

FOREWORD

The West Virginia Department of Education is pleased to prepare the Informal Guidelines for Implementing Public Education Bills Enacted in the Regular Session 2016 as a document to assist educators and others in understanding and implementing education bills enacted by this year's Legislature.

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

For each of the acts included in this publication, the format is as follows: effective date, code reference, title and major new provisions. As time constraints have not permitted an in-depth analysis of these bills from the regular session, it must be emphasized that the information provided in this document must not be considered as official interpretations of the State Superintendent of Schools. Formal interpretations to specific questions will be provided upon request. Should you have any questions about a particular bill, please contact the West Virginia Department of Education contact listed on that bill.

The Informal Guidelines for Implementing Public Education Bills Enacted in the Regular Session 2016 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/2016greenbook.pdf>.

Please feel free to call or write if you need additional information regarding bills enacted during the 2016 regular session of the West Virginia Legislature.

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

CODE CHANGES

NEW CODE	REVISED CODE	
§5-3-3a	§2-2-13	§18-20-8
§5-6-17	§5-3-3	§18A-2-2
§5-11-9a	§5-3-4	§18A-2-3
§6B-2B-1	§5-10-2	§18A-2-5a
§6B-2B-2	§5-10-14	§18A-2-6
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§6B-2B-6	§6-6-7	§18A-4-2a
§18-2-36	§6B-2-4	§18A-4-7a
§18-2-16b	§11-15-30	§18A-4-8b
§18-5B-14	§11B-2-27	§18A-4-8e
§18-5E-1	§12-3-10g	§18A-5-1a
§18-5E-2	§17C-6-1	§18A-5-8
§18-5E-3	§17C-12-7	§18B-1-10
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§18-5E-5	§18-2-6	§18B-1D-8
§18-5E-6	§18-2-12	§18B-2B-6
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Senate Bill 13 **Increasing penalties for overtaking and passing stopped school buses**

Effective Date: June 10, 2016

Code Reference: Amends §17C-12-7

WVDE Contact: Sarah Stewart, Director of Policy & Government Relations
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Bill Summary:

The bill modifies the criminal penalties assessed for illegally overtaking and passing a school bus as follows:

Offense	Former penalty	Penalty upon bill passage
First offense (Misdemeanor offense)	Fine of \$150-\$500 or confined in jail up to 6 months, or both fined and confined.	Fine of \$250-\$500 or confined in jail up to 6 months, or both fined and confined.
Second offense (Misdemeanor offense)	Fine of \$500 or confined in jail up to 6 months, or both fined and confined.	Fine of \$500-\$1,000 or confined in jail up to 6 months, or both fined and confined.
Third offense (Misdemeanor offense)	Fine of \$500 and confined in jail at least 24 hours but not more than 6 months.	Fine of \$1,000 and confined in jail at least 48 hours but not more than 6 months.
Overtaking/passing a school bus that results in death (Felony offense)	Fine of \$500-\$2,000 and confined in jail at least one year but not more than 3 years.	Fine of \$1,000-\$3,000 and confined in jail at least one year but not more than 10 years.

The bill also adds a section of code that allows a penalty to be assessed when the identity of the vehicle illegally passing a school bus can be identified, but the identity of the operator of the vehicle cannot be identified. In such situations, when the license plate of the vehicle is known, it may be inferred that the operator was an owner or lessee of the vehicle for purposes of a probable cause determination. If this is the sole evidence against the owner, then the owner will only be subject to the fine and not subject to confinement.

ARTICLE 12. SPECIAL STOPS REQUIRED.

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

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

(b) Any driver acting in violation of subsection (a) of this section is guilty of a misdemeanor and, upon conviction for a first offense, shall be fined not less than ~~\$150~~ \$250 or more than \$500, or confined in jail not more than six months, or both fined and confined. Upon conviction of a second violation of subsection (a), the driver shall be fined not less than \$500 nor more than \$1,000, or confined in jail not more than six months, or both fined and confined. Upon conviction of a third or subsequent violation of subsection (a), the driver shall be fined ~~\$500~~ \$1,000, and confined not less than ~~twenty-four~~ forty-eight hours in jail but not more than six months.

~~(c) In addition to the penalties in subsections (b) of this section, The Commissioner of Motor Vehicles shall, upon conviction, suspend the driver's license of the person so convicted: Where the actual identity of the operator of a motor vehicle operated in violation of subsection (a) of this section is unknown but the license plate number of the motor vehicle is known, it may be inferred that the operator was an owner or lessee of the motor vehicle for purposes of the probable cause determination. Where there is more than one registered owner or lessee, the inference created by this subsection shall apply to the first listed owner or lessee as found on the motor vehicle registration: *Provided*, That a person charged with a violation of subsection (a) of section under the provisions of this subsection where the sole evidence against the owner or lessee is the presence of the vehicle at the scene at the time of the offense shall only be subject to the applicable fine set forth in subsection (b) of this section upon conviction: *Provided*, however, That, the offenses set forth in subsection (f) and (g) of this section are separate and distinct from that set forth in subsection (a) of this section.~~

~~(d) Service of process of a complaint issued pursuant to subsection (c) of this section shall be effected consistent with West Virginia Rule of Criminal Procedure 4.~~

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

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

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

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

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

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

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

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

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

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

Bill Sponsors: Senators Carmichael, Boso, Gaunch, Leonhardt, Trump, Walters, Blair, Takubo, Miller and Unger

Senate Bill 146 **Establishing instruction standards for early childhood education**

Effective Date: July 1, 2016

Code Reference: Amends §18-5-44

WVDE Contact: Monica DellaMea, Executive Director, Office of Early Learning
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Bill Summary:

The bill modifies the number of minutes required to be offered in early childhood education programs. Upon the effective date of the bill, an early childhood education program must provide no less than 1,500 minutes of instruction per week in a full day program with at least 48,000 minutes of instruction annually.

The bill also removes the condition for withdrawing a child from an early childhood education program that the child be removed only “for good cause,” and in its place adds the requirement that the notification of withdrawal be in writing. Finally, the bill removes certain reporting requirements to be consistent with Senate Bill 369, which contained the same code section.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

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

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

(b) *Findings.* –

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

(A) Improve overall readiness when children enter school;

(B) Decrease behavioral problems;

(C) Improve student attendance;

(D) Increase scores on achievement tests;

(E) Decrease the percentage of students repeating a grade; and

(F) Decrease the number of students placed in special education programs;

(2) Quality early childhood education programs improve school performance and low-quality early childhood education programs may have negative effects, especially for at-risk children;

(3) West Virginia has the lowest percentage of its adult population twenty-five years of age or older with a bachelor’s degree and the education level of parents is a strong indicator of how their children will perform in school;

(4) During the 2006-2007 school year, West Virginia ranked thirty-ninth among the fifty states in the percentage of school children eligible for free and reduced lunches and this percentage is a strong indicator of how the children will perform in school;

(5) For the school year 2008-2009, 13,135 students were enrolled in prekindergarten, a number equal to approximately sixty-three percent of the number of students enrolled in kindergarten;

(6) Excluding projected increases due to increases in enrollment in the early childhood education program, projections indicate that total student enrollment in West Virginia will decline by one percent, or by approximately 2,704 students, by the school year 2012-2013;

(7) In part, because of the dynamics of the state aid formula, county boards will continue to enroll four-year-old students to offset the declining enrollments;

(8) West Virginia has a comprehensive kindergarten program for five-year-olds, but the program was established in a manner that resulted in unequal implementation among the counties, which helped create deficit financial situations for several county boards;

(9) Expansion of current efforts to implement a comprehensive early childhood education program should avoid the problems encountered in kindergarten implementation;

(10) Because of the dynamics of the state aid formula, counties experiencing growth are at a disadvantage in implementing comprehensive early childhood education programs; and

(11) West Virginia citizens will benefit from the establishment of quality comprehensive early childhood education programs.

(c) Beginning no later than the school year 2012-2013, and continuing thereafter, county boards shall provide early childhood education programs for all children who have attained the age of four prior to September 1 of the school year in which the ~~pupil enters~~ children enter the early childhood education program. Beginning no later than the school year 2016-2017, and continuing thereafter, these early childhood education programs that are full day and five days per week shall be available to all children meeting the age requirement set forth in the subsection shall provide at least forty-eight thousand minutes annually and no less than fifteen hundred minutes of instruction per week.

(d) The program shall meet the following criteria:

(1) It shall be voluntary, except that, upon enrollment, the provisions of section one-a, article eight of this chapter apply to an enrolled student, subject to subdivision ~~(3)~~ (4) of this subsection;

(2) It shall be open to all children meeting the age requirement set forth in this section shall have the opportunity to enroll in a program that is full day and five days per week. The program may be for fewer than five days per week and may be less than full day based on family need if a sufficient number of families request such programs and the county board finds that such programs are in the best interest of the requesting families and students: Provided, That the ability of families to request programs that are fewer than five days a week or less than a full day does not relieve the county of the obligation to provide all resident children with the opportunity to enroll in a full day program; and;

(3) A parent of a child enrolled in an early education program may withdraw a child from that program for good cause by notifying the district. Good cause includes, but is not limited to, enrollment of the child in another program or the immaturity of the child. A child withdrawn under this section is not subject to the attendance provisions of the chapter until that child again enrolls in a public school in this state. It shall provide no less than fifteen hundred minutes of instruction per week, in a full day program with at least forty-eight thousand minutes of instruction annually; and

(4) It shall permit a parent of an enrolled child to withdraw the child from that program by notifying the district in writing. A child withdrawn under this section is not subject to the attendance provisions of this chapter until that child again enrolls in a public school in this state.

(e) Enrollment of students in Head Start, or in any other program approved by the state superintendent as provided in this ~~subsection (k)~~ of this section, may be counted toward satisfying the requirement of subsection (c) of this section.

(f) For the purposes of implementation financing, all counties are encouraged to make use of funds from existing sources, including:

(1) Federal funds provided under the Elementary and Secondary Education Act pursuant to 20 U. S. C. §6301, *et seq.*;

(2) Federal funds provided for Head Start pursuant to 42 U. S. C. §9831, *et seq.*;

(3) Federal funds for temporary assistance to needy families pursuant to 42 U. S. C. §601, *et seq.*;

(4) Funds provided by the School Building Authority pursuant to article nine-d of this chapter;

(5) In the case of counties with declining enrollments, funds from the state aid formula above the amount indicated for the number of students actually enrolled in any school year; and

(6) Any other public or private funds.

(g) Each county board shall develop a plan for implementing the program required by this section. The plan shall include the following elements:

(1) An analysis of the demographics of the county related to early childhood education program implementation;

(2) An analysis of facility and personnel needs;

(3) Financial requirements for implementation and potential sources of funding to assist implementation;

(4) Details of how the county board will cooperate and collaborate with other early childhood education programs including, but not limited to, Head Start, to maximize federal and other sources of revenue;

(5) Specific time lines for implementation; and

(6) Any other items the state board may require by policy.

(h) A county board shall submit its plan to the Secretary of the Department of Health and Human Resources. The secretary shall approve the plan if the following conditions are met:

(1) The county board has maximized the use of federal and other available funds for early childhood programs; and

(2) The county board has provided for the maximum implementation of Head Start programs and other public and private programs approved by the state superintendent pursuant to the terms of ~~subsection (k) of this section; and or~~

(3) ~~If The secretary of the Department of Health and Human Resources finds that, if the county board has not met one or more of the requirements of this subsection, but that the county board has acted in good faith and the failure to comply was not the primary fault of the county board, then the secretary shall approve the plan.~~ Any denial by the secretary may be appealed to the circuit court of the county in which the county board is located.

(i) The county board shall submit its plan for approval to the state board. The state board shall approve the plan if the county board has complied substantially with the requirements of subsection (g) of this section and has obtained the approval required in subsection (h) of this section.

(j) Every county board shall submit its plan for reapproval by the Secretary of the Department of Health and Human Resources and by the state board at least every two years after the initial approval of the plan and until full implementation of the early childhood education program in the county. As part of the submission, the county board shall provide a detailed statement of the progress made in implementing its plan. The standards and procedures provided for the original approval of the plan apply to any reapproval.

(k) A county board may not increase the total number of students enrolled in the county in an early childhood program until its program is approved by the Secretary of the Department of Health and Human Resources and the state board.

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

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

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

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

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

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

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

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

~~(n) Annually, the state board shall report to the Legislative Oversight Commission on Education Accountability on the progress of implementation of this section.~~ (e) Except as required by federal law or regulation, no county board may enroll students who will be less than four years of age prior to September 1 for the year they enter school.

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

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

- (1) Standards for curriculum;
- (2) Standards for preparing students;
- (3) Attendance requirements;
- (4) Standards for personnel; and
- (5) Any other terms necessary to implement the provisions of this section.

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

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

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

(3) A method for including a broad range of content that is relevant, engaging and meaningful to young children;

(4) A requirement that the curriculum incorporate a wide variety of learning experiences, materials and equipment, and instructional strategies to respond to differences in prior experience, maturation rates and learning styles that young children bring to the classroom;

(5) A requirement that the curriculum be designed to build on what children already know in order to consolidate their learning and foster their acquisition of new concepts and skills;

(6) A requirement that the curriculum meet the recognized standards of the relevant subject matter disciplines;

(7) A requirement that the curriculum engage children actively in the learning process and provide them with opportunities to make meaningful choices;

(8) A requirement that the curriculum emphasize the development of thinking, reasoning, decision-making and problem-solving skills;

(9) A set of clear guidelines for communicating with parents and involving them in decisions about the instructional needs of their children; and

(10) A systematic plan for evaluating program success in meeting the needs of young children and for helping them to be ready to succeed in school.

~~(s) (r) The secretary and the state superintendent shall submit a report to the Legislative Oversight Commission on Education Accountability and the Joint Committee on Government and Finance which addresses, at a minimum, the following issues: After the school year 2012-2013, on or before July 1 of each year, each county board shall report the following information to the Secretary of the Department of Health and Human Resources and the state superintendent:~~

~~(1) A summary of the approved county plans for providing the early childhood education programs pursuant to this section; Documentation indicating the extent to which county boards are maximizing resources by using the existing capacity of community-based programs, including, but not limited to, Head Start and child care; and~~

~~(2) An analysis of the total cost to the state and county boards of implementing the plans; For those county boards that are including eligible children attending approved, contracted community-based programs in their net enrollment for the purposes of calculating state aid pursuant to article nine-a of this chapter, documentation that the county board is equitably distributing funding for all children regardless of setting.~~

~~(3) A separate analysis of the impact of the plans on counties with increasing enrollment, and~~

~~(4) An analysis of the effect of the programs on the maximization of the use of federal funds for early childhood programs.~~

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

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

~~(1) Documentation indicating the extent to which county boards are maximizing resources by using the existing capacity of community-based programs, including, but to limited to, Head Start and child care; and~~

~~(2) For those county boards that are including eligible children attending approved, contracted community-based programs in their net enrollment for the purposes of calculating state aid pursuant to article nine-a of this chapter, documentation that the county board is equitably funding for all children regardless of setting.~~

Bill Sponsors: Senators Plymale and Unger

Senate Bill 267 **Modifying removal procedure for certain county, school district and municipal officers**

Effective Date: June 10, 2016

Code Reference: Amends §6-6-1 and §6-6-7

WVDE Contact: Heather Hutchens, General Counsel
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Bill Summary:

The bill provides new definitions for the terms “official misconduct,” “neglect of duty,” and “incompetence” and adds a definition for the term “qualified petitioner.”

Charges against a county board of education member may be proffered in the following ways:

- By a duly enacted resolution of the county commission which sets forth the name and office of the challenged officer, the alleged wrongful acts, the dates the alleged acts occurred and the grounds for removal;
- By the prosecuting attorney of the county; or
- By petition of a number of qualified petitioners as follows:
 - In a county with a population in excess of fifty thousand; the lesser of two thousand or ten percent of the number of registered voters who participated in the particular election in which the challenged officer was chosen which next preceded the filing of the petition;
 - In a county with a population in excess of ten thousand but not in excess of fifty thousand, the lesser of five hundred or ten percent of the number of registered voters who participated in the particular election in which the challenged officer was chosen which next preceded the filing of the petition; and
 - In a county with a population not in excess of ten thousand, the lesser of one hundred or ten percent of the number of registered voters who participated in the particular election in which the challenged officer was chosen which next preceded the filing of the petition.
 - The petition shall set forth the name and office of the challenged officer, the alleged wrongful acts and the grounds for removal.

The statute further sets forth the entities responsible serving the charges/petition upon the circuit court and the entities charged with the prosecution of a removal action; explains how the summons be shall be served by the circuit court clerk; sets forth the standard of review and review procedures by the circuit court; details the appointment of a three-judge review panel by the Supreme Court; details the review conducted by the three-judge panel; and sets forth appeal rights to the Supreme Court. Finally, the bill provides that if a judicial proceeding brought pursuant to these statutes is dismissed or resolved in favor of the challenged officer who is found to be acting in good faith, the political subdivision for which the officer serves shall be responsible for the court costs and reasonable attorney fees for the officer.

ARTICLE 6. REMOVAL OF OFFICERS

6-6-1. Definitions.

(a) The term "neglect of duty," or the term "official misconduct", as used in this article, shall include the means conviction of a felony during the officer's present term of office or any willful waste of public funds any officer or officers, or the appointment by him or them of an incompetent or disqualified person to any office or position and the retention of such person in office, or in the position to which he was appointed, after such incompetency or disqualification is made to appear, when it is in the power of such officer to remove such incompetent or disqualified person unlawful behavior by a public officer in the course of his or her performance of the duties of the public office.

(b) The term "neglect of duty", as used in this article, means the knowing refusal or willful failure of a public officer to perform an essential act or duty of the office required by law.

(c) The term "incompetence", as used in this article, shall may include the following acts or adjudications committed or arising during the challenged officer's term of office: The wasting waste or misappropriation of public funds by any officer, habitual drunkenness, habitual addiction to the use of narcotic drugs, adultery, neglect of duty, or gross immorality, on the part of any officer. The term "incompetent person," as used in this section, shall include any appointee or employee of any officer or officers, including county court, municipal bodies or officers, and boards of education, who willfully wastes or misappropriates public funds, or who is guilty of habitual drunkenness, habitual addiction to the use of narcotic drugs, adultery or gross immorality when the officer knew, or should have known, that such use of funds was inappropriate or inconsistent with the lawful duties of the office; conviction of a misdemeanor involving dishonesty or gross immorality, having been the subject of a determination of incapacity, as defined and governed by section seven, article thirty, chapter sixteen of this code; or other conduct affecting the officer's ability to perform the essential official duties of his or her office including but not limited to habitual drunkenness or addiction to the use of narcotic drugs.

(d) The term "qualified petitioner", as used in this article, means a person who was registered to vote in the election in which the officer was chosen which next preceded the filing of the petition.

§6-6-7. Procedure for removal of county, school district and municipal officers having fixed terms; appeal; grounds; cost.

(a) Any person holding any county, school district or municipal office, including the office of a member of a board of education and the office of magistrate, the term or tenure of which office is fixed by law, whether the office be elective or appointive, except judges of the circuit courts, may be removed from such office in the manner provided in this section for official misconduct, ~~malfeasance on office,~~ incompetence, neglect of duty or gross immorality, incompetence or for any of the causes or on any of the grounds provided by any other statute.

(b) Charges may be ~~preferred~~ proffered:

(1) In the case of any county officer, member of a ~~district~~ board of education or magistrate, ~~by the county commission, or other tribunal in lieu thereof, any officer of the county, or by any number of persons other than such county officers which number shall be the lesser of fifty or one percent of the total number of voters of the county participating in the general election next preceding the filing of such charges.:~~

(A) By a duly enacted resolution of the county commission which sets forth therein the name and office of the challenged officer, the alleged wrongful acts, the dates the alleged acts occurred and the grounds for removal as provided in this article:

(B) By the prosecuting attorney of the county; or

(C) By petition of a number of qualified petitioners, which number shall be:

(i) In a county with a population in excess of fifty thousand; the lesser of two thousand or ten percent of the number of registered voters who participated in the particular election in which the challenged officer was chosen which next preceded the filing of the petition;

(ii) In a county with a population in excess of ten thousand but not in excess of fifty thousand, the lesser of five hundred or ten percent of the number of registered voters who participated in the particular election in which the challenged officer was chosen which next preceded the filing of the petition; and

(iii) In a county with a population not in excess of ten thousand, the lesser of one hundred or ten percent of the number of registered voters who participated in the particular election in which the challenged officer was chosen which next preceded the filing of the petition.

Such petition shall set forth therein the name and office of the challenged officer, the alleged wrongful acts and the grounds for removal.

(2) In the case of any municipal officer;

(A) By a duly enacted resolution of the governing body of the municipality which sets forth therein the name and office of the challenged officer, the alleged wrongful acts, the dates the alleged acts occurred and the grounds for removal as provided in this article;

~~(B) By the prosecuting attorney of the county wherein such municipality, or the greater portion thereof, is located, any other elected officer of the municipality, or by any number of persons other than the prosecuting attorney or other municipal elective officer of the municipality who are residents of the municipality, which number shall be the lesser of twenty-five or one percent of the total number of voters of the municipality participating in the election at which the governing body was chosen which election next preceded the filing of the position; or~~

(C) By petition of a number of qualified petitioners, which number shall be:

(i) In a Class I city, the lesser of two thousand or ten percent of the number of registered voters who participated in the particular election in which the challenged officer was chosen which next preceded the filing of the petition;

(ii) In a Class II city, the lesser of five hundred or ten percent of the number of registered voters who participated in the particular election in which the challenged officer was chosen which next preceded the filing of the petition;

(iii) In a Class III city, the lesser of one hundred or ten percent of the number of registered voters who participated in the particular election in which the challenged officer was chosen which next preceded the filing of the petition; and

(iv) In a Class IV town or village, the lesser of fifty or ten percent of the number of registered voters who participated in the particular election in which the challenged officer was chosen which next preceded the filing of the petition.

Such petition shall set forth therein the name and office of the challenged officer, the alleged wrongful acts and the grounds for removal.

(3) By the chief inspector and supervisor of public offices of the state where the person sought to be removed is entrusted by law with the collection, custody and expenditure of public moneys because of any intentional or unlawful misapplication, misappropriation or embezzlement of such moneys.

(c) ~~The charges shall be reduced to writing in the form of a petition duly verified by at least one of the persons bringing the same, and shall be entered of record by the court, or the judge thereof in~~

~~vacation, and a summons shall thereupon be issued by the clerk of such court, together with a copy of the petition, requiring the officer or person named therein to appear before the court, at the courthouse of the county where such officer resides, and answer the charges on a day to be named therein, which summons shall be served at least twenty days before the return day thereof in the manner by which a summons commencing a civil suit may be served.~~

~~The court, or judge thereof in vacation, or in the case of any multi-judge circuit, the chief judge thereof, shall, without delay forward a copy of the petition to the supreme court of appeals and shall ask for the impaneling or convening of a three-judge court consisting of three circuit judges of the state. The chief justice of the supreme court of appeals shall without delay designate and appoint three circuit judges within the state, not more than one of whom shall be from the same circuit in which the petition is filed and, in the order of such appointment, shall designate the date, time and place for the convening of such three-judge court, which date and time shall not be less than twenty days from the date of the filing of the petition.~~

~~Such three-judge court shall, without a jury, hear the charges and all evidence offered in support thereof or in opposition thereto and upon satisfactory proof of the charges shall remove any such officer or person from office and place the records, papers and property of his office in the possession of some other officer or person for safekeeping or in the possession of the person appointed as hereinafter provided to fill the office temporarily. Any final order either removing or refusing to remove any such person from office shall contain such findings of fact and conclusions of law as the three-judge court shall deem sufficient to support its decision of all issues presented to it in the matter.~~

When removal is proffered by a duly enacted resolution of a county commission or municipal governing body, a certified copy of the resolution shall be served by the clerk of the commission or municipal governing body upon the circuit court in whose jurisdiction the officer serves within five business days of adoption of the resolution. The proffering county commission or municipal governing body shall be responsible for the prosecution of the removal resolution.

