included for purposes of determining his or her final average salary as well as for determining years of service: *And provided further*, That a member using the provisions of this subsection is not required to pay interest on any contributions he or she may decide to make. The Teachers Retirement System shall grant service credit to any former member of the State Police Death, Disability and Retirement System who has been a contributing member for more than three years for service previously credited by the State Police Death, Disability and Retirement System; and: (1) Shall require the transfer of the member's contributions to the Teachers Retirement System; or (2) shall require a repayment of the amount withdrawn any time prior to the member's retirement: *Provided*, That the member shall add to the amounts transferred or repaid under this paragraph an amount which is sufficient to equal the contributions he or she would have made had the member been under the Teachers Retirement System during the period of his or her membership in the State Police Death, Disability and Retirement System plus interest at a rate to be determined by the retirement board compounded annually from the date of withdrawal to the date of payment. The interest paid shall be deposited in the reserve fund.~~

~~(m) The Teachers Retirement System shall grant service credit to any former member of the State Police Death, Disability and Retirement System who has been a contributing member for more than three years, for service previously credited by the State Police Death, Disability and Retirement System; and: (1) Shall require the transfer of the member's contributions to the Teachers Retirement System; or (2) shall require a repayment of the amount withdrawn any time prior to the member's retirement: *Provided*, That the member shall add to the amounts transferred or repaid under this paragraph an amount which is sufficient to equal the contributions he or she would have made had the member been under the Teachers Retirement System during the period of his or her membership in the State Police Death, Disability and Retirement System plus interest at a rate to be determined by the retirement board compounded annually from the date of withdrawal to the date of payment. The interest paid shall be deposited in the reserve fund.~~

§18-7A-17a. Qualified military service.

(a) Except as provided in subsection (b) of this section, for the purpose of this article, the retirement board shall grant prior service credit to members of the retirement system who were honorably discharged from active duty service in any of the armed forces of the United States in any period of national emergency within which a federal Selective Service Act was in effect. For purposes of this section, "armed forces" includes Women's Army Corps, women's appointed volunteers for emergency service, Army Nurse Corps, SPARS, Women's Reserve and other similar units officially part of the military service of the United States. The military service is considered equivalent to public school teaching, and the salary equivalent for each year of that service is the actual salary of the member as a teacher for his or her first year of teaching after discharge from military service. Prior service credit for military service shall not exceed ten years for any one member, nor shall it exceed twenty-five percent of total service at the time of retirement. Notwithstanding the preceding provisions of this subsection, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code. For purposes of this section, "qualified military service" has the same meaning as in Section 414(u) of the Internal Revenue Code. The retirement board is authorized to determine all questions and make all decisions relating to this section and, pursuant to the authority granted to the retirement board in section one, article ten-d, chapter five of this code, may promulgate rules relating to contributions, benefits and service credit to comply with Section 414(u) of the Internal Revenue Code. No military service credit may be used in more than one retirement system administered by the Consolidated Public Retirement Board.

(b) Subsection (a) of this section does not apply to any member who first becomes an employee of a participating public employer on or after July 1, 2015. This subsection applies to any member who first became an employee of a participating public employer on or after July 1, 2015, and also applies to any member who became an employee of a participating public employer before July 1, 2015, and is unable to meet the requirements of subsection (a) of this section.

(1) Any member may purchase up to sixty months of military service credit for time served in active military duty prior to first becoming an employee of a participating public employer if all of the following conditions are met:

(A) The member has completed a complete fiscal year of contributory service;

(B) The active military duty occurs prior to the date on which the member first becomes an employee of a participating public employer; and

(C) The employee pays to the retirement system the actuarial reserve purchase amount within forty-eight months after the date on which employer and employee contributions are first received by the retirement system for the member and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system, or within forty-eight months of July 1, 2015, whichever is later: *Provided*, That any employee who ceases employment with a participating public employer before completing the required actuarial reserve purchase amount in full shall not be eligible to purchase the military service.

(2) Notwithstanding paragraph (A), subdivision (1) of this subsection, a member who first becomes an employee of a participating public employer on or after July 1, 2015, but who does not remain employed and contributing to the retirement system for at least a complete fiscal year after his or her initial employment, shall be considered to have met the requirement of said paragraph the first time he or she becomes an employee of a participating public employer and completes at least a complete fiscal year of contributing service. Such a member shall be considered to have met the requirement of paragraph (C) of said subdivision if he or she pays to the retirement system the actuarial reserve purchase amount within forty-eight months after the date on which employer and employee contributions are first received by the retirement system for the member the first time he or she becomes an employee of a participating public employer and completes at least a complete fiscal year of contributing service, and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system.

(3) A member who first becomes an employee of a participating public employer on or after July 1, 2015, may purchase military service credit for active military duty performed on or after the date he or she first becomes an employee of a participating public employer only if all of the following conditions are met: *Provided*, That the maximum military service credit such member may purchase shall take into account any military service credit purchased for active military duty pursuant to subdivision (1) of this subsection in addition to any military service credit purchased pursuant to this subdivision:

(A) The member was an employee of a participating public employer, terminated employment and experienced a break in contributing service in the retirement system of one or more months, performed active military service while not an employee of the participating public employer and not contributing to the retirement system, then again becomes an employee of a participating public employer and completes at least a complete fiscal year of contributory service;

(B) The member does not qualify for military service credit for such active military duty pursuant to subsection (d) of this section; and

(C) The member pays to the retirement system the actuarial reserve purchase amount within forty-eight months after the date on which employer and employee contributions are first received by the retirement system for the member after he or she again becomes an employee of a participating public employer immediately following the period of active military duty and break in service and completes at least a complete fiscal year of contributory service, and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system.

(4) Notwithstanding paragraph (A), subdivision (3) of this subsection, a member who otherwise meets the requirements of said paragraph, but who does not remain employed and contributing to the retirement system for at least a complete fiscal year when he or she first becomes an employee of a participating public employer after the period of active military duty and break in service, shall be considered to have met the requirement of said paragraph the first time he or she again becomes an employee of a participating public employer and completes at least a complete fiscal year of contributing service. Such a member shall be considered to have met the requirement of paragraph (C) of said subdivision if he or she pays to the retirement system the actuarial reserve purchase amount within forty-eight months after the date on which employer and employee contributions are first received by the retirement system for the member for the first time he or she again becomes an employee of a participating public employer and completes at least a complete fiscal year of contributing service, and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system.

(5) For purposes of this subsection, the following definitions shall apply:

(A) "Active military duty" means full-time active duty in the armed forces of the United States for a period of thirty or more consecutive calendar days. Active military duty does not include inactive duty of any kind.

(B) "Actuarial reserve purchase amount" means the purchase annuity rate multiplied by the purchase accrued benefit, calculated as of the calculation month, plus annual interest accruing at seven and one-half percent from the calculation month through the purchase month, compounded monthly.

(C) "Armed forces of the United States" means the Army, Navy, Air Force, Marine Corps, and Coast Guard, the reserve components thereof, and the National Guard of the United States or the National Guard of a state or territory when members of the same are on full-time active duty pursuant to Title 10 or Title 32 of the United States Code.

(D) "Calculation month" means the month immediately following the month in which the member completes a complete fiscal year of contributory service with a participating public employer required by subdivision (1), (2), (3) or (4) of this subsection, as applicable.

(E) "Purchase accrued benefit" means two percent times the purchase military service times the purchase average monthly salary.

(F) "Purchase age" means the age of the employee in years and completed months as of the first day of the calculation month.

(G) "Purchase annuity rate" means the actuarial lump sum annuity factor calculated as of the calculation month based on the following actuarial assumptions: Interest rate of seven and one-half percent; mortality of the 1971 group annuity mortality table, fifty percent blended male and female rates, applied on a unisex basis to all members; if purchase age is under age sixty-two, a deferred annuity factor with payments commencing at age sixty-two; and if purchase age is sixty-two or over, an immediate annuity factor with payments starting at the purchase age.

(H) "Purchase average monthly salary" means the average monthly salary of the member during the number of months of the member's contract during the fiscal year of contributory service required by subdivisions (1), (2), (3) and (4) of this subsection, as applicable. For any member who first became an employee of a participating public employer before July 1, 2015, the purchase average monthly salary means the average monthly salary of the member during the number of months of the member's contract during his or her complete fiscal year of contributory service on or after July 1, 2015.

(I) "Purchase military service" means the amount of military service being purchased by the employee in months up to the sixty-month maximum, calculated in accordance with subdivision (7) of this subsection.

(J) "Purchase month" means the month in which the employee deposits the actuarial reserve lump sum purchase amount into the plan trust fund in full payment of the service credit being purchased or makes the final payment of the actuarial reserve purchase amount into the plan trust fund in full payment of the service credit being purchased.

(6) A member may purchase military service credit for a period of active military duty pursuant to this subsection only if the member received an honorable discharge for the period. Anything other than an honorable discharge, including, but not limited to, a general or under honorable conditions discharge, an entry-level separation discharge, an other than honorable conditions discharge or a dishonorable discharge, shall disqualify the member from receiving military service credit for the period of service. The board shall require a member requesting military service credit to provide official documentation establishing that the requirements set forth in this subsection have been met.

(7) To calculate the amount of military service credit a member may purchase, the board shall add the total number of days in each period of a member's active military duty eligible to be purchased, divide the total by thirty, and round up or down to the nearest integer (fractions of 0.5 shall be rounded up), in order to yield the total number of months of military service credit a member may purchase, subject to the sixty-month maximum. A member may purchase all or part of the maximum amount of military service credit he or she is eligible for in one-month increments.

(8) To receive credit, a member must submit a request to purchase military service credit to the board, on such form or in such other manner as shall be required by the board, within the complete fiscal year period required by subdivision (1), (2), (3) or (4) of this subsection, as applicable. The board shall then calculate the actuarial reserve lump sum purchase amount, which amount must be paid by the member within the 48-month period required by said subdivisions, as applicable. A member purchasing military service credit pursuant to this subsection must do so in a single, lump sum payment: *Provided*, That the board may accept partial, installment or other similar payments if the employee executes a contract with the board specifying the amount of military service to be purchased and the payments required: *Provided*, however, That any failure to pay the contract amount in accordance with this section shall be treated as an overpayment or excess contribution subject to section forty-four of this article and no military service shall be credited.

(9) The board shall require a member requesting military service credit to provide official documentation establishing that the requirements set forth in this subsection have been met.

(10) Military service credit purchased pursuant to this subsection shall not be considered contributing service credit or contributory service for purposes of this article.

(11) If a member who has purchased military service credit pursuant to this subsection is eligible for and requests a withdrawal of accumulated contributions pursuant to the provisions of this article, he or she shall also receive a refund of the actuarial reserve purchase amount he or she paid to the retirement system to purchase military service credit, together with regular interest on such amount.

(c) No period of military service shall be used to obtain credit in more than one retirement system administered by the board and once used in any system, a period of military service may not be used again in any other system.

(d) Notwithstanding the preceding provisions of this section, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code and the federal Uniformed Services Employment and Reemployment Rights Act (USERRA), and regulations promulgated thereunder, as the same may be amended from time to time. For purposes of this section, "qualified military service" has the same meaning as in Section 414(u) of the Internal Revenue Code.

(e) In any case of doubt as to the period of service to be credited a member under the provisions of this section, the board has final power to determine the period. The board is authorized to determine all questions and make all decisions relating to this section and, pursuant to the authority granted to the board in section one, article ten-d of this chapter, may propose rules to administer this section for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code.

§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 loan 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 the contributor, at the time of application, is then no longer under contract, verbal or otherwise, to serve as a teacher; or

(2) Except as provided in section twenty-five-b of this article, if the inactive member has completed twenty years of total service, he or she may elect to receive at age sixty an annuity which shall be

computed as provided in this article: *Provided*, That if the inactive member 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 inactive member must notify the retirement board in writing concerning the election. If the inactive member 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 or nonteaching member 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 primary refund beneficiary, is eligible for an annuity computed as though the deceased were actually a retiree 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: (A) The contributor's accumulated contributions up to the plan year of his or her death plus an amount equal to his or her member contributions: *Provided*, That the latter sum shall emanate from the Employer's Accumulation Fund; and (B) the refund beneficiary of any individual who became a member of the retirement system as a result of the voluntary transfer contemplated in article seven-d of this chapter shall also be paid the 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, as stated by the retirement board.

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

(a) Except for a person who first becomes a member of the retirement system on or after July 1, 2015, any actively contributing member who has attained the age of sixty years or any member who has thirty-five years of total service as a teacher or nonteaching member in West Virginia, regardless of age, is eligible for an annuity. No new entrant nor present member is eligible for an annuity, however, if either has less than five years of service to his or her credit: *Provided*, That on and after July 1, 2013, any person who becomes a new member of this retirement system shall, in qualifying for retirement under this section, have five or more years of contributory service, all of which shall be actual, contributory ones.

(b) Except for a person who first becomes a member of the retirement system on or after July 1, 2015, any member who has attained the age of fifty-five years and who has served thirty years as a teacher or nonteaching member in West Virginia is eligible for an annuity.

(c) Except for a person who first becomes a member of the retirement system on or after July 1, 2015, any member who has served at least thirty but less than thirty-five years as a teacher or nonteaching member in West Virginia and is less than fifty-five years of age is eligible for an annuity, but the annuity shall be the reduced actuarial equivalent of the annuity the member would have received if the member were age fifty-five at the time ~~such~~ the annuity was applied for.

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

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

(1) His or her service as a teacher or nonteaching member in West Virginia must total at least ten years and service as a teacher or nonteaching member must have been terminated because of disability,

which disability must have caused absence from service for at least six months before his or her application for disability annuity is approved.

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

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

(f) Continuance of the disability of the retirant shall be established by medical examination, as prescribed in subdivision (3), subsection (e) of this section, annually for five years after retirement, and thereafter at such times required by the retirement board. Effective July 1, 1998, a member who has retired because of a disability may select an option of payment under the provisions of section twenty-eight of this article: *Provided*, That any option selected under the provisions of section twenty-eight of this article shall be in all respects the actuarial equivalent of the straight life annuity benefit the disability retirant receives or would receive if the options under said section were not available and that no beneficiary or beneficiaries of the disability retirant may receive a greater benefit, nor receive any benefit for a greater length of time, than the beneficiary or beneficiaries would have received had the disability retirant not made any election of the options available under said section. In determining the actuarial equivalence, the retirement board shall take into account the life expectancies of the member and the beneficiary: *Provided, however*, That the life expectancies may at the discretion of the retirement board be established by an underwriting medical director of a competent insurance company offering annuities. Payment of the disability annuity provided in this article shall cease immediately if the retirement board finds that the disability of the retirant no longer exists, or if the retirant refuses to submit to medical examination as required by this section.

§18-7A-25b. Withdrawal and eligibility for retirement allowance for a person who first becomes a member of the retirement system on or after July 1, 2015.

(a) A person who first becomes a member of the retirement system on or after July 1, 2015, who has ten or more years of contributing service, and attains or has attained the age of sixty-two years, may retire upon his or her written application filed with the board of trustees setting forth the date on which the member desires to be retired. Upon retirement, the member shall receive an annuity provided in section twenty-six of this article.

(b) Any person who first becomes a member of the retirement system on or after July 1, 2015, who has ten or more years of contributing service and who leaves the employ of a participating public employer prior to attaining age sixty-two years for any reason except his or her disability or death, is entitled to an annuity computed according to section twenty-two of this article: *Provided*, That he or she does not withdraw his or her accumulated contributions from the members' deposit fund. His or her annuity shall begin the first day of the calendar month next following the month in which his or her application for same is filed with the board of trustees on or after his or her attaining age sixty-four years.

(c) Any member who qualifies for deferred retirement benefits in accordance with subsections (a) and (b) of this section and has twenty or more years of contributing service in force is entitled to an annuity computed as in subsection (a) of this section: *Provided*, That he or she does not withdraw his or her accumulated contributions from the members' deposit fund: *Provided, however*, That his or her annuity shall begin the first day of the calendar month next following the month in which his or her application for same is filed with the board of trustees on or after his or her attaining age sixty-three.

(d) Notwithstanding any of the other provisions of this section or of this article, except sections twenty-eight-a and twenty-eight-b of this article, and pursuant to rules promulgated by the board, any

member who first becomes a member of the retirement system on or after July 1, 2015, and has ten or more years of contributing service in force, is currently employed by a participating public employer and who elects to take early retirement, which for the purposes of this subsection means retirement following attainment of age sixty but prior to attaining age sixty-two, is entitled to the full computation of annuity according to section twenty-two of this article but with the reduced actuarial equivalent of the annuity the member would have received if his or her benefit had commenced at age sixty-two when he or she would have been entitled to full computation of benefit without any reduction: *Provided*, That his or her annuity shall begin the first day of the calendar month next following the month in which his or her application for same is filed with the board of trustees on or after his or her attaining age sixty.

(e) Any member who first becomes a member of the retirement system on or after July 1, 2015, and has twenty or more years of contributing service in force, is currently employed by a participating public employer and who elects to take early retirement, which for the purposes of this subsection means retirement following attainment of age fifty-seven but prior to attaining age sixty-two, is entitled to the full computation of annuity according to section twenty-two of this article but with the reduced actuarial equivalent of the annuity the member would have received if his or her benefit had commenced at age sixty-two when he or she would have been entitled to full computation of benefit without any reduction: *Provided*, That his or her annuity shall begin the first day of the calendar month next following the month in which his or her application for same is filed with the board of trustees on or after his or her attaining age fifty-seven.

(f) Any member who first becomes a member of the retirement system on or after July 1, 2015, and has thirty or more years of contributing service in force, is currently employed by a participating public employer and who elects to take early retirement, which for the purposes of this subsection means retirement following attainment of age fifty-five but prior to attaining age sixty-two, is entitled to the full computation of annuity according to section twenty-two of this article but with the reduced actuarial equivalent of the annuity the member would have received if his or her benefit had commenced at age sixty-two when he or she would have been entitled to full computation of benefit without any reduction: *Provided*, That his or her annuity shall begin the first day of the calendar month next following the month in which his or her application for same is filed with the board of trustees on or after his or her attaining age fifty-five.

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

§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 subsection (c) of this section.

(b) Any 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) More than seventy-five percent of actively contributing members of the Teachers' Defined Contribution Retirement System affirmatively elected to transfer to the State Teachers Retirement System within the period provided in section seven of this article. Therefore, any member of the Teachers' Defined Contribution Retirement System who decides to transfer to the State Teachers Retirement System calculates his or her service credit in the State Teachers Retirement System 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 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 a one and one-half percent contribution by no later than July 1, 2015, or no later than 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 Teachers' Defined Contribution Retirement System through June 30, 2009, and interest of seven and one-half percent per annum accumulated from July 1, 2009, through July 1, 2015: *Provided*, That any member who transferred and provided to the board a signed verification of cost for service credit purchase form by June 30, 2009, but was unable to complete the purchase of the one and one-half percent contribution, or any member who did not request a verification of cost letter but attempted to purchase the one and one-half percent contribution and was denied in writing by the board on or before December 31, 2009, may request the board on or before April 15, 2015, to recalculate the contribution for 2015. To receive full credit, the member shall pay into the State Teachers Retirement System the recalculated purchase amount by July 1, 2015, or no later than sixty days after the postmarked date on a contribution recalculation from the board, whichever is later. The recalculated contribution shall include the interest loss at the actuarial rate of seven and one-half percent. The board's executive director may correct clerical errors.

(A) For a member contributing to the Teachers' Defined Contribution Retirement System at any time during the 2008 fiscal year and commencing membership in the State Teachers Retirement System on July 1, 2008, or August 1, 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 June 30, 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 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 valuation as of July 1, 2007, prepared for the Consolidated Public Retirement Board. This salary scale shall be applied regardless of breaks in service.

(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.

(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 before September 1, 2008: *Provided*, That the Consolidated Public Retirement Board may not retire any member who is eligible to retire during the calendar year 2008 unless the member has provided a written notice to his or her county board of education by July 1, 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 or the 2015 regular legislative session.

House Bill 2005 **Relating to alternative programs for the education of teachers**

Effective Date: June 12, 2015

Code Reference: Adds §18A-3-1h, §18A-3-1f, §18A-3-1i, §18A-3-1d,
§18A-3-1g, §18A-3-1c and §18A-3-1e
Amends §18A-3-1b, §18A-3-1a, 18A-3-2a and §18A-3-1

WVDE Contact: Monica Beane, Office of Professional Preparation
mbeane@k12.wv.us; 304.558.7010

Major Provisions

- The bill expands eligibility for reciprocal teacher certification by allowing teachers from another state to be eligible for a WV teaching certificate for a comparable grade level and subject area if the teacher meets the following requirements: (1) has valid teaching certificate from another state; (2) has graduated from an educator preparation program at a regionally accredited IHE or from another educator preparation program; (3) has a bachelor's degree; and (4) meets all WV requirements for full certification.
- The bill authorizes schools and school districts to partner with an accredited IHE, an entity affiliated with an accredited IHE, WVDE or a RESA to offer a rigorous alternative program for teacher certification. The partnership must execute a partnership agreement that will govern the alternative certification program and identify the rights and responsibilities of each partner. Additionally, the partnership agreement must address at least the following items:
 1. Procedures for determine eligibility into program;
 2. Requirement that a vacancy must be advertised for 10 days, and if no qualified traditional certified teacher applies, only then may the partnership enroll a person in the program;
 3. Procedures for making formal employment offer to a person eligible to enroll;
 4. A detailed list of the categories, methods and sources of instruction that program will provide;
 5. Detailed description of phases of on-the-job training and supervision that the program will provide;
 6. Detailed description of academic and performance standards that a program teacher shall satisfy to receive the partnership's recommendation that the State Superintendent issue to him or her a professional teaching certificate;
 7. Procedures for selecting and training professional support team to instruct, mentor or supervise program teachers;
 8. Provisions for determining tuition or other charges of programs; and
 9. A requirement that hiring authority of school that hires a program teacher will renew the program teacher's contract from year to year as long as such teacher completes the program.
- All alternative programs established pursuant to bill must provide, at a minimum, either six credit hours or six staff development hours of instruction. Such instruction may be provided through nontraditional methods. Subject to WVBE approval, a professional support team, which may be trained by the Center for Professional Development, may be provided to support, supervise, induct and mentor program teachers. Professional support teams are required to submit written evaluations of program teachers to the partnership, which is to include the program teacher's progress toward meeting the program's academic and performance standards. However, final decisions on a program teacher's progress are made by the principal.
- Partnership are not authorized to charge tuition or charge for participation in the program unless

the tuition or charge is necessary to offset the partnership's cost of providing the program. However, IHEs that are part of a partnership may charge for academic credit that a program teacher receives in the program if (1) the IHE is the entity that grants the academic credit and (2) the charge does not exceed the per credit rate charged for student enrolled in standard program at IHE.

- WVBE is required to adopt a policy containing procedures for approval and operation of programs. Separate procedures are required for alternative programs for classroom teachers, alternative programs for highly qualified special education teachers and alternative programs to prepare highly qualified special education teachers. WVBE must consult with Education and the Arts and HEPC before adopting policy, as well as submit to LOCEA for review. At a minimum, the policy must include:
 1. Deadlines, forms and guidance to govern:
 - a. Process for applying to establish a partnership
 - b. WVBE's process for reviewing partnership applications
 - c. Partnership's process for seeking persons to enroll in programs
 - d. Process for a person to enroll in a program
 2. Procedures for determining if partnership agreement complies with statute and WVBE requirements
 3. Standards for how often/length of time program teachers must observe in a mentor's classroom
 4. Guidelines for a partnership to determine what tuition/charges may be assessed
 5. List of test(s) that program teacher must pass if the teacher seeks a certification to teach American Sign Language
 6. List of test(s) that program teacher must pass if the teacher seeks a certification to teach vocational and technical areas
- WVBE must approve partnership applications if determined that the proposed program materially complies with statute and WVBE's policy.
- Under no circumstances may a program be operated without being first approved by WVBE.
- Before participating in alternative program, a person must obtain an alternative program teacher certificate from the State Superintendent. Such certificates are good for a maximum of three years, and may not be renewed. To be eligible for such certificate, person must:
 1. Have bachelor's degree from regionally accredited IHE;
 2. Pass same basic skills and subject matter test(s) required by WVBE for traditional candidates to become certified;
 3. Be a US citizen;
 4. Be of good moral character;
 5. Be physically, mentally and emotionally qualified to perform teacher duties;
 6. Be 18 years of age;
 7. Receive formal offer of employment in an area of critical need and shortage from a county superintendent that is a member of a partnership;
 8. Have relevant academic or occupational qualifications that reasonably indicate that the person will be competent to fill the teaching position; and
 9. Qualify for employment following a criminal history check
 10. For individuals seeking to enroll into an ASL program or a vocational or technical program, they must also demonstrate proficiency in those respected areas
- County boards are to renew a program teacher's contract annually so long as the program teacher is making satisfactory progress in the program or completes the program. Schools cannot continue to employ a program teacher if the teacher fails to makes satisfactory progress in the program.
- If the school/school district employing a program teacher reduces its overall number of teachers,

the program teacher is subject to the safe RIF rules as any other employee, except those relating to seniority; a program teacher will never displace a professional educator.

- At the end of an alternative program, the partnership must prepare a comprehensive evaluation report on the program teacher's performance, and submit such report to the State Superintendent. The report must contain a recommendation on whether a professional teaching certificate should be issued to the program teacher. The bill authorizes the State Superintendent to issue a professional teaching certificate to a person that has successfully completed an alternative certification program.
- Finally, the bill removes the requirement that a coaching certificate may be issued to non-professional educator only when a currently employed certified professional educator has not applied for the position.

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

(a) The education of professional educators in the state is under the general direction and control of the state board after consultation with the Secretary of Education and the Arts and the Chancellor for Higher Education who shall represent the interests of educator preparation programs within the institutions of higher education in this state as defined in section two, article one, chapter eighteen-b of this code.

The education of professional educators in the state includes all programs leading to certification to teach or serve in the public schools. The programs include the following:

(1) Programs in all institutions of higher education, including student teaching and teacher-in-residence programs as provided in this section;

(2) Beginning teacher ~~internship and~~ induction programs;

(3) Granting West Virginia certification to persons who received their preparation to teach outside the boundaries of this state, except as provided in subsection (b) of this section;

(4) Alternative preparation programs in this state leading to certification, including programs established pursuant to the provisions of sections one-a, one-b, one-c, one-d, one-e, one-f, one-g, one-h and one-i of this article and programs which are in effect on the effective date of this section; and

(5) Continuing professional education, professional development and in-service training programs for professional educators employed in the public schools in the state.

(b) After consultation with the Secretary of Education and the Arts and the Chancellor for Higher Education, the state board shall adopt standards for the education of professional educators in the state and for awarding certificates valid in the public schools of this state. The standards include, but are not limited to the following:

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

(2) A provision for the study of classroom management techniques, including methods of effective management of disruptive behavior including societal factors and their impact on student behavior; and

(3) A teacher from another state shall be awarded a teaching certificate for a comparable grade level and subject area valid in the public schools of this state, subject to section ten of this article, if he or she has met the following requirements:

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

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

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

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

(c) The state board may enter into an agreement with county boards for the use of the public schools in order to give prospective teachers the teaching experience needed to demonstrate competence as a prerequisite to certification to teach in the West Virginia public schools.

(d) An agreement established pursuant to subsection (c) of this section shall recognize student teaching as a joint responsibility of the educator preparation institution and the cooperating public schools. The agreement shall include the following items:

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

(2) The remuneration to be paid to public school teachers by the state board, in addition to their contractual salaries, for supervising student teachers;

(3) Minimum standards to guarantee the adequacy of the facilities and program of the public school selected for student teaching;

(4) Assurance that the student teacher, under the direction and supervision of the supervising teacher, shall exercise the authority of a substitute teacher; ~~and~~

(5) A provision requiring any higher education institution with an educator preparation program to document that the student teacher's field-based and clinical experiences include participation and instruction with multicultural, at-risk and exceptional children at each programmatic level for which the student teacher seeks certification; and

(6) A provision authorizing a school or school district that has implemented a comprehensive beginning teacher induction program, to enter into an agreement that provides for the training and supervision of student teachers consistent with the educational objectives of this subsection by using an alternate structure implemented for the support, supervision and mentoring of beginning teachers. The agreement is in lieu of any specific provisions of this subsection and is subject to the approval of the state board.

(e) *Teacher-in-residence programs.* --

(1) In lieu of the provisions of subsections (c) and (d) of this section and subject to approval of the state board, an institution of higher education with a program for the education of professional educators in the state approved by the state board may enter into an agreement with county boards for the use of teacher-in-residence programs in the public schools.

(2) A "teacher-in-residence program" means an intensively supervised and mentored residency program for prospective teachers during their senior year that refines their professional practice skills and helps them gain the teaching experience needed to demonstrate competence as a prerequisite to certification to teach in the West Virginia public schools.