~~(d) An appeal from an order of such three-judge court removing or refusing to remove any person from office pursuant to this section may be taken to the supreme court of appeals within thirty days from the date of entry of the order from which the appeal is taken. The supreme court of appeals shall consider and decide the appeal upon the original papers and documents, without requiring the same to be printed and shall enforce its findings by proper writ. From the date of any order of the three-judge court removing an officer under this section until the expiration of thirty days thereafter, and, if an appeal be taken, until the date of suspension of such order, if suspended by the three-judge court and if not suspended, until the final adjudication of the matter by the supreme court of appeals, the officer, commission or body having power to fill a vacancy in such office may fill the same by a temporary appointment until a final decision of the matter, and when a final decision is made by the supreme court of appeals shall fill the vacancy in the manner provided by law for such office. When removal is proffered by the prosecuting attorney, the charges shall be reduced to writing and the charges shall be served upon the circuit court in whose jurisdiction the officer serves, and the prosecuting attorney shall be responsible for the prosecution of the removal action.~~

~~(e) In any case wherein the charges are preferred by the chief inspector and supervisor of public offices against the county commission or any member thereof or any county district or municipal officer, the proceedings under this section shall be conducted and prosecuted by the prosecuting attorney of the county in which the officer proceeded against resides, and on any appeal from the order of the three-judge court in any such case, the attorney general of the state shall represent the people. When any municipal officer is proceeded against the solicitor or municipal attorney for such municipality may assist in the prosecution of the charges. When removal is proffered by petition, the charges shall be reduced to writing and each page on which signatures are affixed shall include the name and office of the challenged officer, the charges or grounds for removal, which may be achieved by attachment to each signature page, and an informed acknowledgement of an agreement with the charges. At least one of the persons bringing the petition shall serve the original petition upon the circuit court in whose jurisdiction the officer serves, and shall be responsible for the prosecution of the removal action.~~

(f) Any resolution or petition submitted pursuant to this section shall be received and entered of record by the court, or the judge thereof in vacation, and a summons shall thereupon be issued by the clerk of such court, together with a copy of the resolution or petition, requiring the officer or person named therein, or legal counsel therefor, to appear before the court for a preliminary hearing, at the courthouse of the county where such officer resides, for the purpose of a judicial determination as to the validity of the resolution or petition, the clerk having ascertained whether such signatures are the signatures of eligible residents, and to hear any related objections or motions that may be presented. The summons shall be served in the manner by which a summons commencing a civil suit may be served within five business days of the receipt of the resolution or petition by the court.

(g) The court, or judge thereof in vacation, or in the case of any multi-judge circuit, the chief judge thereof, shall have authority to evaluate any resolution or petition for any procedural defect, and to consider all the allegations made in the resolution or petition in light of the applicable case law and the required strict construction of the grounds asserted, and conclude whether or not the allegations asserted would be sufficient, if proven by clear and convincing evidence, to warrant the removal of the officer from office. In the case of a petition, the court may require that the clerk responsible for the maintenance of voting records for the governing body for whom the officer serves provide an affidavit verifying the number of qualified petitioner signatures and the applicable total number of registered voters.

If the court finds, after consideration of any motions or objections, or in the court's discretion provided for herein, that the resolution or petition is defective or the allegations stated therein do not meet the standards for removal set forth herein, the resolution or petition shall be dismissed by the court. If the court finds that the resolution or petition is sufficient under the standards for removal set forth herein to proceed to a hearing before a three-judge court, the court shall forward a copy of the resolution or petition to the Supreme Court of Appeals.

Upon receipt of said resolution or petition, the chief justice of the Supreme Court of Appeals shall, not fewer than twenty days from the date of the receipt of the resolution or petition, designate and appoint three circuit judges within the state, not more than one of whom shall be from the same circuit in which the resolution or petition was filed and, in the order of such appointment, shall require that the three-judge court designate the date, time and place for the hearing of the resolution or petition forthwith.

Such three-judge court shall, without a jury, hear the charges, any motions filed by either party and all evidence offered in support thereof or in opposition thereto, and upon satisfactory proof of the charges by clear and convincing evidence, shall remove any such officer from office and place the records, papers and property of his office in the possession of some other officer or person for safekeeping or in the possession of the person appointed as hereinafter provided to fill the office temporarily. Any final order either removing or refusing to remove any such person from office shall contain such findings of fact and conclusions of law as the three-judge court shall deem sufficient to support its decision of all issues presented to it in the matter.

(h) An appeal from an order of such three-judge court removing or refusing to remove any person from office pursuant to this section may be taken to the Supreme Court of Appeals within thirty days from the date of entry of the order from which the appeal is taken. The Supreme Court of Appeals shall consider and decide the appeal upon the original papers and documents, without requiring the same to be printed and shall enforce its findings by proper writ. From the date of any order of the three-judge court removing an officer under this section until the expiration of thirty days thereafter, and, if an appeal be taken, until the date of suspension of such order, if suspended by the three-judge court and if not suspended, until the final adjudication of the matter by the Supreme Court of Appeals, the officer, commission or body having power to fill a vacancy in such office may fill the same by a temporary appointment until a final decision of the matter, and when a final decision is made by the Supreme Court of Appeals shall fill the vacancy in the manner provided by law for such office.

(i) In any case wherein the charges are proffered by the chief inspector and supervisor of public offices against the county commission or any member thereof or any county, school district or municipal officer, the proceedings under this section shall be conducted and prosecuted in the same manner set forth

herein for removal by resolution or petition by the prosecuting attorney of the county in which the officer proceeded against resides, and on any appeal from the order of the three-judge court in any such case, the Attorney General of the state shall represent the people. When any municipal officer is proceeded against the solicitor or municipal attorney for such municipality may assist in the prosecution of the charges.

(j) If a judicial proceeding under this section is dismissed or otherwise resolved in favor of the challenged officer who has been found to be acting in good faith, the political subdivision for which the officer serves shall be responsible for the court costs and reasonable attorney fees for the officer.

Bill Sponsor: Senator Blair

Senate Bill 369 **Reducing legislative education reporting requirements**

Effective Date: May 22, 2016

Code Reference: Bill repeals §18-2-5g, 18-2E-3g, 18B-5-8; Bill amends 18-2E-5, 18-2I-5, 18-3-12, 18-5-44, 18-20-5, 18-20-8, 18A-2-3, 18A-4-7a, 18A-5-1a, 18B-1-10, 18B-1B-4, 18B-1D-8, 18B-2B-6, 18B-2C-3, 18B-3D-2, 18B-10-1, 18B-13-5, 18B-18-6, 18C-3-4, 18C-5-7, 18C-7-5; Bill adds 18B-1D-8a

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Bill Summary:

This bill reduces and modifies the current legislative education reporting requirements as set forth below:

Public Education

The bill repeals the following code sections:

§18-2E-3g – This obsolete code section legislated a special five-year professional development school project which began in 2005 and ended in 2010.

§18-2-5g – This code section required the Board of Education (“BOE”) to identify and report annually on how to reduce or consolidate principal and teacher reports. No recommendations have been given.

The bill removes the following reporting requirements:

§18-2E-5(k)(6) – This section required the BOE to annually report on any appeals of the Office of Education Performance Audits’ on-site review findings.

§18-2I-5 – This section required the BOE to report on the effectiveness of the staff development resulting from expenditures in the Strategic Staff Development Fund.

§18-3-12 – This section required the state superintendent, the applicable county superintendent and lead community-based organizations to make status reports on the special community development school pilot program.

§18-5-44 – This obsolete section mandated reporting on the implementation of the early childhood education program. The implementation deadline has now passed.

§18-20-5 – This section required the state superintendent to report findings of review of rules, policies and standards of the state and federal law for serving the needs of exceptional children along with an accounting of the services provided and the costs thereof.

§18-20-8 – This section required the interagency plan for exceptional children advisory council to report annually on the status and to recommend policies, procedures and legislation for effectively providing early intervention services.

§18-2-3 – This section required the BOE to annually report on the status of employing prospective employable professional personnel.

§18A-4-7a – This section required the BOE to report on modifications to county board polices relating to which positions are considered lateral in any year in which modifications are made. No modifications have been made.

§18A-5-1a – This section required the BOE to report on the number of students determined to be dangerous students.

Higher Education

The bill repeals the following code sections:

§18B-5-8 – This report on purchases from local and out-of-state businesses to the Senate and House Finance Committees was effectively removed by §18B-1D-8(j)(6). This would remove the report from Code. A report may be obtained from Auditor’s Office.

The bill removes the following reporting requirements:

§18B-1-10(e) – This obsolete report required once Potomac State College to report on its cooperative relationship with Eastern West Virginia Community and Technical College. Potomac is now part of WVU.

§18B-1B-4(a)(10) – This annual Higher Education Policy Commission (“HEPC”) performance report is contained within the Higher Education Report Card report (mandated by §18B-1D-8).

§18B-2B-6(c)(10) – This annual Community and Technical College Council (“CTC”) comprehensive performance report is contained within the Higher Education Report Card (mandated by §18B-1D-8) and the capital investments and requested statutory changes are contained in the annual budget request.

§18B-2C-3(e) – This annual CTC performance report is contained within the Higher Education Report Card report.

§18B-3D-2(e) – This annual report on the Workforce Development Initiative Program is contained within the Higher Education Report Card report.

§18B-10-1(i)(3)(E) – This annual report on auxiliary fees collected to replace state funds is unnecessary as auxiliary funds are never used in this context.

§18B-13-5(c) – This annual report on technical assistance provided to qualified businesses within approved research parks, research zones or technology centers (higher education and industry collaboration) is unnecessary as there has never been anything to report.

§18B-18-6(e) – This annual report on the Eminent Scholars Endowment Trust Fund (for attracting and retaining outstanding faculty) is unnecessary as the fund was never set up.

§18C-5-7(g) – This annual report of the Higher Education Adult Part-time Student Grant Program (“HEAPS”) is contained in the Comprehensive Financial Aid Report.

§18C-3-4 – This annual report on the Nursing Scholarship Program by the Higher Education Policy Commission (“HEPC”) is contained in the Comprehensive Financial Aid Report.

§18C-7-5(b)(5)(B) – This subsection required that the HEPC make annual recommendations to LOCEA on how to encourage PROMISE recipients to live and work in West Virginia after graduation. These recommendations are included within the Comprehensive Financial Aid Report.

§18B-1D-8(j) – Subsection (j) is deleted. This subsection listed ten reports that were not required, unless specifically requested by the Legislature. Additionally, the following are reporting references that are affected by the deletion of this subsection:

§5A-3-48(a) – This vehicle fleet report is no longer required (or referenced in Code) as vehicle fleets are now administered by the Department of Administration and no reference to any education agency.

§18B-2B-6(b)(11)(A) – This CTC performance reporting requirement was moved to §18B-2B-6(c)(10) (included above).

§18B-5-7(b) – This biannual surplus equipment report to the Legislative Auditor remains in Code. The 2015 amendment allows institutions to have more freedom to deal with surplus.

§18C-3-1(e) – This subsection regarding the report on the Health Education Loan Program is accurate, as written, and need not be excluded from Code.

The bill modifies the following reporting requirements:

§18B-1D-8a – This new section includes reports to be consolidated and deadlines to be altered, as needed, for more efficient reporting.

Subsection (a) sets forth reports that may be combined with other similar reports in lieu of their previous statutory mandate. The following reports may be submitted as one comprehensive report:

- (1) All personnel, classification, compensation and human resources reports set forth in §§18B-1B-4 (HEPC duties), §18B-2B-6 (CTC duties), and 18B-9A-1 *et seq.* (Classification and Compensation System).
- (2) All capital appropriation requests, priorities and campus and state capital development plans set forth in §§18B-1B-4 (HEPC duties), §18B-2B-6 (CTC duties), and 18B-19-1 *et seq.* (Capital Projects and Facilities Needs).
- (3) All academic related matters and reports including accreditation (§18B-4-7), institutional Board of Governors training (§18B-1D-9), and institutional compliance with tuition and fee increases (§18B-10-1).
- (4) All financial aid reports including PROMISE, HEAPS, the Nursing Scholarship Program, the higher education grant program, the Underwood-Smith Teacher Scholarship Program and others set out in Chapter 18C of the WV Code.

Subsection (b) states that reporting deadlines may be altered, as needed, provided that the report is always given within the calendar year.

CHAPTER 18. EDUCATION

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

~~§18-2-5g. Review and determination of principal and teacher reports; identify reports with recommendations to Legislative Oversight Commission on Education Accountability.~~

~~(a) The state board annually shall review and evaluate the list of reports required to be written by principals and teachers in order to determine which reports are repetitive, unnecessary, counterproductive or outdated so that the administrative burden on principals and teachers may be lessened.~~

~~(b) The state board shall submit a report to the Legislative Oversight Commission on Education Accountability no later than December 31 of each year identifying those unnecessary reports, together with any comments and recommendations on how to reduce or consolidate principal and teacher reports.~~

~~§18-2E-3g. Special demonstration professional development school project for improving academic achievement.~~

~~(a) The Legislature makes the following findings:~~

~~(1) Well-educated children and families are essential for maintaining safe and economically sound communities;~~

~~(2) Low student achievement is associated with increased delinquent behavior, higher drug use and pregnancy rates, and higher unemployment and adult incarceration rates;~~

~~(3) Each year, more students enter school with circumstances in their lives that schools are ill-prepared to accommodate;~~

~~(4) Ensuring access for all students to the rigorous curriculum they deserve requires effective teaching strategies that include, but are not limited to, using a variety of instructional approaches, using varied curriculum materials, engaging parent and community involvement and support in the educational process, and providing the professional development, support and leadership necessary for an effective school; and~~

~~(5) The achievement of all students can be dramatically improved when schools focus on factors within their control, such as the instructional day, curriculum and teaching practices.~~

~~(b) The purpose of this section is to provide for the establishment of a special five-year demonstration professional development school project to improve the academic achievement of all children. The program shall be under the direction of the state superintendent and shall be for a period of five years beginning with the two thousand four - two thousand five school year. The intent of this section is to provide a special demonstration environment wherein the public schools included in the demonstration project may work in collaboration with higher education, community organizations and the state board to develop and implement strategies that may be replicated in other public schools with significant enrollments of disadvantaged, minority and under-achieving students to improve academic achievement. For this purpose, the state superintendent has the following powers and duties with respect to the demonstration project:~~

~~(1) To select for participation in the demonstration project three public elementary or middle schools with significant enrollments of disadvantaged, minority and under-achieving students in each county in which the number of the African American students is five percent or more of the total second month enrollment;~~

~~(2) To require cooperation from the county board of the county wherein a demonstration project school is located to facilitate program implementation and avoid any reallocation of resources for the schools that are disproportionate with those for other schools of the county of similar classification, accreditation status and federal Title I identification;~~

~~(3) To require specialized training and knowledge of the needs, learning styles and strategies that will most effectively improve the performance of disadvantaged, minority and under-achieving students in demonstration project schools. These powers include, but not limited to, the authority to craft job descriptions with requirements regarding training and experience and the right to specify job duties which are related to job performance that reflect the mission of the demonstration project school;~~

~~(4) To provide specifications and direct the county board to post the positions for school personnel employed at the demonstration project school that encompass the special qualifications and any additional duties that will be required of the personnel as established in the job descriptions authorized pursuant to subdivision (3) of this section. The assertion that the job descriptions and postings are narrowly defined may not be used as the basis for the grievance of an employment decision for positions at a demonstration project school;~~

~~(5) To direct the department of education, the center for professional development and the regional educational service agency to provide any technical assistance and professional development necessary for successful implementation of the demonstration school programs, including, but not limited to, any early intervention or other programs of the department to assist low performing schools;~~

~~(6) To collaborate and enter into agreements with colleges and universities willing to assist with efforts at a demonstration school to improve student achievement, including, but not limited to, the operation of a professional development school program model: *Provided*, That the expenditure of any funds appropriated for the state board or department for this purpose shall be subject to approval of the state board;~~

~~(7) To require collaboration with local community organizations to improve student achievement and increase the involvement of parents and guardians in improving student achievement;~~

~~(8) To provide for an independent evaluation of the demonstration school project, its various programs and their effectiveness on improving student academic achievement; and~~

~~(9) To recommend to the state board and the county board the waiver of any of their respective policies that impede the implementation of demonstration school programs.~~

~~(c) The state superintendent shall make status reports to the legislative oversight commission on education accountability and to the state board annually and may include in those reports any recommendations based on the progress of the demonstration project that he or she considers either necessary for improving the operations of the demonstration project or prudent for improving student achievement in other public schools through replication of successful demonstration school programs. The state superintendent shall make a recommendation to the Legislature not later than its regular session, two thousand ten, for continuation or termination of the program, which recommendation shall be accompanied by the findings and recommendations of the independent evaluation and these findings and recommendations shall be a major factor considered by the superintendent in making his or her recommendation.~~

~~(d) Nothing in this section shall require any specific level of appropriation by the Legislature.~~

§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 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 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) 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;

(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;

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

(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 take one or more of the following actions:

(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) 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:

(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;

(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;

(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;

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

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

(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;

(G) Submitting requests to the Legislature for appropriations to meet the identified needs for improving education;

(H) Directing county boards to target their funds strategically toward alleviating deficiencies;

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

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

(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.

ARTICLE 2I. PROFESSIONAL DEVELOPMENT.

§18-2I-5. Strategic Staff Development Fund.

(a) There is created an account within the state board titled the Strategic Staff Development Fund. The allocation of balances which accrue in the General School Fund shall be transferred to the Strategic Staff Development Fund each year when the balances become available. Any remaining funds transferred to the Strategic Staff Development Fund 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 transfer of funds from the General School Fund for the next fiscal year.

(b) The money in the Strategic Staff Development Fund shall be used by the state board to provide staff development in schools, counties or both that the state board determines need additional resources. ~~The state board is required to report to the Legislative Oversight Commission on Education Accountability before December 1, annually, on the effectiveness of the staff development resulting from expenditures in this fund.~~

ARTICLE 3. STATE SUPERINTENDENT OF SCHOOLS.

§18-3-12. Special Community Development School Pilot Program.

~~(a)~~ The state superintendent shall establish a Special Community Development School Pilot Program to be implemented in a neighborhood of at least five public schools, which shall include at least one elementary and middle school, for the duration of five years. The neighborhood of public schools designated by the state superintendent for the pilot shall have significant enrollments of disadvantaged, minority and underachieving students. The designated neighborhood of public schools under the direction of the county board and county superintendent shall work in collaboration with higher education, community organizations, Center for Professional Development, local community leaders, affected classroom teachers, affected parents and the state board to develop and implement strategies that could be replicated in other public schools with significant enrollments of disadvantaged, minority and underachieving students to improve academic achievement. For purposes of this section "neighborhood" means an area of no more than seven square miles.

~~(b) Beginning in January, 2014, on or before the first day of the regular session of the Legislature, and each year thereafter, the state superintendent, county superintendent for the county in which the schools are located and lead community-based organizations shall make a status report to the Legislative Oversight Commission on Education Accountability and to the state board. The report may include any recommendations based on the progress of the demonstration project that he or she considers either necessary for improving the operations of the demonstration project or prudent for improving student achievement in other public schools through replication of successful demonstration school programs.~~

ARTICLE 5. COUNTY BOARD OF EDUCATION.

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

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

(b) *Findings.*

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

(A) Improve overall readiness when children enter school;

(B) Decrease behavioral problems;

(C) Improve student attendance;

(D) Increase scores on achievement tests;

(E) Decrease the percentage of students repeating a grade; and

(F) Decrease the number of students placed in special education programs;

(2) Quality early childhood education programs improve school performance and low-quality early childhood education programs may have negative effects, especially for at-risk children;

(3) West Virginia has the lowest percentage of its adult population twenty-five years of age or older with a bachelor’s degree and the education level of parents is a strong indicator of how their children will perform in school;

(4) During the 2006-2007 school year, West Virginia ranked thirty-ninth among the fifty states in the percentage of school children eligible for free and reduced lunches and this percentage is a strong indicator of how the children will perform in school;

(5) For the school year 2008-2009, thirteen thousand one hundred thirty-five students were enrolled in prekindergarten, a number equal to approximately sixty-three percent of the number of students enrolled in kindergarten;

(6) Excluding projected increases due to increases in enrollment in the early childhood education program, projections indicate that total student enrollment in West Virginia will decline by one percent, or by approximately two thousand seven hundred four students, by the school year 2012-2013;

(7) In part, because of the dynamics of the state aid formula, county boards will continue to enroll four-year old students to offset the declining enrollments;

(8) West Virginia has a comprehensive kindergarten program for five-year olds, but the program was established in a manner that resulted in unequal implementation among the counties which helped create deficit financial situations for several county boards;

(9) Expansion of current efforts to implement a comprehensive early childhood education program should avoid the problems encountered in kindergarten implementation;

(10) Because of the dynamics of the state aid formula, counties experiencing growth are at a disadvantage in implementing comprehensive early childhood education programs; and

(11) West Virginia citizens will benefit from the establishment of quality comprehensive early childhood education programs.

(c) Beginning no later than the school year 2012-2013, and continuing thereafter, county boards shall provide early childhood education programs for all children who have attained the age of four prior to September 1 of the school year in which the pupil enters the early childhood education program. Beginning no later than the school year 2016-2017, and continuing thereafter, early childhood education programs that are full day and five days per week shall be available to all children meeting the age requirement set forth in the subsection.

(d) The program shall meet the following criteria:

(1) It shall be voluntary, except, upon enrollment, the provisions of section one, article eight of this chapter apply to an enrolled student, subject to subdivision (3) of this subsection;

(2) All children meeting the age requirement set forth in this section shall have the opportunity to enroll in a program that is full day and five days per week. The program may be for fewer than five days per week and may be less than full day based on family need if a sufficient number of families request such programs and the county board finds that such programs are in the best interest of the requesting families and students: *Provided*, That the ability of families to request programs that are fewer than five days a week or less than a full day does not relieve the county of the obligation to provide all resident children with the opportunity to enroll in a full-day program; and

(3) A parent of a child enrolled in an early education program may withdraw a child from that program for good cause by notifying the district. Good cause includes, but is not limited to, enrollment of the child in another program or the immaturity of the child. A child withdrawn under this section is not subject to the attendance provisions of this chapter until that child again enrolls in a public school in this state.

(e) Enrollment of students in Head Start, in any other program approved by the state superintendent as provided in subsection (k) of this section may be counted toward satisfying the requirement of subsection (c) of this section.

(f) For the purposes of implementation financing, all counties are encouraged to make use of funds from existing sources, including:

(1) Federal funds provided under the Elementary and Secondary Education Act pursuant to 20 U. S. C. §6301, *et seq.*;

(2) Federal funds provided for Head Start pursuant to 42 U. S. C. §9831, *et seq.*;

(3) Federal funds for temporary assistance to needy families pursuant to 42 U. S. C. §601, *et seq.*;

(4) Funds provided by the School Building Authority pursuant to article nine-d of this chapter;

(5) In the case of counties with declining enrollments, funds from the state aid formula above the amount indicated for the number of students actually enrolled in any school year; and

(6) Any other public or private funds.

(g) Each county board shall develop a plan for implementing the program required by this section. The plan shall include the following elements:

(1) An analysis of the demographics of the county related to early childhood education program implementation;

(2) An analysis of facility and personnel needs;

(3) Financial requirements for implementation and potential sources of funding to assist implementation;

(4) Details of how the county board will cooperate and collaborate with other early childhood education programs including, but not limited to, Head Start, to maximize federal and other sources of revenue;

(5) Specific time lines for implementation; and

(6) Any other items the state board may require by policy.

(h) A county board shall submit its plan to the Secretary of the Department of Health and Human Resources. The secretary shall approve the plan if the following conditions are met:

(1) The county board has maximized the use of federal and other available funds for early childhood programs;

(2) The county board has provided for the maximum implementation of Head Start programs and other public and private programs approved by the state superintendent pursuant to the terms of subsection (k) of this section; and

(3) If the Secretary of the Department of Health and Human Resources finds that the county board has not met one or more of the requirements of this subsection, but that the county board has acted in good faith and the failure to comply was not the primary fault of the county board, then the secretary shall approve the plan. Any denial by the secretary may be appealed to the circuit court of the county in which the county board is located.

(i) The county board shall submit its plan for approval to the state board. The state board shall approve the plan if the county board has complied substantially with the requirements of subsection (g) of this section and has obtained the approval required in subsection (h) of this section.

(j) Every county board shall submit its plan for reapproval by the Secretary of the Department of Health and Human Resources and by the state board at least every two years after the initial approval of the plan and until full implementation of the early childhood education program in the county. As part of the submission, the county board shall provide a detailed statement of the progress made in implementing its plan. The standards and procedures provided for the original approval of the plan apply to any reapproval.

(k) A county board may not increase the total number of students enrolled in the county in an early childhood program until its program is approved by the Secretary of the Department of Health and Human Resources and the state board.

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

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

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

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

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

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

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

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

~~(n) Annually, the state board shall report to the Legislative Oversight Commission on Education Accountability on the progress of implementation of this section. Except as required by federal law or regulation, no county board may enroll students who will be less than four years of age prior to September 1 for the year they enter school.~~

~~(o) Except as required by federal law or regulation, no county board may enroll students who will be less than four years of age prior to September 1 for the year they enter school. Neither the state board nor the state department may provide any funds to any county board for the purpose of implementing this section unless the county board has a plan approved pursuant to subsections (h), (i) and (j) of this section.~~

~~(p) Neither the state board nor the state department may provide any funds to any county board for the purpose of implementing this section unless the county board has a plan approved pursuant to subsections (h), (i) and (j) of this section. The state board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code for the purposes of implementing the provisions of this section. The state board shall consult with the Secretary of the Department of Health and Human Resources in the preparation of the rule. The rule shall contain the following:~~

- (1) Standards for curriculum;
- (2) Standards for preparing students;
- (3) Attendance requirements;
- (4) Standards for personnel; and
- (5) Any other terms necessary to implement the provisions of this section.

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

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

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

~~(3) A method for including a broad range of content that is relevant, engaging and meaningful to young children;~~

~~(4) A requirement that the curriculum incorporate a wide variety of learning experiences, materials and equipment, and instructional strategies to respond to differences in prior experience, maturation rates and learning styles that young children bring to the classroom;~~

(5) A requirement that the curriculum be designed to build on what children already know in order to consolidate their learning and foster their acquisition of new concepts and skills;

(6) A requirement that the curriculum meet the recognized standards of the relevant subject matter disciplines;

(7) A requirement that the curriculum engage children actively in the learning process and provide them with opportunities to make meaningful choices;

(8) A requirement that the curriculum emphasize the development of thinking, reasoning, decisionmaking and problem-solving skills;

(9) A set of clear guidelines for communicating with parents and involving them in decisions about the instructional needs of their children; and

(10) A systematic plan for evaluating program success in meeting the needs of young children and for helping them to be ready to succeed in school.

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

~~(s) The secretary and the state superintendent shall submit a report to the Legislative Oversight Commission on Education Accountability and the Joint Committee on Government and Finance which addresses, at a minimum, the following issues:~~

~~(1) A summary of the approved county plans for providing the early childhood education programs pursuant to this section;~~

~~(2) An analysis of the total cost to the state and county boards of implementing the plans;~~

~~(3) A separate analysis of the impact of the plans on counties with increasing enrollment; and~~

~~(4) An analysis of the effect of the programs on the maximization of the use of federal funds for early childhood programs.~~

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

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

~~(1) Documentation indicating the extent to which county boards are maximizing resources by using the existing capacity of community-based programs, including, but not limited to, Head Start and child care; and~~

~~(2) For those county boards that are including eligible children attending approved, contracted community-based programs in their net enrollment for the purposes of calculating state aid pursuant to article nine-a of this chapter, documentation that the county board is equitably distributing funding for all children regardless of setting.~~

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

§18-20-5. Powers and duties of state superintendent.

(a) The State Superintendent of Schools shall organize, promote, administer and be responsible for:

(1) Stimulating and assisting county boards of education in establishing, organizing and maintaining special schools, classes, regular class programs, home-teaching and visiting-teacher services.

(2) Cooperating with all other public and private agencies engaged in relieving, caring for, curing, educating and rehabilitating exceptional children, and in helping coordinate the services of such agencies.

(3) (A) Preparing the necessary rules, policies, formula for distribution of available appropriated funds, reporting forms and procedures necessary to define minimum standards in providing suitable facilities for education of exceptional children and ensuring the employment, certification and approval of qualified teachers and therapists subject to approval by the State Board of Education: *Provided*, That no state rule, policy or standard under this article or any county board rule, policy or standard governing special education may exceed the requirements of federal law or regulation.

~~(B) The state superintendent shall annually review the rules, policies and standards of the state and federal law for serving the needs of exceptional children enrolled in the public schools and shall report to the legislative oversight commission on education accountability by the first day of December or as soon thereafter as requested by the commission, two thousand eight, and in each year thereafter, the findings of the review along with an accounting of the services provided and the costs thereof for exceptional children enrolled in the public schools of this state during the latest available school year. An appropriation shall be made to the Department of Education to be distributed to county boards to support children with high acuity needs that exceed the capacity of county to provide with funds available. Each county board shall apply to the state superintendent for receipt of this funding in a manner set forth by the state superintendent that assesses and takes into account varying acuity levels of the exceptional students. Any remaining funds at the end of a fiscal year from the appropriation shall be carried over to the next fiscal year. When possible, federal funds shall be distributed to county boards for this purpose before any of the state appropriation is distributed. The state board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code that implements the provisions of this subdivision relating to distributing the funds to the county boards. The rule at least shall include a definition for "children with high acuity needs".~~

(4) Receiving from county boards of education their applications, annual reports and claims for reimbursement from such moneys as are appropriated by the Legislature, auditing such claims and preparing vouchers to reimburse said counties the amounts reimbursable to them.

(5) Assuring that all exceptional children in the state, including children in mental health facilities, residential institutions, private schools and correctional facilities as provided in section thirteen-f, article two of this chapter receive an education in accordance with state and federal laws: *Provided*, That the state superintendent shall also assure that adults in correctional facilities and regional jails receive an education to the extent funds are provided therefor.

(6) Performing other duties and assuming other responsibilities in connection with this program as needed.

(7) Receive the county plan for integrated classroom submitted by the county boards of education and submit a state plan, approved by the State Board of Education, to the Legislative Oversight Commission on Education Accountability no later than December 1, 1995.

(b) Nothing contained in this section shall be construed to prevent any county board of education from establishing and maintaining special schools, classes, regular class programs, home-teaching or visiting-teacher services out of funds available from local revenue.

§18-20-8. Interagency plan for exceptional children; advisory council.

(a) The state departments of health, human services and education shall enter into a collaborative agreement for the purpose of developing a statewide plan of coordinating comprehensive, multidisciplinary interagency programs providing appropriate early intervention services to all developmentally delayed and at-risk children, ages birth through five years, and their families to be phased in by the school year 1990-94 99.

This comprehensive, coordinated statewide plan shall include, at a minimum:

- (1) Specification of the population to be served;
- (2) The development of regulations and procedural safeguards;
- (3) The development of procedures for administration, supervision and monitoring;
- (4) The identification and coordination of all available resources; and

(5) The development of formal interagency agreements that define the financial responsibility of each agency and all additional components necessary to ensure meaningful cooperation and coordination.

(b) To assist in the development of such a plan, an advisory council consisting of twelve members shall be created. The departments of health, human services and education shall each appoint four members, and each shall include in such appointments one parent of an exceptional child under the age of six; one public or private provider of early intervention services for developmentally delayed and at-risk children; one individual involved in the education training of personnel who work with preschool handicapped; and one other person.

The functions of the council shall include the following:

- (1) Meet at least quarterly;
- (2) Solicit information and opinions from concerned agencies, groups and individuals; and
- (3) Advise and assist the departments of health, human services and education in the development of the statewide plan herein required; and

~~(4) Prepare and submit an annual report by the first day of December of each year to the governor, the joint committee on education, the Legislative commission on juvenile law, the legislative oversight commission on education accountability, and other agencies, as appropriate, which report shall recommend policies, procedures and legislation for effectively providing early intervention services and reports on the status of existing programs.~~

Following the submission of the advisory council's first annual report, the joint committee on education is authorized and empowered to disband the council or alter its functions as it deems advisable.

The members of the council may be reimbursed for actual and necessary expenses incurred in the performance of their official duties in accordance with state law from appropriations to the departments of health, human services and education or available federal funds.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-3. Employment of substitute teachers; 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 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 retiree 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, 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 may not accrue seniority.

(5) A retired 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 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.

(8) Until this subsection is expired pursuant to subdivision (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 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.

(9) The provisions of this subsection shall expire on June 30, 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.~~

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

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

(a) A county board of education shall make decisions affecting the filling of vacancies in professional positions of employment on the basis of the applicant with the highest qualifications: *Provided*, That the county superintendent shall be hired under separate criteria pursuant to section two, article four, chapter eighteen of this code.

(b) In judging qualifications for the filling of vacancies of professional positions of employment, consideration shall be given to each of the following:

(1) Appropriate certification, licensure or both;

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

(3) The amount of course work, degree level or both in the relevant field and degree level generally;

(4) Academic achievement;

(5) In the case of a classroom teaching position or the position of principal, certification by the National Board for Professional Teaching Standards;

(6) Specialized training relevant to the performance of the duties of the job;

(7) Past performance evaluations conducted pursuant to section twelve, article two of this chapter and section two, article three-c of this chapter or, in the case of a classroom teacher, past evaluations of the applicant's performance in the teaching profession;

(8) Seniority;

(9) Other measures or indicators upon which the relative qualifications of the applicant may fairly be judged;

(10) In the case of a classroom teaching position, the recommendation of the principal of the school at which the applicant will be performing a majority of his or her duties; and

(11) In the case of a classroom teaching position, the recommendation, if any, resulting from the process established pursuant to the provisions of section five, article five-a, chapter eighteen of this code by the faculty senate of the school at which the employee will be performing a majority of his or her duties.

(c) In considering the filling of a vacancy pursuant to this section, a county board is entitled to determine the appropriate weight to apply to each of the criterion when assessing an applicant's qualifications: *Provided*, That if one or more permanently employed instructional personnel apply for a classroom teaching position and meet the standards set forth in the job posting, each criterion under subsection (b) of this section shall be given equal weight except that the criterion in subdivisions (10) and (11) shall each be double weighted.

(d) For a classroom teaching position, if the recommendations resulting from the operations of subdivisions (10) and (11), subsection (b) of this section are for the same applicant, and the superintendent concurs with that recommendation, then the other provisions of subsections (b) and (c) of this section do not apply and the county board shall appoint that applicant notwithstanding any other provision of this code to the contrary.

(e) The state board shall promulgate a rule, including an emergency rule if necessary, in accordance with the provisions of article three-b, chapter twenty-nine-a of this code to implement and interpret the provisions of this section, including provisions that may provide for the compensation based on the appropriate daily rate of a classroom teacher who directly participates in making recommendations pursuant to this section for periods beyond his or her individual contract.

(f) Recommendations made pursuant to subdivisions (10) and (11), subsection (b) of this section shall be made based on a determination as to which of the applicants is the highest qualified for the

position: *Provided*, That nothing in this subsection shall require principals or faculty senates to assign any amount of weight to any factor in making a recommendation.

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

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

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

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

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

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

(2) Notwithstanding any provision of this code to the contrary, all employees subject to release shall be considered applicants for any vacancy in an established, existing or newly created position that, on or before February 15, is known to exist for the ensuing school year, and for which they are qualified, and, upon recommendation of the superintendent, the board shall appoint the successful applicant from among them before posting such vacancies for application by other persons;

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

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

(5) If, prior to August 1 of the year a reduction in force is approved, the reason for any particular reduction in force no longer exists as determined by the county board in its sole and exclusive judgment, the board shall rescind the reduction in force or transfer and shall notify the released employee in writing of his or her right to be restored to his or her position of employment. Within five days of being so notified, the released employee shall notify the board, in writing, of his or her intent to resume his or her position of employment or the right to be restored shall terminate. Notwithstanding any other provision of this subdivision, if there is another employee on the preferred recall list with proper certification and higher seniority, that person shall be placed in the position restored as a result of the reduction in force being rescinded.

(l) For the purpose of this article, all positions which meet the definition of "classroom teacher" as defined in section one, article one of this chapter shall be lateral positions. For all other professional positions, the county board of education shall adopt a policy by October 31, 1993, and may modify the policy thereafter as necessary, which defines which positions shall be lateral positions. ~~The board shall submit a copy of its policy to the state board within thirty days of adoption or any modification, and the state board shall compile a report and submit the report to the Legislative Oversight Commission on Education Accountability by December 31, 1993, and by that date in any succeeding year in which any county board submits a modification of its policy relating to lateral positions.~~ In adopting the policy, the board shall give consideration to the rank of each position in terms of title; nature of responsibilities; salary level; certification, licensure or both; and days in the period of employment.

(m) After the twentieth day prior to the beginning of the instructional term, no person employed and assigned to a professional position may transfer to another professional position in the county during that instructional term unless the person holding that position does not have valid certification. The provisions of this subsection are subject to the following:

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

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

(3) The county board, upon recommendation of the superintendent may fill a position before the next instructional term when it is determined to be in the best interest of the students. The county superintendent shall notify the state board of each transfer of a person employed in a professional position to another professional position after the twentieth day prior to the beginning of the instructional term;

(4) The provisions of this subsection do not apply to the filling of a position vacated because of resignation or retirement that became effective on or before the twentieth day prior to the beginning of the instructional term, but not posted until after that date; and

(5) The Legislature finds that it is not in the best interest of the students, particularly in the elementary grades, to have multiple teachers for any one grade level or course during the instructional term. It is the intent of the Legislature that the filling of positions through transfers of personnel from one professional position to another after the twentieth day prior to the beginning of the instructional term should be kept to a minimum.

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

(o) Before position openings that are known or expected to extend for twenty consecutive employment days or longer for professional personnel may be filled by the board, the board shall be

required to notify all qualified professional personnel on the preferred list and give them an opportunity to apply, but failure to apply shall not cause the employee to forfeit any right to recall. The notice shall be sent by certified mail to the last known address of the employee, and it shall be the duty of each professional personnel to notify the board of continued availability annually, of any change in address or of any change in certification, licensure or both.

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

(1) Boards shall be required to post and date notices of each opening at least once. At their discretion, boards may post an opening for a position other than classroom teacher more than once in order to attract more qualified applicants. At their discretion, boards may post an opening for a classroom teacher one additional time after the first posting in order to attract more qualified applicants only if fewer than three individuals apply during the first posting subject to the following:

(A) Each notice shall be posted in conspicuous working places for all professional personnel to observe for at least five working days;

(B) At least one notice shall be posted within twenty working days of the position openings and shall include the job description;

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

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

(E) 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;

(2) No vacancy shall be filled until after the five-day minimum posting period of the most recent posted notice of the vacancy;

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

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

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

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

(r) Reductions in classroom teaching positions in elementary schools shall be processed as follows:

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

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

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

(t) The county board shall compile, update annually on July 1 and make available by electronic or other means to all employees a list of all professional personnel employed by the county, their areas of certification and their seniority.

(u) Notwithstanding any other provision of this code to the contrary, upon recommendation of the principal and approval by the classroom teacher and county board, a classroom teacher assigned to the school may at any time be assigned to a new or existing classroom teacher position at the school without the position being posted.

(v) The amendments to this section during the 2013 regular session of the Legislature shall be effective for school years beginning on or after July 1, 2013, and the provisions of this section immediately prior to those amendments remain in effect until July 1, 2013.

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-1a. Possessing deadly weapons on premises of educational facilities; possessing a controlled substance on premises of educational facilities; assaults and batteries committed by students upon teachers or other school personnel; temporary suspension, hearing; procedure, notice and formal hearing; extended suspension; sale of narcotic; expulsion; exception; alternative education.

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

(b) A principal shall suspend a student from school, or from transportation to or from the school on any school bus, if the student, in the determination of the principal after an informal hearing pursuant to subsection (d) of this section, has: (i) Committed an act or engaged in conduct that would constitute a felony under the laws of this state if committed by an adult; or (ii) unlawfully possessed on the premises of an educational facility or at a school-sponsored function a controlled substance governed by the Uniform Controlled Substances Act as described in chapter sixty-a of this code. If a student has been suspended pursuant to this subsection, the principal may request that the superintendent recommend to the county

board that the student be expelled. Upon such recommendation by the county superintendent, the county board may hold a hearing in accordance with the provisions of subsections (e), (f) and (g) of this section to determine if the student committed the alleged violation. If the county board finds that the student did commit the alleged violation, the county board may expel the student.

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

(d) The actions of any student which may be grounds for his or her suspension or expulsion under the provisions of this section shall be reported immediately to the principal of the school in which the student is enrolled. If the principal determines that the alleged actions of the student would be grounds for suspension, he or she shall conduct an informal hearing for the student immediately after the alleged actions have occurred. The hearing shall be held before the student is suspended unless the principal believes that the continued presence of the student in the school poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process, in which case the student shall be suspended immediately and a hearing held as soon as practicable after the suspension.

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

At the commencement of the informal hearing, the principal shall inquire of the student as to whether he or she admits or denies the charges. If the student does not admit the charges, he or she shall be given an explanation of the evidence possessed by the principal and an opportunity to present his or her version of the occurrence. At the conclusion of the hearing or upon the failure of the noticed student to appear, the principal may suspend the student for a maximum of ten school days, including the time prior to the hearing, if any, for which the student has been excluded from school.

The principal shall report any suspension the same day it has been decided upon, in writing, to the parent(s), guardian(s) or custodian(s) of the student by regular United States mail. The suspension also shall be reported to the county superintendent and to the faculty senate of the school at the next meeting after the suspension.

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

(f) The county board shall hold the scheduled hearing to determine if the student should be reinstated or should ~~or~~, under the provisions of this section, must be expelled from school. If the county board determines that the student should or must be expelled from school, it also may determine whether the student is a dangerous student pursuant to subsection (g) of this section. At this, or any hearing before

a county board conducted pursuant to this section, the student may be represented by counsel, may call his or her own witnesses to verify his or her version of the incident and may confront and cross examine witnesses supporting the charge against him or her. The hearing shall be recorded by mechanical means unless recorded by a certified court reporter. The hearing may be postponed for good cause shown by the student but he or she shall remain under suspension until after the hearing. The state board may adopt other supplementary rules of procedure to be followed in these hearings. At the conclusion of the hearing the county board shall either: (1) Order the student reinstated immediately at the end of his or her initial suspension; (2) suspend the student for a further designated number of days; or (3) expel the student from the public schools of the county.

(g) A county board that did not intend prior to a hearing to assert a dangerous student claim, that did not notify the student prior to the hearing that a dangerous student determination would be considered and that determines through the course of the hearing that the student may be a dangerous student shall schedule a second hearing within ten days to decide the issue. The hearing may be postponed for good cause shown by the student, but he or she remains under suspension until after the hearing.

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

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

Any hearing conducted pursuant to this subsection may be postponed: (1) For good cause shown by the student; (2) when proceedings to compel a subpoenaed witness to appear must be instituted; or (3) when a delay in service of a subpoena hinders either party's ability to provide sufficient notice to appear to a witness. A student remains under suspension until after the hearing in any case where a postponement occurs.

~~The county boards are directed to report the number of students determined to be dangerous students to the state board. The state board will compile the county boards' statistics and shall report its findings to the Legislative Oversight Commission on Education Accountability.~~

(i) Students may be expelled pursuant to this section for a period not to exceed one school year, except that if a student is determined to have violated the provisions of subsection (a) of this section the student shall be expelled for a period of not less than twelve consecutive months, subject to the following:

(1) The county superintendent may lessen the mandatory period of twelve consecutive months for the expulsion of the student if the circumstances of the student's case demonstrably warrant;

(2) Upon the reduction of the period of expulsion, the county superintendent shall prepare a written statement setting forth the circumstances of the student's case which warrant the reduction of the period of expulsion. The county superintendent shall submit the statement to the county board, the principal, the faculty senate and the local school improvement council for the school from which the student was expelled. The county superintendent may use the following factors as guidelines in determining whether or not to reduce a mandatory twelve-month expulsion:

(A) The extent of the student's malicious intent;

(B) The outcome of the student's misconduct;

(C) The student's past behavior history;

(D) The likelihood of the student's repeated misconduct; and

(E) If applicable, successful completion or making satisfactory progress toward successful completion of Juvenile Drug Court pursuant to section one-d of this section.

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

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

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

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

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

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

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

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

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

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 1. GOVERNANCE.

§18B-1-10. Potomac branch of West Virginia University.

(a) Notwithstanding any other provision of this code to the contrary, by July 1, 2005, Potomac State College shall merge and consolidate with West Virginia University, and become a fully integrated division of the university. All administrative and academic units shall be consolidated with primary responsibility for direction and support assigned to West Virginia University. The advisory board previously appointed for Potomac State College shall be known as the board of visitors and shall provide guidance to the division in carrying out its mission.

(b) Operational costs for the Potomac campus may not exceed by more than ten percent the average cost per full-time equivalent student for freestanding community and technical colleges or the southern regional education board average expenditures for two-year institutions. West Virginia University shall reduce these costs to the mandated level within four years.

(c) Auxiliary enterprises shall be incorporated into the West Virginia University auxiliary enterprise system. The West Virginia University Board of Governors shall determine if operations at the Potomac campus can be operated on a self-sufficient basis when establishing rates for auxiliary services and products.

(d) Potomac State College has a strong reputation in agriculture and forestry instruction, preprofessional programs in business, computer science and education, and basic liberal arts instruction. These programs shall be further cultivated and emphasized as the sustaining mission of the Potomac campus over the next decade, except that the Higher Education Policy Commission may change the mission of the Potomac campus at any time the commission determines appropriate. In order to focus its resources on these programs, the campus shall contract through Eastern West Virginia Community and Technical College to provide work force development training, literacy education and technical education programs which are most efficiently offered within a flexible community and technical college curriculum. This collaborative relationship shall serve to strengthen both institutions and generate a model relationship between traditional and community and technical college education for institutions throughout the state.

~~(e) Beginning the first day of November, two thousand three, and annually thereafter, Potomac state college and eastern West Virginia community and technical college shall report to the higher education policy commission on plans, accomplishments and recommendations in implementing the cooperative relationship authorized in subsection (d) of this section. The commission shall report to the legislative oversight commission on education accountability on the cooperative activities, results and recommendations for changes by the fifteenth day of December, two thousand three, and annually thereafter.~~

ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.

18B-1B-4. Powers and duties of Higher Education Policy Commission.

(a) The primary responsibility of the commission is to develop, establish and implement policy that will achieve the goals, objectives and priorities found in section one-a, article one and article one-d of this chapter. The commission shall exercise its authority and carry out its responsibilities in a manner that is consistent and not in conflict with the powers and duties assigned by law to the West Virginia Council for Community and Technical College Education and the powers and duties assigned to the governing boards. To that end, the commission has the following powers and duties relating to the governing boards under its jurisdiction:

(1) Develop, oversee and advance the public policy agenda pursuant to article one-d of this chapter to address major challenges facing the state, including, but not limited to, the following:

(A) The goals, objectives and priorities established in this chapter including specifically those goals, objectives and priorities pertaining to the compacts created pursuant to section seven, article one-d of this chapter; and

(B) Development and implementation of the master plan described in section five, article one-d of this chapter for the purpose of accomplishing the mandates of this section;

(2) Develop, oversee and advance the promulgation and implementation of a financing rule for state institutions of higher education under its jurisdiction. The rule shall meet the following criteria:

(A) Provide for an adequate level of educational and general funding for institutions pursuant to section five, article one-a of this chapter;

(B) Serve to maintain institutional assets, including, but not limited to, human and physical resources and eliminating deferred maintenance; and

(C) Invest and provide incentives for achieving the priority goals in the public policy agenda, including, but not limited to, those found in section one-a, article one and article one-d of this chapter;

(3) In collaboration with the council, create a policy leadership structure capable of the following actions:

(A) Developing, building public consensus around and sustaining attention to a long-range public policy agenda. In developing the agenda, the commission and council shall seek input from the Legislature and the Governor and specifically from the state Board of Education and local school districts in order to create the necessary linkages to assure smooth, effective and seamless movement of students through the public education and post-secondary education systems and to ensure that the needs of public school courses and programs can be fulfilled by the graduates produced and the programs offered;

(B) Ensuring that the governing boards carry out their duty effectively to govern the individual institutions of higher education; and

(C) Holding the governing boards and the higher education systems as a whole accountable for accomplishing their missions and implementing their compacts;

(4) Develop and adopt each compact for the governing boards under its jurisdiction;

(5) Review and adopt the annual updates of the institutional compacts;

(6) Serve as the accountability point to state policymakers:

(A) The Governor for implementation of the public policy agenda; and

(B) The Legislature by maintaining a close working relationship with the legislative leadership and the Legislative Oversight Commission on Education Accountability;

(7) Jointly with the council, promulgate legislative rules pursuant to article three-a, chapter twenty-nine-a of this code to fulfill the purposes of section five, article one-a of this chapter;

(8) Establish and implement a peer group for each institution as described in section three, article one-a of this chapter;

(9) Establish and implement the benchmarks and performance indicators necessary to measure institutional progress in achieving state policy priorities and institutional missions pursuant to section seven, article one-d of this chapter;

~~(10) Report to the Legislature and to the Legislative Oversight Commission on Education Accountability annually during the January interim meeting period on a date and at a time and location to be determined by the President of the Senate and the Speaker of the House of Delegates. The report shall address at least the following: Establish a formal process for identifying capital investment needs and for determining priorities for these investments for consideration by the Governor and the Legislature as part of the appropriation request process pursuant to article nineteen of this chapter;~~

~~(A) The performance of its system of higher education during the previous fiscal year, including, but not limited to, progress in meeting the goals, objectives and priorities set forth in section one-a, article one and article one-d of this chapter and in the commission's master plan and institutional compacts;~~

~~(B) The commission's priorities for new operating and capital investments and the justification for the priority;~~

~~(C) Recommendations of the commission for statutory changes necessary or expedient to achieve state goals, objectives and priorities;~~

~~(11) Establish a formal process for identifying capital investment needs and for determining priorities for these investments for consideration by the Governor and the Legislature as part of the appropriation request process pursuant to article nineteen of this chapter. Develop standards and evaluate governing board requests for capital project financing in accordance with article nineteen of this chapter;~~

~~(12) Develop standards and evaluate governing board requests for capital project financing in accordance with article nineteen of this chapter; Ensure that governing boards manage capital projects and facilities needs effectively, including review and approval or disapproval of capital projects, in accordance with article nineteen of this chapter;~~