(3) The authorization for the higher education institution and the county board to implement a teacher-in-residence program is subject to state board approval. The provisions of the agreement include, but are not limited to, the following items:

(A) A requirement that the prospective teacher in a teacher-in-residence program ~~shall have~~ has completed ~~the content area~~ all other preparation courses and ~~shall have~~ has passed the appropriate basic skills and subject matter test or tests required by the state board for teachers to become certified in the area for which licensure is sought;

(B) A requirement that the teacher-in-residence serve only in a teaching position in the county which has been posted and for which no other teacher fully certified for the position has been employed;

(C) Specifics regarding the program of instruction for the teacher-in-residence setting forth the responsibilities for supervision and mentoring by the higher education institution's educator preparation program, the school principal, and peer teachers and mentors, and the responsibilities for the formal

instruction or professional development necessary for the teacher-in-residence to perfect his or her professional practice skills. The program also may include other instructional items as considered appropriate.

(D) A requirement that the teacher-in-residence hold a teacher-in-residence permit qualifying the individual to teach in his or her assigned position as the teacher of record;

(E) A requirement that the salary and benefit costs for the position to which the teacher-in-residence is assigned shall be used only for program support and to pay a stipend to the teacher-in-residence as specified in the agreement, subject to the following:

(i) The teacher-in-residence is a student enrolled in the teacher preparation program of the institution of higher education and is not a regularly employed employee of the county board;

(ii) The teacher-in-residence is included on the certified list of employees of the county eligible for state aid funding the same as an employee of the county at the appropriate level based on their permit and level of experience;

(iii) All state-aid-funding due to the county board for the teacher-in-residence shall be used only in accordance with the agreement with the institution of higher education for support of the program as provided in the agreement, including costs associated with instruction and supervision as set forth in paragraph (C) of this subdivision;

(iv) The teacher-in-residence is provided the same liability insurance coverage as other employees; and

(v) All state aid funding due to the county for the teacher-in-residence and not required for support of the program shall be paid as a stipend to the teacher-in-residence: *Provided*, That the stipend paid to the teacher-in-residence shall be no less than sixty-five percent of all state aid funding due the county for the teacher-in-residence.

~~(4)~~ (E) Other provisions that may be required by the state board.

(f) In lieu of the student teaching experience in a public school setting required by this section, an institution of higher education may provide an alternate student teaching experience in a nonpublic school setting if the institution of higher education meets the following criteria:

(1) Complies with the provisions of this section;

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

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

(g) At the discretion of the higher education institution, an agreement for an alternate student teaching experience between an institution of higher education and a nonpublic school shall require one of the following:

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

(2) The educator preparation program shall include a requirement that any student performing student teaching in a nonpublic school shall complete the following:

(A) At least two hundred clock hours of field-based training in a public school; and

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

(i) State board policy and provisions of this code governing public education;

(ii) Requirements for federal and state accountability, including the mandatory reporting of child abuse;

(iii) Federal and state mandated curriculum and assessment requirements, including multicultural education, safe schools and student code of conduct;

(iv) Federal and state regulations for the instruction of exceptional students as defined by the Individuals with Disabilities Education Act, 20 U.S.C. §1400 *et seq.*; and

(v) Varied approaches for effective instruction for students who are at-risk.

(h) In addition to the requirements set forth in subsection (g) of this section, an agreement for an alternate student teaching experience between an institution of higher education and a nonpublic school shall include the following:

(1) A requirement that the higher education institution with an educator preparation program shall document that the student teacher's field-based and clinical experiences include participation and instruction with multicultural, at-risk and exceptional children at each programmatic level for which the student teacher seeks certification; and

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

(i) The state superintendent may issue certificates as provided in section two-a of this article to graduates of educator preparation programs and alternative educator preparation programs approved by the state board. The certificates are issued in accordance with this section and rules adopted by the state board after consultation with the Secretary of Education and the Arts and the Chancellor for Higher Education.

(1) A certificate to teach may be granted only to a person who meets the following criteria:

(A) Is a citizen of the United States, except as provided in subdivision (2) of this subsection;

(B) Is of good moral character;

(C) Is physically, mentally and emotionally qualified to perform the duties of a teacher; and

(D) Is at least eighteen years of age on or before October 1, of the year in which his or her certificate is issued.

(2) A permit to teach in the public schools of this state may be granted to a person who is an exchange teacher from a foreign country or an alien person who meets the requirements to teach.

(j) In consultation with the Secretary of Education and the Arts and the Chancellor for Higher Education, institutions of higher education approved for educator preparation may cooperate with each other, with the center for professional development and with one or more county boards to organize and operate centers to provide selected phases of the educator preparation program. The phases include, but are not limited to the following:

(1) Student teaching and teacher-in-residence programs;

(2) Beginning teacher ~~internship and~~ induction programs;

(3) Instruction in methodology; and

(4) Seminar programs for college students, teachers with provisional certification, professional support team members and supervising teachers.

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

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

(l) All institutions of higher education approved for educator preparation in the 1962-63 school year continue to hold that distinction so long as they meet the minimum standards for educator preparation. Nothing in this section infringes upon the rights granted to any institution by charter given according to law previous to the adoption of this code.

(m) *Definitions.* -- For the purposes of this section, the following words have the meanings ascribed to them unless the context clearly indicates a different meaning:

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

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

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

(C) Comply with the provisions of this section;

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

(3) "Exceptional child" or "exceptional children" has the meaning ascribed to these terms pursuant to section one, article twenty, chapter eighteen of this code, but, as used in this section, the terms do not include gifted students.

§18A-3-1a. Alternative programs for the education of teachers; legislative rules required purpose; definitions.

(a) *Purpose.* – Sections one-a, one-b, one-c, one-d, one-e, one-f, one-g, one-h and one-i of this article create an alternative means for a qualified person to earn a professional teaching certificate. These sections authorize a school or a school district to offer a rigorous alternative program for teacher certification in partnership with an accredited higher education institution, an entity affiliated with an accredited higher education institution, the West Virginia Department of Education or a regional education service agency, all under the supervision of the State Board.

~~(a) (b) Definitions.~~ -- For the purposes of this section and sections one-b, one-c, one-d, one-e, one-f, one-g, one-h and one-i of this article, the following terms have the meanings ascribed to them, unless the context in which a term is used clearly requires a different meaning:

~~(1) "Alternative program teacher certificate" means a certificate issued for one year to a candidate who does not meet the standard educational requirements for teacher certification. "Alternative program" means a program for teacher education that is offered as an alternative to the standard college or university programs for the education of teachers;~~

~~(2) "Approved education provider" means a partnership between one or more schools, school districts or regional educational service agencies and an institution of higher education in this state with a regionally accredited program for the education of professional educators approved by the state board or an entity affiliated with such an institution's approved program, that has submitted to the state board a plan and agreement between the organizations for the delivery of an alternative program in accordance with this section, and the state board has approved the plan and agreement; and "Alternative program teacher" means a teacher who holds an alternative program teacher certificate and who participates in an alternative program;~~

~~(3) "Area of critical need and shortage" means an opening in an established, existing or newly-created position which has been posted at least two times in accordance with section seven-a, article four of this chapter and for which no fully-qualified applicant has been employed. "Area of critical need and shortage" means an opening in an established, existing or newly-created position which has been posted at least two times in accordance with section seven-a, article four of this chapter and for which no fully-qualified applicant has been employed;~~

~~(b) Establishment of alternative teacher education programs. --- After consultation with the Secretary of Education and the Arts and the Chancellor of the Higher Education Policy Commission, the state board shall promulgate a legislative rule or rules in accordance with article three-b, chapter twenty-nine-a of this code to implement the provisions of this section. The proposed rule or rules shall be submitted to the Legislative Oversight Commission on Education Accountability for review prior to adoption. The rule or rules shall include, but are not limited to, the following issues:~~

~~(1) Separate procedures for the approval and operation of each of the alternative teacher education programs as provided in this section:~~

~~(A) These programs are an alternative to the regular college or university programs for the education of teachers and may only be offered by approved education providers; and~~

~~(B) Each program is separate from other programs established by this section;~~

~~(2) Procedures for approving an approved education provider as defined in this section. Approval is required prior to implementation the provider's program leading to certification to teach in the public schools of this state;~~

~~(3) An alternative program teacher may not be employed in a school, school district or regional educational service agency unless the school, school district or regional educational service agency is a part of a partnership that qualifies as an approved education provider as defined in subsection (a) of this section;~~

~~(4) Provisions for setting tuition charges to offset program costs;~~

~~(5) The recommendation to rehire an alternative education program teacher, is subject to satisfactory progress in the applicable alternative education program by the holder of the alternative program certificate; and~~

~~(6) When making decisions affecting the hiring of a teacher authorized to teach under an alternative program certificate as provided in this section, a county board shall give preference to applicants who hold a valid West Virginia professional teaching certificate.~~

~~(c) Alternative teacher education program.---~~

~~(1) To participate in an approved alternative teacher education program, the candidate must hold an alternative program teacher certificate issued by the state superintendent and endorsed for the instructional field in which the candidate seeks certification.~~

~~(2) The certificate may be renewed twice and no individual may hold an alternative program teacher certificate for a period exceeding three years. The alternative program teacher certificate is equivalent to a professional teaching certificate for the purpose of issuing a continuing contract.~~

~~(3) To be eligible for an alternative program teacher certificate, an applicant shall meet the following criteria:~~

~~(A) Possess at least a bachelor's degree from a regionally accredited institution of higher education in a discipline taught in the public schools.~~

~~(B) Pass the same basic skills and subject matter test or tests required by the state board for traditional program candidates to become certified in the area for which licensure is being sought;~~

~~(C) Hold United States citizenship; be of good moral character and be physically, mentally and emotionally qualified to perform the duties of a teacher;~~

~~(D) Attain the age of eighteen years on or before October 1 of the year in which the alternative program teacher certificate is issued;~~

~~(E) Receive a formal offer of employment in an area of critical need and shortage from a county superintendent;~~

~~(F) Qualify for employment following a criminal history check pursuant to section ten of this article;~~

~~(G) In the case of an applicant pursuing certification to teach American Sign Language, in lieu of paragraphs (A) and (B) of this subdivision, the applicant shall possess at least a bachelor's degree from a regionally accredited institution of higher education and pass an appropriate state board approved test or tests demonstrating the applicant's proficiency in American Sign Language; and~~

~~(H) In the case of applicants who have at least four years of experience in the subject field and are pursuing certification to teach in selected vocational and technical areas, in lieu of paragraphs (A) and (B) of this subdivision, the applicant shall pass an appropriate state board approved test or tests demonstrating the applicant's proficiency in the basic skills and occupational content areas.~~

~~(4) A person who satisfies the requirements set forth in subdivision (3) of this subsection shall be granted a formal document authorizing him or her to work in a public school in West Virginia.~~

~~(5) An approved alternative program provides essential knowledge and skills to alternative program teachers through the following phases of training:~~

~~(A) Instruction. --- The alternative preparation program shall provide a minimum of eighteen semester hours of instruction in the areas of student assessment; development and learning; curriculum; classroom management; the use of educational computers and other technology; and special education and diversity. All programs shall contain a minimum of three semester hours of instruction in special education and diversity out of the minimum eighteen required semester hours. Subject to the approval of the state board, an approved education provider may provide instruction equivalent to the eighteen~~

semester hours required by this paragraph through nontraditional methods, including, but not limited to, methods such as a series of modules covering the various topics, electronically delivered instruction, summer sessions, professional development and job-embedded mentoring.

~~(B) Phase I. -- Phase I consists of a period of intensive, on-the-job supervision by an assigned mentor and the school administrator for a period of not fewer than two weeks. The assigned mentor shall meet the requirements for a beginning teacher internship mentor set forth in section two-b of this article and shall be paid the stipend authorized pursuant to that section. The state board shall provide, in its rule for the approval and operation of this program, requirements for the frequency and duration of time periods for the person holding an alternative certificate to observe in the classroom of the mentor. The person holding an alternative certificate shall be observed daily by the mentor or the school administrator during this phase. This phase includes an orientation to the policies, organization and curriculum of the employing district. The alternative program teacher shall receive formal instruction in those areas listed in paragraph (A) of this subdivision.~~

~~(C) Phase II. -- Phase II consists of a period of intensive, on-the-job supervision beginning the first day following the completion of Phase I and continuing for a period of at least ten weeks. During Phase II, the alternative program teacher is visited and critiqued at least one time per week by members of a professional support team, as defined in subdivision (6) of this subsection, and is observed by the appropriately certified members of the team at the end of five weeks and again at five-week intervals until the completion of this phase. At the completion of this phase, the alternative program teacher shall receive a formal evaluation by the principal. The alternative program teacher shall continue to receive formal instruction in those areas listed in paragraph (A), of this subdivision.~~

~~(D) Phase III. -- Phase III consists of an additional period of continued supervision and evaluation of no fewer than twenty weeks duration. The professional support team determines the requirements of this phase, but those requirements shall include at least one formal evaluation conducted at the completion of the phase by the principal. The alternative program teacher shall continue to receive formal instruction in those areas listed in paragraph (A) of this subdivision, and shall be given opportunities to observe the teaching of experienced colleagues.~~

~~(6) Professional support team. --~~

~~(A) Training and supervision of alternative program teachers are provided by a professional support team comprised of a school principal, or his or her designee, an experienced classroom teacher who satisfies the requirements for mentor for the Beginning Educator Internship pursuant to section two-b of this article, a representative of the institution of higher education that is a part of the partnership that qualifies as an approved education provider as defined in subsection (a) of this section or an entity affiliated with that institution, and a curriculum supervisor or other central office administrator with certification and training relevant to the training and supervision of the alternative program candidate.~~

~~(B) Districts or schools which have been unable to establish a relationship with a college or university shall provide for comparable expertise on the team.~~

~~(C) The school principal, or his or her designee, serves as chairperson of the team.~~

~~(D) The duration of each of the three phases of the program specified in paragraphs (B), (C) and (D), subdivision (5) of this subsection, in excess of the minimum durations provided in those paragraphs, shall be determined by the professional support team within guidelines provided by the state board in its rule for the approval and operation of this program.~~

~~(E) In addition to other duties assigned to it under this section and section one-b of this article, the approved education provider shall submit a written evaluation of the alternative program teacher to the county superintendent. The written evaluation shall be in a form specified by the county superintendent and submitted on a date specified by the county superintendent that is prior to the first Monday of May. The~~

evaluation shall report the progress of the alternative program teacher toward meeting the academic and performance requirements of the program.

~~(F) The training for professional support team members may be coordinated and provided by the Center for Professional Development in coordination with the approved education provider as set forth in the plan approved by the state board pursuant to subdivision (8) of this subsection.~~

~~(7) In lieu of and as an alternative to the professional support team specified in subdivision (6) of this subsection and its specific duties throughout the program phases as set forth in subdivision (5) of this section, a school or school district that has implemented a comprehensive beginning teacher induction program may, subject to the approval of the state board, provide for the training and supervision of alternative program teachers using a structure consistent with the structure implemented for the support, supervision and mentoring of beginning teachers: *Provided*, That all final decisions on the progress of the alternative program teacher and recommendations upon program completion shall rest with the principal.~~

~~(8) An approved education provider seeking approval for an alternative certification program shall submit a plan to the state board.~~

~~(A) No alternative certification program may be implemented prior to receiving state board approval.~~

~~(B) Each plan shall describe how the proposed training program will accomplish the key elements of an alternative program for the education of teachers as set forth in this section.~~

~~(d) *Alternative highly qualified special education teacher education program.*---~~

~~(1) These programs are separate from the programs established under the other provisions of this section and are applicable only to teachers who have at least a bachelor's degree in a program for the preparation of teachers from a regionally accredited institution of higher education.~~

~~(2) These programs are subject to the other provisions of this section only to the extent specifically provided in the rule.~~

~~(3) These programs may be an alternative to the regular college and university programs for the education of special education teachers and also may address the content area preparation of certified special education teachers.~~

~~(4) The programs shall incorporate professional development to the maximum extent possible to help teachers who are currently certified in special education to obtain the required content area preparation.~~

~~(5) Participation in an alternative education program pursuant to this subsection may not affect any rights, privileges or benefits to which the participant otherwise would be entitled as a regular employee and may not alter any rights, privileges or benefits of participants on continuing contract status.~~

~~(e) *Additional alternative education program to prepare highly qualified special education teachers.*~~

--

~~(1) These programs are separate from the programs established under the other provisions of this section and are applicable only to persons who hold a bachelor's degree from a regionally accredited institution of higher education.~~

~~(2) These programs are subject to the other provisions of this section only to the extent specifically provided in the rule.~~

~~(3) These programs may be an alternative to the regular college and university programs for the education of special education teachers and also may address the content area preparation of these persons.~~

~~(4) “Alternative program teacher certificate” means a temporary teacher certificate that authorizes a person to teach while participating in an alternative program;~~

~~(5) “Approved alternative program” means an alternative program that is approved by the State Board in accordance with section one-e of this article;~~

~~(6) “Approved education provider” means a partnership that the State Board has approved to provide an alternative program;~~

~~(7) “Partnership” means a partnership formed pursuant to section one-b of this article to provide an alternative program;~~

~~(8) “Partnership agreement” means an agreement adopted by a partnership pursuant to section one-b of this article; and~~

~~(9) “Professional support team” means the group of persons that an approved education provider has selected to train and supervise alternative program teachers.~~

§18A-3-1b. Recommendation for certification of alternative program teachers Alternative program partnerships; formation; necessary partners; partnership agreements; single-provider programs.

~~At the conclusion of an alternative teacher education program, the approved education provider shall prepare a comprehensive evaluation report on the alternative program teacher's performance. This report shall be submitted directly to the State Superintendent of Schools and shall contain a recommendation as to whether or not a professional certificate should be issued to the alternative program teacher. The report shall be made on standard forms developed by the State Superintendent.~~

~~The comprehensive evaluation report shall include one of the following recommendations:~~

~~(1) Approved: Recommends issuance of a professional certificate;~~

~~(2) Insufficient: Recommends that a professional certificate not be issued but that the candidate be allowed to seek reentry on one or more occasions in the future into an approved alternative teacher education program; or~~

~~(3) Disapproved: Recommends that a professional certificate not be issued and that the candidate not be allowed to enter into another approved alternative teacher education program in this state, but shall not be prohibited from pursuing teacher certification through other approved programs for the education of teachers in this state.~~

~~The approved education provider shall provide the alternative program teacher with a copy of the alternative program teacher's written evaluation report and certification recommendation before submitting it to the state superintendent. If the alternative program teacher disagrees with the provider's recommendation, the alternative program teacher may, within fifteen days of receipt, request an appeal in accordance with the certification appeals process established by the State Board of Education.~~

~~(a) *Formation.* – One or more schools or school districts, or any combination of these, may form a partnership with one or more institutions of higher education, one or more entities affiliated with an institution of higher education, the West Virginia Department of Education, a regional education service agency, or any combination of these, to provide an alternative program.~~

(b) Necessary partners. – Except as provided in subsection (d) of this section, a partnership shall include at least one of the following:

(1) An institution of higher education with an accredited program for the education of professional educators that has been approved by the State Board;

(2) An entity affiliated with an institution of higher education that has an accredited program for the education of professional educators that has been approved by the State Board;

(3) The West Virginia Department of Education; or

(4) A regional education service agency.

(c) Partnership agreement contents. – A partnership shall adopt a written partnership agreement that governs how the partnership will conduct its alternative program and that identifies the rights and responsibilities of each partner. The partnership agreement shall include, at a minimum, the following elements:

(1) Procedures and criteria for determining whether a person is eligible to enroll in the alternative program;

(2) A requirement that a vacancy has to be advertised for a ten day period, and if no qualified traditional certified teacher applies, only then may the partnership consider enrolling as person in the alternative program;

(3) Procedures and criteria for making a formal offer of employment to a person who is eligible to enroll in the alternative program;

(4) A detailed list, with descriptions, of the categories, methods and sources of instruction that the alternative program will provide;

(5) A detailed description of the phases of on-the-job training and supervision that the alternative program will provide;

(6) A detailed description of the academic and performance standards that an alternative program teacher shall satisfy to receive the partnership's recommendation that the State Superintendent issue to him or her a professional teaching certificate;

(7) Procedures for selecting and training the professional support team who will instruct, mentor or supervise alternative program teachers;

(8) Provisions for determining tuition or other charges, if any, relating to an alternative program;

(9) A requirement, subject to the provisions of subsection (e), subsection one-f of this article, that the hiring authority for any school or school district that hires an alternative program teacher will renew the alternative program teacher's contract from year to year as long as he or she makes satisfactory progress in the alternative education program and until he or she completes the alternative program; and

(10) Any other provisions that the partners consider necessary or helpful to ensure that the alternative program operates in accordance with this chapter.

§18A-3-1c. Alternative program instruction for classroom teachers; methods; training and evaluation phases; professional support team; tuition.

(a) Alternative program instruction. -- An alternative program for classroom teachers shall provide, at a minimum, either six credit hours or six staff development hours of instruction in one or more of the following subjects:

- (1) Early literacy (if an alternative program teacher will be teaching elementary school children);
- (2) Student assessment;
- (3) Development and learning;
- (4) Curriculum;
- (5) Classroom management;
- (6) Use of educational computers and other technology; and
- (7) Special education and diversity.

(b) Methods of instruction. -- An alternative program may provide instruction through nontraditional methods, including, but not limited to, methods such as a series of modules covering the various topics, electronically delivered instruction, summer sessions, professional development and job-embedded mentoring.

(c) Professional support team. -- If the State Board approves, an alternative program may provide a professional support team whose structure is consistent with the structure that the partnership's participating school or schools use for supporting, supervising, inducting and mentoring a beginning teacher or teacher-in-residence. If the State Board approves, an alternative program's professional support team may be trained by and in coordination with the Center for Professional Development.

(d) Professional support team evaluation for classroom teachers. -- The professional support team shall submit a written evaluation of the alternative program teacher to the approved education provider. This evaluation shall be submitted on a form specified by the approved education provider and shall be submitted before the first Monday in May on a date set by the approved education provider. The evaluation shall report the alternative program teacher's progress toward meeting the alternative program's academic and performance standards: *Provided*, That all final decisions on the progress of an alternative program teacher shall rest with the principal.

(e) Tuition. -- A partnership may not charge tuition, or impose any other charge for participation in an alternative program, unless the tuition or other charge is necessary to offset the partnership's cost of providing the alternative program: *Provided*, That a partner that is an institution of higher education with an accredited program for the education of professional educators may charge tuition for academic credit that an alternative education teacher receives in the alternative program if:

- (1) The institution of higher education is the entity that grants the academic credit; and
- (2) The charge does not exceed the per credit rate charged for students enrolled in its standard program for the education of professional educators.

§18A-3-1d. Alternative program rules; necessary contents.

(a) Alternative program rules. --

(1) The State Board shall promulgate a legislative rule or rules in accordance with article three-b, chapter twenty-nine-a of this code containing procedures for the approval and operation of alternative teacher education programs as provided in this article. The State Board shall promulgate separate procedures for alternative programs for classroom teachers, alternative programs for highly qualified

special education teachers, and additional alternative programs to prepare highly qualified special education teachers. These procedures shall be separate from the State Board's other procedures for approving standard teacher education programs.

(2) Before promulgating a rule or rules, the State Board shall consult with the Secretary of Education and the Arts and the Chancellor of the Higher Education Policy Commission.

(3) Before adopting a rule or rules, the State Board shall submit its proposed rule or rules to the Legislative Oversight Commission on Education Accountability for review.

(b) Necessary contents. – The State Board's rule or rules shall include, at a minimum, the following elements:

(1) An orderly set of deadlines, forms and guidance to govern:

(A) A partnership's process for applying to become an approved education provider;

(B) The State Board's process for reviewing and acting on a partnership's application;

(C) An approved education provider's process for seeking persons to enroll in an alternative program; and

(D) A person's process for enrolling in an approved education provider's alternative program;

(2) Procedures for determining whether a partnership agreement complies with sections one-b and one-c of this article;

(3) Procedures for determining whether a partnership agreement complies with any additional requirements contained in the State Board's rule or rules;

(4) Standards for how often and for what lengths of time an alternative program teacher must observe in a mentor's classroom;

(5) Guidelines for determining what tuition or other charges an approved education provider may impose relating to an alternative program;

(6) A list of the test or tests that a person must pass if he or she seeks a certification to teach American Sign Language; and

(7) A list of the test or tests that a person must pass if he or she seeks a certification to teach in selected vocational and technical areas.

§18A-3-1e. State Board approval; prohibited acts.

(a) State Board approval. –

(1) The State Board shall approve a partnership's application to operate an alternative program for classroom teachers if the State Board determines that the proposed alternative program, in all material respects, complies or will comply with the State Board's applicable alternative program rules and with the requirements of sections one-b, one-c of this article.

(2) The State Board shall approve a partnership's application to operate an alternative program for a highly qualified special education teacher if the State Board determines that the proposed alternative program, in all material respects, complies or will comply with the State Board's applicable alternative program rules and with the requirements of section one-g of this article.

(3) The State Board shall approve a partnership's application to operate an alternative program to prepare highly qualified special education teachers if the State Board determines that the proposed alternative program, in all material respects, complies or will comply with the State Board's applicable alternative program rules and with the requirements of section one-h of this article.

(b) Prohibited acts. –

(1) A partnership may not implement an alternative program until the partnership's alternative program has been approved by the State Board.

(2) A school or school district may not employ, or make a formal offer of employment to, any person for the purpose of his or her participation in an alternative program unless the alternative program is approved by the State Board and the school or school district is a member of the partnership that is operating the alternative program.

(3) A school or school district may not continue to employ an alternative program teacher unless he or she makes satisfactory progress in the alternative program for which he or she is employed.

§18A-3-1f. Alternative program participation; eligibility for alternative program certificate; contract renewals; hiring preference.

(a) Alternative program participation. – A person may not participate in an alternative program unless he or she holds an alternative program teacher certificate issue by the State Superintendent for the alternative program position in which he or she will be teaching. An alternative program teacher certificate is the same as a professional teaching certificate for the purpose of issuing a continuing contract.

(b) Eligibility for alternative program teacher certificate. – To be eligible for an alternative program teacher certificate, a person shall:

(1) Possess at least a bachelor's degree from a regionally accredited institution of higher education;

(2) Pass the same basic skills and subject matter test or tests required by the State Board for traditional program candidates to become certified in the area for which he or she is seeking licensure;

(3) Hold United States citizenship;

(4) Be of good moral character;

(5) Be physically, mentally and emotionally qualified to perform the duties of a teacher;

(6) Attain the age of eighteen years on or before October 1 of the year in which the alternative program teacher certificate is issued;

(7) Receive from a county superintendent a formal offer of employment in an area of critical need and shortage and by a school or school district that is a member of an approved educational provider;

(8) Have relevant academic or occupational qualifications that reasonably indicate that the person will be competent to fill the teaching position in which he or she would be employed. For the purposes of this section, 'reasonably indicate' means an academic major or occupational area the same as or similar to the subject matter to which the alternative program teacher is being hired to teach; and

(9) Qualify for employment after a criminal history check made pursuant to section ten of this article.

(c) Eligibility for alternative program certificate: American Sign Language. – If a person seeks certification to teach American Sign Language, in lieu of subdivisions (1) and (2), subsection (b) of this section, he or she shall pass one or more appropriate State Board approved tests demonstrating his or her proficiency in American Sign Language.

(d) Eligibility for alternative program certificate: selected vocational and technical areas. – If a person seeks certification to teach in selected vocational and technical areas, in lieu of subdivisions (1) and (2), subsection (b) of this section, he or she shall pass one or more appropriate State Board approved tests demonstrating his or her proficiency in the basic skills and occupational content areas.

(e) Contract renewals. –

(1) A county board shall renew an alternative program teacher's contract from year to year as long as he or she makes satisfactory progress in the applicable alternative education program and until he or she completes the alternative program, except as provided in subdivision (2) of this subsection.

(2) If the school or school district that employs the alternative program teacher reduces its overall number of teachers, the alternative program teacher is subject to the same force reduction rules and procedures as any other employee, except those that relate to seniority. In no event will an alternative program teacher displace a professional educator as defined in section one, article one of this chapter.

§18A-3-1g. Alternative program for highly qualified special education teachers.

(a) An alternative program for highly qualified special education teachers are separate from the programs established under sections one-b and one-h of this article and are applicable only to teachers who have at least a bachelor's degree in a program for the preparation of teachers from an accredited institution of higher education.

(b) These programs are subject to the other provisions of sections one-b, one-c, one-e and one-f of this article only to the extent specifically provided in State Board rule.

(c) These programs may be an alternative to the standard college and university programs for the education of special education teachers and also may address the content area preparation of certified special education teachers.

(d) The programs shall incorporate professional development to the maximum extent possible to help teachers who are currently certified in special education to obtain the required content area preparation.

(e) Participation in an alternative education program pursuant to this section may not affect any rights, privileges or benefits to which the participant otherwise would be entitled as a regular employee and may not alter any rights, privileges or benefits of participants on continuing contract status.

§18A-3-1h. Additional alternative program to prepare highly qualified special education teachers.

(a) An additional alternative program to prepare highly qualified special education teachers are separate from the programs established under sections one-b and one-g of this article and are applicable only to persons who hold a bachelor's degree from an accredited institution of higher education.

(b) These programs are subject to the other provisions of sections one-b, one-c, one-e and one-f of this article only to the extent specifically provided in State Board rule.

(c) These programs may be an alternative to the standard college and university programs for the education of special education teachers and also may address the content area preparation of these persons.

§18A-3-1i. Recommendation for certification of alternative program teachers; report forms to be prepared by State Superintendent; appeal.

(a) At the conclusion of an approved alternative program, the approved education provider shall prepare a comprehensive evaluation report on the alternative program teacher's performance.

(b) This report shall be submitted directly to the State Superintendent and shall contain a recommendation as to whether or not a professional teaching certificate should be issued to the alternative program teacher. The State Superintendent shall develop standard forms for this report, and the report shall be made on one or more of the State Superintendent's forms.

(c) The comprehensive evaluation report shall include one of the following recommendations:

(1) Approved: Recommends issuance of a professional teaching certificate;

(2) Insufficient: Recommends that a professional teaching certificate not be issued but that the candidate be allowed to seek reentry on one or more occasions in the future to an approved alternative program; or

(3) Disapproved: Recommends that a professional teaching certificate not be issued and that the candidate not be allowed to enter into another approved alternative program in this state but not be prohibited from pursuing teacher certification through other approved programs for the education of teachers in this state.

(d) The approved education provider shall provide the alternative program teacher with a copy of the alternative program teacher's written evaluation report and certification recommendation before the approved education provider submits them to the State Superintendent. If the alternative program teacher disagrees with the provider's recommendation, the alternative program teacher may, within fifteen days of receipt, request an appeal in accordance with the certification appeals process established by the State Board.

§18A-3-2a. Certificates valid in the public schools that may be issued by the State Superintendent.

In accordance with State Board rules for the education of professional educators adopted pursuant to section one of this article and subject to the limitations and conditions of that section, the State Superintendent may issue the following certificates valid in the public schools of the state:

(a) *Professional teaching certificates.* --

(1) A professional teaching certificate for teaching in the public schools may be issued to a person who meets the following conditions:

(A) Holds at least a bachelor's degree from a regionally ~~an~~ accredited institution of higher education ~~in this state~~, and

(i) Has passed appropriate State Board approved basic skills and subject matter tests in the area for which licensure is being sought; and

~~(ii)~~ (ii) Has completed a program for the education of teachers which meets the requirements approved by the State Board; or

~~(iii)~~ (iii) Has met equivalent standards at institutions in other states ~~and has passed appropriate state board approved basic skills and subject matter tests or has completed three years of successful experience within the last seven years in the area for which licensure is being sought;~~ or

(iv) Has completed three years of successful teaching experience within the last seven years under a license issued by another state in the area for which licensure is being sought; or

(v) Has completed an alternative program approved by another state; or

(B) Holds at least a bachelor's degree ~~in a discipline taught in the public schools~~ from an accredited institution of higher education; and

(i) Has passed appropriate State Board approved basic skills and subject matter tests; ~~or~~ and

~~(ii) Has completed three years of successful experience within the last seven years in the area for which licensure is being sought;~~ an alternative program for teacher education as provided in this article; and

(iii) Is recommended for a certificate in accordance with the provisions of section one-i of this article relating to the program; and

(iv) Is recommended by the State Superintendent based on documentation submitted.

~~(I) Has completed an alternative program for teacher education approved by the state board;~~

~~(II) Is recommended for a certificate in accordance with the provisions of sections one-a and one-b of this article relating to the program; or~~

~~(III) Is recommended by the state superintendent based on documentation submitted.~~

(2) The certificate shall be endorsed to indicate the grade level or levels or areas of specialization in which the person is certified to teach or to serve in the public schools.

(3) The initial professional certificate is issued provisionally for a period of three years from the date of issuance:

(A) The certificate may be converted to a professional certificate valid for five years subject to successful completion of a beginning teacher ~~internship~~ or induction program, if applicable; or

(B) The certificate may be renewed subject to rules adopted by the State Board.

(b) *Alternative program teacher certificate.* -- An alternative program teacher certificate may be issued to a candidate who is enrolled in an alternative program for ~~the education of teachers in accordance with the provisions of section one-a of this article~~ teacher education approved by the State Board.

(1) The certificate is valid only for the alternative program position in which the candidate is employed and is subject to enrollment in the program.

~~(2) The certificate is valid for one year and may be renewed for each of the following two consecutive years only while the candidate is enrolled in the alternative program, up to a maximum of three years, and may not be renewed.~~

(c) *Professional administrative certificate.* --

(1) A professional administrative certificate, endorsed for serving in the public schools, with specific endorsement as a principal, vocational administrator, supervisor of instructions or superintendent, may be issued to a person who has completed requirements all to be approved by the State Board as follows:

(A) Holds at least a master's degree from an institution of higher education accredited to offer a master's degree; and

(i) Has successfully completed an approved program for administrative certification developed by the State Board in cooperation with the chancellor for higher education, and

(ii) Has successfully completed education and training in evaluation skills through the center for professional development, or equivalent education and training in evaluation skills approved by the State Board, and

(iii) Possesses three years of management level experience.

(2) Any person serving in the position of dean of students on June 4, 1992, is not required to hold a professional administrative certificate.

(3) The initial professional administrative certificate is issued provisionally for a period of five years. This certificate may be converted to a professional administrative certificate valid for five years or renewed, subject to the regulations of the State Board.

(d) *Paraprofessional certificate.* -- A paraprofessional certificate may be issued to a person who meets the following conditions:

(1) Has completed thirty-six semester hours of post-secondary education or its equivalent in subjects directly related to performance of the job, all approved by the State Board; and

(2) Demonstrates the proficiencies to perform duties as required of a paraprofessional as defined in section eight, article four of this chapter.

(e) *Other certificates; permits.* --

(1) Other certificates and permits may be issued, subject to the approval of the State Board, to persons who do not qualify for the professional or paraprofessional certificate.

(2) A certificate or permit may not be given permanent status and a person holding one of these credentials shall meet renewal requirements provided by law and by regulation, unless the State Board declares certain of these certificates to be the equivalent of the professional certificate.

(3) Within the category of other certificates and permits, the State Superintendent may issue certificates for persons to serve in the public schools as athletic coaches or coaches of other extracurricular activities, whose duties may include the supervision of students, subject to the following limitations:

(A) The person is employed under a contract with the county board of education.

(i) The contract specifies the duties to be performed, specifies a rate of pay that is equivalent to the rate of pay for professional educators in the district who accept similar duties as extra duty assignments, and provides for liability insurance associated with the activity; and

(ii) The person holding this certificate is not considered an employee of the board for salary and benefit purposes other than as specified in the contract.

(B) ~~(C) A currently employed certified professional educator has not applied for the position;~~ and The person completes an orientation program designed and approved in accordance with State Board rules.

(f) *Teacher-In-Residence Permit.* --

(1) A teacher-in-residence permit may be issued to a candidate who is enrolled in a teacher-in-residence program in accordance with an agreement between an institution of higher education and a county board. The agreement is developed pursuant to subsection ~~(f)~~ (e), section one of this article and requires approval by the State Board.

(2) The permit is valid only for the teacher-in-residence program position in which the candidate is enrolled and is subject to enrollment in the program. The permit is valid for no more than one school year and may not be renewed.

Bill Sponsors: Delegates Pasdon, Hamrick, Zatezalo, Romine, McCuskey, Westfall, Arvon, Overington, Espinosa and Moffatt

House Bill 2025 Prohibiting certain sex offenders from loitering within one thousand feet of a school or child care facility

Effective Date: May 26, 2015

Code Reference: Adds §61-8-29
 Amends §62-12-26

WVDE Contact: Sarah Stewart, Office of the Superintendent
sarah.a.stewart@k12.wv.us; 304.558.3762

Major Provisions

- The bill makes it a misdemeanor for persons on supervised release for period of ten years or more to loiter within 1,000 feet of the property line of a victim's educational facility, playground, athletic facility or school bus stop. This misdemeanor is not committed until the person is asked to leave by an authorized person and refuses to do so.
- An exceptions exists for persons who are present at one of the above designated places for the purpose of supervision, counseling or other activity in which the person is directed to participate as a condition of his or her supervised release or otherwise has express permission of his or her supervising officer to be present.

§61-8-29. Criminal loitering by persons on supervised release.

(a) Any person serving a period of supervised release of ten years or more pursuant to the provision of section twenty-six, article twelve, chapter sixty-two of this code who loiters within one thousand feet of the property line of the residence or workplace of a victim of a sexually violent offense for which the person was convicted shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than thirty days.

(b) Any person serving a period of supervised release of ten years or more pursuant to the provisions of section twenty-six, article twelve, chapter sixty-two of this code for an offense where the victim was a minor who loiters within one thousand feet of the property line of a facility or business the principal purpose of which is the education, entertainment or care of minor children, playground, athletic facility or school bus stop shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for a period of not more than thirty days.

(c) A person does not violate the provisions of subsection (a) or (b) of this section unless he or she has previously been asked to leave the proscribed location by an authorized person and thereafter refuses to leave or leaves and thereafter returns to the proscribed location.

(d) As used in this section:

(1) "Authorized person" means:

(A) A law-enforcement officer acting in his or her official capacity;

(B) A security officer employed by a business or facility to protect persons or property acting in his or her employment capacity;

(C) An owner, manager or employee of a facility or business having a principal purpose the caring for, education or entertainment of minors;

(D) A victim or parent, guardian or lawful temporary or permanent custodian thereof;

(E) An employee of a county Board of Education acting in his or her employment capacity.

(2) "Facility or business, the principal purpose of which is the education, entertainment or care of minor children" means:

(A) A pre-school, primary, intermediate, middle or high school, either public or private;

(B) A childcare facility;

(C) A park;

(D) An athletic facility used by minors;

(E) A school bus stop.

(3) "Loitering" means to enter or remain on property while having no legitimate purpose or, if a legitimate purpose exists, remaining on that property beyond the time necessary to fulfill that purpose.

(e) Nothing in this section shall be construed to prohibit or limit a person's presence within one thousand feet of a location or facility referenced in this section if the person is there present for the purposes of supervision, counseling or other activity in which the person is directed to participate as a condition of supervision or where the person has the express permission of his supervising officer to be present.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-26. Extended supervision for certain sex offenders; sentencing; conditions; supervision provisions; supervision fee.

(a) Notwithstanding any other provision of this code to the contrary, any defendant convicted after the effective date of this section of a violation of section twelve, article eight, chapter sixty-one of this code or a felony violation of the provisions of article eight-b, eight-c or eight-d of said chapter shall, as part of the sentence imposed at final disposition, be required to serve, in addition to any other penalty or condition imposed by the court, a period of supervised release of up to fifty years: *Provided*, That the period of supervised release imposed by the court pursuant to this section for a defendant convicted after the effective date of this section as amended and reenacted during the first extraordinary session of the Legislature, 2006, of a violation of section three or seven, article eight-b, chapter sixty-one of this code and sentenced pursuant to section nine-a of said article, shall be no less than ten years: *Provided, however*, That a defendant designated after the effective date of this section as amended and reenacted during the first extraordinary session of the Legislature, 2006, as a sexually violent predator pursuant to the provisions of section two-a, article twelve, chapter fifteen of this code shall be subject, in addition to any other penalty or condition imposed by the court, to supervised release for life: *Provided further*, That pursuant to the provisions of subsection (g) of this section, a court may modify, terminate or revoke any term of supervised release imposed pursuant to subsection (a) of this section.

(b) Any person required to be on supervised release ~~for a~~ between the minimum term of ten years ~~of for~~ and life pursuant to the provisions of subsection (a) of this section also shall be further prohibited from:

(1) Establishing a residence or accepting employment within one thousand feet of a school or child care facility or within one thousand feet of the residence of a victim or victims of any sexually violent offenses for which the person was convicted;

(2) Loitering within one thousand feet of a school or child care facility or within one thousand feet of the residence of a victim or victims of any sexually violent offenses for which the person was convicted: *Provided*, That the imposition of this prohibition shall apply to a defendant convicted after the effective date of this section as amended and reenacted during the regular session of the Legislature, 2015: *Provided, however*, That as used herein "loitering" means to enter or remain on property while having no legitimate purpose or, if a legitimate purpose exists, remaining on that property beyond the time necessary to fulfill that purpose: *Provided further*, That nothing in this subdivision shall be construed to prohibit or limit a person's presence within one thousand feet of a location or facility referenced in this subdivision if the person is present for the purposes of supervision, counseling or other activity in which the person is directed to participate as a condition of supervision or where the person has the express permission of his supervising officer to be present;

~~(2)~~ (3) Establishing a residence or any other living accommodation in a household in which a child under sixteen resides if the person has been convicted of a sexually violent offense against a child, unless the person is one of the following:

(i) The child's parent;

(ii) The child's grandparent; or

(iii) The child's stepparent and the person was the stepparent of the child prior to being convicted of a sexually violent offense, the person's parental rights to any children in the home have not been terminated, the child is not a victim of a sexually violent offense perpetrated by the person, and the court determines that the person is not likely to cause harm to the child or children with whom such person will reside: *Provided*, That nothing in this subsection shall preclude a court from imposing residency or

employment restrictions as a condition of supervised release on defendants other than those subject to the provision of this subsection.

(c) The period of supervised release imposed by the provisions of this section shall begin upon the expiration of any period of probation, the expiration of any sentence of incarceration or the expiration of any period of parole supervision imposed or required of the person so convicted, whichever expires later.

(d) Any person sentenced to a period of supervised release pursuant to the provisions of this section shall be supervised by a multijudicial circuit probation officer, if available. Until such time as a multijudicial circuit probation officer is available, the offender shall be supervised by the probation office of the sentencing court or of the circuit in which he or she resides.

(e) A defendant sentenced to a period of supervised release shall be subject to any or all of the conditions applicable to a person placed upon probation pursuant to the provisions of section nine of this article: *Provided*, That any defendant sentenced to a period of supervised release pursuant to this section shall be required to participate in appropriate offender treatment programs or counseling during the period of supervised release unless the court deems the offender treatment programs or counseling to no longer be appropriate or necessary and makes express findings in support thereof.

Within ninety days of the effective date of this section as amended and reenacted during the first extraordinary session of the Legislature, 2006, the Secretary of the Department of Health and Human Resources shall propose rules and emergency rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code establishing qualifications for sex offender treatment programs and counselors based on accepted treatment protocols among licensed mental health professionals.

(f) The sentencing court may, based upon defendant's ability to pay, impose a supervision fee to offset the cost of supervision. Said fee shall not exceed \$50 per month. Said fee may be modified periodically based upon the defendant's ability to pay.

(g) *Modification of conditions or revocation.* -- The court may:

(1) Terminate a term of supervised release and discharge the defendant released at any time after the expiration of two years of supervised release, pursuant to the provisions of the West Virginia Rules of Criminal Procedure relating to the modification of probation, if it is satisfied that such action is warranted by the conduct of the defendant released and the interests of justice;

(2) Extend a period of supervised release if less than the maximum authorized period was previously imposed or modify, reduce or enlarge the conditions of supervised release, at any time prior to the expiration or termination of the term of supervised release, consistent with the provisions of the West Virginia Rules of Criminal Procedure relating to the modification of probation and the provisions applicable to the initial setting of the terms and conditions of post-release supervision;

(3) Revoke a term of supervised release and require the defendant to serve in prison all or part of the term of supervised release without credit for time previously served on supervised release if the court, pursuant to the West Virginia Rules of Criminal Procedure applicable to revocation of probation, finds by clear and convincing evidence that the defendant violated a condition of supervised release, except that a defendant whose term is revoked under this subdivision may not be required to serve more than the period of supervised release;

(4) Order the defendant to remain at his or her place of residence during nonworking hours and, if the court so directs, to have compliance monitored by telephone or electronic signaling devices, except that an order under this paragraph may be imposed only as an alternative to incarceration.

(h) *Written statement of conditions.* -- The court shall direct that the probation officer provide the defendant with a written statement at the defendant's sentencing hearing that sets forth all the conditions to

which the term of supervised release is subject and that it is sufficiently clear and specific to serve as a guide for the defendant's conduct and for such supervision as is required.

(i) *Supervised release following revocation.* -- When a term of supervised release is revoked and the defendant is required to serve a term of imprisonment that is less than the maximum term of supervised release authorized under subsection (a) of this section, the court may include a requirement that the defendant be placed on a term of supervised release after imprisonment. The length of such term of supervised release shall not exceed the term of supervised release authorized by this section less any term of imprisonment that was imposed upon revocation of supervised release.

(j) *Delayed revocation.* -- The power of the court to revoke a term of supervised release for violation of a condition of supervised release and to order the defendant to serve a term of imprisonment and, subject to the limitations in subsection (i) of this section, a further term of supervised release extends beyond the expiration of the term of supervised release for any period necessary for the adjudication of matters arising before its expiration if, before its expiration, a warrant or summons has been issued on the basis of an allegation of such a violation.

Bill Sponsors: Delegates Howell, Shott, Hamrick, Romine, Sobonya, Espinosa, Miller, Weld, Statler, Kurcaba and Canterbury

House Bill 2139 Relating to employment of retired teachers as substitutes in areas of critical need and shortage for substitutes

Effective Date: March 12, 2015

Code Reference: Amends §18A-2-3

WVBE Contact: Mary Catherine Funk, Board Attorney
mcfunk@k12.wv.us; 304.558.3660

Major Provisions

- The bill extends a county's ability to employ retired teachers in areas of critical need and shortage past the 140 day limit without adversely affecting the retired teacher's benefits when certain conditions are met.
- Counties that want to utilize retirees in an expanded manner cannot do so until a policy setting forth certain minimum requirements has been approved by the WVBE. Such policies are only good for one year, and must be renewed annually at both the local level and by the WVBE.
- The bill does not authorize the WVBE to approve a policy unless it satisfies the following conditions:
 - Sets forth the areas of critical need and need and shortage for substitute teachers in the county. "Area of critical need and shortage for substitute teachers" means an area of certification and training in which the number of available substitute teachers in the county who hold certification and training in that area and who are not retired is insufficient to meet the projected need for substitute teachers. A county must list the areas individually and cannot designate the areas as "all." Also, guidance counselors cannot be designated as areas of critical need and shortage.
 - Provides that a retired teacher may be employed as a substitute teacher in an area of critical need and shortage on an expanded basis only when no other teacher who holds certification and training in the area and who is not retired is available and accepts the substitute assignment.
 - Explains that prior to employment of a retired teacher as a critical needs substitute teacher, the county superintendent must submit an affidavit to the WVBE, on a form approved by the Consolidated Public Retirement Board and the West Virginia Board of Education. The county superintendent must sign the affidavit, verifying all of the following:
 - The county has adopted a policy to employ retired teachers as substitutes to address areas of critical need and shortage
 - The name or names of the person or persons to be employed as a critical needs substitute pursuant to the policy
 - The critical need and shortage area position filled by each person
 - The date that the person gave notice to the county board of the person's intent to retire
 - The effective date of the person's retirement.
 - Includes a provision explaining that the WVBE must verify the county's compliance with the requirements of this code section and verify the eligibility of the critical needs

substitute teacher, and that the county will submit a copy the affidavit to the Consolidated Public Retirement Board.

- Provides that any person who retires and begins work as a critical needs substitute teacher within the same employment term shall lose those retirement benefits attributed to the annuity reserve, effective from the first day of employment as a retiree substitute in that employment term and ending with the month following the date the retiree ceases to perform service as a substitute.
 - Explains that a teacher is eligible to be employed as a critical needs substitute to fill a vacant position only if the retired teacher's retirement became effective at least 20 days before the beginning of the employment term during which he or she is employed as a substitute.
 - Provides that the retired teachers hired under this subsection are considered day-to-day, temporary, part-time employees. The substitutes are not eligible for additional pension or other benefits paid to regularly employed employees and may not accrue seniority.
 - States that when a retired teacher is employed as a critical needs substitute the county board shall continue to post the vacant position until it is filled with a regularly employed teacher who is fully certified or permitted for the position.
 - Provides that when a retired teacher is employed as a critical needs substitute to fill a vacant position, the position vacancy shall be posted electronically and easily accessible to prospective employees.
 - Specifies the effective date of the policy.
 - Specifies that the policy must be renewed at the local level annually and must be annually approved by the WVBE.
- Unless the statute is modified, the ability for counties to use retired teachers as substitutes in accord with the conditions set forth in the bill will end June 30, 2017.

The bill requires WVBE to annually report to the Joint Committee on Government and Finance and LOCEA prior to February 1 of each year.

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

(a) The county superintendent, subject to approval of the county board, may employ and assign substitute teachers to any of the following duties:

(1) ~~☐~~ Fill the temporary absence of any teacher or an unexpired school term made vacant by resignation, death, suspension or dismissal;

(2) ~~☐~~ Fill a teaching position of a regular teacher on leave of absence; and

(3) ~~☐~~ Perform the instructional services of any teacher who is authorized by law to be absent from class without loss of pay, providing the absence is approved by the board of education in accordance with the law.

The substitute shall be a duly certified teacher.

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

(c) (1) The Legislature hereby finds and declares that due to a shortage of qualified substitute teachers, a compelling state interest exists in expanding the use of retired teachers to provide service as substitute teachers in areas of critical need and shortage. The Legislature further finds that diverse circumstances exist among the counties for the expanded use of retired teachers as substitutes. For the purposes of this subsection, “area of critical need and shortage for substitute teachers” means an area of certification and training in which the number of available substitute teachers in the county who hold certification and training in that area and who are not retired is insufficient to meet the projected need for substitute teachers.

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

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

(B) The policy sets forth the areas of critical need and shortage for substitute teachers in the county in accordance with the definition of area of critical need and shortage for substitute teachers set forth in subdivision (1) of this subsection;

(C) The policy provides for the employment of retired teachers as critical needs substitute teachers during the school year on an expanded basis in areas of critical need and shortage for substitute teachers as provided in this subsection;

(D) The policy provides that a retired teacher may be employed as a substitute teacher in an area of critical need and shortage for substitute teachers on an expanded basis as provided in this subsection

only when no other teacher who holds certification and training in the area and who is not retired is available and accepts the substitute assignment;

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

(F) The state board approves the policy and the use of retired teachers as substitute teachers on an expanded basis in areas of critical need and shortage for substitute teachers as provided in this subsection; and

(G) Prior to employment of a retired teacher as a critical needs substitute teacher beyond the post-retirement employment limitations established by the Consolidated Public Retirement Board, the superintendent of the affected county submits to the state board in a form approved by the Consolidated Public Retirement Board and the state board, in a form approved by the retirement board, an affidavit signed by the superintendent stating the name of the county, the fact that the county has adopted a policy to employ retired teachers as substitutes to address areas of critical need and shortage, the name or names of the person or persons to be employed as a critical needs substitute pursuant to the policy, the critical need and shortage area position filled by each person, the date that the person gave notice to the county board of the person's intent to retire, and the effective date of the person's retirement. Upon verification of compliance with this section and the eligibility of the critical needs substitute teacher for employment beyond the post-retirement limit, the state board shall submit the affidavit to the Consolidated Public Retirement Board.

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

(4) Retired teachers employed to perform expanded substitute service pursuant to this subsection are considered day-to-day, temporary, part-time employees. The substitutes are not eligible for additional pension or other benefits paid to regularly employed employees and ~~shall~~ may not accrue seniority.

(5) ~~When~~ A retired teacher is eligible to be employed as a critical needs substitute to fill a vacant position, ~~the county shall continue to post the vacant position until it is filled with a regularly employed teacher. only if the retired teacher's retirement became effective at least twenty days before the beginning of the employment term during which he or she is employed as a substitute;~~

(6) When a retired teacher is employed as a critical needs substitute to fill a vacant position, the county board shall continue to post the vacant position until it is filled with a regularly employed teacher who is fully certified or permitted for the position.

(7) When a retired teacher is employed as a critical needs substitute to fill a vacant position, the position vacancy shall be posted electronically and easily accessible to prospective employees as determined by the state board;

~~(6)~~ (8) Until this subsection is expired pursuant to subdivision ~~(7)~~ (9) of this subsection, the state board, annually, shall report to the Joint Committee on Government and Finance prior to February 1 of each year. Additionally, a copy shall be provided to the Legislative Oversight Commission on Education Accountability. The report shall contain information indicating the effectiveness of the provisions of this subsection on ~~expanding the use of retired substitute teachers to address areas of~~ reducing the critical need and shortage of substitute teachers including, but not limited to, the number of retired teachers, by critical need and shortage area position filled and by county, employed beyond the post-retirement employment limit established by the Consolidated Public Retirement Board, the date that each person gave notice to the county board of the person's intent to retire, and the effective date of the person's retirement.

~~(7)~~ (9) The provisions of this subsection shall expire on June 30, ~~2014~~ 2017.

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

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

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

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

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

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

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

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

(e) The state board annually shall review the status of employing personnel under the provisions of subsection (d) of this section and annually shall report to the Legislative Oversight Commission on Education Accountability on or before November 1 of each year. The report shall include, but not be limited to, the following:

(A) The counties that participated in the program;

(B) The number of personnel hired;

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

(D) The venue from which personnel were employed;

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

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

Bill Sponsors: Delegates Perry, Pasdon, L. Phillips, Hamrick, Rowan, Ambler, Cooper, Espinosa, Pethtel, Romine and Longstreth

House Bill 2140 **Building governance and leadership capacity of county board during period of state intervention**

Effective Date: June 11, 2015

Code Reference: Amends §18-2E-5

WVBE Contact: Mary Catherine Funk, Board Attorney
mcfunk@k12.wv.us; 304.558.3660

Major Provisions

- The bill allows the use of other resources as appropriate to assist underachieving schools and school systems to improve performance before conditions become so grave as to warrant more substantive intervention.
- The bill changes the OEPA director salary from “to not exceed 80 percent of the salary cap” to “80 percent of the salary”. In effect, this means if the superintendent isn’t being paid at the highest level allowed, OEPA must be 80% of what superintendent earns.
- The bill allows positions of personnel who serve at will and pleasure of county superintendents to also be declared vacant during takeover. Historically, only the superintendent position was eligible for this declaration.
- A new subsection has been added to this section of code, with the stated purpose being to help build the governance and leadership capacity of a county board during takeover, and to assure the sustained success following return of control to the county. In order to accomplish these goals, the bill allows/directs the following:
 - Requires county board to establish goals and action plans (subject to state board approval) to improve performance sufficiently to end intervention within period not more than five years
 - State superintendent must maintain oversight/provide assistance/feedback to county board on development/implementation
 - Outlines goal and action plan, provides suggested support mechanisms (RESAs, CPD, WVSBA, OEPA, WVEIS), and makes attendance at improvement events mandatory
 - County board must participate in improvement process to interpret data, write goals, correct deficiencies
 - OEPA must assess readiness of the county board to accept return of control/report to state at least once a year
 - State board has sole determination of ending intervention or returning control to school system. However, if on 5th annual assessment the county board is not ready to accept return of control, the state board shall hold public hearing in the affected county. All members of the county board must attend the meeting so that citizen concerns can be heard. If deemed necessary, the state board can continue intervention after public hearing

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

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

(1) The process for improving education includes four primary elements, these being:

(A) Standards which set forth the knowledge and skills that students should know and be able to perform as the result of a thorough and efficient education that prepares them for the twenty-first century, including measurable criteria to evaluate student performance and progress;

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

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

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

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

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

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

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

(b) *Electronic county and school strategic improvement plans.* -- The state board shall promulgate a rule consistent with the provisions of this section and in accordance with article three-b, chapter twenty-nine-a of this code establishing an electronic county strategic improvement plan for each county board and

an electronic school strategic improvement plan for each public school in this state. Each respective plan shall be a five-year plan that includes for a period of no more than five years and shall include the mission and goals of the school or school system to improve student, school or school system performance and progress, as applicable. The strategic plan shall be revised annually in each area in which the school or system is below the standard on the annual performance measures. The plan shall be revised when required pursuant to this section to include each annual performance measure upon which the school or school system fails to meet the standard for performance and progress, the action to be taken to meet each measure, a separate time line and a date certain for meeting each measure, a cost estimate and, when applicable, the assistance to be provided by the department and other education agencies to improve student, school or school system performance and progress to meet the annual performance measure.