~~(13) Ensure that governing boards manage capital projects and facilities needs effectively, including review and approval or disapproval of capital projects, in accordance with article nineteen of this chapter. Acquire legal services as considered necessary, including representation of the commission, its governing boards, employees and officers before any court or administrative body, notwithstanding any other provision of this code to the contrary. The counsel may be employed either on a salaried basis or on a reasonable fee basis. In addition, the commission may, but is not required to, call upon the Attorney General for legal assistance and representation as provided by law;~~

~~(14) Acquire legal services as considered necessary, including representation of the commission, its, governing boards, employees and officers before any court or administrative body, notwithstanding any other provision of this code to the contrary. The counsel may be employed either on a salaried basis or on a reasonable fee basis. In addition, the commission may, but is not required to, call upon the Attorney General for legal assistance and representation as provided by law; Employ a Chancellor for Higher Education pursuant to section five of this article;~~

~~(15) Employ a Chancellor for Higher Education pursuant to section five of this article; Employ other staff as necessary and appropriate to carry out the duties and responsibilities of the commission and the council, in accordance with article four of this chapter;~~

~~(16) Employ other staff as necessary and appropriate to carry out the duties and responsibilities of the commission and the council, in accordance with article four of this chapter; Provide suitable offices in Kanawha County for the chancellor, vice chancellors and other staff;~~

~~(17) Provide suitable offices in Kanawha County for the chancellor, vice chancellors and other staff; Advise and consent in the appointment of the presidents of the institutions of higher education under its jurisdiction pursuant to section six of this article. The role of the commission in approving an institutional president is to assure through personal interview that the person selected understands and is committed to~~

achieving the goals, objectives and priorities set forth in the compact, in section one-a, article one and article one-d of this chapter;

~~(18) Advise and consent in the appointment of the presidents of the institutions of higher education under its jurisdiction pursuant to section six of this article. The role of the commission in approving an institutional president is to assure through personal interview that the person selected understands and is committed to achieving the goals, objectives and priorities set forth in the compact, in section one-a, article one and article one-d of this chapter;~~ Approve the total compensation package from all sources for presidents of institutions under its jurisdiction, as proposed by the governing boards. The governing boards must obtain approval from the commission of the total compensation package both when institutional presidents are employed initially and afterward when any change is made in the amount of the total compensation package;

~~(19) Approve the total compensation package from all sources for presidents of institutions under its jurisdiction, as proposed by the governing boards. The governing boards must obtain approval from the commission of the total compensation package both when institutional presidents are employed initially and afterward when any change is made in the amount of the total compensation package;~~ Establish and implement the policy of the state to assure that parents and students have sufficient information at the earliest possible age on which to base academic decisions about what is required for students to be successful in college, other post-secondary education and careers related, as far as possible, to results from current assessment tools in use in West Virginia;

~~(20) Establish and implement the policy of the state to assure that parents and students have sufficient information at the earliest possible age on which to base academic decisions about what is required for students to be successful in college, other post-secondary education and careers related, as far as possible, to results from current assessment tools in use in West Virginia;~~ Approve and implement a uniform standard jointly with the council to determine which students shall be placed in remedial or developmental courses. The standard shall be aligned with college admission tests and assessment tools used in West Virginia and shall be applied uniformly by the governing boards throughout the public higher education system. The chancellors shall develop a clear, concise explanation of the standard which they shall communicate to the State Board of Education and the State Superintendent of Schools;

~~(21) Approve and implement a uniform standard jointly with the council to determine which students shall be placed in remedial or developmental courses. The standard shall be aligned with college admission tests and assessment tools used in West Virginia and shall be applied uniformly by the governing boards throughout the public higher education system. The chancellors shall develop a clear, concise explanation of the standard which they shall communicate to the state Board of Education and the state superintendent of Schools;~~ Jointly with the council, develop and implement an oversight plan to manage systemwide technology including, but not limited to, the following:

(A) Expanding distance learning and technology networks to enhance teaching and learning, promote access to quality educational offerings with minimum duplication of effort; and

(B) Increasing the delivery of instruction to nontraditional students, to provide services to business and industry and increase the management capabilities of the higher education system.

(C) Notwithstanding any other provision of law or this code to the contrary, the council, commission and governing boards are not subject to the jurisdiction of the Chief Technology Officer for any purpose;

~~(22) Jointly with the council, develop and implement an oversight plan to manage systemwide technology including, but not limited to, the following:~~ Establish and implement policies and procedures to ensure that a student may transfer and apply toward the requirements for a bachelor's degree the maximum number of credits earned at any regionally accredited in-state or out-of-state community and technical college with as few requirements to repeat courses or to incur additional costs as are consistent with sound academic policy;

~~(A) Expanding distance learning and technology networks to enhance teaching and learning, promote access to quality educational offerings with minimum duplication of effort; and~~

~~(B) Increasing the delivery of instruction to nontraditional students, to provide services to business and industry and increase the management capabilities of the higher education system.~~

~~(C) Notwithstanding any other provision of law or this code to the contrary, the council, commission and governing boards are not subject to the jurisdiction of the Chief Technology Officer for any purpose;~~

(23) Establish and implement policies and procedures to ensure that a student may transfer and apply toward the requirements for a ~~bachelor's~~ degree the maximum number of credits earned at any regionally accredited in-state or out-of-state ~~community and technical college~~ higher education institution with as few requirements to repeat courses or to incur additional costs as are consistent with sound academic policy;

(24) Establish and implement policies and procedures to ensure that a student may transfer and apply toward the requirements for a ~~master's~~ degree the maximum number of credits earned at any regionally accredited in-state or out-of-state higher education institution with as few requirements to repeat courses or to incur additional costs as are consistent with sound academic policy;

~~(25) Establish and implement policies and procedures to ensure that a student may transfer and apply toward the requirements for a master's degree the maximum number of credits earned at any regionally accredited in-state or out-of-state higher education institution with as few requirements to repeat courses or to incur additional costs as are consistent with sound academic policy; Establish and implement policies and programs, in cooperation with the council and the governing boards, through which a student who has gained knowledge and skills through employment, participation in education and training at vocational schools or other education institutions, or Internet-based education programs, may demonstrate by competency-based assessment that he or she has the necessary knowledge and skills to be granted academic credit or advanced placement standing toward the requirements of an associate's degree or a bachelor's degree at a state institution of higher education;~~

~~(26) Establish and implement policies and programs, in cooperation with the council and the governing boards, through which a student who has gained knowledge and skills through employment, participation in education and training at vocational schools or other education institutions, or Internet-based education programs, may demonstrate by competency-based assessment that he or she has the necessary knowledge and skills to be granted academic credit or advanced placement standing toward the requirements of an associate's degree or a bachelor's degree at a state institution of higher education; Seek out and attend regional, national and international meetings and forums on education and workforce development-related topics as, in the commission's discretion, are critical for the performance of their duties as members, for the purpose of keeping abreast of education trends and policies to aid it in developing the policies for this state to meet the established education goals, objectives and priorities pursuant to section one-a, article one and article one-d of this chapter;~~

~~(27) Seek out and attend regional, national and international meetings and forums on education and workforce development-related topics as, in the commission's discretion, are critical for the performance of their duties as members, for the purpose of keeping abreast of education trends and policies to aid it in developing the policies for this state to meet the established education goals, objectives and priorities pursuant to section one-a, article one and article one-d of this chapter; Promulgate and implement a rule for higher education governing boards and institutions to follow when considering capital projects pursuant to article nineteen of this chapter;~~

~~(28) Promulgate and implement a rule for higher education governing boards and institutions to follow when considering capital projects pursuant to article nineteen of this chapter; Consider and submit to the appropriate agencies of the executive and legislative branches of state government an appropriation request that reflects recommended appropriations for the commission and the governing boards under its jurisdiction. The commission shall submit as part of its appropriation request the separate recommended appropriation request it received from the council, both for the council and for the governing boards under~~

the council's jurisdiction. The commission annually shall submit the proposed allocations based on each institution's progress toward meeting the goals of its compact;

~~(29) Consider and submit to the appropriate agencies of the executive and legislative branches of state government an appropriation request that reflects recommended appropriations for the commission and the governing boards under its jurisdiction. The commission shall submit as part of its appropriation request the separate recommended appropriation request it received from the council, both for the council and for the governing boards under the council's jurisdiction. The commission annually shall submit the proposed allocations based on each institution's progress toward meeting the goals of its compact; The commission may assess institutions under its jurisdiction, including Marshall University and West Virginia University, for the payment of expenses of the commission or for the funding of statewide higher education services, obligations or initiatives related to the goals set forth for the provision of public higher education in the state;~~

~~(30) The commission may assess institutions under its jurisdiction, including Marshall University and West Virginia University, for the payment of expenses of the commission or for the funding of statewide higher education services, obligations or initiatives related to the goals set forth for the provision of public higher education in the state; Promulgate rules allocating reimbursement of appropriations, if made available by the Legislature, to governing boards for qualifying noncapital expenditures incurred in providing services to students with physical, learning or severe sensory disabilities;~~

~~(31) Promulgate rules allocating reimbursement of appropriations, if made available by the Legislature, to governing boards for qualifying noncapital expenditures incurred in providing services to students with physical, learning or severe sensory disabilities; Make appointments to boards and commissions where this code requires appointments from the State College System Board of Directors or the University of West Virginia System Board of Trustees which were abolished effective June 30, 2000, except in those cases where the required appointment has a specific and direct connection to the provision of community and technical college education, the appointment shall be made by the council. Notwithstanding any provisions of this code to the contrary, the commission or the council may appoint one of its own members or any other citizen of the state as its designee. The commission and council shall appoint the total number of persons in the aggregate required to be appointed by these previous governing boards;~~

~~(32) Make appointments to boards and commissions where this code requires appointments from the State College System Board of Directors or the University of West Virginia System Board of Trustees which were abolished effective June 30, 2000, except in those cases where the required appointment has a specific and direct connection to the provision of community and technical college education, the appointment shall be made by the council. Notwithstanding any provisions of this code to the contrary, the commission or the council may appoint one of its own members or any other citizen of the state as its designee. The commission and council shall appoint the total number of persons in the aggregate required to be appointed by these previous governing boards; Pursuant to article three-a, chapter twenty-nine-a of this code and section six, article one of this chapter, promulgate rules necessary or expedient to fulfill the purposes of this chapter. The commission and the council shall promulgate a uniform joint legislative rule for the purposes of standardizing, as much as possible, the administration of personnel matters among the state institutions of higher education and implementing the provisions of articles seven, eight, nine and nine-a of this chapter;~~

~~(33) Pursuant to article three-a, chapter twenty-nine-a of this code and section six, article one of this chapter, promulgate rules necessary or expedient to fulfill the purposes of this chapter. The commission and the council shall promulgate a uniform joint legislative rule for the purposes of standardizing, as much as possible, the administration of personnel matters among the state institutions of higher education and implementing the provisions of articles seven, eight, nine and nine-a of this chapter; Determine when a joint rule among the governing boards under its jurisdiction is necessary or required by law and, in those instances, in consultation with the governing boards under its jurisdiction, promulgate the joint rule;~~

~~(34) Determine when a joint rule among the governing boards under its jurisdiction is necessary or required by law and, in those instances, in consultation with the governing boards under its jurisdiction, promulgate the joint rule; Promulgate and implement a rule jointly with the council whereby course credit earned at a community and technical college transfers for program credit at any other state institution of higher education and is not limited to fulfilling a general education requirement;~~

~~(35) Promulgate and implement a rule jointly with the council whereby course credit earned at a community and technical college transfers for program credit at any other state institution of higher education and is not limited to fulfilling a general education requirement; By October 1, 2011, promulgate a rule pursuant to section one, article ten of this chapter, establishing tuition and fee policy for all governing boards under the jurisdiction of the commission, including Marshall University and West Virginia University. The rule shall include, but is not limited to, the following:~~

~~(A) Comparisons with peer institutions;~~

~~(B) Differences among institutional missions;~~

~~(C) Strategies for promoting student access;~~

~~(D) Consideration of charges to out-of-state students; and~~

~~(E) Such other policies as the commission and council consider appropriate;~~

~~(36) By October 1, 2011, promulgate a rule pursuant to section one, article ten of this chapter, establishing tuition and fee policy for all governing boards under the jurisdiction of the commission, including Marshall University and West Virginia University. The rule shall include, but is not limited to, the following: Implement general disease awareness initiatives to educate parents and students, particularly dormitory residents, about meningococcal meningitis; the potentially life-threatening dangers of contracting the infection; behaviors and activities that can increase risks; measures that can be taken to prevent contact or infection; and potential benefits of vaccination. The commission shall encourage governing boards that provide medical care to students to provide access to the vaccine for those who wish to receive it; and~~

~~(A) Comparisons with peer institutions;~~

~~(B) Differences among institutional missions;~~

~~(C) Strategies for promoting student access;~~

~~(D) Consideration of charges to out-of-state students; and~~

~~(E) Such other policies as the commission and council consider appropriate;~~

~~(37) Implement general disease awareness initiatives to educate parents and students, particularly dormitory residents, about meningococcal meningitis; the potentially life-threatening dangers of contracting the infection; behaviors and activities that can increase risks; measures that can be taken to prevent contact or infection; and potential benefits of vaccination. The commission shall encourage governing boards that provide medical care to students to provide access to the vaccine for those who wish to receive it; and Notwithstanding any other provision of this code to the contrary sell, lease, convey or otherwise dispose of all or part of any real property that it owns, in accordance with article nineteen of this chapter.~~

~~(38) Notwithstanding any other provision of this code to the contrary sell, lease, convey or otherwise dispose of all or part of any real property that it owns, in accordance with article nineteen of this chapter.~~

(b) In addition to the powers and duties listed in subsection (a) of this section, the commission has the following general powers and duties related to its role in developing, articulating and overseeing the implementation of the public policy agenda:

(1) Planning and policy leadership, including a distinct and visible role in setting the state's policy agenda and in serving as an agent of change;

(2) Policy analysis and research focused on issues affecting the system as a whole or a geographical region thereof;

(3) Development and implementation of institutional mission definitions, including use of incentive funds to influence institutional behavior in ways that are consistent with public priorities;

(4) Academic program review and approval for governing boards under its jurisdiction. The review and approval includes use of institutional missions as a template to judge the appropriateness of both new and existing programs and the authority to implement needed changes.

(A) The commission's authority to review and approve academic programs for either Marshall University or West Virginia University is limited to programs that are proposed to be offered at a new location not presently served by that institution;

(B) The commission shall approve or disapprove proposed academic degree programs in those instances where approval is required as soon as practicable, but in any case not later than six months from the date the governing board makes an official request. The commission may not withhold approval unreasonably

(5) Distribution of funds appropriated to the commission, including incentive and performance-based funds;

(6) Administration of state and federal student aid programs under the supervision of the vice chancellor for administration, including promulgation of rules necessary to administer those programs;

(7) Serving as the agent to receive and disburse public funds when a governmental entity requires designation of a statewide higher education agency for this purpose;

(8) Developing, establishing and implementing information, assessment, accountability and personnel systems, including maintaining statewide data systems that facilitate long-term planning and accurate measurement of strategic outcomes and performance indicators;

(9) Jointly with the council, promulgating and implementing rules for licensing and oversight for both public and private degree-granting and nondegree-granting institutions that provide post-secondary education courses or programs in the state. The council has authority and responsibility for approval of all post-secondary courses or programs providing community and technical college education as defined in section two, article one of this chapter;

(10) Developing, implementing and overseeing statewide and regional projects and initiatives related to providing post-secondary education at the baccalaureate level and above such as those using funds from federal categorical programs or those using incentive and performance-based funds from any source;

(11) Quality assurance that intersects with all other duties of the commission particularly in the areas of research, data collection and analysis, personnel administration, planning, policy analysis, program review and approval, budgeting and information and accountability systems; and

(12) Developing budgets and allocating resources for governing boards under its jurisdiction:

(A) For all governing boards under its jurisdiction, except the governing boards of Marshall University and West Virginia University, the commission shall review institutional operating budgets, review and approve capital budgets, and distribute incentive and performance-based funds;

(B) For the governing boards of Marshall University and West Virginia University, the commission shall distribute incentive and performance-based funds and may review and comment upon the institutional operating budgets and capital budgets. The commission's comments, if any, shall be made part of the governing board's minute record.

(c) In addition to the powers and duties provided in subsections (a) and (b) of this section and any other powers and duties assigned to it by law, the commission has other powers and duties necessary or expedient to accomplish the purposes of this article.

(d) The commission may withdraw specific powers of a governing board under its jurisdiction for a period not to exceed two years, if the commission determines that any of the following conditions exist:

(1) The governing board has failed for two consecutive years to develop or implement an institutional compact as required in article one-d of this chapter;

(2) The commission has received information, substantiated by independent audit, of significant mismanagement or failure to carry out the powers and duties of the governing board according to state law; or

(3) Other circumstances which, in the view of the commission, severely limit the capacity of the governing board to exercise its powers or carry out its duties and responsibilities.

The commission may not withdraw specific powers for a period exceeding two years. During the withdrawal period, the commission shall take all steps necessary to reestablish sound, stable and responsible institutional governance.

ARTICLE 1D. HIGHER EDUCATION ACCOUNTABILITY.

§18B-1D-8. Institutional and system report cards.

(a) The purpose of the institutional and statewide report cards is to make information available to parents, students, faculty, staff, state policymakers and the general public on the quality and performance of public higher education. The focus of the report cards is to determine annual progress of the commission, the council and institutions under their respective jurisdictions toward achieving state goals and objectives identified in this article and section one-a, article one of this chapter and system goals and objectives contained in the statewide master plans of the commission and council created pursuant to section five of this article.

(b) The information contained in the report cards shall be consistent and comparable between and among state institutions of higher education. If applicable, the information shall allow for easy comparison with higher education-related data collected and disseminated by the Southern Regional Education Board, the United States Department of Education and other education data-gathering and data-disseminating organizations upon which state policymakers frequently rely in setting policy.

(c) The rules required by subsection (c), section one of this article shall provide for the collection, analysis and dissemination of information on the performance of the state institutions of higher education, including health sciences education, in relation to the findings, goals and objectives set forth in this article and section one-a, article one of this chapter and those contained in the statewide master plans of the commission and council developed pursuant to section five of this article.

(1) The objective of this portion of the rule is to ensure that the Legislative Oversight Commission on Education Accountability and others identified in subsection (a) of this section are provided with full and accurate information while minimizing the institutional burden of recordkeeping and reporting.

(2) This portion of the rule shall identify various indicators of student and institutional performance that, at a minimum, must be reported annually, set forth general guidelines for the collection and reporting of data and provide for the preparation, printing and distribution of report cards under this section.

(d) The report cards shall be analysis-driven, rather than simply data-driven, and shall present information in a format that can inform education policymaking. They shall include an executive summary which outlines significant trends, identifies major areas of concern and discusses progress toward meeting state and system goals and objectives. They shall be brief and concise, reporting required information in nontechnical language. Any technical or supporting material to be included shall be contained in a separate appendix.

(e) The statewide report card shall include the data for each separately listed, applicable indicator identified in the rule promulgated pursuant to subsection (c) of this section and the aggregate of the data for all public institutions of higher education.

(f) The statewide report card shall be prepared using actual institutional, state, regional and national data, as applicable and available, indicating the present performance of the individual institutions, the governing boards and the state systems of higher education. Statewide report cards shall be based upon information for the current school year or for the most recent school year for which the information is available, in which case the year shall be clearly noted.

(g) The president or chief executive officer of each state institution of higher education shall prepare and submit annually all requested data to the commission at the times established by the commission.

(h) The higher education central office staff, under the direction of the Vice Chancellor for Administration, shall provide technical assistance to each institution and governing board in data collection and reporting and is responsible for assembling the statewide report card from information submitted by each governing board.

(i) The statewide report card shall be completed and disseminated with copies to the Legislative Oversight Commission on Education Accountability prior to January 1 of each year and the staff of the commission and the council shall prepare a report highlighting specifically the trends, progress toward meeting goals and objectives and major areas of concern for public higher education, including medical education, for presentation to the Legislative Oversight Commission on Education Accountability at the interim meetings in January, 2009, and annually thereafter.

~~(j) Notwithstanding any other provisions of this code to the contrary, the following statutorily mandated reports are not required to be prepared and submitted annually unless a member of the Legislature makes a specific request for a particular report: For a reasonable fee, the Vice Chancellor for Administration shall make copies of the report cards, including any appendices of supporting material, available to any individual requesting them.~~

~~(1) An annual report, pursuant to subsection (a), section forty-eight, article three, chapter five-a of this code, on vehicle fleets;~~

~~(2) An annual report, pursuant to subsection (e), section ten, article one of this chapter, on plans, accomplishments and recommendations in implementing a cooperative relationship between Potomac State College and Eastern West Virginia Community and Technical College;~~

~~(3) An annual report, pursuant to paragraphs (A) and (B), subdivision (10), subsection (a), section four, article one-b of this chapter, concerning higher education performance and enrollment data;~~

~~(4) An annual report, pursuant to paragraph (A), subdivision (11), subsection (b), section six, article two-b of this chapter, concerning community and technical college performance;~~

~~(5) An annual report, pursuant to subsection (b), section seven, article five of this chapter, on all sales of obsolete, unusable or surplus commodities;~~

~~(6) An annual report, pursuant to section eight, article five of this chapter, on purchases from West Virginia businesses;~~

~~(7) An annual report, pursuant to subsection (j), section one, article ten of this chapter, on the amount of auxiliary fees collected to replace state funds subsidizing auxiliary services;~~

~~(8) An annual report, pursuant to subsection (c), section five, article thirteen of this chapter, on technical assistance provided to qualified businesses within approved research parks, research zones or technology centers;~~

~~(9) An annual report, pursuant to subsection (e), section six, article eighteen of this chapter, on the status of the Eminent Scholars Endowment Trust Fund; and~~

~~(10) An annual report, pursuant to subsection (e), section one, article three, chapter eighteen-c of this code, relevant to the health education loan program.~~

~~(k) For a reasonable fee, the Vice Chancellor for Administration shall make copies of the report cards, including any appendices of supporting material, available to any individual requesting them.~~

§18B-1D-8a. Modification to reporting requirements to the Legislative Oversight Commission on Education Accountability.

(a) Notwithstanding any other provisions of this code to the contrary, the following statutorily mandated reports are not required to be prepared and submitted annually to the Legislature but this information and data previously contained therein shall be combined with other reports in a manner that reduces the cost and increases the efficacy of those reports. This includes:

(1) All personnel, classification, compensation and human resources reports set out in section four, article one-b of this chapter, section six, article two-b of this chapter and article nine-a of this chapter;

(2) All capital appropriation requests, priorities and campus and state capital development plans set out in section four, article one-b of this chapter, section six, article two-b of this chapter and article nineteen of this chapter;

(3) All academic related matters and reports including those detailing institutional reauthorization at section seven, article four of this chapter; training of institutional Boards of Governors set out in section nine, article one-d of this chapter and section one, article ten of this chapter dealing with institutional compliance with tuition and fee increases;

(4) All financial aid reports including PROMISE, HEAPS, the Higher Education Grant Program, the Nursing Scholarship Program, the Underwood-Smith Teacher Scholarship Program and others set out in chapter eighteen-c of this code.

(b) In order to create more efficiency, reporting deadlines of statutorily or rule mandated reports may be altered, as needed by the Commission without a statutory or rule-making change: *Provided, That the reports are always provided within any given calendar year.*

**ARTICLE 2B. WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE
EDUCATION.**

§18B-2B-6. Powers and duties of the council.

(a) The council is the sole agency responsible for administration of vocational-technical-occupational education and community and technical college education in the state. The council has jurisdiction and authority over the community and technical colleges and the statewide network of independently accredited community and technical colleges as a whole, including community and technical college education programs as defined in section two, article one of this chapter.

(b) The council shall propose rules pursuant to section six, article one of this chapter and article three-a, chapter twenty-nine-a of this code to implement the provisions of this section and applicable provisions of article one-d of this chapter:

(1) To implement the provisions of article one-d of this chapter relevant to community and technical colleges, the council may propose rules jointly with the commission, or separately, and may choose to address all components of the accountability system in a single rule or may propose additional rules to cover specific components;

(2) The rules pertaining to financing policy and benchmarks and indicators required by this section shall be filed with the Legislative Oversight Commission on Education Accountability by October 1, 2008. Nothing in this subsection requires other rules of the council to be promulgated again under the procedure set forth in article three-a, chapter twenty-nine-a of this code unless such rules are rescinded, revised, altered or amended; and

(3) The Legislature finds that an emergency exists and, therefore, the council shall propose an emergency rule or rules to implement the provisions of this section relating to the financing policy and benchmarks and indicators in accordance with section six, article one of this chapter and article three-a, chapter twenty-nine-a of this code by October 1, 2008. The emergency rule or rules may not be implemented without prior approval of the Legislative Oversight Commission on Education Accountability.