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

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

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

(d) *Comprehensive statewide student assessment program.* -- The state board shall establish a comprehensive statewide student assessment program to assess student performance and progress in grades three through twelve. The assessment program is subject to the following:

(1) The state board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code establishing the comprehensive statewide student assessment program;

(2) Prior to the 2014-2015 school year, the state board shall align the comprehensive statewide student assessment for all grade levels in which the test is given with the college-readiness standards adopted pursuant to section thirty-nine, article two of this chapter or develop other aligned tests to be required at each grade level so that progress toward college readiness in English/language arts and math can be measured;

(3) The state board may require that student proficiencies be measured through the ACT EXPLORE and the ACT PLAN assessments or other comparable assessments, which are approved by the state board and provided by future vendors;

(4) The state board may require that student proficiencies be measured through the West Virginia writing assessment at any grade levels determined by the state board to be appropriate; and

(5) The state board may provide through the statewide assessment program other optional testing or assessment instruments applicable to grade levels kindergarten through grade twelve which may be used by each school to promote student achievement. The state board annually shall publish and make available, electronically or otherwise, to school curriculum teams and teacher collaborative processes the optional testing and assessment instruments.

(e) *State annual performance measures for school and school system accreditation.* --

The state board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code that establishes a system to assess and weigh annual performance measures for state accreditation of schools and school systems. The state board also may establish performance incentives for schools and school systems as part of the state accreditation system. On or before December 1, 2013, the state board shall report to the Governor and to the Legislative Oversight Commission on Education Accountability the proposed rule for establishing the measures and incentives of accreditation and the estimated cost therefore, if any. Thereafter, the state board shall provide an annual report to the Governor and to the Legislative Oversight Commission on Education Accountability on the impact and effectiveness of the accreditation system. The rule for school and school system accreditation proposed by the board may include, but is not limited to, the following measures:

(1) Student proficiency in English and language arts, math, science and other subjects determined by the board;

(2) Graduation and attendance rate;

(3) Students taking and passing AP tests;

(4) Students completing a career and technical education class;

(5) Closing achievement gaps within subgroups of a school's student population; and

(6) Students scoring at or above average attainment on SAT or ACT tests.

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

- (1) Curriculum delivery including, but not limited to, the use of distance learning;
- (2) Transportation;
- (3) Facilities;
- (4) Administrative practices;
- (5) Personnel;

(6) Use of regional educational service agency programs and services, including programs and services that may be established by their assigned regional educational service agency or other regional services that may be initiated between and among participating county boards; and

- (7) Any other indicators as determined by the state board.

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

(1) The assessment of student, school and school system performance and progress based on the annual measures established pursuant to subsection (e) of this section;

(2) The evaluation of records, reports and other information collected by the Office of Education Performance Audits upon which the quality of education and compliance with statutes, policies and standards may be determined;

- (3) The review of school and school system electronic strategic improvement plans; and

(4) The on-site review of the processes in place in schools and school systems to enable school and school system performance and progress and compliance with the standards.

(h) *Uses of school and school system assessment information.* -- The state board shall use information from the system of education performance audits to assist it in ensuring that a thorough and efficient system of schools is being provided and to improve student, school and school system performance and progress. Information from the system of education performance audits further shall be used by the state board for these purposes, including, but not limited to, the following:

- (1) Determining school accreditation and school system approval status;

(2) Holding schools and school systems accountable for the efficient use of existing resources to meet or exceed the standards; and

- (3) Targeting additional resources when necessary to improve performance and progress.

The state board shall make accreditation information available to the Legislature, the Governor, the general public and to any individual who requests the information, subject to the provisions of any act or rule restricting the release of information.

(i) *Early detection and intervention programs.* -- Based on the assessment of student, school and school system performance and progress, the state board shall establish early detection and intervention

programs using the available resources of the Department of Education, the regional educational service agencies, the Center for Professional Development and the Principals Academy, or other resources as appropriate, to assist underachieving schools and school systems to improve performance before conditions become so grave as to warrant more substantive state intervention. Assistance shall include, but is not limited to, providing additional technical assistance and programmatic, professional staff development, providing monetary, staffing and other resources where appropriate.

(j) *Office of Education Performance Audits.* --

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

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

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

(4) Under the direction of the state board, the Office of Education Performance Audits shall receive from the West Virginia education information system staff research and analysis data on the performance and progress of students, schools and school systems, and shall receive assistance, as determined by the state board, from staff at the State Department of Education, the regional education service agencies, the Center for Professional Development, the Principals Academy and the School Building Authority to carry out the duties assigned to the office.

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

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

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

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

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

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

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

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

(F) Identify, in conjunction with the assessment and accountability processes, school systems and best practices that improve student, school and school system performance and communicate those to the state board for promoting the use of best practices. The state board shall provide information on best practices to county school systems; and

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

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

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

(iii) The appropriate licensure of school personnel; and

(iv) The appropriate provision of multicultural activities.

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

(k) *On-site reviews.* --

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

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

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

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

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

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

(F) Determining and reporting whether required reviews and inspections have been conducted by the appropriate agencies, including, but not limited to, the State Fire Marshal, the Health Department, the School Building Authority and the responsible divisions within the Department of Education, and whether noted deficiencies have been or are in the process of being corrected.

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

(3) The Office of Education Performance Audits shall conduct on-site reviews which are limited in scope to specific areas in which performance and progress are persistently below standard as determined by the state board unless specifically directed by the state board to conduct a review which covers additional areas.

(4) The Office of Education Performance Audits shall reimburse a county board for the costs of substitutes required to replace county board employees who serve on a review team.

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

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

(7) The Legislature finds that the accountability and oversight of some activities and programmatic areas in the public schools are controlled through other mechanisms and agencies and that additional accountability and oversight may be unnecessary, counterproductive and impair necessary resources for teaching and learning. Therefore, the Office of Education Performance Audits may rely on other agencies and mechanisms in its review of schools and school systems.

(l) *School accreditation.* --

(1) The state board shall establish levels of accreditation to be assigned to schools. The establishment of levels of accreditation and the levels shall be subject to the following:

(A) The levels will be designed to demonstrate school performance in all the areas outlined in this section and also those established by the state board;

(B) The state board shall promulgate legislative rules in accordance with the provisions of article three-b, chapter twenty-nine-a of this code to establish the performance and standards required for a school to be assigned a particular level of accreditation; and

(C) The state board will establish the levels of accreditation in such a manner as to minimize the number of systems of school recognition, both state and federal, that are employed to recognize and accredit schools.

(2) The state board annually shall review the information from the system of education performance audits submitted for each school and shall issue to every school a level of accreditation as designated and determined by the state board.

(3) The state board, in its exercise of general supervision of the schools and school systems of West Virginia, may exercise any or all of the following powers and actions:

(A) To require a school to revise its electronic strategic plan;

(B) To define extraordinary circumstances under which the state board may intervene directly or indirectly in the operation of a school;

(C) To appoint monitors to work with the principal and staff of a school where extraordinary circumstances are found to exist, and to appoint monitors to assist the school principal after intervention in the operation of a school is completed;

(D) To direct a county board to target resources to assist a school where extraordinary circumstances are found to exist;

(E) To intervene directly in the operation of a school and declare the position of principal vacant and assign a principal for the school who will serve at the will and pleasure of the state board. If the principal who was removed elects not to remain an employee of the county board, then the principal assigned by the state board shall be paid by the county board. If the principal who was removed elects to remain an employee of the county board, then the following procedure applies:

(i) The principal assigned by the state board shall be paid by the state board until the next school term, at which time the principal assigned by the state board shall be paid by the county board;

(ii) The principal who was removed is eligible for all positions in the county, including teaching positions, for which the principal is certified, by either being placed on the transfer list in accordance with section seven, article two, chapter eighteen-a of this code, or by being placed on the preferred recall list in accordance with section seven-a, article four, chapter eighteen-a of this code; and

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

(F) ~~Such~~ Other powers and actions the state board determines necessary to fulfill its duties of general supervision of the schools and school systems of West Virginia.

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

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

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

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

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

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

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

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

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

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

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

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

(iii) Declaring that the positions of personnel who serve at the will and pleasure of the county superintendent as provided in section one, article two, chapter eighteen-a of this code, are vacant, subject to application and reemployment;

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

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

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

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

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

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

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

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

(o) *Capacity.* -- The process for improving education includes a process for targeting resources strategically to improve the teaching and learning process. Development of electronic school and school system strategic improvement plans, pursuant to subsection (b) of this section, is intended, in part, to provide mechanisms to target resources strategically to the teaching and learning process to improve student, school and school system performance. When deficiencies are detected through the assessment and accountability processes, the revision and approval of school and school system electronic strategic improvement plans shall ensure that schools and school systems are efficiently using existing resources to correct the deficiencies. When the state board determines that schools and school systems do not have the capacity to correct deficiencies, the state board shall ~~work with the county board to develop or secure the resources necessary to increase the capacity of schools and school systems to meet the standards and, when necessary, seek additional resources in consultation with the Legislature and the Governor.~~ take one or more of the following actions:

~~(1) the state board shall~~ (1) Work with the county board to develop or secure the resources necessary to increase the capacity of schools and school systems to meet the standards and, when necessary, seek additional resources in consultation with the Legislature and the Governor;

~~(2)~~ The state board shall Recommend to the appropriate body including, but not limited to, the Legislature, county boards, schools and communities methods for targeting resources strategically to eliminate deficiencies identified in the assessment and accountability processes. When making determinations on recommendations, the state board shall include, but is not limited to, the following methods:

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

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

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

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

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

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

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

~~(8)~~ (H) Directing county boards to target their funds strategically toward alleviating deficiencies;

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

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

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

(p) Building leadership capacity – To help build the governance and leadership capacity of a county board during an intervention in the operation of its school system by the state board, and to help assure sustained success following return of control to the county board, the state board shall require the county board to establish goals and action plans, subject to approval of the state board, to improve performance sufficiently to end the intervention within a period of not more than five years. The state superintendent shall maintain oversight and provide assistance and feedback to the county board on development and implementation of the goals and action plans. At a minimum, the goals and action plans shall include:

(A) An analysis of the training and development activities needed by the county board and leadership of the school system and schools for effective governance and school improvement;

(B) Support for the training and development activities identified which may include those made available through the state superintendent, regional education service agencies, Center for Professional Development, West Virginia School Board Association, Office of Education Performance Audits, West Virginia Education Information System and other sources identified in the goals and action plans. Attendance at these activities included in the goals and action plans is mandatory as specified in the goals and action plans; and

(C) Active involvement by the county board in the improvement process, working in tandem with the county superintendent to gather, analyze and interpret data, write time-specific goals to correct deficiencies, prepare and implement action plans and allocate or request from the state board of education the resources, including board development training and coaching, necessary to achieve approved goals and action plans and sustain system and school improvement.

At least once each year during the period of intervention, the Office of Education Performance Audits shall assess the readiness of the county board to accept the return of control of the system or school from the state board and sustain the improvements, and shall make a report and recommendations to the state board supported by documented evidence of the progress made on the goals and action plans. The state board may end the intervention or return any portion of control of the operations of the school system or school that was previously removed at its sole determination. If the state board determines at the fifth annual assessment that the county board is still not ready to accept return of control by the state board and sustain the improvements, the state board shall hold a public hearing in the affected county at which the attendance by all members of the county board is requested so that the reasons for continued intervention and the concerns of the citizens of the county may be heard. The state board may continue the intervention only after it holds the public hearing and may require revision of the goals and action plans.

Following the termination of an intervention in the operation of a school system and return of full control by the state board, the support for governance education and development shall continue as needed for up to three years. If at any time within this three years, the state board determines that intervention in the operation of the school system is again necessary, the state board shall again hold a public hearing in the affected county so that the reasons for the intervention and the concerns of the citizens of the county may be heard.

Bill Sponsors: Delegates Perry, Pasdon, Hamrick, Rowan, Ambler, Cooper, Romine, Moye, Hartman and Williams

House Bill 2370 **Increasing the powers of regional councils for governance of regional education service agencies**

Effective Date: June 10, 2015

Code Reference: Amends §18-2-26

WVBE Contact: Mary Catherine Funk, Board Attorney
mcfunk@k12.wv.us; 304.558.3660

Major Provisions

- The bill removes archaic basic skills and SUCCESS programs and replaces with technology learning tools for public school program.
- Regional council are added as an entity allowed to develop or implement programs or services.
- The bill changes executive director selection process to include nomination of one or more candidates by regional council of agency; if WVBE refuses to select nominated candidates, regional council must submit additional nominations. The WVBE is to set the qualifications for the position.
- The bill adds the requirement for the WVBE to establish a process for making nominations for position of executive director and for annually evaluating all executive director positions.
- The bill mandates that WVBE consult with regional councils to develop a job description, qualifications, and procedures for employment of executive directors. Regional councils are to provide for one-half of an executive directors annual performance rating.
- The bill states that regional councils are to inform their respective executive director to carry out duties that achieve the RESA's purpose and provide educational services to county school systems within region.
- The bill adds a provision that nothing in this section of code prohibits RESAs from cooperating, sharing or combining services or programs with each other, at their discretion, to further the RESA's purpose.
- The bill removes other outdated language from this section of code.
- The bill requires WVBE to establish policy consistent with modifications to code made by the bill no later than November 1, 2015.

§18-2-26. Establishment of multicounty regional educational service agencies; purpose; authority of state board; governance; annual performance standards.

(a) *Legislative intent.* -- The intent of the Legislature in providing for establishment of regional education service agencies, hereinafter referred to in this section as agency or agencies, is to provide for high quality, cost effective education programs and services to students, schools and school systems.

Since the first enactment of this section in 1972, the focus of public education has shifted from a reliance on input models to determine if education programs and services are providing to students a thorough and efficient education to a performance based accountability model which relies on the following:

(1) Development and implementation of standards which set forth the things that students should know and be able to do as the result of a thorough and efficient education including measurable criteria to evaluate student performance and progress;

(2) Development and implementation of assessments to measure student performance and progress toward meeting the standards;

(3) Development and implementation of a system for holding schools and school systems accountable for student performance and progress toward obtaining a high quality education which is delivered in an efficient manner; and

(4) Development and implementation of a method for building the capacity and improving the efficiency of schools and school systems to improve student performance and progress.

(b) *Purpose.* -- In establishing the agencies the Legislature envisions certain areas of service in which the agencies can best assist the state board in implementing the standards based accountability model pursuant to subsection (a) of this section and, thereby, in providing high quality education programs. These areas of service include the following:

(1) Providing technical assistance to low performing schools and school systems;

(2) Providing high quality, targeted staff development designed to enhance the performance and progress of students in state public education;

(3) Facilitating coordination and cooperation among the county boards within their respective regions in such areas as cooperative purchasing; sharing of specialized personnel, communications and technology; curriculum development; and operation of specialized programs for exceptional children;

(4) Installing, maintaining and/or repairing education related technology equipment and software with special attention to the state level ~~basic skills and SUCCESS programs~~ technology learning tools for public schools program;

(5) Receiving and administering grants under the provisions of federal and/or state law; and

(6) Developing and/or implementing any other programs or services as directed by law, ~~or by~~ the state board or the regional council.

(c) *State board rule.* -- The state board shall reexamine the powers and duties of the agencies in light of the changes in state level education policy that have occurred and shall establish multicounty regional education service agencies by rule, promulgated in accordance with the provisions of article three-b, chapter twenty-nine-a of this code.

The rule shall contain all information necessary for the effective administration and operation of the agencies. In developing the rule, the state board may not delegate its Constitutional authority for the

general supervision of schools to the agencies, however, it may allow the agencies greater latitude in the development and implementation of programs in the service areas outlined in subsection (b) of this section with the exceptions of providing technical assistance to low performing schools and school systems and providing high quality, targeted staff development designed to enhance the performance and progress of students in state public education. These two areas constitute the most important responsibilities for the agencies.

The rule establishing the agencies shall be promulgated before November 1, ~~2002~~ 2015, and shall be consistent with the provisions of this section. It shall include, but is not limited to, the following procedures:

(1) Providing for a uniform governance structure for the agencies containing at least these elements:

(A) Selection by the state board of an executive director who shall be responsible for the administration of his or her respective agency. The rule shall provide for the state board to ~~consult with the appropriate regional council during the selection process~~ select the executive director only upon the nomination of one or more candidates by the regional council of the agency. In case the board refuses to select any of the candidates nominated, the regional council shall nominate others and submit them to the board. All candidates nominated must meet the qualifications for the position established by the state board. Nothing shall prohibit the timely employment of persons to perform necessary duties;

(B) Development of a job description and qualifications for the position of executive director, together with procedures for informing the public of position openings ~~and~~ for taking and evaluating applications, for making nominations for these positions, and for annually evaluating the performance of persons employed as executive director. The state board shall consult with the regional councils on the development of the job description, qualifications and procedures;

(C) Provisions for the annual performance evaluation of the executive director that provide for one half of the evaluation rating to be determined by the regional council.

~~(C)~~ (D) Provisions for the agencies to employ other staff, as necessary, with the approval of the state board and upon the recommendation of the executive director: *Provided*, That prior to July 1, 2003, no person who is an employee of an agency on the effective date of this section may be terminated or have his or her salary and benefit levels reduced as the sole result of the changes made to this section or by state board rule;

~~(D)~~ (E) Appointment by the county boards of a regional council in each agency area consisting of representatives of county boards and county superintendents from within that area for the purpose of advising, ~~and~~ assisting and informing the executive director in carrying out his or her duties to achieve the purposes of this section and provide educational services to the county school systems within the region. The state board may provide for membership on the regional council for representatives from other agencies and institutions who have interest or expertise in the development or implementation of regional education programs; and

~~(E)~~ (F) Selection by the state superintendent of a representative from the state Department of Education to serve on each regional council. These representatives shall meet with their respective regional councils at least quarterly;

(2) Establishing statewide standards by the state board for service delivery by the agencies. These standards may be revised annually and shall include, but are not limited to, programs and services to fulfill the purposes set forth in subsection (b) of this section;

(3) Establishing procedures for developing and adopting an annual basic operating budget for each agency and for other budgeting and accounting procedures as the state board may require;

(4) Establishing procedures to clarifying that agencies may acquire and hold real property;

(5) Dividing the state into appropriate, contiguous geographical areas and designating an agency to serve each area. The rule shall provide that each of the state's counties is contained within a single service area and that all counties located within the boundaries of each agency, as determined by the state board, shall be members of that agency; and

(6) Such other standards or procedures as the state board finds necessary or convenient.

(d) *Regional services.* -- In furtherance of the purposes provided for in this section, the state board and the regional council of each agency shall continually explore possibilities for the delivery of services on a regional basis which will facilitate equality in the education offerings among counties in its service area, permit the delivery of high quality education programs at a lower per student cost, strengthen the cost effectiveness of education funding resources, reduce administrative and/or operational costs, including the consolidation of administrative, coordinating and other county level functions into region level functions, and promote the efficient administration and operation of the public school systems generally.

Technical, operational, programmatic or professional services are among the types of services appropriate for delivery on a regional basis. Nothing in this section prohibits regional education service agencies from cooperating, sharing or combining services or programs with each other, at their discretion, to further the purposes of this section.

(e) *Virtual education.* -- The state board, in conjunction with the various agencies, shall develop an effective model for the regional delivery of instruction in subjects where there exists low student enrollment or a shortage of certified teachers or where the delivery method substantially improves the quality of an instructional program. The model shall incorporate an interactive electronic classroom approach to instruction. To the extent funds are appropriated or otherwise available, county boards or regional education service agencies may adopt and utilize the model for the delivery of the instruction.

(f) *Computer information system.* -- Each county board of education shall use the ~~uniform integrated regional computer~~ statewide electronic information system ~~recommended~~ established by the state board for data collection and reporting to the state Department of Education. ~~County boards of education shall bear the cost of and fully participate in the implementation of the system by using one of the following methods:~~

~~(1) Acquiring necessary, compatible equipment to participate in the regional computer information system, or~~

~~(2) Following receipt of a waiver for the state superintendent, operating a comparable management information system at a lower cost which provides at least all uniform integrated regional computer information system software modules and allows on-line, interactive access for schools and the county board office onto the statewide communications network. All data formats shall be the same as for the uniform integrated regional information system and will reside at the regional computer.~~

~~Any county granted a waiver shall receive periodic notification of any incompatibility or deficiency in its system. No county shall expand any system either through the purchase of additional software or hardware that does not advance the goals and implementation of the uniform integrated regional computer information system as recommended by the state board.~~

(g) *Reports and evaluations.* -- Each agency shall submit to the state superintendent on such date and in such form as specified in the rules adopted by the state board a report and evaluation of the technical assistance and other services provided and utilized by the schools within each respective region and their effectiveness. Additionally, any school may submit an evaluation of the services provided by the agency to the state superintendent at any time. This report shall include an evaluation of the agency program, suggestions on methods to improve utilization and suggestions on the development of new programs and the enhancement of existing programs. The reports and evaluations submitted pursuant to

this subsection shall be submitted to the state board and shall be made available upon request to the standing committees on education of the West Virginia Senate and House of Delegates and to the secretary of education and the arts.

(h) *Funding sources.* -- An agency may receive and disburse funds from the state and federal governments, from member counties, or from gifts and grants.

(i) *Employee expenses.* -- Notwithstanding any other provision of this code to the contrary, employees of agencies shall be reimbursed for travel, meals and lodging at the same rate as state employees under the travel management office of the Department of Administration.

A county board member may not be an employee of an agency.

(j) *Meetings and compensation.* --

(1) Agencies shall hold at least one half of their regular meetings during hours other than those of a regular school day. The executive director of each agency shall attend at least one meeting of each of the member county boards of education each year to explain the agency's services, garner suggestions for program improvement and provide any other information as may be requested by the county board.

(2) Notwithstanding any other provision of this code to the contrary, county board members serving on regional councils may receive compensation at a rate not to exceed \$100 per meeting attended, not to exceed fifteen meetings per year. County board members serving on regional councils may be reimbursed for travel at the same rate as state employees under the rules of the travel management office of the Department of Administration.

~~(k) *Computer installation, maintenance and repair.* -- Agencies shall serve as the lead agency for computer installation, maintenance and repair for the basic skills and SUCCESS computer programs. Each agency shall submit a quarterly status report on turn-around time for computer installation, maintenance and repair to the state superintendent of schools who shall then submit a report to the legislative oversight commission on education accountability. The status report for turn-around time for computer installation, maintenance and repair shall be based on the following suggested time schedules:~~

Network File Servers.....	forty-eight hours
Local Area Networks.....	forty-eight hours
West Virginia Education Information System.....	twenty-four hours
Computer Workstations.....	three to five days
Printers.....	three to five days
Other Peripherals.....	three to five days

~~Agencies also shall submit an audit report to the legislative oversight commission on education accountability each year.~~

~~(l) *Professional development.* -- Pursuant to the processes and provisions of section twenty-three-a, article two, chapter eighteen of this code, each agency shall provide coordinated professional development programs within its region to meet the professional development goals established by the state board.~~

Bill Sponsors: Delegates Pasdon, Duke, Rowan, Wagner, upson, Ambler and Espinosa

House Bill 2377 Authorizing State Board of Education to approve certain alternatives with respect to instructional time

Effective Date: June 10, 2015

Code Reference: Amends §18-2-5

WVDE Contact: Sarah Stewart, Office of the Superintendent
sarah.a.stewart@k12.wv.us; 304.558.3762

Major Provisions

- The bill aligns to West Virginia Board of Education's criteria for reimaging instructional time initiative.
- The bill recognizes that, to adequately perform its constitutional duties, the WVBE must have reasonable discretion to balance the local autonomy and flexibility needed by schools to deliver a thorough and efficient education with the letter of the laws enacted for school operations. To achieve this, the bill authorizes WVBE to approve certain alternatives to laws enacted for school operations if such alternatives meet the spirit and intent of applicable statutes and are intended solely to optimize student learning.
- The WVBE may approve, on a case-by-case basis, comprehensive plans for optimizing student learning that are submitted by county BOEs that:
 1. Achieve the spirit and intent of laws for an instructional term that provide the instructional time necessary for students to meet or exceed the high quality standards for student performance adopted by WVBE;
 2. Ensure sufficient time within the instructional term to promote the improvement of instruction and instructional practices;
 3. Incorporate an approved school calendar;
 4. Allows for school level determination of alternative affecting time within the school day that preserve the spirit and intent of providing teachers with sufficient planning time and sufficient teacher collaboration time; and
 5. Has the sole purpose of improving student learning and that improvement is evident within a reasonable time.
- In considering whether to approve a county's comprehensive plan, WVBE is to consider the following items:
 1. Maximizing learning time is a critical factor needed to improve student learning and requires multiple strategies and polices that support great teaching and learning;
 2. Learning time is that portion of instructional time in the school day during which a student is paying attention and receiving instruction that is appropriately leveled, and learning is taking place – learning time is not equal to desk time;
 3. A student's time engaged in learning is maximized when the student is allowed to progress and acquire competency at a pace which challenges the student's interest and intellect while receiving guidance and assistance when need;
 4. Providing teachers with the resources and support needed to engage students in meaningful, appropriately leveled learning for as much time as is possible during the school day may be as important as facilities, equipment and staff development for maximizing learning time and improving student learning;
 5. Successful schools are distinguishable from unsuccessful schools by the frequency and extent to which teachers discuss professional practices, collectively design materials and inform and critique one another;

6. Even successful schools must be self-renewing systems and learning organizations marked by deliberate effort to identify helpful knowledge and spread its use within the organization;
 7. Unless teachers are collectively involved in planning and implementing school improvement, it is unlikely to be sustained; and
 8. Given sufficient control over their own programs and supportive district leadership and policies, schools themselves may best be suited to determine the variety of methods through which time during the school day is allocated for teachers to plan individually and collectively to maximize learning time. Examples of methods used by successful schools include, but are not limited to, scheduling, using special subject teachers and guest presenters, dedicating time set aside for staff development, implementing alternative staff utilization patterns, providing opportunities for administrators to teach, and utilizing accrued instructional time.
- The bill gives WVBE the authority to approve alternatives to instructional time requirements in certain situations, as outlined above. The bill does not require WVBE to approve any instructional time alternative, and specifically mandates that approval must be given on a case by case basis.

§18-2-5. Powers and duties generally; public school entrance age; “public schools” not to include kindergartens specific powers and duties for alternatives that improve student learning.

(a) Subject to and in conformity with the Constitution and laws of this state, the State Board of Education shall exercise general supervision of the public schools of the state, and shall ~~make~~ promulgate rules in accordance with the provisions of article three-b, chapter twenty-nine-a of this code for carrying into effect the laws and policies of the state relating to education, ~~including rules relating to~~. The rules shall relate to the following:

- (1) Standards for performance and measures of accountability;
- (2) ~~the~~ Physical welfare of ~~pupils~~ students;
- (3) ~~the~~ Education of all children of school age;
- (4) School attendance;
- (5) Evening and continuation or part-time day schools;
- (6) School extension work;
- (7) ~~the~~ Classification of schools;
- (8) ~~the~~ Issuing of certificates based upon credentials;
- (9) ~~the~~ Distribution and care of ~~free textbooks~~ instructional resources by the county boards of education;
- (10) ~~the~~ General powers and duties of county boards of education, ~~and of teachers, principals, supervisors and superintendents;~~ and
- (11) Such other matters pertaining to the public schools of the state as ~~may seem to~~ the state board ~~to be~~ considers necessary and expedient.

~~Notwithstanding any other provision of law which may be to the contrary, and notwithstanding the rule-making powers given to the state board of education by this section, a child shall not be permitted to enter the public schools of this state in any school year, beginning with the school year one thousand nine hundred eighty-three--eighty-four, unless such child be six years of age prior to the first day of September of such school year or is attending public school in accordance with article twenty of this chapter: **Provided,** That children who have successfully completed a kindergarten program in the school year one thousand nine hundred eighty-two--eighty-three, may enter the public schools notwithstanding the provisions of this section. The term "public schools" as used in the preceding sentence shall not be deemed to include public kindergartens, but nothing herein shall prevent a county board from permitting a child enrolled in kindergarten from entering public schools for attendance in particular curriculum areas.~~

~~The state board shall develop a three-year plan to provide for the transition to developmental programming and instruction to be provided to the students in kindergarten through fourth grade and further shall, include the method of information dissemination in order to provide for parental preparation, and further shall, in conjunction with the professional development center, develop an ongoing program for training of principals and classroom teachers in methods of instruction to implement the developmental program. The existing developmental programs throughout the state shall be involved in this process and shall be provided an opportunity to assist in pilot programs to begin no later than the first day of September, one thousand nine hundred ninety-one. The plan shall be fully implemented by the first day of September, one thousand nine hundred ninety-three.~~

(b) The state board, in exercising its constitutional responsibility for the general supervision of public schools, must do so as provided by general law. Included within the general law is the process for improving education which has been recognized by the court as the method chosen by the Legislature to measure whether a thorough and efficient education is being provided. The court further recognized that the resulting student learning is the ultimate measure of a thorough education and that it must be achieved in an efficient manner. To achieve this result, the state board must have reasonable discretion to balance the local autonomy and flexibility needed by schools to deliver a thorough and efficient education with the letter of the laws as enacted for school operations.

(c) The purpose of this subsection is to authorize the state board to approve alternatives to the letter of the laws enacted for school operations in the areas enumerated in this subsection. The state board may approve such alternatives as proposed by a county board or school if, in the sole judgment of the state board, the alternatives meet the spirit and intent of the applicable statutes and are intended solely to optimize student learning.

(1) The Legislature finds that alternatives are warranted and may be approved by the state board on a case-by-case basis when a county board submits to the state board a comprehensive plan for optimizing student learning that:

(A) Achieves the spirit and intent of the laws for an instructional term that provide the instructional time necessary for students to meet or exceed the high quality standards for student performance adopted by the state board;

(B) Ensures sufficient time within the instructional term to promote the improvement of instruction and instructional practices;

(C) Incorporates a school calendar approved in accordance with the approval process required by section forty-five, article five of this chapter;

(D) Allows for school-level determination of alternatives affecting time within the school day that preserve the spirit and intent of providing teachers with: (i) Sufficient planning time to develop engaging, differentiated instruction for all students in all classes, which includes at least forty minutes in length for the elementary level and as required by section fourteen, article four, chapter eighteen-a of this code for the secondary level; and (ii) Collaborative time for teachers to undertake and sustain instructional improvement. This determination may be made only in the form of a school policy that is part of the school's strategic improvement plan and is approved by a vote of the faculty senate; and

(E) Has the sole purpose of improving student learning and that improvement is evident within a reasonable period.

(2) The Legislature makes the following findings for consideration by the state board with respect to optimizing student learning:

(A) Maximizing learning time is a critical factor needed to improve student learning and requires multiple strategies and policies that support great teaching and learning;

(B) Learning time is that portion of instructional time in the school day during which a student is paying attention and receiving instruction that is appropriately leveled, and learning is taking place. Learning time must not be assumed to be the time that a student is seated at a desk, but may be achieved through a variety of methods that actively engage students in learning;

(C) A student's time engaged in learning is maximized when the student is allowed to progress and acquire competency at a pace which challenges his or her interest and intellect while receiving guidance and assistance when needed. Instructional strategies to help personalize student learning in this manner are frequently assisted by technology;

(D) Providing teachers with the resources and support needed to engage students in meaningful, appropriately leveled learning for as much time as is possible during the school day may be as important as facilities, equipment and staff development for maximizing learning time and improving student learning;

(E) Successful schools are distinguishable from unsuccessful schools by the frequency and extent to which teachers discuss professional practices, collectively design materials and inform and critique one another;

(F) Even successful schools must be self-renewing systems and learning organizations marked by deliberate effort to identify helpful knowledge and spread its use within the organization;

(G) Unless teachers are collectively involved in planning and implementing school improvement, it is unlikely to be sustained; and

(H) Given sufficient control over their own programs and supportive district leadership and policies, schools themselves may best be suited to determine the variety of methods through which time during the school day is allocated for teachers to plan individually and collectively to maximize learning time. Examples of methods used by successful schools include, but are not limited to, scheduling, using special subject teachers and guest presenters, dedicating time set aside for staff development, implementing alternative staff utilization patterns, providing opportunities for administrators to teach, and utilizing accrued instructional time.

Bill Sponsors: Delegates Pasdon, Duke, Rowan, Wagner, Upson, Ambler and Espinosa

House Bill 2381 **Providing a teacher mentoring increment for classroom teachers with national board certification who teach and mentor at certain schools**

Effective Date: July 1, 2015

Code Reference: Adds §18a-4-2c

WVDE Contact: Monica Beane, Office of Professional Preparation
mbeane@k12.wv.us; 304.558.7010

Major Provisions

- After the effective date of the legislation, teachers with national board certification who teach and mentor at persistently low performing schools may be provided with a mentoring increment. Districts are also permitted to use other funds, including federal and local funds, available to them to increase or provide other incentives for highly qualified teachers to teach at persistently low performing schools.
- The bill defines “persistently lower performing school” as a school identified by the WVDE as being among the lowest twenty percent of schools in the state in three-year aggregate mathematics and reading/language arts scores on the statewide summative assessment.

§18A-4-2c. Teacher mentoring increment for classroom teachers with national board certification who teach and mentor at persistently low performing schools.

(a) An additional \$2,000 shall be paid annually to each classroom teacher who:

(1) Holds a valid certificate issued by the National Board for Professional Teaching Standards;

(2) Is employed to teach at a school designated as a persistently low performing school by the West Virginia Department of Education; and

(3) Is also assigned as part of their regular employment, to serve in a mentoring capacity for other teachers at the school.

(b) The additional payment:

(1) Shall be in addition to any amounts prescribed in the applicable state minimum salary schedule;

(2) Shall be paid in equal monthly installments; and

(3) Shall be considered a part of the state minimum salaries for teachers.

(c) For the purposes of this section:

(1) "Persistently low performing school" means a school identified by the department as being among the lowest twenty percent of schools in the state in three-year aggregate mathematics and reading/language arts scores on the statewide summative assessment; and

(2) "Mentoring" means working under the direction of the principal to improve the professional practice knowledge and skills of other teachers employed at the school through on-site embedded professional development and other appropriate school building level approaches. Mentoring includes, but is not limited to, an assigned role in the comprehensive system for teacher induction and professional growth pursuant to section three, article three-c of this chapter, and may include working with other teachers to improve instruction at the school.

(d) A national board certified teacher who becomes eligible for an additional payment under this section remains eligible for five consecutive years of employment at the same school in the same assignment regardless of a subsequent change in the designation of the school as a persistently low performing school. The teacher may become eligible again at the same school if it continues to be persistently low performing or at a different persistently low performing school, but not sooner than five years from the beginning of a previous eligibility.

(e) Nothing in this section permits continued eligibility if the certificate issued by the National Board for Professional Teaching Standards is no longer valid.

(f) Notwithstanding any other provision of this chapter to the contrary, a county may use other funds, including federal and local funds, available to them to increase or provide other incentives for highly qualified teachers to teach at persistently low performing schools.

Bill Sponsors: Delegates Ambler, Cooper, D. Evans, Perry, Duke, Rohrbach, Espinosa, Upson, Roawn and Romine

House Bill 2478 **Relating to public school finance**

Effective Date: July 1, 2015

Code Reference: Amends §18-9A-7

WVDE Contact: Amy Willard, Office of School Finance
awillard@k12.wv.us; 304.558.6300

Major Provisions

- The bill includes propane as an alternative fuel for which the additional allowance under the Public School Support program of ten percent applies.
- The bill caps the allowance for the replacement of school buses at \$15,000,000 for the 2015-16 school year, and at \$18,000,000 for the 2016-17 school year.

§18-9A-7. Foundation allowance for transportation cost.

(a) The allowance in the foundation school program for each county for transportation shall be the sum of the following computations:

(1) A percentage of the transportation costs incurred by the county for maintenance, operation and related costs exclusive of all salaries, including the costs incurred for contracted transportation services and public utility transportation, as follows:

(A) For each high-density county, eighty-seven and one-half percent;

(B) For each medium-density county, ninety percent;

(C) For each low-density county, ninety-two and one-half percent;

(D) For each sparse-density county, ninety-five percent;

(E) For any county for the transportation cost for maintenance, operation and related costs, exclusive of all salaries, for transporting students to and from classes at a multicounty vocational center, the percentage provided in paragraphs (A) through (D) of this subdivision as applicable for the county plus an additional ten percent; and

(F) For any county for that portion of its school bus system that uses as an alternative fuel compressed natural gas or propane, the percentage provided in paragraphs (A) through (D) of this subdivision as applicable for the county plus an additional ten percent: *Provided*, That for any county receiving an additional ten percent for that portion of their bus system using bio-diesel as an alternative fuel during the school year 2012-2013, bio-diesel shall continue to qualify as an alternative fuel under this paragraph to the extent that the additional percentage applicable to that portion of the bus system using bio-diesel shall be decreased by two and one-half percent per year for four consecutive school years beginning in school year 2014-2015: *Provided, however*, That any county using an alternative fuel and qualifying for the additional allowance under this subdivision shall submit a plan regarding the intended future use of alternatively fueled school buses;

(2) The total cost, within each county, of insurance premiums on buses, buildings and equipment used in transportation;

(3) An amount equal to eight and one-third percent of the current replacement value of the bus fleet within each county as determined by the state board: *Provided*, That the amount for the school year beginning July 1, 2015, will be \$15,000,000 and the amount for the school year beginning July 1, 2016, will be \$18,000,000. The amount shall only be used for the replacement of buses. Buses purchased after July 1, 1999 that are driven one hundred eighty thousand miles, regardless of year model, will be subject to the replacement value of eight and one-third percent as determined by the state board. In addition, in any school year in which its net enrollment increases when compared to the net enrollment the year immediately preceding, a school district may apply to the state superintendent for funding for an additional bus or buses. The state superintendent shall make a decision regarding each application based upon an analysis of the individual school district's net enrollment history and transportation needs: *Provided*, That the superintendent shall not consider any application which fails to document that the county has applied for federal funding for additional buses. If the state superintendent finds that a need exists, a request for funding shall be included in the budget request submitted by the state board for the upcoming fiscal year; and

(4) Aid in lieu of transportation equal to the state average amount per pupil for each pupil receiving the aid within each county.

(b) The total state share for this purpose ~~shall be~~ is the sum of the county shares: *Provided*, That no county shall receive an allowance which is greater than one-third above the computed state average

allowance per transportation mile multiplied by the total transportation mileage in the county exclusive of the allowance for the purchase of additional buses.

(c) One half of one percent of the transportation allowance distributed to each county shall be for the purpose of trips related to academic classroom curriculum and not related to any extracurricular activity. Any remaining funds credited to a county for the purpose of trips related to academic classroom curriculum during the fiscal year shall be carried over for use in the same manner the next fiscal year and shall be separate and apart from, and in addition to, the appropriation for the next fiscal year. The state board may request a county to document the use of funds for trips related to academic classroom curriculum if the board determines that it is necessary.

Bill Sponsors: Delegates Armstead and Miley, By Request of the Executive

House Bill 2502 **Possessing deadly weapons on school buses or on the premises of educational facilities**

Effective Date: June 9, 2015

Code Reference: Amends §61-7-11a

WVDE Contact: Mike Pickens, Office of School Facilities
mepicken@k12.wv.us; 304.558.2711

Major Provisions

- This bill authorizes active law-enforcement officers in certain circumstances to possess a firearm or deadly weapon on a school bus, on school property, or at school sponsored functions.
- The bill authorizes retired law-enforcement officers acting in official security capacities to carry firearms. Additionally, retired law-enforcement officers who are employed by a state, county or municipal law enforcement agency and are covered for liability purposes by employers and authorized by a county board as school security may carry a firearm so long as the individual meets all requirements for qualified retired law-enforcement officers.
- The bill authorizes off duty law enforcement officers employed by federal, state, county or municipal law enforcement agencies to carry firearms or deadly weapons.

§61-7-11a. Possessing deadly weapons on premises of educational facilities; reports by school principals; suspension of driver's license; possessing deadly weapons on premises housing courts of law and ~~in offices of family law master courts.~~

(a) The Legislature ~~hereby~~ finds that the safety and welfare of the citizens of this state are inextricably dependent upon assurances of safety for children attending and persons employed by schools in this state and for persons employed by the judicial department of this state. It is for the purpose of providing assurances of safety that subsections (b), (g) and (h) of this section are enacted as a reasonable regulation of the manner in which citizens may exercise the rights accorded to them pursuant to section twenty-two, article three of the Constitution of the State of West Virginia.

(b) (1) It is unlawful for a person to possess a firearm or other deadly weapon on a school bus as defined in section one, article one, chapter seventeen-a of this code, or in or on a public or private primary or secondary education building, structure, facility or grounds including a vocational education building, structure, facility or grounds where secondary vocational education programs are conducted or at a school-sponsored function.

(2) This subsection does not apply to:

(A) ~~A law-enforcement officer acting in his or her official capacity~~ employed by a federal, state, county or municipal law enforcement agency;

~~(B)~~ A retired law-enforcement officer who:

(i) Is employed by a state, county or municipal law enforcement agency;

(ii) Is covered for liability purposes by his or her employer;

(iii) Is authorized by a county board of education and the school principal to serve as security for a school;

(iv) Meets all the requirements to carry a firearm as a qualified retired law-enforcement officer under the Law Enforcement Officer Safety Act of 2004, as amended, pursuant to 18 U.S.C. §926C(c); and

(v) Meets all of the requirements for handling and using a firearm established by his or her employer, and has qualified with his or her firearm to those requirements;

~~(B)~~ (C) A person specifically authorized by the board of education of the county or principal of the school where the property is located to conduct programs with valid educational purposes;

~~(C)~~ (D) A person who, as otherwise permitted by the provisions of this article, possesses an unloaded firearm or deadly weapon in a motor vehicle or leaves an unloaded firearm or deadly weapon in a locked motor vehicle;

~~(D)~~ (E) Programs or raffles conducted with the approval of the county board of education or school which include the display of unloaded firearms;

~~(E)~~ (F) The official mascot of West Virginia University, commonly known as the Mountaineer, acting in his or her official capacity; or

~~(F)~~ (G) The official mascot of Parkersburg South High School, commonly known as the Patriot, acting in his or her official capacity.

(3) A person violating this subsection is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a definite term of years of not less than two years nor more than ten years, or fined not more than \$5,000, or both fined and imprisoned.

~~(c) It is the duty of the principal of each A school principal subject to the authority of the State Board of Education to who discovers a violation of subsection (b) of this section shall report a the violation of subsection (b) of this section discovered by the principal to the State Superintendent of Schools within seventy-two hours after the violation occurs, as soon as possible to:~~

(1) The State Superintendent of Schools. The State Board of Education shall keep and maintain these reports and may prescribe rules establishing policy and procedures for making and ~~delivery of delivering~~ the reports as required by this subsection. ~~In addition, it is the duty of the principal of each school subject to the authority of the State Board of Education to report a violation of subsection (b) of this section discovered by the principal to; and~~

(2) The appropriate local office of the Division of Public Safety within seventy-two hours after the violation occurs, county sheriff or municipal police agency.

(d) In addition to the methods of disposition provided by article five, chapter forty-nine of this code, a court which adjudicates a person who is fourteen years of age or older as delinquent for a violation of subsection (b) of this section may, ~~in its discretion,~~ order the Division of Motor Vehicles to suspend a driver's license or instruction permit issued to the person for a period of time as the court considers appropriate, not to extend beyond the person's nineteenth birthday. ~~Where~~ If the person has not been issued a driver's license or instruction permit by this state, a court may order the Division of Motor Vehicles to deny the person's application for a license or permit for a period of time as the court considers appropriate, not to extend beyond the person's nineteenth birthday. A suspension ordered by the court pursuant to this subsection is effective upon the date of entry of the order. Where the court orders the suspension of a driver's license or instruction permit pursuant to this subsection, the court shall confiscate any driver's license or instruction permit in the adjudicated person's possession and forward to the Division of Motor Vehicles.

(e) (1) If a person eighteen years of age or older is convicted of violating subsection (b) of this section, and if the person does not act to appeal the conviction within the time periods described in subdivision (2) of this subsection, the person's license or privilege to operate a motor vehicle in this state shall be revoked in accordance with the provisions of this section.

(2) The clerk of the court in which the person is convicted as described in subdivision (1) of this subsection shall forward to the commissioner a transcript of the judgment of conviction. If the conviction is the judgment of a magistrate court, the magistrate court clerk shall forward the transcript when the person convicted has not requested an appeal within twenty days of the sentencing for the conviction. If the conviction is the judgment of a circuit court, the circuit clerk shall forward a transcript of the judgment of conviction when the person convicted has not filed a notice of intent to file a petition for appeal or writ of error within thirty days after the judgment was entered.

(3) If, upon examination of the transcript of the judgment of conviction, the commissioner determines that the person was convicted as described in subdivision (1) of this subsection, the commissioner shall make and enter an order revoking the person's license or privilege to operate a motor vehicle in this state for a period of one year or, in the event the person is a student enrolled in a secondary school, for a period of one year or until the person's twentieth birthday, whichever is the greater period. The order shall contain the reasons for the revocation and the revocation period. The order of suspension shall advise the person that because of the receipt of the court's transcript, a presumption exists that the person named in the order of suspension is the same person named in the transcript. The commissioner may grant an administrative hearing which substantially complies with the requirements of the provisions of section two, article five-a, chapter seventeen-c of this code upon a preliminary showing that a possibility exists that the person named in the notice of conviction is not the same person whose license is being suspended. The request for hearing shall be made within ten days after receipt of a copy of the order of suspension. The sole purpose of this hearing is for the person requesting the hearing to present evidence that he or she is not the person named in the notice. If the commissioner grants an administrative hearing,

the commissioner shall stay the license suspension pending the commissioner's order resulting from the hearing.

(4) For the purposes of this subsection, a person is convicted when ~~such person~~ he or she enters a plea of guilty or is found guilty by a court or jury.

(f) (1) It is unlawful for a parent, guardian or custodian of a person less than eighteen years of age who knows that the person is in violation of subsection (b) of this section or has reasonable cause to believe that the person's violation of subsection (b) is imminent, to fail to immediately report his or her knowledge or belief to the appropriate school or law-enforcement officials.

(2) A person violating this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, or shall be confined in jail not more than one year, or both fined and confined.

(g) (1) It is unlawful for a person to possess a firearm or other deadly weapon on the premises of a court of law, including family courts.

(2) This subsection does not apply to:

(A) A law-enforcement officer acting in his or her official capacity; and

(B) A person exempted from the provisions of this subsection by order of record entered by a court with jurisdiction over the premises or offices.

(3) A person violating this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, or shall be confined in jail not more than one year, or both fined and confined.

(h) (1) It is unlawful for a person to possess a firearm or other deadly weapon on the premises of a court of law, including family courts, with the intent to commit a crime.

(2) A person violating this subsection is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a definite term of years of not less than two years nor more than ten years, or fined not more than \$5,000, or both fined and imprisoned.

(i) Nothing in this section may be construed to be in conflict with the provisions of federal law.

Bill Sponsors: Delegates Espinosa, Upson, Gearheart, Cooper, Ambler, O' Neal, Miller, Sobonya, Shott, Arvon and Blair

House Bill 2527 **Creating a Task Force on Prevention of Sexual Abuse of Children;
"Erin Merryn's Law"**

Effective Date: June 11, 2015

Code Reference: Adds §49-2-126 and §49-2-814

WVDE Contact: Betty Jo Jordon, Office of Superintendent
bjjordan@k12.wv.us; 304.558.2118

Major Provisions

- The bill establishes a Task Force on Prevention of Sexual Abuse of Children to consist of the following members (or his/her designee):
 - Senate Health Chair
 - House Health Chair
 - Senate Education Chair
 - House Education Chair
 - Citizen member appointed by Speaker of House
 - Citizen member appointed by President of Senate
 - Citizen member who is survivor of child sexual abuse appointed by Governor
 - State Superintendent
 - State Board President
 - DHHR Secretary
 - Prosecuting Attorney's Institute Director
 - Representative of each statewide professional teachers' organization, appointed by leader of organization
 - Representative of school service personnel organization, appointed by leader of organization
 - Representative of school principals' organization, appointed by leader of organization
 - Representative of social workers' organization, appointed by leader of organization
 - Representative of teacher preparation program, appointed by HEPC
 - CEO of Center for Professional Development
 - Prevent Child Abuse WV Director
 - WV Child Advocacy Network Director
 - WV Coalition Against Domestic Violence Director
 - WVSCA Administrative Director
 - WV Sheriff's Association Executive Director
 - Representative of law enforcement organization, appointed by WV State Police Superintendent
 - Practicing counselor, appointed by WV School Counselors Association.
- The initial meeting of the task force will be at the joint call of the Education Chairs, and elect presiding officers at that time. Subsequent meetings are to be at the call of the presiding officer.
- The task force is required to make recommendations for decreasing incidence of sexual abuse of children in WV. The task force is specifically charged with gathering information regarding the sexual abuse of children throughout WV, receive related reports and testimony from individuals and groups throughout the state, create goals for state education policy that would prevent sexual abuse of children, create goals for other areas of state policy that would prevent sexual abuse of children, and to submit a report of its recommendations to the Governor and the Legislature. Within such recommendations, the task force may include proposals for statutory changes and ways to foster cooperation among state agencies and state and local governments.
- The bill also contains a section outlining the goals for children in foster care, but clarifies that no

cause of action exists against the state or its agents for failure of the Legislature to provide adequate funding to meet the specified goals.

- DHHR is given rule making authority to outline a process to ensure that a child has an effective means of being heard if he or she believes the goals are not being met.
- Finally, the bill provides a process for children that have previously been placed in foster care, subsequently removed from the state's custody, and then seeking foster care to reunite with the children's initial foster parents if possible.

§49-2-814. Task Force on Prevention of Sexual Abuse of Children.

(a) This section may be referred to as “Erin Merryn's Law”.

(b) The Task Force on Prevention of Sexual Abuse of Children is established. The task force consists of the following members:

(1) The Chair of the West Virginia Senate Committee on Health and Human Resources, or his or her designee;

(2) The Chair of the House of Delegates Committee on Health and Human Resources, or his or her designee;

(3) The Chair of the West Virginia Senate Committee on Education, or his or her designee;

(4) The Chair of the House of Delegates Committee on Education, or his or her designee;

(5) One citizen member appointed by the President of the Senate;

(6) One citizen member appointed by the Speaker of the House of Delegates;

(7) One citizen member, who is a survivor of child sexual abuse, appointed by the Governor;

(8) The President of the State Board of Education, or his or her designee;

(9) The State Superintendent of Schools, or his or her designee;

(10) The Secretary of the Department of Health and Human Resources, or his or her designee;

(11) The Director of the Prosecuting Attorney's Institute, or his or her designee;

(12) One representative of each statewide professional teachers' organization, each selected by the leader of his or her respective organization;

(13) One representative of the statewide school service personnel organization, selected by the leader of the organization;

(14) One representative of the statewide school principals' organization, appointed by the leader of the organization;

(15) One representative of the statewide professional social workers' organization, appointed by the leader of the organization;

(16) One representative of a teacher preparation program of a regionally accredited institution of higher education in the state, appointed by the Chancellor of the Higher Education Policy Commission;

(17) The Chief Executive Officer of the Center for Professional Development, or his or her designee;

(18) The Director of Prevent Child Abuse West Virginia, or his or her designee;

(19) The Director of the West Virginia Child Advocacy Network, or his or her designee;

(20) The Director of the West Virginia Coalition Against Domestic Violence, or his or her designee;

(21) The Director of the West Virginia Foundation for Rape Information and Services, or his or her designee;

(22) The Administrative Director of the West Virginia Supreme Court of Appeals, or his or her designee;

(23) The Executive Director of the West Virginia Sheriffs' Association, or his or her designee;

(24) One representative of an organization representing law enforcement, appointed by the Superintendent of the West Virginia State Police; and

(25) One practicing school counselor appointed by the leader of the West Virginia School Counselors Association.

(c) To the extent practicable, members of the task force shall be individuals actively involved in the fields of child abuse and neglect prevention and child welfare.

(d) At the joint call of the House of Delegates and Senate Education Committee Chairs, the task force shall convene its first meeting and by majority vote of members present elect presiding officers. Subsequent meetings shall be at the call of the presiding officer.

(e) The task force shall make recommendations for decreasing incidence of sexual abuse of children in West Virginia. In making those recommendations, the task force shall:

(1) Gather information regarding sexual abuse of children throughout the state;

(2) Receive related reports and testimony from individuals, state and local agencies, community-based organizations, and other public and private organizations;

(3) Create goals for state education policy that would prevent sexual abuse of children;

(4) Create goals for other areas of state policy that would prevent sexual abuse of children; and

(5) Submit a report with its recommendations to the Governor and the Legislature.

(f) The recommendations may include proposals for specific statutory changes and methods to foster cooperation among state agencies and between the state and local governments. The task force shall consult with employees of the Bureau for Children and Family Services, the Division of Justice and Community Services, the West Virginia State Police, the State Board of Education, and any other state agency or department as necessary to accomplish its responsibilities under this section.

(g) Task force members serve without compensation and do not receive expense reimbursement.

§49-2-126. Legislative findings and declaration of intent for goals for foster children.

(a) The Legislature finds and declares that the design and delivery of child welfare services should be directed by the principle that the health and safety of children should be of paramount concern and, therefore, establishes the goals for children in foster care. A child in foster care should have:

(1) Protection by a family of his or her own, and be provided readily available services and support through care of an adoptive family or by plan, a continuing foster family;

(2) Nurturing by foster parents who have been selected to meet his or her individual needs, and who are provided services and support, including specialized education, so that the child can grow to reach his or her potential;

(3) A safe foster home free of violence, abuse, neglect and danger;

(4) The ability to communicate with the assigned social worker or case worker overseeing the child's case and have calls made to the social worker or case worker returned within a reasonable period of time;

(5) Permission to remain enrolled in the school the child attended before being placed in foster care, if at all possible;

(6) Participation in school extracurricular activities, community events, and religious practices;

(7) Communication with the biological parents. Communication is necessary if the child placed in foster care receives any immunizations and if any additional immunizations are needed, if the child will be transitioning back into a home with his or her biological parents;

(8) A bank or savings account established in accordance with state laws and federal regulations;

(9) Identification and other permanent documents, including a birth certificate, social security card and health records by the age of sixteen, to the extent allowed by federal and state law;

(10) The use of appropriate communication measures to maintain contact with siblings if the child placed in foster care is separated from his or her siblings; and

(11) Meaningful participation in a transition plan for those phasing out of foster care.

(b) A person shall not have a cause of action against the state or any of its subdivisions, agencies, contractors, subcontractors, or agents, based upon the adoption of or failure to provide adequate funding for the achievement of these goals by the Legislature. Nothing in this section requires the expenditure of funds to meet the goals established in this section, except funds specifically appropriated for that purpose.

(c) The West Virginia Department of Health and Human Resources shall propose rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code to ensure that a child has an effective means of being heard if he or she believes the goals of this section are not being met.

(d) When a child who was previously placed into foster care, but left the custody or guardianship of the department, is again placed into foster care, the department shall notify the foster parents who most recently cared for the child of the child's availability for foster care placement to determine if the foster parents are desirous of seeking a foster care arrangement for the child. The arrangement may only be made if the foster parents are otherwise qualified or can become qualified to enter into the foster care arrangement with the department and if the arrangement is in the best interests of the child: *Provided*, That the department may petition the court to waive notification to the foster parents. This waiver may be granted, *ex parte*, upon a showing of compelling circumstances.

Bill Sponsors: Delegates Pasdon, Marcum, Kessinger, R. Phillips and Upson

House Bill 2535 **Relating generally to suicide prevention training, "Jamie's Law"**

Effective Date: June 8, 2015

Code Reference: Adds §18-2-40, §18B-1B-7 and §27-6-1

WVDE Contact: Barbara Brady, Office of Secondary Learning
barbbrady@k12.wv.us; 304.558.5325

Major Provisions

- Prior to September 1, 2015, and each year thereafter, public middle and high school administrators are required to disseminate information and provide discussion opportunities to students concerning suicide prevention awareness. Such information may be obtained from the Bureau for Behavioral Health and Health Facilities or from a commercially developed suicide prevention training program approved by WVBE. In approving a program, WVBE is to consult with Bureau for Behavioral Health to assure the accuracy and appropriateness of the information provided by the program.
- The bill outlines certain steps that must be taken by institutions of higher education regarding suicide prevention awareness.
- The bill requires the Bureau for Behavior Health to post suicide prevention awareness information on its website. The Bureau is authorized to assist public middle and high school administrators in providing suicide prevention information to students.

§18-2-40. Suicide prevention awareness training; dissemination of information.

(a) This section, section seven, article one-b, chapter eighteen-b of this code and section one, article six, chapter twenty-seven of this code shall be known as “Jamie’s Law”.

(b) On or before September 1, 2015 and each year thereafter, a public middle and high school administrator shall disseminate and provide opportunities to discuss suicide prevention awareness information to all middle and high school students. The information may be obtained from the Bureau for Behavioral Health and Health Facilities or from a commercially developed suicide prevention training program approved by the State Board of Education in consultation with the bureau to assure the accuracy and appropriateness of the information.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.

§18B-1B-7. Student mental health policies; suicide prevention.

(a) Each public and private institution of higher education shall develop and implement a policy to advise students and staff on suicide prevention programs available on and off campus that includes, but is not limited to:

(1) Crisis intervention access, which includes information for national, state and local suicide prevention hotlines;

(2) Mental health program access, which provides information on the availability of local mental health clinics, student health services and counseling services;

(3) Multimedia application access, which includes crisis hotline contact information, suicide warning signs, resources offered and free-of-cost applications;

(4) Student communication plans, which consist of creating outreach plans regarding educational and outreach activities on suicide prevention; and

(5) Post intervention plans which include creating a strategic plan to communicate effectively with students, staff and parents after the loss of a student to suicide.

(b) Each public and private institution of higher education shall provide all incoming students with information about depression and suicide prevention resources available to students. The information provided to students shall include available mental health services and other support services, including student-run organizations for individuals at risk of or affected by suicide.