(c) The council has the following powers and duties relating to the authority established in subsection (a) of this section:

(1) Develop, oversee and advance the public policy agenda for community and technical college education for the purpose of accomplishing the mandates of this section, including, but not limited to, the following:

(A) Achieving the goals and objectives established in articles one and one-d of this chapter;

(B) Addressing the goals and objectives contained in the institutional compacts created pursuant to section seven, article one-d of this chapter; and

(C) Developing and implementing the master plan described in section five, article one-d of this chapter;

(2) Propose a legislative rule pursuant to subsection (b) of this section and article three-a, chapter twenty-nine-a of this code to develop and implement a financing policy for community and technical college education in West Virginia. The rule shall meet the following criteria:

(A) Provide an adequate level of education and general funding for institutions pursuant to section five, article one-a of this chapter;

(B) Serve to maintain institutional assets, including, but not limited to, human and physical resources and deferred maintenance;

(C) Establish a plan for strategic funding to strengthen capacity for support of community and technical college education; and

(D) Establish a plan that measures progress and provides performance-based funding to institutions which make significant progress in the following specific areas:

- (i) Achieving the objectives and priorities established in article one-d of this chapter;
- (ii) Serving targeted populations, especially working age adults twenty-five years of age and over;
- (iii) Providing access to high-cost, high-demand technical programs in every region of the state;
- (iv) Increasing the percentage of functionally literate adults in every region of the state; and

(v) Providing high-quality community and technical college education services to residents of every region of the state.

(3) Create a policy leadership structure relating to community and technical college education capable of the following actions:

(A) Developing, building public consensus around and sustaining attention to a long-range public policy agenda. In developing the agenda, the council shall seek input from the Legislature and the Governor and specifically from the State Board of Education and local school districts in order to create the necessary linkages to assure smooth, effective and seamless movement of students through the public education and post-secondary education systems and to ensure that the needs of public school courses and programs can be fulfilled by the graduates produced and the programs offered;

(B) Ensuring that the governing boards of the institutions under the council's jurisdiction carry out their duty effectively to govern the individual institutions of higher education; and

(C) Holding each community and technical college and the statewide network of independently accredited community and technical colleges as a whole accountable for accomplishing their missions and achieving the goals and objectives established in articles one, one-d and three-c of this chapter;

(4) Develop for inclusion in the statewide public agenda, a plan for raising education attainment, increasing adult literacy, promoting workforce and economic development and ensuring access to advanced education for the citizens of West Virginia;

(5) Provide statewide leadership, coordination, support, and technical assistance to the community and technical colleges and to provide a focal point for visible and effective advocacy for their work and for the public policy agendas approved by the commission and council;

(6) Review and adopt annually all institutional compacts for the community and technical colleges pursuant to the provisions of section seven, article one-d of this chapter;

(7) Fulfill the mandates of the accountability system established in article one-d of this chapter and report on progress in meeting established goals, objectives, and priorities to the elected leadership of the state;

(8) Propose a legislative rule pursuant to subsection (b) of this section and article three-a, chapter twenty-nine-a of this code to establish benchmarks and indicators in accordance with the provisions of this subsection;

(9) Establish and implement the benchmarks and performance indicators necessary to measure institutional progress:

(A) In meeting state goals, objectives, and priorities established in articles one and one-d of this chapter;

(B) In carrying out institutional missions; and

(C) In meeting the essential conditions established in article three-c of this chapter;

(10) ~~Collect and analyze data relating to the performance of community and technical colleges in every region of West Virginia and report periodically or as directed to the Legislative Oversight Commission on Education Accountability on the progress in meeting the goals and objectives established in articles one and one-d of this chapter. Establish a formal process for identifying needs for capital investments and for determining priorities for these investments for consideration by the Governor and the Legislature as part of the appropriation request process. Notwithstanding the language in subdivision eleven, subsection a, section four, article one-b of this chapter, the commission is not a part of the process for identifying needs for capital investments for the statewide network of independently accredited community and technical colleges;~~

~~Additionally, the council shall report annually during the January interim meetings on a date and at a time and location to be determined by the President of the Senate and the Speaker of the House of Delegates.~~

~~The annual report shall address at least the following:~~

~~(A) The performance of the community and technical college network during the previous fiscal year, including, but not limited to, progress in meeting goals stated in the compacts and progress of the institutions and the network as a whole in meeting the goals and objectives established in articles one and one-d of this chapter;~~

~~(B) The priorities established for capital investment needs pursuant to subdivision (11) of this subsection and the justification for such priority; and~~

~~(C) Recommendations of the council for statutory changes necessary or expedient to achieve established state goals and objectives.~~

~~(11) Establish a formal process for identifying needs for capital investments and for determining priorities for these investments for consideration by the Governor and the Legislature as part of the appropriation request process. Notwithstanding the language in subdivision eleven, subsection a, section four, article one-b of this chapter, the commission is not a part of the process for identifying needs for capital investments for the statewide network of independently accredited community and technical colleges; Draw upon the expertise available within the Governor's Workforce Investment Office and the West Virginia Development Office as a resource in the area of workforce development and training;~~

~~(12) Draw upon the expertise available within the Governor's Workforce Investment Office and the West Virginia Development Office as a resource in the area of workforce development and training; Acquire legal services that are considered necessary, including representation of the council, its institutions, employees and officers before any court or administrative body, notwithstanding any other provision of this code to the contrary. The counsel may be employed either on a salaried basis or on a reasonable fee basis. In addition, the council may, but is not required to, call upon the Attorney General for legal assistance and representation as provided by law;~~

~~(13) Acquire legal services that are considered necessary, including representation of the council, its institutions, employees and officers before any court or administrative body, notwithstanding any other provision of this code to the contrary. The counsel may be employed either on a salaried basis or on a reasonable fee basis. In addition, the council may, but is not required to, call upon the Attorney General for legal assistance and representation as provided by law; Employ a chancellor for community and technical college education pursuant to section three of this article;~~

~~(14) Employ a chancellor for community and technical college education pursuant to section three of this article; Employ other staff as necessary and appropriate to carry out the duties and responsibilities of the council consistent with the provisions of section two, article four of this chapter;~~

~~(15) Employ other staff as necessary and appropriate to carry out the duties and responsibilities of the council consistent with the provisions of section two, article four of this chapter; Employ other staff as necessary and appropriate to carry out the duties and responsibilities of the council who are employed solely by the council;~~

~~(16) Employ other staff as necessary and appropriate to carry out the duties and responsibilities of the council who are employed solely by the council; Provide suitable offices in Charleston for the chancellor and other staff: *Provided*, That the offices may be located outside of Charleston at a technology and research center: *Provided, however*, That the current employees of WVNET shall not be moved from Monongalia County without legislative approval;~~

~~(17) Provide suitable offices in Charleston for the chancellor and other staff: *Provided*, That the offices may be located outside of Charleston at a technology and research center: *Provided, however*, That the current employees of WVNET shall not be moved from Monongalia County without legislative approval; Approve the total compensation package from all sources for presidents of community and technical colleges, as proposed by the governing boards. The governing boards must obtain approval from the council of the total compensation package both when presidents are employed initially and subsequently when any change is made in the amount of the total compensation package;~~

~~(18) Approve the total compensation package from all sources for presidents of community and technical colleges, as proposed by the governing boards. The governing boards must obtain approval from the council of the total compensation package both when presidents are employed initially and subsequently when any change is made in the amount of the total compensation package; Establish and implement policies and procedures to ensure that students may transfer and apply toward the requirements for a degree the maximum number of credits earned at any regionally accredited in-state or out-of-state higher education institution with as few requirements to repeat courses or to incur additional costs as is consistent with sound academic policy;~~

~~(19) Establish and implement policies and procedures to ensure that students may transfer and apply toward the requirements for a degree the maximum number of credits earned at any regionally accredited in-state or out-of-state higher education institution with as few requirements to repeat courses or to incur additional costs as is consistent with sound academic policy; Establish and implement policies and programs, jointly with the community and technical colleges, through which students who have gained knowledge and skills through employment, participation in education and training at vocational schools or other education institutions, or internet-based education programs, may demonstrate by competency-based assessment that they have the necessary knowledge and skills to be granted academic credit or advanced placement standing toward the requirements of an associate degree or a bachelor's degree at a state institution of higher education;~~

~~(20) Establish and implement policies and programs, jointly with the community and technical colleges, through which students who have gained knowledge and skills through employment, participation in education and training at vocational schools or other education institutions, or internet-based education programs, may demonstrate by competency-based assessment that they have the necessary knowledge and skills to be granted academic credit or advanced placement standing toward the requirements of an associate degree or a bachelor's degree at a state institution of higher education; Seek out and attend regional and national meetings and forums on education and workforce development-related topics, as council members consider critical for the performance of their duties. The council shall keep abreast of national and regional community and technical college education trends and policies to aid members in developing the policies for this state that meet the education goals and objectives established in articles one and one-d of this chapter;~~

~~(21) Seek out and attend regional and national meetings and forums on education and workforce development-related topics, as council members consider critical for the performance of their duties. The council shall keep abreast of national and regional community and technical college education trends and policies to aid members in developing the policies for this state that meet the education goals and objectives established in articles one and one-d of this chapter; Assess community and technical colleges for the payment of expenses of the council or for the funding of statewide services, obligations or initiatives related specifically to the provision of community and technical college education;~~

~~(22) Assess community and technical colleges for the payment of expenses of the council or for the funding of statewide services, obligations or initiatives related specifically to the provision of community and technical college education; Promulgate rules allocating reimbursement of appropriations, if made available by the Legislature, to community and technical colleges for qualifying noncapital expenditures incurred in the provision of services to students with physical, learning or severe sensory disabilities;~~

~~(23) Promulgate rules allocating reimbursement of appropriations, if made available by the Legislature, to community and technical colleges for qualifying noncapital expenditures incurred in the provision of services to students with physical, learning or severe sensory disabilities; Assume the prior authority of the commission in examining and approving tuition and fee increase proposals submitted by community and technical college governing boards as provided in section one, article ten of this chapter;~~

~~(24) Assume the prior authority of the commission in examining and approving tuition and fee increase proposals submitted by community and technical college governing boards as provided in section one, article ten of this chapter; Develop and submit to the commission, a single budget for community and technical college education that reflects recommended appropriations for community and technical colleges and that meets the following conditions:~~

~~(A) Incorporates the provisions of the financing rule mandated by this section to measure and provide performance funding to institutions which achieve or make significant progress toward achieving established state objectives and priorities;~~

~~(B) Considers the progress of each institution toward meeting the essential conditions set forth in section three, article three-c of this chapter, including independent accreditation; and~~

~~(C) Considers the progress of each institution toward meeting the goals, objectives, and priorities established in article one-d of this chapter and its approved institutional compact.~~

~~(25) Develop and submit to the commission, a single budget for community and technical college education that reflects recommended appropriations for community and technical colleges and that meets the following conditions: Administer and distribute the independently accredited community and technical college development account;~~

~~(A) Incorporates the provisions of the financing rule mandated by this section to measure and provide performance funding to institutions which achieve or make significant progress toward achieving established state objectives and priorities;~~

~~(B) Considers the progress of each institution toward meeting the essential conditions set forth in section three, article three-c of this chapter, including independent accreditation; and~~

~~(C) Considers the progress of each institution toward meeting the goals, objectives, and priorities established in article one-d of this chapter and its approved institutional compact.~~

~~(26) Administer and distribute the independently accredited community and technical college development account; Establish a plan of strategic funding to strengthen capacity for support and assure delivery of high-quality community and technical college education in all regions of the state;~~

~~(27) Establish a plan of strategic funding to strengthen capacity for support and assure delivery of high quality community and technical college education in all regions of the state; Foster coordination~~

among all state-level, regional and local entities providing post-secondary vocational education or workforce development and coordinate all public institutions and entities that have a community and technical college mission;

~~(28) Foster coordination among all state-level, regional and local entities providing post-secondary vocational education or workforce development and coordinate all public institutions and entities that have a community and technical college mission; Assume the principal responsibility for oversight of those community and technical colleges seeking independent accreditation and for holding governing boards accountable for meeting the essential conditions pursuant to article three-c of this chapter;~~

~~(29) Assume the principal responsibility for oversight of those community and technical colleges seeking independent accreditation and for holding governing boards accountable for meeting the essential conditions pursuant to article three-c of this chapter; Advise and consent in the appointment of the presidents of the community and technical colleges pursuant to section six, article one-b of this chapter. The role of the council in approving a president is to assure through personal interview that the person selected understands and is committed to achieving the goals and objectives established in the institutional compact and in articles one, one-d and three-c of this chapter;~~

~~(30) Advise and consent in the appointment of the presidents of the community and technical colleges pursuant to section six, article one-b of this chapter. The role of the council in approving a president is to assure through personal interview that the person selected understands and is committed to achieving the goals and objectives established in the institutional compact and in articles one, one-d, and three-c of this chapter; Provide a single, statewide link for current and prospective employers whose needs extend beyond one locality;~~

~~(31) Provide a single, statewide link for current and prospective employers whose needs extend beyond one locality; Provide a mechanism capable of serving two or more institutions to facilitate joint problem-solving in areas including, but not limited to the following;~~

~~(A) Defining faculty roles and personnel policies;~~

~~(B) Delivering high-cost technical education programs across the state;~~

~~(C) Providing one-stop service for workforce training to be delivered by multiple institutions; and~~

~~(D) Providing opportunities for resource-sharing and collaborative ventures;~~

~~(32) Provide a mechanism capable of serving two or more institutions to facilitate joint problem-solving in areas including, but not limited to the following: Provide support and technical assistance to develop, coordinate, and deliver effective and efficient community and technical college education programs and services in all regions of the state;~~

~~(A) Defining faculty roles and personnel policies;~~

~~(B) Delivering high-cost technical education programs across the state;~~

~~(C) Providing one-stop service for workforce training to be delivered by multiple institutions; and~~

~~(D) Providing opportunities for resource-sharing and collaborative ventures;~~

~~(33) Provide support and technical assistance to develop, coordinate, and deliver effective and efficient community and technical college education programs and services in all regions of the state; Assist the community and technical colleges in establishing and promoting links with business, industry and labor in the geographic areas for which each community and technical college is responsible;~~

~~(34) Assist the community and technical colleges in establishing and promoting links with business, industry and labor in the geographic areas for which each community and technical college is responsible;~~

Develop alliances among the community and technical colleges for resource sharing, joint development of courses and courseware, and sharing of expertise and staff development;

~~(35) Develop alliances among the community and technical colleges for resource sharing, joint development of courses and courseware, and sharing of expertise and staff development; Serve aggressively as an advocate for development of a seamless curriculum;~~

~~(36) Serve aggressively as an advocate for development of a seamless curriculum; Cooperate with all providers of education services in the state to remove barriers relating to a seamless system of public and higher education and to transfer and articulate between and among community and technical colleges, state colleges and universities and public education, preschool through grade twelve;~~

~~(37) Cooperate with all providers of education services in the state to remove barriers relating to a seamless system of public and higher education and to transfer and articulation between and among community and technical colleges, state colleges and universities and public education, preschool through grade twelve; Encourage the most efficient use of available resources;~~

~~(38) Encourage the most efficient use of available resources; Coordinate with the commission in informing public school students, their parents and teachers of the academic preparation that students need in order to be prepared adequately to succeed in their selected fields of study and career plans, including presentation of academic career fairs;~~

~~(39) Coordinate with the commission in informing public school students, their parents and teachers of the academic preparation that students need in order to be prepared adequately to succeed in their selected fields of study and career plans, including presentation of academic career fairs; Jointly with the commission, approve and implement a uniform standard, as developed by the chancellors, to determine which students shall be placed in remedial or developmental courses. The standard shall be aligned with college admission tests and assessment tools used in West Virginia and shall be applied uniformly by the governing boards throughout the public higher education system. The chancellors shall develop a clear, concise explanation of the standard which the governing boards shall communicate to the State Board of Education and the State Superintendent of Schools;~~

~~(40) Jointly with the commission, approve and implement a uniform standard, as developed by the chancellors, to determine which students shall be placed in remedial or developmental courses. The standard shall be aligned with college admission tests and assessment tools used in West Virginia and shall be applied uniformly by the governing boards throughout the public higher education system. The chancellors shall develop a clear, concise explanation of the standard which the governing boards shall communicate to the State Board of Education and the State Superintendent of Schools; Develop and implement strategies and curriculum for providing developmental education which shall be applied by any state institution of higher education providing developmental education;~~

~~(41) Develop and implement strategies and curriculum for providing developmental education which shall be applied by any state institution of higher education providing developmental education; Develop a statewide system of community and technical college programs and services in every region of West Virginia for competency-based certification of knowledge and skills, including a statewide competency-based associate degree program;~~

~~(42) Develop a statewide system of community and technical college programs and services in every region of West Virginia for competency-based certification of knowledge and skills, including a statewide competency-based associate degree program; Review and approve all institutional master plans for the community and technical colleges pursuant to section four, article two-a of this chapter;~~

~~(43) Review and approve all institutional master plans for the community and technical colleges pursuant to section four, article two-a of this chapter; Propose rules for promulgation pursuant to subsection (b) of this section and article three-a, chapter twenty-nine-a of this code that are necessary or expedient for the effective and efficient performance of community and technical colleges in the state;~~

~~(44) Propose rules for promulgation pursuant to subsection (b) of this section and article three-a, chapter twenty-nine-a of this code that are necessary or expedient for the effective and efficient performance of community and technical colleges in the state; In its sole discretion, transfer any rule under its jurisdiction, other than a legislative rule, to the jurisdiction of the governing boards who may rescind, revise, alter or amend any rule transferred pursuant to rules adopted by the council and provide technical assistance to the institutions under its jurisdiction to aid them in promulgating rules;~~

~~(45) In its sole discretion, transfer any rule under its jurisdiction, other than a legislative rule, to the jurisdiction of the governing boards who may rescind, revise, alter or amend any rule transferred pursuant to rules adopted by the council and provide technical assistance to the institutions under its jurisdiction to aid them in promulgating rules; Develop for inclusion in the higher education report card, as defined in section eight, article one-d of this chapter, a separate section on community and technical colleges. This section shall include, but is not limited to, evaluation of the institutions based upon the benchmarks and indicators developed in subdivision (9) of this subsection;~~

~~(46) Develop for inclusion in the higher education report card, as defined in section eight, article one-d of this chapter, a separate section on community and technical colleges. This section shall include, but is not limited to, evaluation of the institutions based upon the benchmarks and indicators developed in subdivision (9) of this subsection; Facilitate continuation of the Advantage Valley Community College Network under the leadership and direction of Marshall Community and Technical College;~~

~~(47) Facilitate continuation of the Advantage Valley Community College Network under the leadership and direction of Marshall Community and Technical College; Initiate and facilitate creation of other regional networks of affiliated community and technical colleges that the council finds to be appropriate and in the best interests of the citizens to be served;~~

~~(48) Initiate and facilitate creation of other regional networks of affiliated community and technical colleges that the council finds to be appropriate and in the best interests of the citizens to be served; Develop with the State Board of Education plans for secondary and post-secondary vocational-technical-occupational and adult basic education, including, but not limited to the following:~~

~~(A) Policies to strengthen vocational-technical-occupational and adult basic education; and~~

~~(B) Programs and methods to assist in the improvement, modernization and expanded delivery of vocational-technical-occupational and adult basic education programs;~~

~~(49) Develop with the State Board of Education plans for secondary and post-secondary vocational-technical-occupational and adult basic education, including, but not limited to the following: Distribute federal vocational education funding provided under the Carl D. Perkins Vocational and Technical Education Act of 1998, PL 105-332, with an emphasis on distributing financial assistance among secondary and post-secondary vocational-technical-occupational and adult basic education programs to help meet the public policy agenda.~~

~~In distributing funds the council shall use the following guidelines:~~

~~(A) Policies to strengthen vocational-technical-occupational and adult basic education; and The State Board of Education shall continue to be the fiscal agent for federal vocational education funding;~~

~~(B) Programs and methods to assist in the improvement, modernization and expanded delivery of vocational-technical-occupational and adult basic education programs; The percentage split between the State Board of Education and the council shall be determined by rule promulgated by the council under the provisions of article three-a, chapter twenty-nine-a of this code. The council shall first obtain the approval of the State Board of Education before proposing a rule;~~

~~(50) Distribute federal vocational education funding provided under the Carl D. Perkins Vocational and Technical Education Act of 1998, PL 105-332, with an emphasis on distributing financial assistance among secondary and post-secondary vocational-technical-occupational and adult basic education programs to help meet the public policy agenda. Collaborate, cooperate and interact with all secondary and post-secondary vocational-technical-occupational and adult basic education programs in the state, including the programs assisted under the federal Carl D. Perkins Vocational and Technical Education Act of 1998, PL 105-332, and the Workforce Investment Act of 1998, to promote the development of seamless curriculum and the elimination of duplicative programs;~~

~~In distributing funds the council shall use the following guidelines:~~

~~(A) The State Board of Education shall continue to be the fiscal agent for federal vocational education funding;~~

~~(B) The percentage split between the State Board of Education and the council shall be determined by rule promulgated by the council under the provisions of article three-a, chapter twenty-nine-a of this code. The council shall first obtain the approval of the State Board of Education before proposing a rule;~~

~~(51) Collaborate, cooperate and interact with all secondary and post-secondary vocational-technical-occupational and adult basic education programs in the state, including the programs assisted under the federal Carl D. Perkins Vocational and Technical Education Act of 1998, PL 105-332, and the Workforce Investment Act of 1998, to promote the development of seamless curriculum and the elimination of duplicative programs; Coordinate the delivery of vocational-technical-occupational and adult basic education in a manner designed to make the most effective use of available public funds to increase accessibility for students;~~

~~(52) Coordinate the delivery of vocational-technical-occupational and adult basic education in a manner designed to make the most effective use of available public funds to increase accessibility for students; Analyze and report to the State Board of Education on the distribution of spending for vocational-technical-occupational and adult basic education in the state and on the availability of vocational-technical-occupational and adult basic education activities and services within the state;~~

~~(53) Analyze and report to the State Board of Education on the distribution of spending for vocational-technical-occupational and adult basic education in the state and on the availability of vocational-technical-occupational and adult basic education activities and services within the state; Promote the delivery of vocational-technical-occupational education, adult basic education and community and technical college education programs in the state which emphasize the involvement of business, industry and labor organizations;~~

~~(54) Promote the delivery of vocational-technical-occupational education, adult basic education and community and technical college education programs in the state which emphasize the involvement of business, industry and labor organizations; Promote public participation in the provision of vocational-technical-occupational education, adult basic education and community and technical education at the local level, emphasizing programs which involve the participation of local employers and labor organizations;~~

~~(55) Promote public participation in the provision of vocational-technical-occupational education, adult basic education and community and technical education at the local level, emphasizing programs which involve the participation of local employers and labor organizations; Promote equal access to quality vocational-technical-occupational education, adult basic education and community and technical college education programs to handicapped and disadvantaged individuals, adults in need of training and retraining, single parents, homemakers, participants in programs designed to eliminate sexual bias and stereotyping and criminal offenders serving in correctional institutions;~~

~~(56) Promote equal access to quality vocational-technical-occupational education, adult basic education and community and technical college education programs to handicapped and disadvantaged individuals, adults in need of training and retraining, single parents, homemakers, participants in programs designed to eliminate sexual bias and stereotyping and criminal offenders serving in correctional~~

institutions; Meet annually between the months of October and December with the Advisory Committee of Community and Technical College Presidents created pursuant to section eight of this article to discuss those matters relating to community and technical college education in which advisory committee members or the council may have an interest;

(57) Meet annually between the months of October and December with the Advisory Committee of Community and Technical College Presidents created pursuant to section eight of this article to discuss those matters relating to community and technical college education in which advisory committee members or the council may have an interest; Accept and expend any gift, grant, contribution, bequest, endowment or other money for the purposes of this article;

(58) Accept and expend any gift, grant, contribution, bequest, endowment or other money for the purposes of this article; Assume the powers set out in section nine of this article. The rules previously promulgated by the State College System Board of Directors pursuant to that section and transferred to the commission are hereby transferred to the council and shall continue in effect until rescinded, revised, altered or amended by the council;

(59) Assume the powers set out in section nine of this article. The rules previously promulgated by the State College System Board of Directors pursuant to that section and transferred to the commission are hereby transferred to the council and shall continue in effect until rescinded, revised, altered or amended by the council; Pursuant to the provisions of subsection (b) of this section and article three-a, chapter twenty-nine-a of this code, promulgate a uniform joint legislative rule with the commission for the purpose of standardizing, as much as possible, the administration of personnel matters among the institutions of higher education;

(60) Pursuant to the provisions of subsection (b) of this section and article three-a, chapter twenty-nine-a of this code, promulgate a uniform joint legislative rule with the commission for the purpose of standardizing, as much as possible, the administration of personnel matters among the institutions of higher education; Determine when a joint rule among the governing boards of the community and technical colleges is necessary or required by law and, in those instances and in consultation with the governing boards, promulgate the joint rule;

(61) Determine when a joint rule among the governing boards of the community and technical colleges is necessary or required by law and, in those instances and in consultation with the governing boards, promulgate the joint rule; Promulgate a joint rule with the commission establishing tuition and fee policy for all institutions of higher education. The rule shall include, but is not limited to, the following:

(A) Comparisons with peer institutions;

(B) Differences among institutional missions;

(C) Strategies for promoting student access;

(D) Consideration of charges to out-of-state students; and

(E) Any other policies the commission and council consider appropriate;

(62) Promulgate a joint rule with the commission establishing tuition and fee policy for all institutions of higher education. The rule shall include, but is not limited to, the following: In cooperation with the West Virginia Division of Highways, study a method for increasing the signage signifying community and technical college locations along the state interstate highways, and report to the Legislative Oversight Commission on Education Accountability regarding any recommendations and required costs; and

(A) Comparisons with peer institutions;

(B) Differences among institutional missions;

- ~~(C) Strategies for promoting student access;~~
- ~~(D) Consideration of charges to out-of-state students; and~~
- ~~(E) Any other policies the commission and council consider appropriate;~~

~~(63) In cooperation with the West Virginia Division of Highways, study a method for increasing the signage signifying community and technical college locations along the state interstate highways, and report to the Legislative Oversight Commission on Education Accountability regarding any recommendations and required costs; and Implement a policy jointly with the commission whereby any course credit earned at a community and technical college transfers for program credit at any other state institution of higher education and is not limited to fulfilling a general education requirement.~~

~~(64) Implement a policy jointly with the commission whereby any course credit earned at a community and technical college transfers for program credit at any other state institution of higher education and is not limited to fulfilling a general education requirement.~~

(d) In addition to the powers and duties listed in subsections (a), (b) and (c) of this section, the council has the following general powers and duties related to its role in developing, articulating and overseeing the implementation of the public policy agenda for community and technical colleges:

(1) Planning and policy leadership including a distinct and visible role in setting the state's policy agenda for the delivery of community and technical college education and in serving as an agent of change;

(2) Policy analysis and research focused on issues affecting the community and technical college network as a whole or a geographical region thereof;

(3) Development and implementation of each community and technical college mission definition including use of incentive and performance funds to influence institutional behavior in ways that are consistent with achieving established state goals, objectives, and priorities;

(4) Academic program review and approval for the institutions under its jurisdiction, including the use of institutional missions as a template to judge the appropriateness of both new and existing programs and the authority to implement needed changes;

(5) Development of budget and allocation of resources for institutions delivering community and technical college education, including reviewing and approving institutional operating and capital budgets and distributing incentive and performance-based funding;

(6) Acting as the agent to receive and disburse public funds related to community and technical college education when a governmental entity requires designation of a statewide higher education agency for this purpose;

(7) Development, establishment and implementation of information, assessment and internal accountability systems, including maintenance of statewide data systems that facilitate long-term planning and accurate measurement of strategic outcomes and performance indicators for community and technical colleges;

(8) Jointly with the commission, development, establishment and implementation of policies for licensing and oversight of both public and private degree-granting and nondegree-granting institutions that provide post-secondary education courses or programs;

(9) Development, implementation and oversight of statewide and regionwide projects and initiatives related specifically to providing community and technical college education such as those using funds from federal categorical programs or those using incentive and performance-based funding from any source; and

(10) Quality assurance that intersects with all other duties of the council particularly in the areas of planning, policy analysis, program review and approval, budgeting and information and accountability systems.