(c) The information prescribed by subsection (a), subdivisions (1) through (4) of this section shall be posted on the website of each institution of higher education in this state.

(d) Any applicable free-of-cost prevention materials or programs shall be posted on the websites of the public and private institutions of higher education, the Higher Education Policy Commission, and the West Virginia Council for Community and Technical College Education.

CHAPTER 27. MENTALLY ILL PERSONS.

ARTICLE 6. SUICIDE PREVENTION AND AWARENESS.

§27-6-1. Dissemination of information.

(a) The Bureau for Behavioral Health and Health Facilities shall, on or before August 1, 2015, post on its website suicide prevention awareness information, to include recognizing the warning signs of a suicide crisis. The website shall include information related to suicide prevention training opportunities offered by the bureau or an agency recognized by the bureau as a training provider.

(b) The bureau may assist the public middle and high school administrators in providing suicide prevention information to students in the public middle and high schools.

(c) The bureau shall annually review, for adequacy and completeness, the materials or programs posted on the websites of the institutions of higher education as required by section seven, article one-b, chapter eighteen-b of this code.

Bill Sponsors: Delegates Longstreth, Ferro, Caputo, Rowan, O'Neal, Ashley, Hamrick, L. Phillips, Fleischauer, Skinner and P. Smith

House Bill 2550 **Increasing the number of unexcused absences of a student before action may be taken against the parent**

Effective Date: June 10, 2015

Code Reference: Amends §18-8-4

WVDE Contact: Sarah Stewart, Office of the Superintendent
sarah.a.stewart@k12.wv.us; 304.558.3762

Major Provisions

- The bill defines “excused absence” to include: (1) personal illness or injury of student or family; (2) medical/dental appointments with written excuse; (3) chronic medical condition/disability that impacts attendance; (4) participation in home or hospital instruction due to illness/injury or other extraordinary circumstance; (5) calamity; (6) death in family; (7) school/county approved curricular or extra-curricular activities; (8) judicial obligation or court appearance involving student; (9) military requirement for enlisted students; and (10) other circumstances as determined by county board.
- The bill clarifies that absences of students with disabilities must be in accordance with IDEA.
- Unexcused absences are defined as any absence that is not excused.
- The bill modifies the number of unexcused absences that must occur before parent contact and court involvement. It decreases the number of unexcused absences before a parent is served written notice from five to three. It also decreases the number of unexcused absences before a parent conference is required from ten to five.
- Currently, the attendance director was to cause court intervention if a parent failed to comply with the provisions of the section. The bill modifies this requirement by directing the attendance director to cause court intervention after ten unexcused absences.

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

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

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

(2) Take such steps as are, in their discretion, best calculated to encourage the attendance of students and to impart upon the parents and guardians the importance of attendance and the seriousness of failing to do so-; and

(3) For the purposes of this article, the following definitions shall apply:

(A) “Excused absence” shall be defined to include:(i) Personal illness or injury of the student or in the family;

(ii) Medical or dental appointment with written excuse from physician or dentist;

(iii) Chronic medical condition or disability that impacts attendance;

(iv) Participation in home or hospital instruction due to an illness or injury or other extraordinary circumstance that warrants home or hospital confinement;

(v) Calamity, such as a fire or flood;

(vi) Death in the family;

(vii) School-approved or county-approved curricular or extra-curricular activities;

(viii) Judicial obligation or court appearance involving the student;

(ix) Military requirement for students enlisted or enlisting in the military;

(x) Personal or academic circumstances approved by the principal; and

Provided, That absences of students with disabilities shall be in accordance with the Individuals with Disabilities Education Improvement Act of 2004 and the federal and state regulations adopted in compliance therewith.

(B) “Unexcused absence” shall be any absence not specifically included in the definition of “excused absence”.

(b) In the case of three total unexcused absences of a student during a school year, the attendance director or assistant shall serve written notice to the parent, guardian or custodian of the student that the attendance of the student at school is required and that if the student has five unexcused absences, a conference with the principal or other designated representative will be required.

~~(b) (c) In the case of five total unexcused absences of a student during the school year, the attendance director or assistant shall: serve written notice to the parent, guardian or custodian of the student that the attendance of within five days of receipt of the notice the parent, guardian or custodian, accompanied by the student at school is required and that within 10 days of receipt of the notice the parent, guardian or custodian, accompanied by the student, shall report in person to the school the student attends for a conference with the principal or other designated representative of the school in order to discuss and~~

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

(d) In the case of ten total unexcused absences of a student during a school year, the attendance director or assistant shall make complaint against the parent, guardian or custodian before a magistrate of the county. If it appears from the complaint that there is probable cause to believe that an offense has been committed and that the accused has committed it, a summons or a warrant for the arrest of the accused shall issue to any officer authorized by law to serve the summons or to arrest persons charged with offenses against the state. More than one parent, guardian or custodian may be charged in a complaint. Initial service of a summons or warrant issued pursuant to the provisions of this section shall be attempted within ten calendar days of receipt of the summons or warrant and subsequent attempts at service shall continue until the summons or warrant is executed or until the end of the school term during which the complaint is made, whichever is later.

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

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

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

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

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

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

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

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

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

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

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

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

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

Bill Sponsors: Delegates Cowles, Miller, Householder, Moffatt, McGeehan, Sponaugle, H. White, Campbell, Skinner, Rowe and Perry

House Bill 2598 Ensuring that teachers of students with disabilities receive complete information about the school's plan for accommodating the child's disabilities

Effective Date: June 12, 2015

Code Reference: Amends §18-20-2

WVDE Contact: Pat Homberg, Office of Special Programs
phomberg@k12.wv.us; 304.558.2696

Major Provisions

- The bill requires teachers of students with Section 504 Plan to receive specific instruction from the school, and be educated, on the students' disability and educational accommodations. Such teachers are also required to receive a copy of the written plan and every update thereto, and must sign an acknowledgment of receipt for each document received.

§18-20-2. Providing suitable educational facilities, equipment and services.

(a) Each county board shall provide suitable educational facilities, special equipment and special services that are necessary. Special services include provisions and procedures for finding and enumerating exceptional children of each type, diagnosis by appropriate specialists who will certify the child's need and eligibility for special education and make recommendations for treatment and prosthesis as may alleviate the disability, special teaching by qualified and specially trained teachers, transportation, lunches and remedial therapeutic services. Qualifications of teachers and therapists shall be in accordance with standards prescribed or approved by the state board.

(b) A county board may provide for educating resident exceptional children by contracting with other counties or other educational agencies which maintain special education facilities. Fiscal matters shall follow policies approved by the state board.

(c) The county board shall provide a four-clock-hour program of training for any teacher aide employed to assist teachers in providing services to exceptional children under this article prior to the assignment. The program shall consist of training in areas specifically related to the education of exceptional children, pursuant to rules of the state board. The training shall occur during normal working hours and an opportunity to be trained shall be provided to a service person prior to filling a vacancy in accordance with the provisions of section eight-b, article four, chapter eighteen-a of this code.

(d) The county board annually shall make available during normal working hours to all regularly employed teachers' aides twelve hours of training that satisfies the continuing education requirements for the aides regarding:

(1) Providing services to children who have displayed violent behavior or have demonstrated the potential for violent behavior; and

(2) Providing services to children diagnosed as autistic or with autism spectrum disorder. This training shall be structured to permit the employee to qualify as an autism mentor after a minimum of four years of training. The county board shall:

(A) Notify in writing all teachers' aides of the location, date and time when training will be offered for qualification as an autism mentor; and

(B) Reimburse any regularly employed or substitute teacher's aide who elects to attend this training for one half of the cost of the tuition.

(e) For any student whose individualized education plan (IEP) or education plan established pursuant to Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794, requires the services of a sign support specialist or an educational sign language interpreter I or II:

(1) Any educational sign language interpreter I or II assigned to assist that student is a related service provider member of the education team who participates in IEP meetings and works with the team to implement the IEP;

(2) A sign support specialist may be assigned to a student with an exceptionality other than deaf or hard of hearing if it is determined that the student needs signs to support his or her expressive communication; and

(3) A sign support specialist may be assigned to a student who is deaf or hard of hearing in lieu of an interpreter only if an educational sign language interpreter I or II is unavailable, and the sign support specialist is executing a professional development plan while actively seeking certification as an educational sign language interpreter I or II. After two years the sign support specialist may remain in the assignment only if an educational sign language interpreter I or II remains unavailable, and with an approved waiver by the West Virginia Department of Education. An employee in this situation is entitled to full payment of the costs of certification acquisition or renewal pursuant to the certification renewal provisions of section four, article two, chapter eighteen-a of this code.

(f) Every teacher of a student for whom a school or county board of education prepares a plan of accommodation pursuant to Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794, shall receive specific instruction from the school regarding the contents and requirements of the plan and, if the plan is prepared in writing, the teacher shall receive a copy of the written plan and every update thereto and the teacher shall sign an acknowledgment of receipt of each plan and update.

Bill Sponsors: Delegates Campbell, Perry, Cowles, Ambler, Cooper, Reynolds, Rowan, Moye, Pasdon and Marcum

House Bill 2632 **Exempting the procurement of certain instructional materials for use in and in support of public schools from the division of purchasing requirements**

Effective Date: March 11, 2015

Code Reference: Amends §5A-3-1, §5A-3-3, §18-2E-7 and §18-9A-10

WVDE Contact: Terry Harless, Office of Internal Operations
tharless@k12.wv.us; 304.558.2686

Major Provisions

- Currently, the WVBE has a purchasing exemption for purchases of textbooks. The bill broadens the exemption to include purchases of instructional materials, digital content resources, instructional technology, hardware, software, telecommunications and technical services for use in and in support of public schools.
- The bill also removes outdated and expired language relating to the 21st Century initiative and the calculation of local share funding. The bill allows for the hiring of technology system specialists with local share funding, as well as for WVDE to purchase statewide licenses of software or hardware in situations where it is beneficial to school districts.

§5A-3-1. Division created; purpose; director; applicability of article; continuation.

(a) The Purchasing Division within the Department of Administration is continued. The underlying purposes and policies of the Purchasing Division are:

(1) To establish centralized offices to provide purchasing and travel services to the various state agencies;

(2) To simplify, clarify and modernize the law governing procurement by this state;

(3) To permit the continued development of procurement policies and practices;

(4) To make as consistent as possible the procurement rules and practices among the various spending units;

(5) To provide for increased public confidence in the procedures followed in public procurement;

(6) To ensure the fair and equitable treatment of all persons who deal with the procurement system of this state;

(7) To provide increased economy in procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds;

(8) To foster effective broad-based competition within the free enterprise system;

(9) To provide safeguards for the maintenance of a procurement system of quality and integrity; and

(10) To obtain in a cost-effective and responsive manner the commodities and services required by spending units in order for those spending units to better serve this state's businesses and residents.

(b) The Director of the Purchasing Division shall, at the time of appointment:

(1) Be a graduate of an accredited college or university; and

(2) Have spent a minimum of ten of the fifteen years immediately preceding his or her appointment employed in an executive capacity in purchasing for any unit of government or for any business, commercial or industrial enterprise.

(c) The provisions of this article apply to all of the spending units of state government, except as otherwise provided by this article or by law.

(d) The provisions of this article do not apply to the judicial branch, the West Virginia State Police Forensics Laboratory, the West Virginia Office of Laboratory Services, the legislative branch, to purchases of stock made by the Alcohol Beverage Control Commissioner and to purchases of textbooks, instructional materials, digital content resources, instructional technology, hardware, software, telecommunications and technical services by for the State Board of Education for use in and in support of the public schools.

(e) The provisions of this article apply to every expenditure of public funds by a spending unit for commodities and services irrespective of the source of the funds.

§5A-3-3. Powers and duties of Director of Purchasing.

The director, under the direction and supervision of the secretary, shall be the executive officer of the Purchasing Division and shall have the power and duty to:

- (1) Direct the activities and employees of the Purchasing Division;
- (2) Ensure that the purchase of or contract for commodities and services shall be based, whenever possible, on competitive bid;
- (3) Purchase or contract for, in the name of the state, the commodities, services and printing required by the spending units of the state government;
- (4) Apply and enforce standard specifications established in accordance with section five of this article as hereinafter provided;
- (5) Transfer to or between spending units or sell commodities that are surplus, obsolete or unused as hereinafter provided;
- (6) Have charge of central storerooms for the supply of spending units, as the director deems advisable;
- (7) Establish and maintain a laboratory for the testing of commodities and make use of existing facilities in state institutions for that purpose as hereinafter provided, as the director deems advisable;
- (8) Suspend the right and privilege of a vendor to bid on state purchases when the director has evidence that such vendor has violated any of the provisions of the purchasing law or the rules and regulations of the director;
- (9) Examine the provisions and terms of every contract entered into for and on behalf of the State of West Virginia that impose any obligation upon the state to pay any sums of money for commodities or services and approve each such contract as to such provisions and terms; and the duty of examination and approval herein set forth does not supersede the responsibility and duty of the Attorney General to approve such contracts as to form: *Provided*, That the provisions of this subdivision do not apply in any respect whatever to construction or repair contracts entered into by the Division of Highways of the Department of Transportation: *Provided, however*, That the provisions of this subdivision do not apply in any respect whatever to contracts entered into by the University of West Virginia Board of Trustees or by the Board of Directors of the State College System, except to the extent that such boards request the facilities and services of the director under the provisions of this subdivision; *Provided further*, That the provisions of this subdivision do not apply to the West Virginia State Police Forensic Laboratory and the West Virginia Office of Laboratory Services;
- (10) Assure that the specifications and descriptions in all solicitations are prepared so as to provide all potential suppliers-vendors who can meet the requirements of the state an opportunity to bid and to assure that the specifications and descriptions do not favor a particular brand or vendor. If the director determines that any such specifications or descriptions as written favor a particular brand or vendor or if it is decided, either before or after the bids are opened, that a commodity or service having different specifications or quality or in different quantity can be bought, the director may rewrite the solicitation and the matter shall be rebid; and
- (11) Issue a notice to cease and desist to a spending unit when the director has credible evidence that a spending unit has violated competitive bidding or other requirements established by this article and the rules promulgated hereunder. Failure to abide by such notice may result in penalties set forth in section seventeen of this article.

CHAPTER 18. EDUCATION.

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-7. Providing for ~~twenty-first century~~ instruction and learning in all public schools.

(a) The Legislature finds that:

(1) The knowledge and skills children need to succeed in the twenty-first century are changing dramatically and that West Virginia students must develop proficiency in ~~twenty-first century~~ the subject matter content, technology tools and learning skills to succeed and prosper in life, in school and on the job;

(2) Students must be equipped to live in a multitasking, multifaceted, technology-driven world;

(3) The provision of ~~twenty-first century~~ technologies and software resources in grades prekindergarten through twelve is necessary to meet the goal that high school graduates will be prepared fully for college, other post-secondary education or gainful employment;

(4) This goal reflects a fundamental belief that the youth of the state exit the system equipped with the skills, competencies and attributes necessary to succeed, to continue learning throughout their lifetimes and to attain self-sufficiency;

(5) To promote ~~twenty-first century~~ learning, teachers must be competent in ~~twenty-first century~~ content and learning skills and must be equipped to fully integrate technology to transform instructional practice and to support ~~twenty-first century~~ skills acquisition;

(6) For students to learn ~~twenty-first century~~ technology skills, students and teachers must have equitable access to high quality, ~~twenty-first century~~ technology tools and resources;

(7) When aligned with standards and curriculum, technology-based assessments can be a powerful tool for teachers; and

(8) Teachers must understand how to use technology to create classroom assessments for accurate, timely measurements of student proficiency in attainment of academic content ~~and twenty-first century skills.~~

(b) The state board shall ensure that the resources to be used to provide technology services to students in grades prekindergarten through twelve are included in a West Virginia ~~21st Century~~ Strategic Technology Learning Plan to be developed by the Department of Education as an integral component of the county electronic strategic improvement plan required in section five of this article. The provision of technologies and services to students and teachers shall be based on a county technology plan developed by a team that includes school building-level professional educators and is aligned with the goals and objectives of the West Virginia ~~21st Century~~ Strategic Technology Learning Plan. This plan shall be an integral component of the county electronic strategic improvement plan as required in section five of this article. Funds shall be allocated equitably to county school systems following peer review of the plans that includes providing necessary technical assistance prior to submission and allows timely review and approval by the West Virginia Department of Education. Equitable allocation shall be defined by the state board and may include per school-site equity for technologies requiring a site license or other per school application. ~~Technology tools including hardware, software, network cabling, network electronics and related professional development, shall be purchased pursuant to the provisions of article three, chapter five-a of this code in the amount equal to anticipated revenues being appropriated and based on the approved county plans. County allocations that support this legislation~~ from appropriations for this section shall adhere to state contract prices: *Provided*, That contingent upon approval of the county technology plan, counties that identify, within that plan, specific software or peripheral equipment not listed on the state contract, but necessary to support implementation of ~~twenty-first century~~ skills, may request the West Virginia Department of Education to secure state purchasing prices for those identified items. Total expenditure to purchase these additional items may not exceed ten percent of the annual county allocation. To the extent practicable, the technology shall be used:

(1) To maximize student access to learning tools and resources at all times including during regular school hours, before and after school or class, in the evenings, on weekends and holidays and for public education, noninstructional days and during vacations; and

(2) For student use for homework, remedial work, personalized learning, independent learning, career planning and adult basic education.

(c) The implementation of this section should provide a technology infrastructure capable of supporting multiple technology-based learning strategies designed to enable students to achieve at higher academic levels. The technology infrastructure should facilitate student development by addressing the following areas:

(1) Mastery of rigorous core academic subjects in grades prekindergarten through eight by providing software, other technology resources or both aligned with state standards in reading, mathematics, writing, science, social studies ~~twenty-first century learning skills and twenty-first century~~ and learning tools;

(2) Mastery of rigorous core academic subjects in grades nine through twelve by providing appropriate ~~twenty-first century~~ technology tools aligned with state standards for learning skills and technology tools;

(3) Attainment of ~~twenty-first century~~ skills outcomes for all students in the use of technology tools and learning skills;

(4) Proficiency in new, emerging ~~twenty-first century~~ content;

(5) Participation in relevant, contextual instruction that uses dynamic, real-world contexts that are engaging and meaningful for students, making learning relevant to life outside of school and bridging the gap between how students live and how they learn in school;

(6) Ability to use digital and emerging technologies to manage information, communicate effectively, think critically, solve problems, work productively as an individual and collaboratively as part of a team and demonstrate personal accountability and other self-directional skills;

(7) Providing students with information on post-secondary educational opportunities, financial aid and the skills and credentials required in various occupations that will help them better prepare for a successful transition following high school;

(8) Providing greater access to advanced and other curricular offerings than could be provided efficiently through traditional on-site delivery formats, including increasing student access to quality distance learning curricula and online distance education tools;

(9) Providing resources for teachers in differentiated instructional strategies, technology integration, sample lesson plans, curriculum resources and online staff development that enhance student achievement; and

(10) Providing resources to support basic skills acquisition and improvement at the above mastery and distinguished levels.

(d) Developed with input from appropriate stakeholder groups, the West Virginia ~~21st-Century~~ Strategic Technology Learning Plan shall be an integral component of the electronic strategic county improvement plan as required in section five of this article. The West Virginia ~~21st-Century~~ Strategic Technology Learning Plan shall be comprehensive and shall address, but not necessarily be limited to, the following provisions:

(1) Allocation of adequate resources to provide students with equitable access to ~~twenty-first century~~ technology tools, including instructional offerings and appropriate curriculum, assessment and technology integration resources aligned to both the content and rigor of state content standards as well as to learning skills and technology tools;

(2) Providing students and staff with equitable access to a technology infrastructure that supports the acquisition of ~~twenty-first century~~ skills in the use of technology, including the ability to access information, solve problems, communicate clearly, make informed decisions, acquire new knowledge, construct products, reports and systems and access online assessment systems;

(3) Inclusion of various technologies that enable and enhance the attainment of ~~twenty-first century~~ the skills outcomes for all students;

(4) Collaboration with various partners, including parents, community organization, higher education, schools of education in colleges and universities, employers and content providers;

(5) Seeking of applicable federal government funds, philanthropic funds, other partnership funds or any combination of those types of funds to augment state appropriations and encouraging the pursuit of funding through grants, gifts, donations or any other sources for uses related to education technology;

(6) Sufficient bandwidth to support teaching and learning and to provide satisfactorily for instructional management needs;

(7) Protection of the integrity and security of the network, as well as student and administrative workstations;

(8) Flexibility to adjust the plan based on developing technology, federal and state requirements and changing local school and county needs;

(9) Incorporation of findings based upon validation from research-based evaluation findings from previous West Virginia-based evaluation projects;

(10) Continuing study of emerging technologies for application in a ~~twenty-first century~~ learning environment and inclusion in the technology plan, as appropriate;

(11) An evaluation component to determine the effectiveness of the program and make recommendations for ongoing implementation;

(12) A program of embedded, sustained professional development for teachers that is strategically developed to support a ~~twenty-first century~~ thorough and efficient education for all students and that aligns with state standards for technology, integrates ~~twenty-first century~~ technology skills into educational practice and supports the implementation of ~~twenty-first century~~ software, technology and assessment resources in the classroom;

(13) Providing for uniformity in technological hardware and software standards and procedures;

(14) The strategy for ensuring that the capabilities and capacities of the technology infrastructure is adequate for acceptable performance of the technology being implemented in the public schools;

(15) Providing for a comprehensive, statewide uniform, integrated education management and information system for data collection and reporting to the Department of Education ~~as provided in section twenty-six, article two of this chapter and commonly referred to as the West Virginia Education Information System~~ and the public;

(16) Providing for an effective model for the distance delivery, virtual delivery or both types of delivery of instruction in subjects where there exists low student enrollment or a shortage of certified teachers or where the delivery method substantially improves the quality of an instructional program such as the West Virginia Virtual School;

(17) Providing a strategy to implement, support and maintain technology in the public schools;

(18) Providing a strategy to provide ongoing support and assistance to teachers in integrating technology into ~~twenty-first century~~ instruction such as with technology integration specialists and technology system specialists;

(19) A method of allowing public education to take advantage of appropriate bulk purchasing abilities and to purchase from competitively bid contracts initiated through the southern regional education board educational technology cooperative and the America TelEdCommunications Alliance;

(20) Compliance with United States Department of Education regulations and Federal Communications Commission requirements for federal E-rate discounts; and

(21) Other provisions as considered appropriate, necessary or both to align with applicable guidelines, policies, rules, regulations and requirements of the West Virginia Legislature, the Board of Education and the Department of Education.

(e) Any state code and budget references to the Basic Skills/Computer Education Program and the SUCCESS Initiative will be understood to refer to the statewide technology initiative referenced in this section, commonly referred to as the 21st Century Tools for 21st Century Schools Technology Initiative.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-10. Foundation allowance to improve instructional programs.

(a) The total allowance to improve instructional programs shall be the sum of the following:

(1) For instructional improvement, in accordance with county and school electronic strategic improvement plans required by section five, article two-e of this chapter, an amount equal to ~~fifteen~~ ten percent of the increase in the local share amount for the next school year above any required allocation pursuant to section six-b of this article shall be added to the amount of the appropriation for this purpose for the immediately preceding school year. The sum of these amounts shall be distributed to the counties as follows:

(A) One hundred fifty thousand dollars shall be allocated to each county; and

(B) Distribution to the counties of the remainder of these funds 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.

Moneys allocated by provision of this ~~section~~ subdivision shall be used to improve instructional programs according to the county and school ~~electronic~~ strategic improvement plans required by section five, article two-e of this chapter and approved by the state board: *Provided*, That notwithstanding any other provision of this code to the contrary, moneys allocated by provision of this section ~~may~~ also may be used in the implementation and maintenance of the uniform integrated regional computer information system.

Up to twenty-five percent of this allocation may be used to employ professional educators and service personnel in counties after all applicable provisions of sections four and five of this article have been fully utilized.

Prior to the use of any funds from this subdivision for personnel costs, the county board must receive authorization from the state superintendent ~~of schools~~. The state superintendent shall require the county board to demonstrate: (1) The need for the allocation; (2) efficiency and fiscal responsibility in staffing; (3) sharing of services with adjoining counties and the regional educational service agency for that county in the use of the total local district board budget; and (4) employment of technology integration specialists to meet the needs for implementation of the West Virginia ~~21st Century~~ Strategic Technology Learning Plan. County boards shall make application for ~~available~~ the use of funds for personnel for the

next fiscal year by ~~the first day of May~~ May 1 of each year. On or before ~~the first day of June~~ June 1, the state superintendent shall review all applications and notify applying county boards of the ~~distribution of the allocation approval or disapproval of the use of funds for personnel during the fiscal year appropriate. The funds shall be distributed during the fiscal year appropriate.~~ The state superintendent shall require the county board to demonstrate the need for an allocation for personnel based upon the county's inability to meet the requirements of state law or state board policy: ~~Provided, That,~~

The provisions relating to the use of any funds from this subdivision for personnel costs are subject to the following: (1) The funds available for personnel under this subsection may not be used to increase the total number of professional noninstructional personnel in the central office beyond four; and (2) For the school year beginning July 1, 2013, and thereafter, any funds available to a county for use for personnel under this subsection above the amount available for the 2012-2013 school year, only may be used for technology systems specialists until the state superintendent determines that the county has sufficient technology systems specialists to serve the needs of the county.

The plan shall be made available for distribution to the public at the office of each affected county board; plus

(2) For the purposes of ~~the West Virginia 21st Century Strategic Technology Learning Plan provided for in section seven, article two-e of this chapter~~ improving instructional technology, an amount equal to ~~fifteen~~ twenty percent of the increase in the local share amount for the next school year above any required allocation pursuant to section six-b of this article shall be added to the amount of the appropriation for this purpose for the immediately preceding school year. The sum of these amounts shall be ~~allocated~~ distributed to the counties as ~~provided in section seven, article two-e of this chapter to meet the objectives of the West Virginia 21st Century Strategic Technology Learning Plan,~~ plus follows:

(A) Thirty thousand dollars shall be allocated to each county; and

(B) Distribution to the counties of the remainder of these funds 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.

Effective July 1, 2014, moneys allocated by provision of this subdivision shall be used to improve instructional technology programs according to the county and school strategic improvement plans; plus

(3) One percent of the state average per pupil state aid multiplied by the number of students enrolled in dual credit, advanced placement and international baccalaureate courses, as defined by the state board, distributed to the counties proportionate to enrollment in these courses in each county; plus

(4) An amount not less than the amount required to meet debt service requirements on any revenue bonds issued prior to ~~the first day of January 1, one thousand nine hundred ninety-four 1994,~~ and the debt service requirements on any revenue bonds issued for the purpose of refunding revenue bonds issued prior to ~~the first day of January 1, one thousand nine hundred ninety-four 1994,~~ shall be paid into the School Building Capital Improvements Fund created by section six, article nine-d of this chapter and shall be used solely for the purposes of that article. The School Building Capital Improvements Fund shall not be utilized to meet the debt services requirement on any revenue bonds or revenue refunding bonds for which moneys contained within the School Building Debt Service Fund have been pledged for repayment pursuant to that section.

(b) When the school improvement bonds secured by funds from the School Building Capital Improvements Fund mature, the state Board of Education shall annually deposit an amount equal to \$24,000,000 from the funds allocated in this section into the School Construction Fund created pursuant to the provisions of section six, article nine-d of this chapter to continue funding school facility construction and improvements.

(c) Any project funded by the School Building Authority shall be in accordance with a comprehensive educational facility plan which must be approved by the state board and the School Building Authority.

Bill Sponsors: Westfall, Pasdon, Hamrick, Ambler, Cooper, Upson, Statler, Kurcaba, Duke, Rohrbach and Espinosa

House Bill 2645 Expanding the availability of the Underwood-Smith Teacher Loan Assistance Program

Effective Date: June 7, 2015

Code Reference: Amends §18C-4A-1, §18C-4A-2 and §18C-4A-3

WVDE Contact: Monica Beane, Office of Professional Preparation
mbeane@k12.wv.us; 304.558.7010

Major Provisions

- The bill modifies the Underwood-Smith Teacher Loan Assistance Program by increasing the annual award from \$2,000 to \$3,000.

§18C-4A-1. Selection criteria and procedures for loan assistance.

(a) The Governor shall designate the Higher Education Student Financial Aid Advisory Board created by section five, article one of this chapter to select recipients to receive Underwood-Smith Teacher Loan Assistance Awards.

~~(b) To be eligible for a loan award, a teacher shall agree to teach, or shall currently be teaching, a subject area of critical need or in a school or geographic area of the state identified as an area of critical need. The advisory board shall make decisions regarding loan assistance pursuant to section one, article four of this chapter and the following criteria:~~

~~(A) Eligibility for an award is limited to a teacher who has earned a teaching degree and is certified to teach a subject area of critical need in the public schools of West Virginia. A certified teacher in a subject area of critical need who is enrolled in an advanced in-field degree course or who has earned an advanced in-field degree may apply for an award to be paid toward current education loans;~~

~~(B) To be eligible for a loan award, a teacher shall agree to teach, or shall currently be teaching, a subject area of critical need in a state school or geographic area of the state identified as an area of critical need pursuant to section one, article four of this chapter.~~

(c) In accordance with the rule promulgated pursuant to section one, article four of this chapter, the Vice Chancellor for Administration shall develop additional eligibility criteria and procedures for the administration of the loan program.

(d) The Vice Chancellor for Administration shall make available program application forms to public and private schools in the state via the website of the commission and the State Department of Education's ~~websites~~ and in other locations convenient to potential applicants.

§18C-4A-2. Loan assistance agreement.

(a) Before receiving an award, each eligible teacher shall enter into an agreement with the Vice Chancellor for Administration and shall meet the following criteria:

(1) Provide the commission with evidence of compliance with subsection (b), section four, article four of this chapter;

(2) Teach in a subject area of critical need or in a school or geographic area of critical need full time under contract with a county board for a period of two school years for each year for which loan assistance is received pursuant to this article. The Vice Chancellor for Administration may grant a partial award to an eligible recipient whose contract term is for less than a full school year pursuant to criteria established by commission rule.

(3) Acknowledge that an award is to be paid to the recipient's educational student loan institution, not directly to the recipient, and only after the commission determines that the recipient has complied with all terms of the agreement; and

(4) Repay all or part of an award received pursuant to this article if the award is not paid to the educational student loan institution or if the recipient does not comply with the other terms of the agreement.

(b) Each loan agreement shall disclose fully the terms and conditions under which an award may be granted pursuant to this article and under which repayment may be required. The agreement also is subject to and shall include the terms and conditions established by section five, article four of this chapter.

§18C-4A-3. Amount and duration of loan assistance; limits.

(a) Each award recipient is eligible to receive loan assistance of up to ~~\$2,000~~ \$3,000 annually, subject to limits set forth in subsection (b) of this section:

(1) If the recipient has taught ~~math or science~~ for a full school year under contract with a county board in a subject area of critical need or in a school or geographic area of critical need; and

(2) If the recipient otherwise has complied with the terms of the agreement and with applicable provisions of this article and article four of this chapter, and any rules promulgated pursuant thereto.

(b) The recipient is eligible for renewal of loan assistance only during ~~the~~ periods when the recipient is under contract with a county board to teach in a subject area of critical need or in a school or geographic area of critical need, and complies with other criteria and conditions established by rule, except that a teacher who is teaching under a contract in a position that no longer meets the definition of critical need under rules established in accordance with section one, article four of this chapter is eligible for renewal of loan assistance until the teacher leaves his or her current position.

(c) ~~No~~ A recipient may not receive loan assistance pursuant to this article which accumulates in excess of \$15,000.

Bill Sponsors: Mr. Speaker, (Mr. Armstead) and Delegate Miley) [By Request of the Executive]

House Bill 2669 **Relating to compulsory tuberculosis testing**

Effective Date: May 26, 2015

Code Reference: Amends §16-3D-2 and §16-3D-3

WVDE Contact: Becky King, Office of Special Programs
rjking@k12.wv.us; 304.558.8830

Major Provisions

- The bill eliminates the current TB testing laws for new school employees and out of state transfer students. Since the law was enacted, zero cases of TB have been identified by this law. The CDC no longer recommends school TB Testing and no longer funds such services through the state health department as of December 19, 2014.

§16-3D-2. Definitions.

As used in this article:

(1) "Active Tuberculosis" or "Tuberculosis" means a communicable disease caused by the bacteria, *Mycobacterium tuberculosis*, which is demonstrated by clinical, bacteriological, radiographic or epidemiological evidence; An infected person whose tuberculosis has progressed to active disease may experience symptoms such as coughing, fever, fatigue, loss of appetite and weight loss and is capable of spreading the disease to others if the tuberculosis germs are active in the lungs or throat.

(2) "Bureau" means the Bureau for Public Health in the Department of Health and Human Resources;

(3) "Commissioner" means the Commissioner of the Bureau for Public Health, who is the state health officer;

(4) "Local board of health," "local board" or "board" means a board of health serving one or more counties or one or more municipalities or a combination thereof;

(5) "Local health department" means the staff of the local board of health; and

(6) "Local health officer" means the individual physician with a current West Virginia license to practice medicine who supervises and directs the activities of the local health department services, staff and facilities and is appointed by the local board of health with approval by the commissioner.

(7) "Tuberculosis suspect" means a person who is suspected of having tuberculosis disease due to any or all of the following medical factors: the presence of symptoms, the result of a positive skin test, risk factors for tuberculosis, or findings on an abnormal chest x ray, during the time period when an active tuberculosis disease diagnosis is pending.

§16-3D-3. Compulsory testing for tuberculosis of school children and school personnel; commissioner to approve the test; X rays required for reactors; suspension from school or employment for pupils and personnel found to have tuberculosis.

~~(a) All students transferring from a school located outside this state or enrolling for the first time from outside the state shall furnish a certification from a licensed physician stating that a tuberculin skin test, approved by the Commissioner, has been made within four months prior to the beginning of the school year. If the student cannot produce certification from a physician as required by this section then the student shall have an approved tuberculin skin test done with the result read and evaluated prior to admittance to school. Pupils found or suspected to have active tuberculosis shall be temporarily removed from school while their case is reviewed and evaluated by their personal physician and the local health officer. Pupils shall return to school when their personal physician and the local health officer, in consultation with the commissioner, indicate that it is safe and appropriate for them to return.~~

~~(b) Test results must be recorded on the certification required by subsection (a) of this section. Positive reactors to the skin test must be immediately evaluated by a physician and, if medically indicated, X-rayed, and receive periodic X-rays thereafter, when medically indicated. Pupils found to have tuberculosis shall be temporarily removed from school while their case is reviewed and evaluated by their physician and the local health officer. Pupils shall return to school when the local health officer indicates that it is safe and appropriate for them to return. School personnel found or suspected to have active tuberculosis shall have their employment suspended until the local health officer, in consultation with the commissioner, approves a return to work.~~

~~(c) Notwithstanding any other provision of this code to the contrary, all school personnel shall have one approved tuberculin skin test at the time of employment performed by the local health department or the person's physician. Additional tuberculosis skin tests or other medical screens may be required by the~~

~~local health department or Commissioner, if medically indicated. Positive reactors and those with previous positive skin tests are to be immediately referred to a physician for evaluation and treatment or further studies. School personnel found to have tuberculosis shall have their employment suspended until the local health officer, in consultation with the Commissioner, approves a return to work. School personnel who have not had the required examination will be suspended from employment until reports of examination are confirmed by the local health officer.~~

~~(d) The local health officer shall be responsible for arranging proper follow-up of school personnel and students who are unable to obtain physician evaluation for a positive tuberculin skin test.~~

~~(e) (c) The commissioner shall have the authority to~~ may require selective testing of students and school personnel for tuberculosis when there is reason to believe that they may have been exposed to the tuberculosis organism or they have signs and symptoms indicative of the disease. School nurses shall identify and refer any students or school personnel to the local health ~~officer~~ department in instances where they have reason to suspect that the individual has been exposed to tuberculosis or has symptoms indicative of the disease.

Bill Sponsors: Delegates Ellington, Householder, Pasdon and Campbell

House Bill 2702 **Redefining service personnel class titles of early childhood classroom assistant teacher**

Effective Date: March 9, 2015

Code Reference: Amends §18-5-18, §18A-4-8, §18A-4-8a and §18A-4-8b

WVDE Contact: Rhonda Fisher, Office of Early Learning
rcrowley@k12.wv.us; 304.558.9994

Major Provisions

- This bill modifies titles of Early Classroom Assistant Teachers into three categories (I, II, III). Any individuals under these classifications eligible for full retirement benefits before July 1, 2020 will be granted permanent authorization by state superintendent.
- Temporary Authorization becomes ECAT I; category II allows the WVBE to determine minimum standards; category III transitions from paraprofessional.
- Any kindergarten aide who is full time and eligible for retirement benefits before the 1st day of the instructional term of 2020-2021 will not be subject to RIF/transfer to create a vacancy for a less senior early childhood CAT. If the individual holds both an early childhood CAT and an aide title, he or she should have multiclass certification as an aide or paraprofessional.
- The bill renames the jobs on the pay scale, however, it does not change the class category.

§18-5-18. Kindergarten programs.

(a) County boards shall provide kindergarten programs for all children who have attained the age of five prior to September 1, of the school year in which the pupil enters the kindergarten program and may, pursuant to the provisions of section forty-four, article five, chapter eighteen of this code, establish kindergarten programs designed for children below the age of five. The programs for children who shall have attained the age of five shall be full-day everyday programs.

(b) Persons employed as kindergarten teachers, as distinguished from paraprofessional personnel, shall be required to hold a certificate valid for teaching at the assigned level as prescribed by rules established by the state board. The state board shall establish the minimum requirements for all paraprofessional personnel employed in kindergarten programs established pursuant to the provisions of this section and no such paraprofessional personnel may be employed in any kindergarten program unless he or she meets the minimum requirements. Beginning July 1, 2014, any person previously employed as an aide in a kindergarten program and who is employed in the same capacity on and after that date and any new person employed in that capacity in a kindergarten program on and after that date shall hold the position of aide and either Early Childhood Classroom Assistant Teacher I —Temporary Authorization, Early Childhood Classroom Assistant Teacher II —Permanent Authorization or Early Childhood Classroom Assistant Teacher III —Paraprofessional Certificate. Any person employed as an aide in a kindergarten program that is eligible for full retirement benefits before July 1, 2020, may remain employed as an aide in that position and ~~may not shall be required to acquire licensure pursuant to this section~~ granted an Early Childhood Classroom Assistant Teacher permanent authorization by the state superintendent pursuant to section two-a, article three, chapter eighteen-a of this code.

(c) The state board with the advice of the state superintendent shall establish and prescribe guidelines and criteria relating to the establishment, operation and successful completion of kindergarten programs in accordance with the other provisions of this section. Guidelines and criteria so established and prescribed also are intended to serve for the establishment and operation of nonpublic kindergarten programs and shall be used for the evaluation and approval of those programs by the state superintendent, provided application for the evaluation and approval is made in writing by proper authorities in control of the programs. The state superintendent, annually, shall publish a list of nonpublic kindergarten programs, including Montessori kindergartens that have been approved in accordance with the provisions of this section. Montessori kindergartens established and operated in accordance with usual and customary practices for the use of the Montessori method which have teachers who have training or experience, regardless of additional certification, in the use of the Montessori method of instruction for kindergartens shall be considered to be approved.

(d) Pursuant to the guidelines and criteria, and only pursuant to the guidelines and criteria, the county boards may establish programs taking kindergarten to the homes of the children involved, using educational television, paraprofessional personnel in addition to and to supplement regularly certified teachers, mobile or permanent classrooms and other means developed to best carry kindergarten to the child in its home and enlist the aid and involvement of its parent or parents in presenting the program to the child; or may develop programs of a more formal kindergarten type, in existing school buildings, or both, as the county board may determine, taking into consideration the cost, the terrain, the existing available facilities, the distances each child may be required to travel, the time each child may be required to be away from home, the child's health, the involvement of parents and other factors as each county board may find pertinent. The determinations by any county board are final and conclusive.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

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

(a) The purpose of this section is to establish an employment term and class titles for service personnel. The employment term for service personnel may not be less than ten months. A month is

defined as twenty employment days. The county board may contract with all or part of these service personnel for a longer term.

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

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

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

(e) If a service person whose regular work week is scheduled from Monday through Friday agrees to perform any work assignments on a Saturday or Sunday, the service person is paid for at least one-half day of work for each day he or she reports for work. If the service person works more than three and one-half hours on any Saturday or Sunday, he or she is paid for at least a full day of work for each day.

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

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

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

(3) The additional compensation provided in this subsection:

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

(B) Is payable entirely from county board funds.

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

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

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

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

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

limited to the number of years shown and allowed under the state minimum pay scale as set forth in section eight-a of this article;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(18) "Cabinetmaker" means a person employed to construct cabinets, tables, bookcases and other furniture;

(19) "Cafeteria manager" means a person employed to direct the operation of a food services program in a school, including assigning duties to employees, approving requisitions for supplies and repairs, keeping inventories, inspecting areas to maintain high standards of sanitation, preparing financial reports and keeping records pertinent to food services of a school;

(20) "Carpenter I" means a person classified as a carpenter's helper;

(21) "Carpenter II" means a person classified as a journeyman carpenter;

(22) "Chief mechanic" means a person employed to be responsible for directing activities which ensure that student transportation or other county board-owned vehicles are properly and safely maintained;

(23) "Clerk I" means a person employed to perform clerical tasks;

(24) "Clerk II" means a person employed to perform general clerical tasks, prepare reports and tabulations, and operate office machines;

(25) "Computer operator" means a qualified person employed to operate computers;

(26) "Cook I" means a person employed as a cook's helper;

(27) "Cook II" means a person employed to interpret menus and to prepare and serve meals in a food service program of a school. This definition includes a service person who has been employed as a "Cook I" for a period of four years;

(28) "Cook III" means a person employed to prepare and serve meals, make reports, prepare requisitions for supplies, order equipment and repairs for a food service program of a school system;

(29) "Crew leader" means a person employed to organize the work for a crew of maintenance employees to carry out assigned projects;

(30) "Custodian I" means a person employed to keep buildings clean and free of refuse;

(31) "Custodian II" means a person employed as a watchman or groundsman;

(32) "Custodian III" means a person employed to keep buildings clean and free of refuse, to operate the heating or cooling systems and to make minor repairs;

(33) "Custodian IV" means a person employed as a head custodian. In addition to providing services as defined in "Custodian III" duties may include supervising other custodian personnel;

(34) "Director or coordinator of services" means an employee of a county board who is assigned to direct a department or division.

(A) Nothing in this subdivision prohibits a professional person or a professional educator from holding this class title;

(B) Professional personnel holding this class title may not be defined or classified as service personnel unless the professional person held a service personnel title under this section prior to holding the class title of "director or coordinator of services;"

(C) The director or coordinator of services is classified either as a professional person or a service person for state aid formula funding purposes;

(D) Funding for the position of director or coordinator of services is based upon the employment status of the director or coordinator either as a professional person or a service person; and

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

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

(36) "Early Childhood Classroom Assistant Teacher I ~~—Temporary Authorization~~" means a person who does not possess minimum requirements for the permanent authorization requirements, but is enrolled in and pursuing requirements;

(37) "Early Childhood Classroom Assistant Teacher II ~~—Permanent Authorization~~" means a person who has completed the minimum requirements for a state-awarded certificate for early childhood classroom assistant teachers ~~that meet or exceed the requirements for a child development associate as determined by the State Board; Equivalency for the West Virginia Department of Education will be determined as the child development associate or the West Virginia Apprenticeship for Child Development Specialists;~~

(38) "Early Childhood Classroom Assistant Teacher III ~~—Paraprofessional Certificate~~" means a person who has completed permanent authorization requirements, as well as additional requirements comparable to current paraprofessional certificate;

(39) "Educational Sign Language Interpreter I" means a person employed to provide communication access across all educational environments to students who are deaf or hard of hearing, and who holds the Initial Paraprofessional Certificate – Educational Interpreter pursuant to state board policy;

(40) "Educational Sign Language Interpreter II" means a person employed to provide communication access across all educational environments to students who are deaf or hard of hearing, and who holds the Permanent Paraprofessional Certificate – Educational Interpreter pursuant to state board policy;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(55) "Heavy equipment operator" means a person employed to operate heavy equipment;

(56) "Inventory supervisor" means a person employed to supervise or maintain operations in the receipt, storage, inventory and issuance of materials and supplies;

(57) "Key punch operator" means a qualified person employed to operate key punch machines or verifying machines;

(58) "Licensed practical nurse" means a nurse, licensed by the West Virginia Board of Examiners for Licensed Practical Nurses, employed to work in a public school under the supervision of a school nurse;

(59) "Locksmith" means a person employed to repair and maintain locks and safes;

(60) "Lubrication man" means a person employed to lubricate and service gasoline or diesel-powered equipment of a county school system;

(61) "Machinist" means a person employed to perform machinist tasks which include the ability to operate a lathe, planer, shaper, threading machine and wheel press. A person holding this class title also should have the ability to work from blueprints and drawings;

(62) "Mail clerk" means a person employed to receive, sort, dispatch, deliver or otherwise handle letters, parcels and other mail;

(63) "Maintenance clerk" means a person employed to maintain and control a stocking facility to keep adequate tools and supplies on hand for daily withdrawal for all school maintenance crafts;

(64) "Mason" means a person employed to perform tasks connected with brick and block laying and carpentry tasks related to these activities;

(65) "Mechanic" means a person employed to perform skilled duties independently in the maintenance and repair of automobiles, school buses and other mechanical and mobile equipment to use in a county school system;

(66) "Mechanic assistant" means a person employed as a mechanic apprentice and helper;

(67) "Multiclassification" means a person employed to perform tasks that involve the combination of two or more class titles in this section. In these instances the minimum salary scale is the higher pay grade of the class titles involved;

(68) "Office equipment repairman I" means a person employed as an office equipment repairman apprentice or helper;

(69) "Office equipment repairman II" means a person responsible for servicing and repairing all office machines and equipment. A person holding this class title is responsible for the purchase of parts necessary for the proper operation of a program of continuous maintenance and repair;

(70) "Painter" means a person employed to perform duties painting, finishing and decorating wood, metal and concrete surfaces of buildings, other structures, equipment, machinery and furnishings of a county school system;

(71) "Paraprofessional" means a person certified pursuant to section two-a, article three of this chapter to perform duties in a support capacity including, but not limited to, facilitating in the instruction and direct or indirect supervision of students under the direction of a principal, a teacher or another designated professional educator.

(A) A person employed on the effective date of this section in the position of an aide may not be subject to a reduction in force or transferred to create a vacancy for the employment of a paraprofessional;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(84) "Sign Support Specialist" means a person employed to provide sign supported speech assistance to students who are able to access environments through audition. A person who has held or holds an aide title and becomes employed as a sign support specialist shall hold a multiclassification status that includes both aide and sign support specialist titles, in accordance with section eight-b of this article.

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

(86) "Supervisor of transportation" means a qualified person employed to direct school transportation activities properly and safely, and to supervise the maintenance and repair of vehicles, buses

and other mechanical and mobile equipment used by the county school system. After July 1, 2010, all persons employed for the first time in a position with this classification title or in a multiclassification position that includes this title shall have five years of experience working in the transportation department of a county board. Experience working in the transportation department consists of serving as a bus operator, bus aide, assistant mechanic, mechanic, chief mechanic or in a clerical position within the transportation department;

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

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

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

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

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

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

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

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

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

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

(1) Reclassified by class title; or

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

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

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

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

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

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

(s) Any service person holding a classification title on June 30, 2013, that is removed from the classification schedule pursuant to amendment and reenactment of this section in the year 2013, has his or her employment contract revised as follows:

(1) Any service person holding the Braille or Sign Language Specialist classification title has that classification title renamed on his or her employment contract as either Braille Specialist or Sign Support Specialist. This action does not result in a loss or reduction of salary or supplement by any employee. Any seniority earned in the Braille or Sign Language Specialist classification prior to July 1, 2013, continues to be credited as seniority earned in the Braille Specialist or Sign Support Specialist classification;

(2) Any service person holding the Paraprofessional classification title and holding the Initial Paraprofessional Certificate – Educational Interpreter has the title Educational Sign Language Interpreter I added to his or her employment contract. This action does not result in a loss or reduction of salary or supplement by any employee. Any seniority earned in the Paraprofessional classification prior to July 1, 2013, continues to be credited as seniority earned in the Educational Sign Language Interpreter I classification; and

(3) Any service person holding the Paraprofessional classification title and holding the Permanent Paraprofessional Certificate – Educational Interpreter has the title Educational Sign Language Interpreter II added to his or her employment contract. This action does not result in a loss or reduction of salary or supplement by any employee. Any seniority earned in the Paraprofessional classification prior to July 1,

2013, continues to be credited as seniority earned in the Educational Sign Language Interpreter II classification;

(t) Any person employed as an aide in a kindergarten program who is eligible for full retirement benefits before the first day of the instructional term in the 2020-2021 school year, may not be subject to a reduction in force or transferred to create a vacancy for the employment of a less senior Early Childhood Classroom Assistant Teacher;

(u) A person who has held or holds an aide title and becomes employed as an Early Childhood Classroom Assistant Teacher shall hold a multiclassification status that includes aide and/or paraprofessional titles in accordance with section eight-b of this article.

§18A-4-8a. Service personnel minimum monthly salaries.

(a) The minimum monthly pay for each service employee shall be as follows:

(1) Beginning July 1, 2014, and continuing thereafter, the minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the State Minimum Pay Scale Pay Grade and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one-half the amount indicated in the State Minimum Pay Scale Pay Grade set forth in this subdivision.

Years Exp.	STATE MINIMUM PAY SCALE PAY GRADE							
	A	B	C	D	E	F	G	H
0	1,660	1,681	1,723	1,776	1,829	1,892	1,924	1,997
1	1,692	1,714	1,755	1,808	1,862	1,925	1,956	2,030
2	1,725	1,746	1,788	1,841	1,894	1,957	1,989	2,062
3	1,757	1,779	1,821	1,874	1,927	1,990	2,022	2,095
4	1,790	1,812	1,853	1,906	1,959	2,023	2,054	2,129
5	1,823	1,844	1,886	1,939	1,992	2,055	2,087	2,161
6	1,855	1,877	1,920	1,972	2,025	2,088	2,120	2,194
7	1,889	1,909	1,952	2,004	2,057	2,121	2,152	2,227
8	1,922	1,942	1,985	2,037	2,090	2,153	2,185	2,259
9	1,954	1,975	2,018	2,071	2,123	2,186	2,217	2,292
10	1,987	2,008	2,050	2,103	2,155	2,220	2,251	2,325
11	2,020	2,041	2,083	2,136	2,188	2,252	2,284	2,357

12	2,052	2,074	2,115	2,169	2,222	2,285	2,316	2,390
13	2,085	2,106	2,148	2,201	2,254	2,317	2,349	2,423
14	2,118	2,139	2,181	2,234	2,287	2,350	2,382	2,455
15	2,150	2,172	2,213	2,266	2,319	2,383	2,414	2,488
16	2,183	2,204	2,246	2,299	2,352	2,415	2,447	2,521
17	2,215	2,237	2,280	2,332	2,385	2,448	2,480	2,554
18	2,248	2,270	2,312	2,364	2,417	2,481	2,512	2,587
19	2,282	2,302	2,345	2,397	2,450	2,513	2,545	2,619
20	2,314	2,335	2,378	2,431	2,483	2,546	2,578	2,653
21	2,347	2,367	2,410	2,463	2,515	2,579	2,610	2,687
22	2,380	2,401	2,443	2,496	2,548	2,612	2,644	2,719
23	2,412	2,434	2,476	2,529	2,582	2,646	2,678	2,753
24	2,445	2,466	2,508	2,561	2,614	2,680	2,711	2,787
25	2,478	2,499	2,541	2,594	2,648	2,712	2,745	2,819
26	2,510	2,532	2,573	2,628	2,682	2,746	2,777	2,853
27	2,543	2,564	2,606	2,660	2,714	2,778	2,811	2,886
28	2,576	2,597	2,640	2,694	2,748	2,812	2,845	2,920
29	2,608	2,631	2,673	2,726	2,781	2,846	2,877	2,954
30	2,642	2,663	2,707	2,760	2,814	2,878	2,911	2,987
31	2,675	2,697	2,741	2,794	2,848	2,912	2,945	3,020
32	2,709	2,730	2,773	2,827	2,880	2,946	2,977	3,054
33	2,743	2,763	2,807	2,861	2,914	2,978	3,011	3,087
34	2,775	2,797	2,841	2,895	2,948	3,012	3,045	3,120

35	2,809	2,831	2,873	2,927	2,980	3,046	3,078	3,154
36	2,843	2,864	2,907	2,961	3,015	3,079	3,112	3,186
37	2,875	2,898	2,941	2,995	3,049	3,113	3,145	3,220
38	2,909	2,930	2,973	3,027	3,081	3,146	3,178	3,254
39	2,943	2,964	3,007	3,061	3,115	3,179	3,212	3,286
40	2,975	2,998	3,040	3,094	3,149	3,213	3,245	3,320

(2) Each service employee shall receive the amount prescribed in the Minimum Pay Scale in accordance with the provisions of this subsection according to their class title and pay grade as set forth in this subdivision:

CLASS TITLE	PAY GRADE
Accountant I	D
Accountant II	E
Accountant III	F
Accounts Payable Supervisor	G
Aide I	A
Aide II	B
Aide III	C
Aide IV	D
Audiovisual Technician.....	C
Auditor	G
Autism Mentor	F
Braille Specialist	E
Bus Operator	D
Buyer	F
Cabinetmaker	G
Cafeteria Manager.....	D
Carpenter I	E
Carpenter II	F
Chief Mechanic.....	G
Clerk I	B
Clerk II	C
Computer Operator	E
Cook I	A
Cook II	B
Cook III	C
Crew Leader.....	F
Custodian I	A
Custodian II	B
Custodian III	C
Custodian IV.....	D
Director or Coordinator of Services.....	H
Draftsman.....	D
Early Childhood Classroom Assistant Teacher I	E
Early Childhood Classroom Assistant Teacher II	E
Early Childhood Classroom Assistant Teacher III	F
Educational Sign Language Interpreter I	F

Educational Sign Language Interpreter II.....	G
Electrician I.....	F
Electrician II.....	G
Electronic Technician I.....	F
Electronic Technician II.....	G
Executive Secretary.....	G
Food Services Supervisor.....	G
Foreman.....	G
General Maintenance.....	C
Glazier.....	D
Graphic Artist.....	D
Groundsman.....	B
Handyman.....	B
Heating and Air Conditioning Mechanic I.....	E
Heating and Air Conditioning Mechanic II.....	G
Heavy Equipment Operator.....	E
Inventory Supervisor.....	D
Key Punch Operator.....	B
Licensed Practical Nurse.....	F
Locksmith.....	G
Lubrication Man.....	C
Machinist.....	F
Mail Clerk.....	D
Maintenance Clerk.....	C
Mason.....	G
Mechanic.....	F
Mechanic Assistant.....	E
Office Equipment Repairman I.....	F
Office Equipment Repairman.....	G
Painter.....	E
Paraprofessional.....	F
Payroll Supervisor.....	G
Plumber I.....	E
Plumber II.....	G
Printing Operator.....	B
Printing Supervisor.....	D
Programmer.....	H
Roofing/Sheet Metal Mechanic.....	F
Sanitation Plant Operator.....	G
School Bus Supervisor.....	E
Secretary I.....	D
Secretary II.....	E
Secretary III.....	F
Sign Support Specialist.....	E
Supervisor of Maintenance.....	H
Supervisor of Transportation.....	H
Switchboard Operator-Receptionist.....	D
Truck Driver.....	D
Warehouse Clerk.....	C
Watchman.....	B
Welder.....	F
WVEIS Data Entry and Administrative Clerk.....	B

(b) An additional \$12 per month is added to the minimum monthly pay of each service person who holds a high school diploma or its equivalent.

(c) An additional \$11 per month also is added to the minimum monthly pay of each service person for each of the following:

(1) A service person who holds twelve college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(2) A service person who holds twenty-four college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(3) A service person who holds thirty-six college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(4) A service person who holds forty-eight college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(5) A service employee who holds sixty college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(6) A service person who holds seventy-two college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(7) A service person who holds eighty-four college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(8) A service person who holds ninety-six college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(9) A service person who holds one hundred eight college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(10) A service person who holds one hundred twenty college hours or comparable credit obtained in a trade or vocational school as approved by the state board.

(d) An additional \$40 per month also is added to the minimum monthly pay of each service person for each of the following:

(1) A service person who holds an associate's degree;

(2) A service person who holds a bachelor's degree;

(3) A service person who holds a master's degree;

(4) A service person who holds a doctorate degree.

(e) An additional \$11 per month is added to the minimum monthly pay of each service person for each of the following:

(1) A service person who holds a bachelor's degree plus fifteen college hours;

(2) A service person who holds a master's degree plus fifteen college hours;

(3) A service person who holds a master's degree plus thirty college hours;

(4) A service person who holds a master's degree plus forty-five college hours; and

(5) A service person who holds a master's degree plus sixty college hours.

(f) To meet the objective of salary equity among the counties, each service person is paid an equity supplement, as set forth in section five of this article, of \$164 per month, subject to the provisions of that section. These payments: (i) Are in addition to any amounts prescribed in the applicable State Minimum Pay Scale Pay Grade, any specific additional amounts prescribed in this section and article and any county supplement in effect in a county pursuant to section five-b of this article; (ii) are paid in equal monthly installments; and (iii) are considered a part of the state minimum salaries for service personnel.