(e) The council may withdraw specific powers of a governing board under its jurisdiction for a period not to exceed two years if the council makes a determination that any of the following conditions exist:

(1) The governing board has failed for two consecutive years to develop an institutional compact as required in section seven, article one-d of this chapter;

(2) The council has received information, substantiated by independent audit, of significant mismanagement or failure to carry out the powers and duties of the board of governors according to state law; or

(3) Other circumstances which, in the view of the council, severely limit the capacity of the board of governors to carry out its duties and responsibilities.

The period of withdrawal of specific powers may not exceed two years during which time the council is authorized to take steps necessary to reestablish the conditions for restoration of sound, stable and responsible institutional governance.

(f) In addition to the powers and duties provided for in subsections (a), (b), (c) and (d) of this section and any others assigned to it by law, the council has those powers and duties necessary or expedient to accomplish the purposes of this article; and

(g) When the council and commission, each, is required to consent, cooperate, collaborate or provide input into the actions of the other the following conditions apply:

(1) The body acting first shall convey its decision in the matter to the other body with a request for concurrence in the action;

(2) The commission or the council, as the receiving body, shall place the proposal on its agenda and shall take final action within sixty days of the date when the request for concurrence is received; and

(3) If the receiving body fails to take final action within sixty days, the original proposal stands and is binding on both the commission and the council.

ARTICLE 2C. WEST VIRGINIA COMMUNITY AND TECHNICAL COLLEGE.

§18B-2C-3. Authority and duty of council to determine progress of community and technical colleges; conditions; authority to create West Virginia Community and Technical College.

(a) The council annually shall review and analyze all the state community and technical colleges, and any branches, centers, regional centers or other delivery sites with a community and technical college mission, to determine their progress toward meeting the goals, objectives, priorities, and essential conditions established in articles one, one-d and three-c of this chapter.

(b) The analysis required in subsection (a) of this section shall be based, in whole or in part, upon the findings made pursuant to the rule establishing benchmarks and indicators promulgated by the council pursuant to section six, article two-b of this chapter.

(c) Based upon their analysis in subsections (a) and (b) of this section, the council shall make a determination whether any one or more of the following conditions exists:

(1) A community and technical college required to do so has not achieved or is not making sufficient, satisfactory progress toward achieving the essential conditions, including independent accreditation;

(2) One or more of the public community and technical colleges, branches, centers, regional centers and other delivery sites with a community and technical college mission requires financial assistance or other support to meet the goals and essential conditions set forth in this chapter;

(3) It is in the best interests of the people of the state or a region within the state to have a single, accredited institution which can provide an umbrella of statewide accreditation;

(4) One or more of the state community and technical colleges, branches, centers, regional centers or other delivery sites with a community and technical college mission requests from the council the type of assistance which can best be delivered through implementation of the provisions of section four of this article. Institutional requests that may be considered by the council include, but are not limited to, assistance in seeking and/or attaining independent accreditation, in meeting the goals, priorities and essential conditions established in articles one, one-d and three-c of this chapter, or in establishing and implementing regional networks;

(5) One or more state community and technical colleges, branches, centers, regional centers or other delivery sites with a community and technical college mission has not achieved, or is not making sufficient, satisfactory progress toward achieving, the goals, objectives and essential conditions established in articles one, one-d and three-c of this chapter; and

(6) The council determines that it is in the best interests of the people of the state or a region of the state to create a statewide, independently accredited community and technical college.

(d) The council may not make a determination subject to the provisions of this section that a condition does not exist based upon a finding that the higher education entity lacks sufficient funds to make sufficient, satisfactory progress.

~~(e) By the first day of December annually, the council shall prepare and file with the Legislative Oversight Commission on Education Accountability a written report on the findings and determinations required by this section, together with a detailed history of any actions taken by the council under the authority of this article.~~

ARTICLE 3D. WORKFORCE DEVELOPMENT INITIATIVE.

§18B-3D-2. Workforce Development Initiative Program continued; purpose; program administration; rule required.

(a) The Workforce Development Initiative Program is continued under the supervision of the council. The purpose of the program is to administer and oversee grants to community and technical colleges to implement the provisions of this article in accordance with legislative intent.

(b) It is the responsibility of the council to administer the state fund for community and technical college and workforce development, including setting criteria for grant applications, receiving applications for grants, making determinations on distribution of funds and evaluating the performance of workforce development initiatives.

(c) The chancellor, under the direction of the council, shall review and approve the expenditure of all grant funds, including development of application criteria, the review and selection of applicants for funding and the annual review and justification of applicants for grant renewal.

(1) To aid in decisionmaking, the chancellor appoints an advisory committee consisting of the Executive Director of the West Virginia Development Office or designee; the Secretary of Education and

the Arts or designee; the Assistant State Superintendent for Technical and Adult Education; the Chair of the West Virginia Council for Community and Technical College Education; the Chair of the West Virginia Workforce Investment Council; the Executive Director of Workforce West Virginia; two members representing business and industry; and one member representing labor. The advisory committee shall review all applications for workforce development initiative grants and make recommendations for distributing grant funds to the council. The advisory committee also shall make recommendations on methods to share among the community and technical colleges any curricula developed as a result of a workforce development initiative grant.

(2) When determining which grant proposals will be funded, the council shall give special consideration to proposals by community and technical colleges that involve businesses with fewer than fifty employees.

(3) The council shall weigh each proposal to avoid awarding grants which will have the ultimate effect of providing unfair advantage to employers new to the state who will be in direct competition with established local businesses.

(d) The council may allocate a reasonable amount, not to exceed five percent up to a maximum of \$50,000 of the funds available for grants on an annual basis, for general program administration.

~~(e) The council shall report to the Legislative Oversight Commission on Education Accountability and the Legislative Oversight Commission on Workforce Investment for Economic Development on the status of the Workforce Development Initiative Program annually by the first day of December. Moneys appropriated or otherwise available for the Workforce Development Initiative Program shall be allocated by line item to an appropriate account. Any moneys remaining in the fund at the close of a fiscal year are carried forward for use in the next fiscal year.~~

~~(f) Moneys appropriated or otherwise available for the Workforce Development Initiative Program shall be allocated by line item to an appropriate account. Any moneys remaining in the fund at the close of a fiscal year are carried forward for use in the next fiscal year. Nothing in this article requires a specific level of appropriation by the Legislature.~~

~~(g) Nothing in this article requires a specific level of appropriation by the Legislature.~~

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

§18B-10-1. Enrollment, tuition and other fees at education institutions; refund of fees.

(a) Each governing board shall fix tuition and other fees for each academic term for the different classes or categories of students enrolling at the state institution of higher education under its jurisdiction and may include among the tuition and fees any one or more of the following as defined in section one-b of this article:

- (1) Tuition and required educational and general fees;
- (2) Auxiliary and auxiliary capital fees; and
- (3) Required educational and general capital fees.

(b) A governing board may establish a single special revenue account for each of the following classifications of fees:

- (1) All tuition and required educational and general fees collected;
- (2) All auxiliary and auxiliary capital fees collected; and

(3) All required educational and general capital fees collected to support existing systemwide and institutional debt service and future systemwide and institutional debt service, capital projects and campus renewal for educational and general facilities.

(4) Subject to any covenants or restrictions imposed with respect to revenue bonds payable from the accounts, a governing board may expend funds from each special revenue account for any purpose for which funds were collected within that account regardless of the original purpose for which the funds were collected.

(c) The purposes for which tuition and fees may be expended include, but are not limited to, health services, student activities, recreational, athletic and extracurricular activities. Additionally, tuition and fees may be used to finance a student's attorney to perform legal services for students in civil matters at the institutions. The legal services are limited to those types of cases, programs or services approved by the president of the institution where the legal services are to be performed.

(d) By October 1, 2011, the commission and council each shall propose a rule for legislative approval in accordance with article three-a, chapter twenty-nine-a of this code to govern the fixing, collection and expenditure of tuition and other fees by the governing boards under their respective jurisdictions.

(e) The schedule of all tuition and fees, and any changes in the schedule, shall be entered in the minutes of the meeting of the appropriate governing board and the board shall file with the commission or council, or both, as appropriate, and the Legislative Auditor a certified copy of the schedule and changes.

(f) The governing boards shall establish the rates to be charged full-time students, as defined in section one-b of this article, who are enrolled during a regular academic term.

(1) Undergraduate students taking fewer than twelve credit hours in a regular term shall have their fees reduced pro rata based upon one twelfth of the full-time rate per credit hour and graduate students taking fewer than nine credit hours in a regular term shall have their fees reduced pro rata based upon one ninth of the full-time rate per credit hour.

(2) Fees for students enrolled in summer terms or other nontraditional time periods shall be prorated based upon the number of credit hours for which the student enrolls in accordance with this subsection.

(g) All fees are due and payable by the student upon enrollment and registration for classes except as provided in this subsection:

(1) The governing boards shall permit fee payments to be made in installments over the course of the academic term. All fees shall be paid prior to awarding course credit at the end of the academic term.

(2) The governing boards also shall authorize the acceptance of credit cards or other payment methods which may be generally available to students for the payment of fees. The governing boards may charge the students for the reasonable and customary charges incurred in accepting credit cards and other methods of payment.

(3) If a governing board determines that a student's finances are affected adversely by a legal work stoppage, it may allow the student an additional six months to pay the fees for any academic term. The governing board shall determine on a case-by-case basis whether the finances of a student are affected adversely.

(4) The commission and council jointly shall propose a rule in accordance with article three-a, chapter twenty-nine-a of this code defining conditions under which a governing board may offer tuition and fee deferred payment plans itself or through third parties.

(5) A governing board may charge interest or fees for any deferred or installment payment plans.

(h) In addition to the other fees provided in this section, each governing board may impose, collect and distribute a fee to be used to finance a nonprofit, student-controlled public interest research group if the students at the institution demonstrate support for the increased fee in a manner and method established by that institution's elected student government. The fee may not be used to finance litigation against the institution.

(i) Governing boards shall retain tuition and fee revenues not pledged for bonded indebtedness or other purposes in accordance with the tuition rules proposed by the commission and council pursuant to this section. The tuition rules shall address the following areas:

(1) Providing a basis for establishing nonresident tuition and fees;

(2) Allowing governing boards to charge different tuition and fees for different programs;

(3) Authorizing a governing board to propose to the commission, council or both, as appropriate, a mandatory auxiliary fee under the following conditions:

(A) The fee shall be approved by the commission, council or both, as appropriate, and either the students below the senior level at the institution or the Legislature before becoming effective;

(B) Increases may not exceed previous state subsidies by more than ten percent;

(C) The fee may be used only to replace existing state funds subsidizing auxiliary services such as athletics or bookstores;

(D) If the fee is approved, the amount of the state subsidy shall be reduced annually by the amount of money generated for the institution by the fees. All state subsidies for the auxiliary services shall cease five years from the date the mandatory auxiliary fee is implemented;

~~(E) The commission or council or both, as appropriate, shall certify to the Legislature annually by October 1 the amount of fees collected for each of the five years;~~

(4) Establishing methodology, where applicable, to ensure that, within the appropriate time period under the compact, community and technical college tuition rates for students in all community and technical colleges will be commensurate with the tuition and fees charged by their peer institutions.

(j) A penalty may not be imposed by the commission or council upon any governing board based upon the number of nonresidents who attend the institution unless the commission or council determines that admission of nonresidents to any institution or program of study within the institution is impeding unreasonably the ability of resident students to attend the institution or participate in the programs of the institution. The governing boards shall report annually to the commission or council on the numbers of nonresidents and any other enrollment information the commission or council may request.

(k) Tuition and fee increases of the governing boards, including the governing boards of Marshall University and West Virginia University, are subject to rules adopted by the commission and council pursuant to this section and in accordance with article three-a, chapter twenty-nine-a of this code. The commission or council, as appropriate, shall examine individually each request from a governing board for an increase and make its determinations as follows:

(1) A tuition and fee increase greater than five percent for resident students proposed by a governing board requires the approval of the commission or council, as appropriate.

(2) A fee used solely for the purpose of complying with the athletic provisions of 20 U. S. C. §1681, *et seq.*, known as Title IX of the Education Amendment of 1972, is exempt from the limitations on fee increases set forth in this subsection for three years from the effective date of the section.

(3) In determining whether to approve or deny a governing board's request for a tuition and/or fee increase for resident students greater than the increases granted pursuant to subdivision (1) of this subsection, the commission or council shall determine the progress the governing board has made toward meeting the conditions outlined in this subsection and shall make this determination the predominate factor in its decision. The commission or council shall consider the degree to which each governing board has met the following conditions:

(A) Maximizes resources available through nonresident tuition and fee charges to the satisfaction of the commission or council;

(B) Consistently achieves the benchmarks established in the compact pursuant to article one-d of this chapter;

(C) Continuously pursues the statewide goals for post-secondary education and the statewide compact established in this chapter;

(D) Demonstrates to the satisfaction of the commission or council that an increase will be used to maintain high-quality programs at the institution;

(E) Demonstrates to the satisfaction of the commission or council that the governing board is making adequate progress toward achieving the goals for education established by the Southern Regional Education Board;

(F) Demonstrates to the satisfaction of the commission or council that the governing board has considered the average per capita income of West Virginia families and their ability to pay for any increases; and

(G) Demonstrates to the satisfaction of the commission or council that base appropriation increases have not kept pace with recognized nation-wide inflationary benchmarks;

(4) This section does not require equal increases among governing boards nor does it require any level of increase by a governing board.

(5) The commission and council shall report to the Legislative Oversight Commission on Education Accountability regarding the basis for approving or denying each request as determined using the criteria established in this subsection.

ARTICLE 13. HIGHER EDUCATION – INDUSTRY PARTNERSHIPS.

§18B-13-5. Use of state property and equipment; faculty.

(a) The governing boards are authorized to provide for the low cost and economical use and sharing of state property and equipment, including computers, research labs and other scientific and necessary equipment to assist any qualified business within an approved research park or zone or technology center. The commission shall approve a schedule of nominal or reduced-cost reimbursements to the state for such use.

(b) The governing boards shall develop and provide for a program of release time, sabbaticals or other forms of faculty involvement or participation with any qualifying business.

(c) The Legislature finds that cooperation, communication and coordination are integral components of higher education's involvement in economic development. In order to proceed in a manner

that is cost effective and time efficient, it is the duty of the commission to review and coordinate such aspects of the programs administered by the governing boards. The review and coordination may not operate to affect adversely sources of funding or any statutory characterization of any program as an independent entity. ~~The Commission shall report annually to the Legislature and the Governor. The report shall contain the following information:~~

- ~~(1) The number of seminars and workshops conducted;~~
 - ~~(2) The subject matter addressed in each seminar and workshop;~~
 - ~~(3) The number of feasibility studies conducted and the subject matter contained in each study;~~
 - ~~(4) An accounting of the cost of all travel expenses, seminars, workshops and feasibility studies;~~
- and
- ~~(5) The extent to which the authority provided for in subsection (b) of this section has been exercised, stating specifically the names of the institutions and faculty members involved in the program.~~

ARTICLE 18. EMINENT SCHOLARS ENDOWMENT TRUST FUND ACT.

§18B-18-6. Duties of Higher Education Policy Commission.

The Higher Education Policy Commission shall:

- (a) Establish documentation standards and review procedures to determine the eligibility of donor gifts to participate in the eminent scholars program when the gift is initially received or whenever the terms are significantly changed;
- (b) Require that each participating institution report on total gifts received, investment earnings realized and anticipated expenditures in its annual operating budget request;
- (c) Annually develop and submit a consolidated budget request for the eminent scholars program to the Governor for the fiscal year beginning on July 1, 2003. The budget request shall include a request for an appropriation by the Legislature to each institutional account each fiscal year in an amount equal to the investment earnings in the previous fiscal year which are intended for use in the fiscal year to supplement the salaries of eminent scholars;
- (d) Allocate any funds appropriated by the Legislature among the participating institutions in equal installments at the beginning of each quarter; ~~and~~
- ~~(e) Submit to the Legislature no later than the first day of December of each year an annual report on the status of the programs, the qualifications and accomplishments of the eminent scholars, the value of endowment holdings, the investment earnings realized and salary supplements paid.~~

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

ARTICLE 3. HEALTH PROFESSIONALS STUDENT LOAN PROGRAM.

§18C-3-4. Nursing Scholarship Program; Center for Nursing Fund; administration; scholarship awards; service requirements.

(a) There is continued in the State Treasury a special revenue account known as the "Center for Nursing Fund" to be administered by the commission to implement the provisions of this section and article seven-b, chapter thirty of this code. Any moneys in the account on the effective date of this section are transferred to the commission's administrative authority. Balances remaining in the fund at the end of the fiscal year do not expire or revert to the general revenue. All costs associated with the administration of this section and article seven-b, chapter thirty of this code shall be paid from the Center for Nursing Fund under

the direction of the Vice Chancellor for Administration. Administrative costs are to be minimized and the maximum amount feasible is to be used to fund awards for students in nursing programs.

(b) The account is funded from the following sources:

(1) A supplemental licensure fee, not to exceed \$10 per year, to be paid by all nurses licensed by the Board of Examiners for Registered Professional Nurses, pursuant to section eight-a, article seven, chapter thirty of this code, and the Board of Examiners for Licensed Practical Nurses, pursuant to section seven-a, article seven-a, chapter thirty of this code;

(2) Repayments, including interest as set by the Vice Chancellor for Administration, collected from recipients who fail to practice or teach in West Virginia under the terms of the scholarship agreement; and

(3) Any other funds from any source as may be added to the account.

(c) In consultation with the Board of Directors of the West Virginia Center for Nursing, established pursuant to article seven-b, chapter thirty of this code, the commission shall administer a scholarship, designated the Nursing Scholarship Program, designed to benefit nurses who practice in hospitals and other health care institutions or teach in state nursing programs.

(1) Awards are available for students enrolled in accredited nursing programs in West Virginia. A recipient shall execute an agreement to fulfill a service requirement or repay the amount of any award received.

(2) Awards are made as follows, subject to the rule required by this section:

(A) An award for any student may not exceed the full cost of education for program completion.

(B) An award of up to \$3,000 is available for a student in a licensed practical nurse education program. A recipient is required to practice nursing in West Virginia for one year following program completion.

(C) An award of up to \$7,500 is available for a student who has completed one-half of a registered nurse education program. A recipient is required to teach or practice nursing in West Virginia for two years following program completion.

(D) An award of up to \$15,000 is available to a student in a nursing master's degree program or a doctoral nursing or education program. A recipient is required to teach in West Virginia for two years following program completion.

(E) An award of up to \$1,000 per year is available for a student obtaining a licensed practical nurse teaching certificate. A recipient is required to teach in West Virginia for one year per award received.

(d) An award recipient shall satisfy one of the following conditions:

(1) Fulfill the service requirement pursuant to this section and the legislative rule; or

(2) Repay the commission for the amount awarded, together with accrued interest as stipulated in the service agreement.

(e) The commission shall promulgate a rule for legislative approval pursuant to article three-a, chapter twenty-nine-a of this code to implement and administer this section. The rule shall provide for the following:

(1) Eligibility and selection criteria for program participation;

- (2) Terms of a service agreement which a recipient shall execute as a condition of receiving an award;
- (3) Repayment provisions for a recipient who fails to fulfill the service requirement;
- (4) Forgiveness options for death or disability of a recipient;
- (5) An appeal process for students denied participation or ordered to repay awards; and
- (6) Additional provisions as necessary to implement this section.

ARTICLE 5. HIGHER EDUCATION GRANT PROGRAM.

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

(a) There is established the Higher Education Adult Part-time Student Grant Program, referred to in this section as the HEAPS grant program. The grant program established and authorized by this section is administered by the vice chancellor for administration. Moneys appropriated or otherwise available for the grant program shall be allocated by line item to an appropriate account. Any moneys remaining in the fund at the close of a fiscal year shall be carried forward for use in the next fiscal year.

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

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

(2) "Part-time" means enrollment for not less than three nor more than eleven semester or term hours: *Provided*, That in the case of enrollment in postsecondary certificate, industry recognized credential and other skill development programs in demand occupations in this state, "part-time" means enrollment on such basis as is established for the program in which enrolled;

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

(4) "Eligible institution" means:

(A) Any community college; community and technical college; adult technical preparatory education program or training;

(B) Any state college or university, as those terms are defined in section two, article one, chapter eighteen-b of this code;

(C) Any approved institution of higher education as that term is defined in section two of this article; and

(D) Any approved distance education, including world wide web based courses;

(5) "Eligible program or programs" or "eligible course or courses" means, in addition to programs and courses offered by eligible institutions as defined in subdivision (4) of this subsection:

(A) Programs and courses offered by any nationally accredited degree granting institution of higher learning permitted pursuant to section five, article three, chapter eighteen-b of this code and approved by the joint commission for vocational-technical-occupational education; and

(B) Any postsecondary certificate, industry recognized credential and other skill development programs of study as defined in this section in a demand occupation in this state;

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

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

(8) "Demand occupation" means any occupation having documented verification from employers that job opportunities in that occupation are currently available or are projected to be available within a year within the state or regions of the state. The Joint Commission for Vocational-Technical-Occupational Education shall prepare and update annually a list of occupations that they determine meet the requirements of this definition;

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

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

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

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

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

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

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

(5) Is not incarcerated in a correctional facility;

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

(7) Is enrolled in a program of study at less than the graduate level on a part-time basis in an eligible institution or program of study and is making satisfactory academic progress at the time of application: *Provided*, That the requirement that the student be making satisfactory academic progress may

not preclude a HEAPS grant award to a student who has been accepted for enrollment in an eligible institution or program of study but has not yet been enrolled.

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

(e) The Higher Education Policy Commission shall propose a legislative rule pursuant to article three-a, chapter twenty-nine-a of this code to implement the provisions of this section which shall be filed with the Legislative Oversight Commission on Education Accountability by September 1, 2003. The Legislature hereby declares that an emergency situation exists and, therefore, the policy commission may establish, by emergency rule, under the procedures of article three-a, chapter twenty-nine-a of this code, a rule to implement the provisions of this section, after approval by the Legislative Oversight Commission on Education Accountability.