(g) When any part of a school service person's daily shift of work is performed between the hours of six o'clock p. m. and five o'clock a. m. the following day, the employee is paid no less than an additional \$10 per month and one half of the pay is paid with local funds.

(h) Any service person required to work on any legal school holiday is paid at a rate one and one-half times the person's usual hourly rate.

(i) Any full-time service personnel required to work in excess of their normal working day during any week which contains a school holiday for which they are paid is paid for the additional hours or fraction of the additional hours at a rate of one and one-half times their usual hourly rate and paid entirely from county board funds.

(j) A service person may not have his or her daily work schedule changed during the school year without the employee's written consent and the person's required daily work hours may not be changed to prevent the payment of time and one-half wages or the employment of another employee.

(k) The minimum hourly rate of pay for extra duty assignments as defined in section eight-b of this article is no less than one seventh of the person's daily total salary for each hour the person is involved in performing the assignment and paid entirely from local funds: *Provided*, That an alternative minimum hourly rate of pay for performing extra duty assignments within a particular category of employment may be used if the alternate hourly rate of pay is approved both by the county board and by the affirmative vote of a two-thirds majority of the regular full-time persons within that classification category of employment within that county: *Provided, however*, That the vote is by secret ballot if requested by a service person within that classification category within that county. The salary for any fraction of an hour the employee is involved in performing the assignment is prorated accordingly. When performing extra duty assignments, persons who are regularly employed on a one-half day salary basis shall receive the same hourly extra duty assignment pay computed as though the person were employed on a full-day salary basis.

(l) The minimum pay for any service personnel engaged in the removal of asbestos material or related duties required for asbestos removal is their regular total daily rate of pay and no less than an additional \$3 per hour or no less than \$5 per hour for service personnel supervising asbestos removal responsibilities for each hour these employees are involved in asbestos-related duties. Related duties required for asbestos removal include, but are not limited to, travel, preparation of the work site, removal of asbestos, decontamination of the work site, placing and removal of equipment and removal of structures from the site. If any member of an asbestos crew is engaged in asbestos-related duties outside of the employee's regular employment county, the daily rate of pay is no less than the minimum amount as established in the employee's regular employment county for asbestos removal and an additional \$30 per each day the employee is engaged in asbestos removal and related duties. The additional pay for asbestos removal and related duties shall be payable entirely from county funds. Before service personnel may be used in the removal of asbestos material or related duties, they shall have completed a federal Environmental Protection Act-approved training program and be licensed. The employer shall provide all necessary protective equipment and maintain all records required by the Environmental Protection Act.

(m) For the purpose of qualifying for additional pay as provided in section eight, article five of this chapter, an aide is considered to be exercising the authority of a supervisory aide and control over pupils if the aide is required to supervise, control, direct, monitor, escort or render service to a child or children when not under the direct supervision of a certified professional person within the classroom, library, hallway, lunchroom, gymnasium, school building, school grounds or wherever supervision is required. For

purposes of this section, “under the direct supervision of a certified professional person” means that certified professional person is present, with and accompanying the aide.

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

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

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

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

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

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

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

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

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

(7) New service personnel.

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

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

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

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

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

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

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

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

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

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

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

(f) *Extra-duty assignments.* --

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Bill Sponsors: Delegates Pasdon, Perry, Moye, Hamrick, Campbell, Statler, Rowan and Espinosa

House Bill 2755 **Relating to service and professional employee positions at jointly established schools**

Effective Date: March 9, 2015

Code Reference: Amends §18-5-11a

WVDE Contact: Heather Hutchens, Office of Legal Services
hhutchens@k12.wv.us; 304.558.3667

Major Provisions

- The bill clarifies the manner in which positions are filled and seniority is earned at a school that is jointly established by two counties.
- Gilmer County and Lewis County are the first counties to jointly establish a school. The new school will open in the fall of 2015.
- The bill provides that the receiving county (Lewis) may not fill any vacancies created by the retirement or voluntary transfer of employees of the receiving county school from February 1 of the school year immediately preceding the opening of the school until January 1 following the opening of the jointly established school until the vacancies have been offered to qualified individuals from the sending county (Gilmer) school who would have been RIFed.
- The bill also clarifies that employees of the sending county who are hired by the receiving county shall accrue seniority in both the sending and receiving counties during the time in which they continue to be employed at the jointly established school.

§18-5-11a. Joint governing partnership board pilot initiative.

(a) The Legislature finds that many examples exist across the state of students who reside in one county, but who attend the public schools in an adjoining county.

(1) These arrangements have been accommodated by the boards of the adjoining counties and applicable statutes to serve best the interests of the students by enabling them to attend a school closer to their homes.

(2) Typically, these arrangements have evolved because school closures or construction of new schools in the student's county of residence have made a cross-county transfer to an existing school in an adjoining county a more convenient, practical and educationally sound option.

(b) The Legislature further finds that as population changes continue to occur, the boards of adjoining counties may best serve the interests of their students and families by establishing a new school in partnership to be attended by students residing in each of the counties. Particularly in the case of elementary grade level schools established in partnership between adjoining counties, the Legislature finds that each of the county boards, as well as the parents of students from each of the counties attending the school, have an interest in the operation of the school and the preparation of the students for success as they transition to the higher grade levels in the other schools of their respective home counties. Therefore, in the absence of a well defined governance structure that accommodates these interests, the purpose of this section is to provide for a joint governing partnership board pilot initiative.

(c) The pilot initiative is limited to the joint establishment by two adjoining counties of a school including elementary grade levels for which a memorandum of understanding on the governance and operation of the school has been signed. The pilot initiative is subject to amendment of the agreement as may be necessary to incorporate at least the following features of a joint governing partnership board:

(1) The joint governing partnership board is comprised of the county superintendent of each county, the president of the county board of each county or his or her designee, and a designee of the state superintendent;

(2) The board shall elect a chair from among its membership for a two-year term and may meet monthly or at the call of the chair.

(A) Meetings of the board are subject to the open governmental proceedings laws applicable to county boards.

(B) The boards of the respective counties are responsible for the expenses of its members and shall apportion other operational expenses of the board upon mutual agreement.

(C) Once the jointly established school is opened, the meetings of the board shall be held at the school.

(3) All provisions of law applicable to the establishment, operation and management of an inter-county school including, but not limited to, section eleven, article five and section fourteen, article nine-a of this chapter and article eight-i, article four, chapter eighteen-a of this code apply, except that the joint governing partnership board may exercise governing authority for operation and management of the school in the following areas:

(A) *Personnel.*

(1) ~~Within the applicable~~ **Notwithstanding any other laws for employment, evaluation, mentoring, professional development, suspension and dismissal of public school employees,** the powers and duties of the county superintendent are vested in the joint governing partnership board with respect to the employees employed by the county in which the school is located or assigned to the school from the

partner county. Pursuant to the provisions of section eight-i, article four, chapter eighteen-a of this code, employees who are hired by the county board of the receiving county shall accrue seniority in both the sending and receiving counties during the time in which they continue to be employed at the jointly established school. Upon losing a position at the jointly established school due to reduction in force or involuntary transfer, an employee shall displace a less senior employee in the county of employment which immediately preceded employment at the jointly established school. Once an employee from the sending county voluntarily transfers or resigns from a position at the jointly established school and is no longer employed in the receiving county, the employee's seniority and any other statutory rights in the receiving county cease.

~~(2) The employees are the employees of the employing county board and the partnership board may make recommendations concerning these employment matters to the employing board it considers necessary and appropriate;~~ When initially filling service and professional employee positions at the jointly established school, the counties shall follow the procedures established in section eight-i, article four, chapter eighteen-a of this code. For the initial school year of the jointly established school's opening only, the receiving county may not fill any vacancies created by the retirement or voluntary transfer of employees of the receiving county school from February 1 of the school year immediately preceding the opening of the school until January 1 following the opening of the jointly established school until the receiving county has received the list of employees created pursuant to the provisions of subsection (c), section eight-i, article four, chapter eighteen-a of this code. The receiving county may not fill any of the vacancies referenced in this subsection until the vacancies have been offered to qualified individuals from the certified list.

(3) The employees of the jointly established school are the employees of the employing county board and the partnership board may make recommendations concerning these employment matters to the employing board it considers necessary and appropriate.

(B) *Curriculum.*

(1) The joint governing partnership board is responsible for the formulation and execution of the school's strategic improvement plan and technology plan to meet the goals for student and school performance and progress.

(2) In its formulation of these plans, the partnership board shall consider the curriculum and plans of the respective county boards to ensure preparation of the students at the school for their successful transition into the higher grade level schools of the respective counties;

(C) *Finances.* The joint governing partnership board shall control and may approve the expenditure of all funds allocated to the school for the school budget from either county and may solicit and receive donations, apply for and receive grants and conduct fund raisers to supplement the budget; and

(D) *Facilities.* Consistent with the policies in effect concerning liability insurance coverage, maintenance and appropriate uses of school facilities for the schools of the county in which the school is located, the joint governing partnership board governs the use of the school facility and ensures equitable opportunities for access and use by organizations and groups from both counties.

~~(b)~~ (d) The joint governing partnership board may adopt policies for the school that are separate from the policies of the respective counties and, working in concert with its local school improvement council, may propose alternatives to the operation of the school which require the request of a waiver of policy, interpretation or statute from either or both county boards, the state board or the Legislature as appropriate.

~~(e)~~ (e) The superintendents and presidents of county boards of adjoining counties that have in effect on the effective date of this section a memorandum of understanding on the governance and operation of a jointly established school shall report to the Legislative Oversight Commission on Education Accountability on or before November 1, 2013, on the status of implementation of this section.

(1) Once established, the joint governing partnership board established under this pilot initiative shall remain in effect for five consecutive school years unless authority for the pilot initiative is repealed.

(2) The Legislative Oversight Commission on Education Accountability may request the superintendents and the presidents of the county boards to provide periodic updates on this pilot initiative. Also, at the conclusion of the five-year pilot initiative, they shall report their recommendations on the viability of the joint governing partnership board approach and any recommended changes to the Legislative Oversight Commission on Education Accountability.

(A) When the five-year period is concluded, by affirmative vote of both boards, the joint governing partnership board shall remain in effect; or

(B) The agreement between the boards for the governance and operation of the school shall revert to the terms in effect on the effective date of this section, subject to amendment by agreement of the boards.

Bill Sponsors: Delegates Boggs, Hanshaw, D. Evans, Perry, Ashley, Pasdon, Pethtel, Duke and Williams

House Bill 2764 **Making a supplementary appropriation to the State Department of Education - School Building Authority**

Effective Date: March 6, 2015

Code Reference: None

WVDE Contact: Terry Harless, Office of Internal Operations
tharless@k12.wv.us; 304.558.2686

Major Provisions

- The bill makes a supplementary appropriation to the School Building Authority's Debt Service Fund in the amount of \$18,000,000 for FY15.

Sec. 4. Appropriations from lottery net profits.

288-State Department of Education -

School Building Authority -

Debt Service Fund

(WV Code Chapter 18)

Fund 3963 FY 2015 Org 0402

Appropriation Lottery Funds

Debt Service – Total	31000	\$	7,513,455
Directed Transfer	70000		<u>10,486,545</u>
Total			18,000,000

The School Building Authority shall have the authority to transfer between the above appropriations in accordance with W.Va. Code §29-22-18.

The purpose of this supplementary appropriation bill is to supplement, amend, decrease an existing item, and add a new item of appropriation in the aforesaid account for the designated spending unit for expenditure during the fiscal year 2015.

Bill Sponsors: Mr. Speaker, (Mr. Armstead) and Delegate Miley) [By Request of the Executive]

House Bill 2939 **Relating to requirements for mandatory reporting of sexual offenses on school premises involving students**

Effective Date: June 12, 2015

Code Reference: Amends §49-1-201, §49-2-803 and §49-2-812

WVDE Contact: Heather Hutchens, Office of Legal Services
hhutchens@k12.wv.us; 304.558.3667

Major Provisions

- The bill requires any school teacher or personnel receiving credible information from a witness, or personally observing any sexual contact, intercourse or intrusion on school premises or on a school bus, must immediately (no more than 24 hours) report the situation to law enforcement. This reporting requirement does not apply to information received or observations made of consensual sexual contact, intercourse or intrusion.
- A school teacher or personnel is deemed to have satisfied the reporting requirement if he or she reports the information or observation to the school principal, assistant principal or other similar person in charge. In such event, the duty to report to law enforcement within 24 hours is placed upon the principal, assistant principal or other similar person in charge. If the sexual contact, intercourse or intrusion involves two students or a student and a school employee, law enforcement is required to notify the student's parents about the allegations within 24 hours.
- County BOEs are required to provide all employees with a written statement detailing this legislation's reporting requirements. The county BOE is required to maintain a signed acknowledgment from all employees that they have received and understand the reporting requirements.
- Failure to follow the reporting requirements can result in a misdemeanor, and subject a party found guilty of the misdemeanor to jail time of up to six months and a fine of not more than \$10,000.

§49-1-201. Definitions related, but not limited, to child abuse and neglect.

When used in this chapter, terms defined in this section have the meanings ascribed to them that relate to, but are not limited to, child abuse and neglect, except in those instances where a different meaning is provided or the context in which the word is used clearly indicates that a different meaning is intended.

"Abandonment" means any conduct that demonstrates the settled purpose to forego the duties and parental responsibilities to the child;

"Abused child" means a child whose health or welfare is being harmed or threatened by:

(A) A parent, guardian or custodian who knowingly or intentionally inflicts, attempts to inflict or knowingly allows another person to inflict, physical injury or mental or emotional injury, upon the child or another child in the home. Physical injury may include an injury to the child as a result of excessive corporal punishment;

(B) Sexual abuse or sexual exploitation;

(C) The sale or attempted sale of a child by a parent, guardian or custodian in violation of section fourteen-h, article two, chapter sixty-one of this code; or

(D) Domestic violence as defined in section two hundred two, article twenty-seven, chapter forty-eight of this code.

"Abusing parent" means a parent, guardian or other custodian, regardless of his or her age, whose conduct has been adjudicated by the court to constitute child abuse or neglect as alleged in the petition charging child abuse or neglect.

"Battered parent," for the purposes of part six, article four of this chapter, means a respondent parent, guardian, or other custodian who has been adjudicated by the court to have not condoned the abuse or neglect and has not been able to stop the abuse or neglect of the child or children due to being the victim of domestic violence as defined by section two hundred two, article twenty-seven, chapter forty-eight of this code which was perpetrated by the same person or persons determined to have abused or neglected the child or children.

"Child abuse and neglect services" means social services which are directed toward:

(A) Protecting and promoting the welfare of children who are abused or neglected;

(B) Identifying, preventing and remedying conditions which cause child abuse and neglect;

(C) Preventing the unnecessary removal of children from their families by identifying family problems and assisting families in resolving problems which could lead to a removal of children and a breakup of the family;

(D) In cases where children have been removed from their families, providing time-limited reunification services to the children and the families so as to reunify those children with their families or some portion thereof;

(E) Placing children in suitable adoptive homes when reunifying the children with their families, or some portion thereof, is not possible or appropriate; and

(F) Assuring the adequate care of children or juveniles who have been placed in the custody of the department or third parties.

"Condition requiring emergency medical treatment" means a condition which, if left untreated for a period of a few hours, may result in permanent physical damage; that condition includes, but is not limited to, profuse or arterial bleeding, dislocation or fracture, unconsciousness and evidence of ingestion of significant amounts of a poisonous substance.

"Imminent danger to the physical well-being of the child" means an emergency situation in which the welfare or the life of the child is threatened. These conditions may include an emergency situation when there is reasonable cause to believe that any child in the home is or has been sexually abused or sexually exploited, or reasonable cause to believe that the following conditions threaten the health, life, or safety of any child in the home:

(A) Nonaccidental trauma inflicted by a parent, guardian, custodian, sibling or a babysitter or other caretaker;

(B) A combination of physical and other signs indicating a pattern of abuse which may be medically diagnosed as battered child syndrome;

(C) Nutritional deprivation;

(D) Abandonment by the parent, guardian or custodian;

(E) Inadequate treatment of serious illness or disease;

(F) Substantial emotional injury inflicted by a parent, guardian or custodian;

(G) Sale or attempted sale of the child by the parent, guardian or custodian;

(H) The parent, guardian or custodian's abuse of alcohol or drugs or other controlled substance as defined in section one hundred one, article one, chapter sixty-a of this code, has impaired his or her parenting skills to a degree as to pose an imminent risk to a child's health or safety; or

(I) Any other condition that threatens the health, life, or safety of any child in the home.

"Neglected child" means a child:

(A) Whose physical or mental health is harmed or threatened by a present refusal, failure or inability of the child's parent, guardian or custodian to supply the child with necessary food, clothing, shelter, supervision, medical care or education, when that refusal, failure or inability is not due primarily to a lack of financial means on the part of the parent, guardian or custodian; or

(B) Who is presently without necessary food, clothing, shelter, medical care, education or supervision because of the disappearance or absence of the child's parent or custodian;

(C) "Neglected child" does not mean a child whose education is conducted within the provisions of section one, article eight, chapter eighteen of this code.

"Petitioner or co-petitioner" means the Department or any reputable person who files a child abuse or neglect petition pursuant to section six hundred one, article four, of this chapter.

"Permanency plan" means the part of the case plan which is designed to achieve a permanent home for the child in the least restrictive setting available.

"Respondent" means all parents, guardians, and custodians identified in the child abuse and neglect petition who are not petitioners or co-petitioners.

"Sexual abuse" means:

(A) Sexual intercourse, sexual intrusion, sexual contact, or conduct proscribed by section three, article eight-c, chapter sixty-one, which a parent, guardian or custodian engages in, attempts to engage in, or knowingly procures another person to engage in with a child notwithstanding the fact that for a child who is less than sixteen years of age the child may have willingly participated in that conduct or the child may have suffered no apparent physical injury or mental or emotional injury as a result of that conduct or, for a child sixteen years of age or older the child may have consented to that conduct or the child may have suffered no apparent physical injury or mental or emotional injury as a result of that conduct;

(B) Any conduct where a parent, guardian or custodian displays his or her sex organs to a child, or procures another person to display his or her sex organs to a child, for the purpose of gratifying the sexual desire of the parent, guardian or custodian, of the person making that display, or of the child, or for the purpose of affronting or alarming the child; or

(C) Any of the offenses proscribed in sections seven, eight or nine of article eight-b, chapter sixty-one of this code.

"Sexual assault" means any of the offenses proscribed in sections three, four or five of article eight-b, chapter sixty-one of this code.

"Sexual contact" means sexual contact as that term is defined in section one, article eight-b, chapter sixty-one of this code.

"Sexual exploitation" means an act where:

(A) A parent, custodian or guardian, whether for financial gain or not, persuades, induces, entices or coerces a child to engage in sexually explicit conduct as that term is defined in section one, article eight-c, chapter sixty-one of this code; or

(B) A parent, guardian or custodian persuades, induces, entices or coerces a child to display his or her sex organs for the sexual gratification of the parent, guardian, custodian or a third person, or to display his or her sex organs under circumstances in which the parent, guardian or custodian knows that the display is likely to be observed by others who would be affronted or alarmed.

"Sexual intercourse" means sexual intercourse as that term is defined in section one, article eight-b, chapter sixty-one of this code.

"Sexual intrusion" means sexual intrusion as that term is defined in section one, article eight-b, chapter sixty-one of this code.

"Serious physical abuse" means bodily injury which creates a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN

§49-2-803. Persons mandated to report suspected abuse and neglect; requirements.

(a) Any medical, dental or mental health professional, Christian Science practitioner, religious healer, school teacher or other school personnel, social service worker, child care or foster care worker, emergency medical services personnel, peace officer or law-enforcement official, humane officer, member of the clergy, circuit court judge, family court judge, employee of the Division of Juvenile Services, magistrate, youth camp administrator or counselor, employee, coach or volunteer of an entity that provides organized activities for children, or commercial film or photographic print processor who has reasonable cause to suspect that a child is neglected or abused or observes the child being subjected to conditions that are likely to result in abuse or neglect shall immediately, and not more than forty-eight hours after

suspecting this abuse or neglect, report the circumstances or cause a report to be made to the Department of Health and Human Resources. In any case where the reporter believes that the child suffered serious physical abuse or sexual abuse or sexual assault, the reporter shall also immediately report, or cause a report to be made, to the State Police and any law-enforcement agency having jurisdiction to investigate the complaint. Any person required to report under this article who is a member of the staff or volunteer of a public or private institution, school, entity that provides organized activities for children, facility or agency shall also immediately notify the person in charge of the institution, school, entity that provides organized activities for children, facility or agency, or a designated agent thereof, who may supplement the report or cause an additional report to be made.

(b) Any person over the age of eighteen who receives a disclosure from a credible witness or observes any sexual abuse or sexual assault of a child, shall immediately, and not more than forty-eight hours after receiving that disclosure or observing the sexual abuse or sexual assault, report the circumstances or cause a report to be made to the Department of Health and Human Resources or the State Police or other law-enforcement agency having jurisdiction to investigate the report. In the event that the individual receiving the disclosure or observing the sexual abuse or sexual assault has a good faith belief that the reporting of the event to the police would expose either the reporter, the subject child, the reporter's children or other children in the subject child's household to an increased threat of serious bodily injury, the individual may delay making the report while he or she undertakes measures to remove themselves or the affected children from the perceived threat of additional harm and the individual makes the report as soon as practicable after the threat of harm has been reduced. The law-enforcement agency that receives a report under this subsection shall report the allegations to the Department of Health and Human Resources and coordinate with any other law-enforcement agency, as necessary to investigate the report.

(c) Any school teacher or other school personnel who receives a disclosure from a witness, which a reasonable prudent person would deem credible, or personally observes any sexual contact, sexual intercourse or sexual intrusion, as those terms are defined in article eight-b, chapter sixty-one, of a child on school premises or on school buses or on transportation used in furtherance of a school purpose shall immediately, but not more than 24 hours, report the circumstances or cause a report to be made to the State Police or other law-enforcement agency having jurisdiction to investigate the report: *Provided*, That this subsection will not impose any reporting duty upon school teachers or other school personnel who observe, or receive a disclosure of any consensual sexual contact, intercourse, or intrusion occurring between students who would not otherwise be subject to section three, five, seven or nine of article eight-8, chapter sixty-one of this code: *Provided, however*, That any teacher or other school personnel shall not be in violation of this section if he or she makes known immediately, but not more than 24 hours. to the principal, assistant principal or similar person in charge, a disclosure from a witness, which a reasonable prudent person would deem credible, or personal observation of conduct described in this section: *Provided further*, That a principal, assistant principal or similar person in charge made aware of such disclosure or observation from a teacher or other school personnel shall be responsible for immediately, but not more than 24 hours, reporting such conduct to law enforcement.

(d) County boards of education and private school administrators shall provide all employees with a written statement setting forth the requirement contained in this subsection and shall obtain and preserve a signed acknowledgment from school employees that they have received and understand the reporting requirement.

(e) The reporting requirements contained in this section specifically include reported, disclosed or observed conduct involving or between students enrolled in a public or private institution of education, or involving a student and school teacher or personnel. When the alleged conduct is between two students or between a student and school teacher or personnel, the law enforcement body that received the report under this section is required to make such a report under this section shall additionally immediately, but not more than 24 hours, notify the students' parents, guardians, and custodians about the allegations.

(f) Nothing in this article is intended to prevent individuals from reporting suspected abuse or neglect on their own behalf. In addition to those persons and officials specifically required to report

situations involving suspected abuse or neglect of children, any other person may make a report if that person has reasonable cause to suspect that a child has been abused or neglected in a home or institution or observes the child being subjected to conditions or circumstances that would reasonably result in abuse or neglect.

§49-2-812. Failure to report; penalty.

(a) Any person, official or institution required by this article to report a case involving a child known or suspected to be abused or neglected, or required by section eight hundred nine of this article to forward a copy of a report of serious injury, who knowingly fails to do so or knowingly prevents another person acting reasonably from doing so, is guilty of a misdemeanor and, upon conviction, shall be confined in jail not more than ninety days or fined not more than \$5,000, or both fined and confined.

(b) Any person, official or institution required by this article to report a case involving a child known or suspected to be sexually assaulted or sexually abused, or student known or suspected to have been a victim of any non-consensual sexual contact, sexual intercourse or sexual intrusion on school premises, who knowingly fails to do so or knowingly prevents another person acting reasonably from doing so, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not more than six months or fined not more than \$10,000, or both.

Bill Sponsor: Delegate B. White

House Bill 3022 **Making a supplementary appropriation to the Treasurer's Office, to the State Board of Education, to Mountwest Community and Technical College, to the West Virginia School of Osteopathic Medicine, and to West Virginia State University**

Effective Date: March 14, 2015

Code Reference: None

WVDE Contact: Terry Harless, Office of Internal Operations
tharless@k12.wv.us; 304.558.2686

Major Provisions

- The bill makes supplementary appropriations to Cedar Lakes and WV School for Deaf and Blind for FY15.

That the total appropriation for the fiscal year ending June 30, 2015, to fund 0126, fiscal year 2015, organization 1300, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II - APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EXECUTIVE

9-Treasurer's Office -

(WV Code Chapter 12)

Fund 0126 FY 2015 Org 1300

	Appropriation	General Revenue Fund
3	Unclassified – Surplus (R) 09700	\$410,629

Any unexpended balance remaining in the above appropriation for Unclassified - Surplus (fund 0126, appropriation 09700) at the close of the fiscal year 2015 is hereby reappropriated for expenditure during the fiscal year 2016.

And, That the total appropriation for the fiscal year ending June 30, 2015, to fund 0306, fiscal year 2015, organization 0402, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II - APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF EDUCATION

46-State Board of Education -

State FFA-FHA Camp and Conference Center

(WV Code Chapters 18 and 18A)

Fund 0306 FY 2015 Org 0402

	Appropriation	General Revenue Fund
3a	Unclassified Surplus (R) 09700	\$500,000

Any unexpended balance remaining in the above appropriation for Unclassified - Surplus (fund 0306, appropriation 09700) at the close of the fiscal year 2015 is hereby reappropriated for expenditure during the fiscal year 2016.

And, That the total appropriation for the fiscal year ending June 30, 2015, to fund 0320, fiscal year 2015, organization 0403, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II - APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF EDUCATION

52-State Board of Education -

West Virginia Schools for the Deaf and the Blind
(WV Code Chapters 18 and 18A)
Fund 0320 FY 2015 Org 0403

	Appropriation	General Revenue Fund
3 Unclassified Surplus (R)	09700	\$1,500,000

Any unexpended balance remaining in the above appropriation for Unclassified - Surplus (fund 0320, appropriation 09700) at the close of the fiscal year 2015 is hereby reappropriated for expenditure during the fiscal year 2016.

And, That the total appropriation for the fiscal year ending June 30, 2015, to fund 0599, fiscal year 2015, organization 0444, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II - APPROPRIATIONS.
Section 1. Appropriations from general revenue.
**WEST VIRGINIA COUNCIL FOR COMMUNITY
AND TECHNICAL COLLEGE EDUCATION**
92-Mountwest Community and Technical College
(WV Code Chapter 18B)
Fund 0599 FY 2015 Org 0444

	Appropriation	General Revenue Fund
1 Mountwest Community and 2 Technical College Surplus	48799	\$ 123,962

And, That the total appropriation for the fiscal year ending June 30, 2015, to fund 0336, fiscal year 2015, organization 0476, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II - APPROPRIATIONS.
Section 1. Appropriations from general revenue.
HIGHER EDUCATION POLICY COMMISSION
107-West Virginia School of Osteopathic Medicine
(WV Code Chapter 18B)
Fund 0336 FY 2015 Org 0476

	Appropriation	General Revenue Fund
1 West Virginia School of 2 Osteopathic Medicine – Surplus (R)	17299	\$500,000

Any unexpended balance remaining in the above appropriation for West Virginia School of Osteopathic Medicine - Surplus (fund 0336, appropriation 17299) at the close of the fiscal year 2015 is hereby reappropriated for expenditure during the fiscal year 2016.

And, That the total appropriation for the fiscal year ending June 30, 2015, to fund 0373, fiscal year 2015, organization 0490, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II - APPROPRIATIONS.

Section 1. Appropriations from general revenue.

HIGHER EDUCATION POLICY COMMISSION

114-West Virginia State University

(WV Code Chapter 18B)

Fund 0373 FY 2015 Org 0490

	Appropriation	General Revenue Fund
1 West Virginia State University		
Surplus (R)	44199	\$500,000

Any unexpended balance remaining in the above appropriation for West Virginia State University - Surplus (fund 0373, appropriation 44199) at the close of the fiscal year 2015 is hereby reappropriated for expenditure during the fiscal year 2016.

The purpose of this supplemental appropriation bill is to supplement, amend, and increase and add items of appropriation in the aforesaid accounts for the designated spending units for expenditure during the fiscal year 2015.

Bill Sponsors: Delegates Ashley, E. Nelson, Williams, Canterbury, Hamilton, Pethtel, Householder, Butler, L. Phillips, Espinosa and Westfall