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

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

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

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

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

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

(3) That not less than twenty-five percent of the funds appropriated in any one fiscal year be used to make grants to students enrolled in postsecondary certificate, industry recognized credential and other skill development programs of study: *Provided*, That after giving written notice to the Legislative Oversight Commission on Education Accountability, the vice chancellor for administration may allocate less than twenty-five percent of the funds for such grants;

(4) That ten percent of the funds appropriated in any one fiscal year shall be granted to state community and technical colleges by the council for community and technical college education in accordance with a process specified in the rule for noncredit and customized training programs which further the economic development goals of the state, help meet the training and skill upgrade needs of employers in the state, and for which funds are not available from other sources;

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

(6) That grants under this section shall be available for approved distance education throughout the calendar year, subject only to the availability of funds; and

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

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

(i) Actual cost of tuition and fees;

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

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

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

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

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

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

§18C-7-5. Powers and duties of the West Virginia Higher Education Policy Commission regarding the PROMISE Scholarship.

(a) *Powers of commission.* — In addition to the powers granted by any other provision of this code, the commission has the powers necessary or convenient to carry out the purposes and provisions of this article including, but not limited to, the following express powers:

(1) To promulgate legislative rules in accordance with the provisions of article three-a, chapter twenty-nine-a of this code to effectuate the purposes of this article;

(2) To invest any of the funds of the West Virginia PROMISE Scholarship Fund established in section seven of this article with the West Virginia Investment Management Board in accordance with the provisions of article six, chapter twelve of this code. Any investments made pursuant to this article shall be made with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in conducting an enterprise of a like character and with like aims. Fiduciaries shall diversify plan investments to the extent permitted by law to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so;

(3) To execute contracts and other necessary instruments;

(4) To impose reasonable requirements for residency for students applying for the PROMISE scholarship. Except as provided in section four, article one of this chapter, a student shall have met the following requirements to be eligible:

(A) Completed at least one half of the credits required for high school graduation in a public or private high school in this state; or

(B) Received instruction in the home or other approved place pursuant to subsection (c), section one, article eight, chapter eighteen of this code for the two years immediately preceding application;

(C) This subsection does not establish residency requirements for matriculation or fee payment purposes at state institutions of higher education;

(5) To contract for necessary goods and services, to employ necessary personnel and to engage the services of private persons for administrative and technical assistance in carrying out the responsibilities of the scholarship program. Any services provided or secured to implement or administer

the provisions of this section remain under the direction and authority of the Vice Chancellor for Administration;

(6) To solicit and accept gifts, including bequests or other testamentary gifts made by will, trust or other disposition, grants, loans and other aid from any source and to participate in any federal, state or local governmental programs in carrying out the purposes of this article;

(7) To define the terms and conditions under which scholarships are awarded with the minimum requirements being set forth in section six of this article; and

(8) To establish other policies, procedures and criteria necessary to implement and administer the provisions of this article.

(b) *Duties of commission.* — In addition to any duty required by any other provision of this code, the commission has the following responsibilities:

(1) To operate the program in a fiscally responsible manner and within the limits of available funds;

(2) To operate the program as a merit-based program;

(3) To adjust academic eligibility requirements should projections indicate that available funds will not be sufficient to cover future costs; and

(4) To maintain contact with graduates who have received PROMISE scholarships and to provide a written statement of intent to recipients who are selected to receive a PROMISE scholarship notifying them that acceptance of the scholarship entails a responsibility to supply the following:

(A) Information requested by the commission to determine the number and percentage of recipients who shall:

(i) Continue to live in West Virginia after graduation;

(ii) Obtain employment in West Virginia after graduation; and

(iii) Enroll in post-graduate education programs;

(B) For PROMISE scholars who enroll in post-graduate education programs, the name of the state in which each post-graduate institution is located; and

(C) Any other relevant information the commission reasonably requests to implement the provisions of this subdivision.

~~(5) To analyze and use the data collected pursuant to subdivision (4) of this subsection to:~~

~~(A) Report the findings annually to the Legislative Oversight Commission on Education Accountability; and~~

~~(B) Make annual recommendations to the Legislative Oversight Commission on Education Accountability regarding any actions the commission considers necessary or expedient to encourage PROMISE recipients to live and work in the state after graduation.~~

Bill Sponsors: Senator Sypolt, Boso, Plymale, Prezioso and Williams

Senate Bill 400 **Reducing amount of sales tax proceeds dedicated to School Major Improvement Fund**

Effective Date: June 6, 2016

Code Reference: Amends §17-15-30

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

Bill Summary:

The bill reduces the amount of sales tax collections dedicated to the School Major Improvement Fund by \$999,996 for the 2016-17 year. While this is a decrease from the existing statute, it is an increase from the 2015-16 year when the statutory amount was reduced by \$2,000,004. The statute calls for the reduction to cease beyond fiscal year 2017.

Additionally, the bill reduces the amount of sales tax collections dedicated to the School Construction Fund by \$3 million for the 2016-17 year. While this is a decrease from the existing statute, it is an increase from the 2015-16 year when the statutory amount was reduced by \$6 million. The statute calls for the reduction to cease beyond fiscal year 2017.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-30. Proceeds of tax; appropriation of certain revenues.

(a) The proceeds of the tax imposed by this article shall be deposited in the General Revenue Fund of the state except as otherwise expressly provided in this article.

(b) *School Major Improvement Fund.* – After the payment or commitment of the proceeds or collections of this tax for the purposes set forth in section sixteen of this article, on the first day of each month, there shall be dedicated monthly from the collections of this tax, the amount of \$416,667 and the amount dedicated shall be deposited on a monthly basis into the School Major Improvement Fund created pursuant to section six, article nine-d, chapter eighteen of this code: *Provided*, That for fiscal year 2016, the amount so dedicated and deposited annually under this subdivision is reduced by \$2,000,004, and the amount so dedicated and deposited monthly is reduced to \$250,000 for fiscal year 2016. This reduction shall cease for fiscal years beginning after June 30, 2016: *Provided, however*, That for fiscal year 2017, the amount so dedicated and deposited annually under this subdivision is reduced by \$999,996 and the amount so dedicated and deposited monthly is reduced to \$333,334 for fiscal year 2017. This reduction shall cease for fiscal years beginning after June 30, ~~2016~~ 2017.

(c) *School Construction Fund.* – After the payment or commitment of the proceeds or collections of this tax for the purposes set forth in section sixteen of this article:

(1) On the first day of each month, there shall be dedicated monthly from the collections of this tax the amount of \$1,416,667 and the amount dedicated shall be deposited into the School Construction Fund created pursuant to section six, article nine-d, chapter eighteen of this code.

(2) Except as provided in subdivision (3) of this subsection, effective July 1, 1998, there shall be dedicated from the collections of this tax an amount equal to any annual difference that may occur between the debt service payment for the 1997 fiscal year for school improvement bonds issued under the Better School Building Amendment under the provisions of article nine-c, chapter eighteen of this code and the amount of funds required for debt service on these school improvement bonds in any current fiscal year thereafter. This annual difference shall be prorated monthly, added to the monthly deposit in subdivision (1) of this subsection and deposited into the School Construction Fund created pursuant to section six, article nine-d, chapter eighteen of this code.

(3) After June 30, 2015, the provisions of subdivisions (1) and (2) of this subsection shall have no force or effect. After June 30, 2015, there shall be dedicated from the collections of this tax the amount of \$27,216,996 annually. This amount shall be prorated monthly and ~~added to the monthly deposit in subdivision (1) of this subsection and~~ deposited into the School Construction Fund created pursuant to section six, article nine-d, chapter eighteen of this code: *Provided*, That for fiscal year 2016, the amount so dedicated annually under this subdivision is reduced by \$6 million. This reduction shall cease for fiscal years beginning after June 30, 2016: *Provided, however*, That for fiscal year 2017, the amount so dedicated and deposited annually under this subdivision is reduced by \$3 million. This reduction shall cease for fiscal years beginning after June 30, 2017. Amendments to this subdivision enacted in the 2016 regular legislative session are retroactive, in accordance with dates and fiscal years specified herein.

(d) *Prepaid wireless calling service.* – The proceeds or collections of this tax from the sale of prepaid wireless service are dedicated as follows:

(1) The tax imposed by this article upon the sale of prepaid wireless calling service is in lieu of the wireless enhanced 911 fee imposed by section six-b, article six, chapter twenty-four of this code.

(2) Within thirty days following the end of each calendar month, the Tax Commissioner shall remit to the Public Service Commission the proceeds of the tax imposed by this article upon the sale of prepaid wireless calling service in the preceding month, determined as follows: For purposes of determining the amount of those monthly proceeds, the Tax Commissioner shall use an amount equal to one twelfth of the

wireless enhanced 911 fees collected from prepaid wireless calling service under section six-b, article six, chapter twenty-four of this code during the period beginning on July 1, 2007, and ending on June 30, 2008. Beginning on July 1, 2009, the Tax Commissioner shall adjust this amount annually by an amount proportionate to the increase or decrease in the enhanced wireless 911 fees paid to the Public Service Commission under said section during the previous twelve months. The Public Service Commission shall receive, deposit and disburse the proceeds in the manner prescribed in said section.

Bill Sponsors: Senators Cole and Kessler

Senate Bill 439 **Relating generally to requisitions for personal services**

Effective Date: June 8, 2016

Code Reference: Amends §11B-2-27

WVDE Contact: Terry Harless, Chief Financial Officer
tharless@k12.wv.us; 304.558.2686

Bill Summary:

The bill requires the state budget director to check the payment of personal services against the personnel schedule of the spending unit making the requisition. The director must approve a requisition for personal services only if the amounts requested are in accordance with the personnel schedule of the spending unit. The budget director is not required to verify or approved requisitions for the payment of personal services for any spending unit that does not participate in the human resource payroll module of the WV Enterprise Resource Planning System.

ARTICLE 2. STATE BUDGET OFFICE.

§11B-2-27. Expenditure of appropriations — Payment of personal services.

A requisition for the payment of personal services shall, upon receipt by the director of the budget, be checked against the personnel schedule of the spending unit making the requisition. The director shall approve a requisition for personal services only if the amounts requested are in accordance with the personnel schedule of the spending unit: Provided, That the director of the budget is not required to verify or approve requisitions for the payment of personal services for any spending unit that does not participate in the human resource payroll module of the West Virginia Enterprise Resource Planning System as set forth in section one, article six-d, chapter twelve of this code.

Bill Sponsors: Senator Hall and Plymale

Senate Bill 459 **Requiring county board of education to pay tuition to Mountaineer Challenge Academy**

Effective Date: Effective 90 days from passage (passed March 10, 2016)

Code Reference: Amends §18-2-6

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

Bill Summary:

The bill requires county boards of education to pay tuition to the Mountaineer Challenge Academy for each student graduating from the academy with a high school diploma that resides in the county board's district. Tuition is defined in the bill as an amount equal to seventy-five percent of the amount allotted per pupil under the school aid formula.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-6. Classification and standardization of schools; standards for degrees and diplomas; certificates of proficiency; establishment of alternative education programs.

(a) The state board shall promulgate rules for the accreditation, classification and standardization of all schools in the state, except institutions of higher education, and shall determine the minimum standards for granting diplomas and certificates of proficiency by those schools.

(1) The certificates of proficiency shall include specific information regarding the graduate's skills, competence and readiness for employment or honors and advanced education and shall be granted, along with the diploma, to every eligible high school graduate.

(2) The certificate of proficiency shall include the program of study major completed by the student only for those students who have completed the required major courses, or higher level courses, advanced placement courses, college courses or other more rigorous substitutes related to the major, and the recommended electives.

(b) An institution of less than collegiate or university status may not grant any diploma or certificate of proficiency on any basis of work or merit below the minimum standards prescribed by the state board.

(c) A charter or other instrument containing the right to issue diplomas or certificates of proficiency may not be granted by the State of West Virginia to any institution or other associations or organizations of less than collegiate or university status within the state until the condition of granting or issuing the diplomas or other certificates of proficiency has first been approved in writing by the state board.

(d) The state board shall promulgate a rule for the approval of alternative education programs for disruptive students who are at risk of not succeeding in the traditional school structure.

(1) This rule may provide for the waiver of other policies of the state board, the establishment and delivery of a nontraditional curriculum, the establishment of licensure requirements for alternative education program teachers, and the establishment of performance measures for school accreditation.

(2) This rule shall provide uniform definitions of disruptive student behavior and uniform standards for the placement of students in alternative settings or providing other interventions including referrals to local juvenile courts to correct student behavior so that they can return to a regular classroom without engaging in further disruptive behavior.

(e) The state board shall establish up to five pilot projects at the elementary or middle school levels, or both, that employ alternative schools or other placements for disruptive students to learn appropriate behaviors so they can return to the regular classroom without further disrupting the learning environment. The state board shall report to the Legislative Oversight Commission on Education Accountability by December 1, 2010, on its progress in establishing the pilot projects and by December 1 in each year after that for the duration of the pilot projects on the effect of the projects on maintaining student discipline.

(f) If a student attends an approved alternative education program or the Mountaineer Challenge Academy, which is designated as a special alternative education program pursuant to section twenty-four, article one-b, chapter fifteen of this code, and the student graduates or passes the General Equivalency Development (GED) Tests within five years of beginning ninth grade, that student shall be considered graduated for the purposes of calculating the high school graduation rate used for school accreditation and school system approval, subject to the following:

(1) The student shall be considered graduated only to the extent that this is not in conflict with any provision of federal law relating to graduation rates;

(2) If the state board determines that this is in conflict with a provision of federal law relating to graduation rates, the state board shall request a waiver from the United States department of education; and

(3) If the waiver is granted, notwithstanding the provisions of subdivision (1) of this subsection, the student graduating or passing the General Educational Development (GED) Tests within five years shall be considered graduated.

(g) The state board shall promulgate a rule to support the operation of the National Guard Youth Challenge Program operated by the Adjutant General and known as the² Mountaineer Challenge Academy² which is designated as a special alternative education program pursuant to section twenty-four, article one-b, chapter fifteen of this code for students who are at risk of not succeeding in the traditional school structure. The rule shall set forth policies and procedures applicable only to the Mountaineer Challenge Academy that provide for, but are not limited to, the following:

(1) Implementation of provisions set forth in section twenty-four, article one-b, chapter fifteen of this code;

(2) Precedence of the policies and procedures designated by the National Guard Bureau for the operation of the Mountaineer Challenge Academy special alternative education program;

(3) Consideration of a student participating in the Mountaineer Challenge Academy special alternative education program at full enrollment status in the referring county for the purposes of funding and calculating attendance and graduation rates, subject to the following:

(A) The student shall be considered at full enrollment status only for the purposes of calculating attendance and graduation rates to the extent that this is not in conflict with any provision of federal law relating to attendance or graduation rates;

(B) If the state board determines that this is in conflict with a provision of federal law relating to attendance or graduation rates, the state board shall request a waiver from the United States Department of Education;

(C) If the waiver is granted, notwithstanding the provisions of paragraph (A) of this subdivision, the student shall be considered at full enrollment status in the referring county for the purposes of calculating attendance and graduation rates; and

(D) Consideration of the student at full enrollment status in the referring county is for the purposes of funding and calculating attendance and graduation rates only. For any other purpose, a student participating in the academy is considered withdrawn from the public school system;

(4) Articulation of the knowledge, skills and competencies gained through alternative education so that students who return to regular education may proceed toward attainment or may attain the standards for graduation without duplication;

(5) Consideration of eligibility to take the General Educational Development (GED) Tests by qualifying within the extraordinary circumstances provisions established by state board rule for a student participating in the Mountaineer Challenge Academy special alternative education program who does not meet any other criteria for eligibility-; and

(6) Payment of tuition by a county board to the Mountaineer Challenge Academy for each student graduating from the academy with a high school diploma that resides in that county board's school district. For purposes of this subdivision, "tuition" means an amount equal to seventy-five percent of the amount allotted per pupil under the school aid formula.

(h) Nothing in this section or the rules promulgated under this section compels the Mountaineer Challenge Academy to be operated as a special alternative education program or to be subject to any other laws governing the public schools except by its consent.

(i) The Legislature makes the following findings regarding students at risk:

(1) *Defeated and discouraged learners.* —

(A) Any child who is unlikely to graduate on schedule with both the skills and self esteem necessary to exercise meaningful options in the areas of work, leisure, culture, civic affairs and personal relationships may be defined as being an at-risk student;

(B) Problems associated with students at risk often begin for them in the early grades as they gradually fall further behind in the essential skills of reading, writing and math;

(C) These problems may be accompanied by such behavior patterns as poor attendance, inattentiveness, negative attitudes and acting out in class. These patterns are both symptoms of and added catalysts for students to become increasingly defeated and discouraged learners;

(D) By the middle grades, students with growing skill deficits usually know they are behind other students and have good reason to feel discouraged. A growing lack of self confidence and self worth, limited optimism for the future, avoidance of school and adults and a dimming view of the relationship between effort and achievement are among the characteristics of defeated and discouraged learners;

(E) Public schools are expected to address the needs of all students, minimizing the likelihood that they will become at risk and giving additional attention to those who do; however, the circumstances involved with a child becoming at risk often are complex and may include influences both within and outside of the school environment; and

(F) In fragile homes, a child who is at risk and is becoming a discouraged and defeated learner often lacks adequate support and may develop peer relationships that further exacerbate the difficulty of reengaging him or her in learning, school and responsible social behavior.

(2) The Legislature further finds that the public schools should not be deterred from seeking and assisting with enrollment of students in an alternative program that helps remedy the discouragement, lessens skill deficits and facilitates a successful return to public school.

~~(A)~~ For this purpose, subject to approval of the county superintendent, a student enrolled in the public schools of the county may continue to be enrolled while also enrolled in an alternative program subject to the following conditions:

(1) The alternative program is approved by the state board;

(2) The student meets the general description of an at-risk student and exhibits behaviors and characteristics associated with a discouraged and defeated learner;

(3) The alternative program complies with all requests of the county superintendent for information on the educational program and progress of the student;

(4) The alternative program includes a family involvement component in its program. This component shall include, but is not limited to, providing for student and parent participation in activities that help address the challenging issues that have hindered the student's engagement and progress in learning;

(5) The alternative program includes an on-site boarding option for students;

(6) The alternative program provides an individualized education program for students that is designed to prepare them for a successful transition back into the public schools; and

(7) The parents or legal guardian of the student make application for enrollment of the student in the alternative program, agree to the terms and conditions for enrollment, and enroll the student in the program.

Bill Sponsors: Senators Cole and Kessler

Senate Bill 476 **Relating to driving restrictions in school zones**

Effective Date: June 8, 2016

Code Reference: Amends §17C-6-1

WVDE Contact: Sarah Stewart, Director of Policy & Government Relations
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Bill Summary:

The bill requires the West Virginia Division of Highways (DOH) to erect signage to indicate the entry point and the exit point of school zones. Following a formal vote, a county board of education may make a written request to the DOH to expand a school zone. Upon receipt of such written request, the DOH has 90 days to erect new signage indicating the entry point and exit point of the expanded school zone. School zones may not be expanded more than 125 feet along an adjacent road unless the DOH determines that the additional extension is needed and necessary for the safety of children.

ARTICLE 6. SPEED RESTRICTIONS

§17C-6-1. SPEED LIMITATIONS GENERALLY; PENALTY.

(a) No person may drive a vehicle on a highway at a speed greater than is reasonable and prudent under the existing conditions and the actual and potential hazards. In every event speed shall be controlled as necessary to avoid colliding with any person, vehicle or other conveyance on or entering the highways in compliance with legal requirements and the duty of all persons to use due care.

(b) Where no special hazard exists that requires lower speed for compliance with subsection (a) of this section, the speed of any vehicle not in excess of the limits specified in this section or established as authorized in this section is lawful, but any speed in excess of the limits specified in this subsection or established as authorized in this section is unlawful. The following speed limits apply:

(1) Fifteen miles per hour in a school zone during school recess or while children are going to or leaving school during opening or closing hours. A school zone is all school property, including school grounds and any street or highway abutting the school grounds and extending one hundred twenty-five feet along the street or highway from the school grounds. The West Virginia Division of Highways shall erect signage indicating the place of entry and exit of each school zone. Upon a formal vote and a written request by a county board of education to expand a school zone to a road that is adjacent to school property, the West Virginia Division of Highways shall expand the school zone by erecting new signage indicating the expanded school zone's location and speed limit within ninety days of receiving the request: *Provided*, That the school zone may not be expanded more than one hundred twenty-five feet along an adjacent road unless the division determines that the additional extension is needed and necessary for the safety of the school children. The speed restriction does not apply to vehicles traveling on a controlled-access highway which is separated from the school or school grounds by a fence or barrier approved by the Division of Highways;

(2) Twenty-five miles per hour in any business or residence district; and

(3) Fifty-five miles per hour on open country highways, except as otherwise provided by this chapter.

The speeds set forth in this section may be altered as authorized in sections two and three of this article.

(c) The driver of every vehicle shall, consistent with the requirements of subsection (a) of this section, drive at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway and when a special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions.

(d) The speed limit on controlled access highways and interstate highways, where no special hazard exists that requires a lower speed, shall be not less than fifty-five miles per hour and the speed limits specified in subsection (b) of this section do not apply.

(e) Unless otherwise provided in this section, any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$100; upon a second conviction within one year thereafter, shall be fined not more than \$200; and, upon a third or subsequent conviction within two years thereafter, shall be fined not more than \$500: *Provided*, That if the third or subsequent conviction is based upon a violation of the provisions of this section where the offender exceeded the speed limit by fifteen miles per hour or more, then upon conviction, shall be fined not more than \$500 or confined in ~~county or regional~~ jail for not more than six months, or both fined and confined.

(f) Any person who violates the provisions of subdivision (1), subsection (b) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$500: *Provided*, That if the conviction is based upon a violation of the provisions of subdivision (1), subsection (b)

of this section where the offender exceeded the speed limit by fifteen miles per hour or more in the presence of one or more children, then upon conviction, shall be fined not less than \$100 nor more than \$500 or confined in the ~~regional or county~~ jail for not more than six months, or both fined and confined: Provided, that if the signage required by subdivision (1) is not present in the school zone at the time of the violation, then any person who violates said provision is guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than \$25.

(g) If an owner or driver is arrested under the provisions of this section for the offense of driving above the posted speed limit on a controlled access highway or interstate highway and if the evidence shows that the motor vehicle was being operated at ten miles per hour or less above the speed limit, then, upon conviction thereof, that person shall be fined not more than \$5, plus court costs.

(h) Any person operating a commercial motor vehicle engaged in the transportation of coal on the coal resource transportation road system who violates subsection (a), (b) or (c) of this section shall, upon conviction, be subject to fines in triple the amount otherwise provided in subsection (e) of this section.

(i) If an owner or driver is convicted under the provisions of this section for the offense of driving above the speed limit on a controlled access highway or interstate highway of this state and if the evidence shows that the motor vehicle was being operated at ten miles per hour or less above the speed limit, then notwithstanding the provisions of section four, article three, chapter seventeen-b of this code, a certified abstract of the judgment on the conviction shall not be transmitted to the Division of Motor Vehicles: *Provided*, That the provisions of this subsection do not apply to conviction of owners or drivers who have been issued a commercial driver's license as defined in chapter seventeen-e of this code, if the offense was committed while operating a commercial vehicle.

(j) If an owner or driver is convicted in another state for the offense of driving above the maximum speed limit on a controlled access highway or interstate highway and if the maximum speed limit in the other state is less than the maximum speed limit for a comparable controlled access highway or interstate highway in this state, and if the evidence shows that the motor vehicle was being operated at ten miles per hour or less above what would be the maximum speed limit for a comparable controlled access highway or interstate highway in this state, then notwithstanding the provisions of section four, article three, chapter seventeen-b of this code, a certified abstract of the judgment on the conviction shall not be transmitted to the Division of Motor Vehicles or, if transmitted, shall not be recorded by the division, unless within a reasonable time after conviction, the person convicted has failed to pay all fines and costs imposed by the other state: *Provided*, That the provisions of this subsection do not apply to conviction of owners or drivers who have been issued a commercial driver's license as defined in chapter seventeen-e of this code, if the offense was committed while operating a commercial vehicle.

Bill Sponsors: Senators Beach, Plymale and Kessler

Senate Bill 483 **Marshall County and Wyoming County LSIC waiver**

Effective Date: July 1, 2016

Code Reference: Amends §18-5A-3a

WVDE Contact: Sarah Stewart, Director of Policy & Government Relations
sarah.a.stewart@k12.wv.us; 304.558.3762

The purpose of the bill is to increase the compulsory school attendance age for Marshall County and Wyoming County from 17 to 18 years of age as part of each county's respective countywide dropout prevention initiative.

ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.

§18-5A-3a. Waivers of statutes granted to public schools pursuant to recommendations submitted by local school improvement councils; limitations.

(a) The Legislature hereby grants a waiver from the statute or statutes indicated for the following school or schools pursuant to and for the purposes enumerated in the written statement recommending the waiver, with supporting reasons, approved by the local school improvement council of the respective schools and recommended by the Legislative Oversight Commission on Education Accountability in accordance with the provisions of section three of this article. The grant of a waiver to a statute means that the school or schools granted the waiver may implement the actions as specifically described in their written statement notwithstanding the provisions of this code from which they are specifically waived. These waivers are limited to the purposes as specifically described in the statement upon which the Legislative Oversight Commission on Education Accountability made its recommendation for a waiver to the Legislature and are expressly repealed for any modification or implementation of the described actions which changes those purposes. However, nothing in this section prohibits a local school improvement council school that has been granted a waiver from submitting a request to the Legislative Oversight Commission on Education Accountability for modifications, subject to approval in accordance with section three of this article.

(b) The following waivers are granted:

(1) Section two-b, article three, chapter eighteen-a of this code is waived for the schools of Cabell County for the purpose of implementing a comprehensive new teacher induction program, which purposes are as more specifically described in the schools' written statement approved by the county board and submitted to the Legislative Oversight Commission on Education Accountability on February 24, 2011.

(2) Section one-a, article eight, chapter eighteen of this code is waived for the schools of Marshall County for the purpose of increasing the compulsory school attendance age in Marshall County from seventeen to eighteen years of age as a part of its countywide dropout prevention initiative as requested by letter dated January 4, 2016, and recommended by the Legislative Oversight Commission on Education Accountability on January 18, 2016.

(3) Section one-a, article eight, chapter eighteen of this code is waived for the schools of Wyoming County for the purpose of increasing the compulsory school attendance age in Wyoming County from seventeen to eighteen years of age as a part of its countywide dropout prevention initiative as requested by letter dated February 25, 2016 and recommended by the Legislative Oversight Commission on Education Accountability on February 25, 2016.

Bill Sponsors: Sypolt, Boley, Plymale and Ferns

Senate Bill 594 **Relating generally to electronically generated invoices**

Effective Date: June 3, 2016

Code Reference: Adds new section to code: §12-3-10g

WVDE Contact: Terry Harless, Chief Financial Officer
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Bill Summary:

The bill permits the State Auditor to treat an agency-generated electronic invoice as an original invoice if the invoice contains the vendor name, vendor address, invoice number, invoice date, invoice amount, description of the items purchased or services provided, purchase order number and contract number, where applicable, and date of service provided or goods received. However, such agency-generated computer invoices may only be considered for payment if the agency has an established financial system which has been subjected to a financial audit by the Legislative Auditor or by an independent certified public accountant, duly licensed and in good standing.

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

§12-3-10g. Acceptance by Auditor for payment of a claim submitted by electronically generated invoices.

The State Auditor may consider an agency-generated electronic invoice as an original invoice pursuant to section ten of this article and any applicable rules approved thereto if the invoice contains the vendor name, vendor address, invoice number, invoice date, invoice amount, description of the items purchased or services provided, purchase order number and contract number, where applicable, and date of service provided or goods received: *Provided*, That agency-generated computer invoices may be considered for payment only if the agency has an established financial system which has been subjected to a financial audit by the Legislative Auditor or by an independent certified public accountant, duly licensed and in good standing.

Bill Sponsors: Prezioso, Plymale and Gaunch

House Bill 3019 **Requiring official business and records of the state and its political subdivisions be conducted in English**

Effective Date: May 25, 2016

Code Reference: Adds new section to code: §2-2-13

WVDE Contact: Heather Hutchens, General Counsel
hhutchens@k12.wv.us; 304.558.3667

Bill Summary:

The bill requires that all official business and records of the state and its political subdivisions be conducted in English. All official records, documents, rules, orders, and publications shall be printed in English and all official programs, meetings, transactions, and actions conducted by or on behalf of the state and all its political subdivisions shall be in English.

Other languages may be used by government officials, and in official documents, whenever necessary to protect public health and safety; teach or study other languages; protect the rights of criminal defendants or victims of crime; promote trade, tourism or commerce; facilitate activities pertaining to the compilation of any census; comply with the federal Individuals with Disabilities Education Act, PL 101-476; use proper names, terms of art, legal terms or phrases from languages other than English; or comply with the Constitution and laws of the United States of America or the Constitution of West Virginia. Except in exigent circumstances, when an official government document is translated into any language other than English under this section, an English translation shall also be provided in the same document, appearing in such a manner as to afford the reader the opportunity to observe the English translation of all phrases used.

This section is not to be construed to diminish the usage of, prevent the study or development of, or discourage the use of, any Native American language in any context or for any purpose; prohibit an elected official from speaking to any person in a language other than English while campaigning or providing constituent services; disparage any language or discourage any person from learning or using any language; or prohibit informal and nonbinding translations or communications among or between representatives of government and other persons if the activity does not affect or impair supervision, management, conduct, or execution of official actions and if the representatives of government make clear that these translations or communications are unofficial and not binding on the state or any political subdivision of the state.

Any examination related to employment administered by any state, municipal or county entity may be administered in a language other than English if the test is available in that language.

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

§2-2-13. Official business and records of the state to be in English; exceptions; definition.

(a) All official business of this state shall be conducted in the English language. All official records, documents, rules, orders, and publications shall be printed in English and all official programs, meetings, transactions, and actions conducted by or on behalf of the state and all its political subdivisions shall be in English.

(b) Other languages may be used by government officials, and in official documents, whenever necessary to:

(1) Protect public health and safety;

(2) Teach or study other languages;

(3) Protect the rights of criminal defendants or victims of crime;

(4) Promote trade, tourism or commerce;

(5) Facilitate activities pertaining to the compilation of any census;

(6) Comply with the federal Individuals with Disabilities Education Act, PL 101-476;

(7) Use proper names, terms of art, legal terms or phrases from languages other than English; or

(8) Comply with the Constitution and laws of the United States of America or the Constitution of West Virginia. Except in exigent circumstances, when an official government document is translated into any language other than English under this section, an English translation shall also be provided in the same document, appearing in such a manner as to afford the reader the opportunity to observe the English translation of all phrases used.

(c) This section may not be construed to:

(1) Diminish the usage of, prevent the study or development of, or discourage the use of, any Native American language in any context or for any purpose;

(2) Prohibit an elected official from speaking to any person in a language other than English while campaigning or providing constituent services. However, those officials are encouraged to use English as much as possible to promote fluency in English;

(3) Disparage any language or discourage any person from learning or using any language; or

(4) Prohibit informal and nonbinding translations or communications among or between representatives of government and other persons if the activity does not affect or impair supervision, management, conduct, or execution of official actions and if the representatives of government make clear that these translations or communications are unofficial and not binding on the state or any political subdivision of the state.

(d) Any examination related to employment administered by any state, municipal or county entity may be administered in a language other than English if the test is available in that language.

(e) As used in this section, "official" means any government action or document that binds the government, is required by law, or is authorized by law.

Bill Sponsors: Ireland, Overington, Foster, Fast, Lynch, Azinger, Shott, Hicks and Hanshaw

House Bill 4005 **Repealing prevailing hourly rate of wages requirements**

Effective Date: May 25, 2016

Code Reference: Repeals §21-5A-1, 21-5A-2, 21-5A-3, 21-5A-4, 21-5A-5, 21-5A-6, 21-5A-7, 21-5A-8, 21-5A-9, 21-5A-10, 21-5A-11, 21-5A-12

WVDE Contact: Terry Harless, Chief Financial Officer
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Bill Summary:

The bill removes the statutory mandate that all public authorities must include within bid specifications of contracts related to the construction of public improvements the fair minimum rate of wages to be paid by the successful bidder to all laborers, workers, or mechanics in the various branches or classes of the construction to be performed.

ARTICLE 5A. WAGES FOR CONSTRUCTION OF PUBLIC IMPROVEMENTS

§1. Repeal of article relating to wages for construction of public improvements.

§21-5A-1, §21-5A-2, §21-5A-3, §21-5A-5, §21-5A-6, §21-5A-7, §21-5A-8, §21-5A-9, §21-5A-10, §21-5A-11 and §21-5A-12 of the Code of West Virginia, 1931, as amended, are hereby repealed.

Bill Sponsors: Delegates Cowles, Duke, Foster, Gearheart, Miller, Overington, Shott, Walters, Waxman, Westfall and Householder

House Bill 4175 **Relating generally to home schooling**

Effective Date: May 23, 2016

Code Reference: Amends §18-8-1

WVDE Contact: Betty Jo Jordan, Executive Assistant to State Superintendent
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Bill Summary:

Homeschool parents will now provide a one-time Notice of Intent (NOI) versus an annual Notice of Intent. The NOI must contain name, age and address of child to be homeschooled as well as assurance child will receive instruction in reading, language, mathematics, science and social studies. Removes the requirement that the grade level of the child be provided in the NOI.

If a child is enrolled in public school, NOI to provide home instruction shall be given on or before the date home instruction is to begin. Removes the provision that for child who is enrolled in public school, the NOI shall be given at least two weeks prior to withdrawing the child from public school.

The bill provides that an acceptable credential for the home school provider now includes a post-secondary degree or certificate from a regionally accredited institution or from an institution of higher education that has been authorized to confer a post-secondary degree or certificate in WV by the WV Council for Community and Technical College Education or by the WV Higher Education Policy Commission.

Changes provisions for assessment requirement in the following ways:

- Removes language that the parent or guardian shall pay the cost when the assessment takes place outside a public school
- Allows the parent to administer the assessment
- Requires that if the assessment is a nationally normed test, the test must be normed not more than 10 years from the date of administration
- Redefines acceptable progress when the assessment is a nationally normed test from meeting or exceeding the 50th percentile to within or above the fourth stanine.
- Removes the requirement that the teacher who reviews the portfolio (when that assessment option is used) must provide their certification number
- Removes the requirement that parents annually report the assessment results to the county superintendent. New requirement for reporting is at grades three, five, eight and eleven.

Finally, the bill adds the term “after showing probable cause” to the provision that the county superintendent may seek from the circuit county of the county an order denying home instruction of the child. The order may be granted upon a showing of clear and convincing evidence that the child will suffer neglect in his or her education or that there are other compelling reasons to deny home instruction.

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-1. Compulsory school attendance; exemptions.

(a) Exemption from the requirements of compulsory public school attendance established in section one-a of this article shall be made on behalf of any child for the causes or conditions set forth in this section. Each cause or condition set forth in this section is subject to confirmation by the attendance authority of the county. A child who is exempt from compulsory school attendance under this section is not subject to prosecution under section two of this article, nor is such a child a status offender as defined by section two hundred two, article one, chapter forty-nine of this code.

(b) A child is exempt from the compulsory school attendance requirement set forth in section one-a of this article if the requirements of this subsection, relating to instruction in a private, parochial or other approved school, are met. The instruction shall be in a school approved by the county board and for a time equal to the instructional term set forth in section forty-five, article five of this chapter. In all private, parochial or other schools approved pursuant to this subsection it is the duty of the principal or other person in control, upon the request of the county superintendent, to furnish to the county board such information and records as may be required with respect to attendance, instruction and progress of students enrolled.

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

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

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

(A) ~~Annually, the person or persons providing~~ Upon commencing home instruction under this section the parent of a child receiving home instruction shall present to the county superintendent or county board a notice of intent to provide home instruction ~~and that includes~~ and that includes the name, address, and age ~~and grade level~~ of any child of compulsory school age to be instructed ~~and assurance that the child shall receive instruction in reading, language, mathematics, science and social studies and that the child shall be assessed annually in accordance with this subdivision.~~ and assurance that the child shall receive instruction in reading, language, mathematics, science and social studies and that the child shall be assessed annually in accordance with this subdivision. The person providing home instruction shall notify the county superintendent upon termination of home instruction for a child who is of compulsory attendance age. Upon establishing residence in a new county, the person providing home instruction shall notify the previous county superintendent and submit a new notice of intent to the superintendent of the new county of residence: *Provided*, That if a child is enrolled in a public school, notice of intent to provide home instruction shall be given at least two weeks prior to withdrawing the child from public school; on or before the date home instruction is to begin.

(B) The person or persons providing home instruction shall submit satisfactory evidence of a high school diploma or equivalent; or a post-secondary degree or certificate from a regionally accredited institution or from an institution of higher education that has been authorized to confer a post-secondary degree or certificate in West Virginia by the West Virginia Council for Community and Technical College Education or by the West Virginia Higher Education Policy Commission.

(C) Annually, the person or persons providing home instruction shall outline a plan of instruction for the ensuing school year; and obtain an academic assessment of the child for the previous school year in one of the following ways:

(i) The child receiving home instruction takes a nationally normed standardized achievement test published or normed not more than ten years from the date of administration and administered under the conditions as set forth by the published instructions of the selected test and by a person qualified in accordance with the test's published guidelines in the subjects of reading, language, mathematics, science and social studies. The child is considered to have made acceptable progress when the mean of the child's test results in the required subject areas for any single year is within or above the fourth stanine or, if below the fourth stanine, shows improvement from the previous year's results;

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

(iii) A portfolio of samples of the child's work is reviewed by a certified teacher who determines whether the child's academic progress for the year is in accordance with the child's abilities. The teacher shall provide a written narrative about the child's progress in the areas of reading, language, mathematics, science and social studies and shall note any areas which, in the professional opinion of the reviewer, show need for improvement or remediation. If the narrative indicates that the child's academic progress for the year is in accordance with the child's abilities, the child is considered to have made acceptable progress; or

(iv) The child completes an alternative academic assessment of proficiency that is mutually agreed upon by the parent or legal guardian and the county superintendent.

(D) On or before June 30 annually, the person or persons providing home instruction shall obtain an academic assessment of the child for the previous school year and submit the results to the county superintendent. When the academic assessment takes place outside of a public school, the parent or legal guardian shall pay the cost. The requirement of an academic assessment is satisfied in one of the following ways: A parent or legal guardian shall maintain copies of each student's Academic Assessment for three years. When the annual assessment fails to show acceptable progress, the person or persons providing home instruction shall initiate a remedial program to foster acceptable progress. The county board upon request shall notify the parents or legal guardian of the child, in writing, of the services available to assist in the assessment of the child's eligibility for special education services. Identification of a disability does not preclude the continuation of home schooling. In the event that the child does not achieve acceptable progress for a second consecutive year, the person or persons providing instruction shall submit to the county superintendent additional evidence that appropriate instruction is being provided.

(i) The child receiving home instruction takes a nationally normed standardized achievement test to be administered under standardized conditions as set forth by the published instructions of the selected test in the subjects of reading, language, mathematics, science and social studies. The child's parent or legal guardian may not administer the test in any event. The publication date of the chosen test may not be more than ten years from the date the test is administered. The child is considered to have made acceptable progress when the mean of the child's test results in the required subject areas for any single year meets or exceeds the fiftieth percentile or, if below the fiftieth percentile, shows improvement from the previous year's results;

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

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

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

~~(E) When the annual assessment fails to show acceptable progress as defined under the appropriate assessment option set forth in paragraph (D) of this subdivision, the person or persons providing home instruction shall initiate a remedial program to foster acceptable progress. The county board shall notify the parents or legal guardian of the child, in writing, of the services available to assist in the assessment of the child's eligibility for special education services. Identification of a disability does not preclude the continuation of home schooling. In the event that the child does not achieve acceptable progress as defined under the appropriate assessment option set forth in paragraph (D) of this subdivision for a second consecutive year, the person or persons providing instruction shall submit to the county superintendent additional evidence that appropriate instruction is being provided. The parent or legal guardian shall submit to the county superintendent the results of the academic assessment of the child at grade levels three, five, eight and eleven, as applicable, by June 30 of the year in which the assessment was administered.~~

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

(d) A child is exempt from the compulsory school attendance requirement set forth in section one-a of this article if the requirements of this subsection, relating to physical or mental incapacity, are met. Physical or mental incapacity consists of incapacity for school attendance and the performance of school work. In all cases of prolonged absence from school due to incapacity of the child to attend, the written statement of a licensed physician or authorized school nurse is required. Incapacity shall be narrowly defined and in any case the provisions of this article may not allow for the exclusion of the mentally, physically, emotionally or behaviorally handicapped child otherwise entitled to a free appropriate education.

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

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

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

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

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

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

(k) A child is exempt from the compulsory school attendance requirement set forth in section one-a of this article if the requirements of this subsection, relating to alternative private, parochial, church or religious school instruction, are met. Exemption shall be made for any child attending any private school, parochial school, church school, school operated by a religious order or other nonpublic school which elects to comply with the provisions of article twenty-eight of this chapter.

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

Bill Sponsors: Kurcaba, Faircloth, Statler, Espinosa, McGeehan, Azinger, Upson, Kelly, Trecost and Ihle

House Bill 4225 **Relating to patriotic displays at public buildings**

Effective Date: June 6, 2016

Code Reference: Adds new section to code: §5-6-17

WVDE Contact: Sarah Stewart, Director of Policy & Government Relations
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Bill Summary:

The bill allows the governing body of public buildings to prominently display the motto “In God We Trust” on the public building. Any costs associated with displaying this motto may be paid with donations, gifts, grants and bequests received by the governing body.

Additionally, the bill allows the governing body of public buildings to display the POW-MIA flag in the same manner as other national and state flags are displayed at such building. Any costs associated with displaying this motto may be paid with donations, gifts, grants and bequests received by the governing body.

The Department of Administration is charged with developing guidelines for displaying the above referenced motto and the POW-MIA flag.

ARTICLE 6. STATE BUILDINGS.

§5-6-17. Display of the national motto and POW-MIA flag.

(a) The Legislature finds and declares that the national motto of "In God We Trust," is an important part of our country's history and heritage. Additionally, the POW-MIA flag is a symbol of citizen concern for U.S. military personnel taken as prisoners of war (POW) or listed as missing in action (MIA). These patriotic displays enhance our national pride and awareness, both of the sacrifices made by service members and our heritage as Americans.

(b) The governing authority of any public property, public buildings and any building, designed, constructed and maintained with public funds from the state, a county or a municipality may prominently display on the property or building, the American national motto, "In God We Trust." Costs associated with the display of the motto may be paid with any private donations, gifts, grants and bequests received by the governing authority.

(c) The governing authority of any public property, public buildings and any building, designed, constructed and maintained with public funds from the state, a county or a municipality may prominently display on the property or building, the POW-MIA flag in the same manner as prescribed by this code for the required display of national and state flags. Costs associated with the display of the POW-MIA flag may be paid with any private donations, gifts, grants and bequests received by the governing authority.

(d) The Department of Administration shall develop guidelines for display of the motto and POW-MIA flag.

Bill Sponsors: Overington, Sobonya, Hanshaw, Gearheart, Cadle, Householder, Butler, Moffatt, Frich, Rowan and Kelly

House Bill 4261 Prohibiting the sale or transfer of student data to vendors and other profit making entities

Effective Date: June 10, 2016

Code Reference: Amends §18-2-5h

WVDE Contact: Heather Hutchens, General Counsel
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Bill Summary:

The bill amends the Student Data Accessibility, Transparency and Accountability Act, which prohibits the West Virginia Department of Education from transferring confidential student information or certain redacted data to any federal, state or local agency or other person or entity, public or private.

Under the Act, “confidential student information” means data relating to a person’s Social Security number, or other identification number issued by a state or federal agency, except for the state-assigned student identifier as defined in this section, religious affiliation, whether the person or a member of their household owns or possesses a firearm, whether the person or their family are or were recipients of financial assistance from a state or federal agency, medical, psychological or behavioral diagnoses, criminal history, criminal history of parents, siblings or any members of the person’s household, vehicle registration number, driver’s license number, biometric information, handwriting sample, credit card numbers, consumer credit history, credit score, or genetic information.

The changes in the bill establish an exception that, in the event the either the ACT or the SAT is adopted as the state summative assessment, allows the ACT or the College Board to use a student’s assessment results and necessary directory or other permissible information under this Act. It also requires written consent containing a detailed list of confidential information required and the purpose for its requirement if information classified as confidential will be used.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-5h. Student Data Accessibility, Transparency and Accountability Act.

(a) *Title.* - This section shall be known and may be cited as the “Student Data Accessibility, Transparency and Account-ability Act.”

(b) *Definitions.* - As used in this section, the following words have the meanings ascribed to them unless the context clearly implies a different meaning:

(1) “Board” means the West Virginia Board of Education;

(2) “Department” means the West Virginia Department of Education;

(3) “Student Data system” means the West Virginia Department of Education statewide longitudinal data system;

(4) “Aggregate data” means data collected that is reported at the group, cohort, or institutional level with a data set of sufficient size that no information for an individual parent or student is identifiable;

(5) “Redacted data” means a student dataset in which parent and student identifying information has been removed;

(6) “State-assigned student identifier” means the unique student identifier assigned by the state to each student that shall not be or include the Social Security number of a student in whole or in part;

(7) “Student data” means data collected or reported at the individual student level included in a student’s educational record;

(8) “Provisional student data” means new student data proposed for inclusion in the student data system;

(9) “School district” means a county board of education, the West Virginia Schools for the Deaf and Blind and the West Virginia Department of Education with respect to the education programs under its jurisdiction that are not in the public schools;

(10) ‘Directory information’ means the following individual student information that is subject to disclosure for school-related purposes only: Student name, address, telephone number, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, indication of “graduate” or “nongraduate”, degrees and awards receives, most recent previous school attended, and photograph.

(11) “Confidential student information” means data relating to a person’s Social Security number, or other identification number issued by a state or federal agency, except for the state-assigned student identifier as defined in this section, religious affiliation, whether the person or a member of their household owns or possesses a firearm, whether the person or their family are or were recipients of financial assistance from a state or federal agency, medical, psychological or behavioral diagnoses, criminal history, criminal history of parents, siblings or any members of the person’s household, vehicle registration number, driver’s license number, biometric information, handwriting sample, credit card numbers, consumer credit history, credit score, or genetic information;

(12) “Affective computing” means human-computer interaction in which the device has the ability to detect and appropriately respond to its user’s emotions and other stimuli; and

(13) “Fair Information Practice Principles” are United States Federal Trade Commission guidelines that represent widely accepted concepts concerning fair information practice in an electronic marketplace.

(c) *Data Inventory - State Responsibilities.* - The Department of Education shall:

(1) Create, publish, and make publicly available a data inventory and dictionary or index of data elements with definitions of individual student data fields in the student data system to include, but not be limited to:

(A) Any individual student data required to be reported by state and federal education mandates;

(B) Any individual student data which has been proposed in accordance with paragraph (A), subdivision (7) of this subsection for inclusion in the student data system with a statement regarding the purpose or reason and legal authority for the proposed collection; and

(C) Any individual student data that the department collects or maintains with no current identified purpose;

(2) Develop, publish, and make publicly available policies and procedures to comply with all relevant state and federal privacy laws and policies, including, but not limited to, the Federal Family Educational Rights and Privacy Act (FERPA) and other relevant privacy laws and policies. The policies and procedures specifically shall include, but are not limited to:

(A) Access to student and redacted data in the statewide longitudinal data system shall be restricted to:

(i) The authorized staff of the department and the contractors working on behalf of the department who require access to perform their assigned duties as required by law and defined by interagency data-sharing agreements;

(ii) District administrators, teachers and school personnel who require access to perform their assigned duties;

(iii) Students and their parents; and

(iv) The authorized staff of other West Virginia state agencies as required by law and defined by interagency data-sharing agreements;

(B) Ensure that any inter-agency data-sharing agreements shall be posted on the Department website, and parents shall be notified of their right to opt out of sharing the child's data pursuant to agreements.

(C) Use only aggregate data in public reports or in response to record requests in accordance with this section;

(D) Unless otherwise prohibited by law, develop criteria for the approval of research and data requests from state and local agencies, the Legislature, researchers working on behalf of the department, and the public. Student data maintained by the department shall remain redacted; and

(E) Notification to students and parents regarding student privacy rights under federal and state law;

(3) Unless otherwise provided by law, the department shall not transfer confidential student information or redacted data that is confidential under this section to any federal, state or local agency or other ~~organization~~ person or entity, public or private, with the following exceptions:

(A) A student transfers out-of-state or a school or school district seeks help with locating an out-of-state transfer;

(B) A student leaves the state to attend an out-of-state institution of higher education or training program;

(C) A student registers for or takes a national or multistate assessment;

(D) A student voluntarily participates in a program for which a data transfer is a condition or requirement of participation;

(E) The department enters into a contract that governs databases, assessments, student or redacted data, special education or instructional supports with an in-state or out-of-state contractor for the purposes of state level reporting;

(F) A student is classified as “migrant” for federal reporting purposes; ~~or~~

(G) A federal agency is performing a compliance review; or

(H) In the event that the ACT or the SAT tests are adopted for use as the state summative assessment, nothing in this article prevents the ACT or the College Board from using a student's assessment results and necessary directory or other permissible information under this Act. If information classified as confidential is required, the ACT, SAT or College Board shall obtain affirmative written consent from the student if the student is eighteen years of age or older, or from the student's parent or guardian if the student is under eighteen years of age. The consent shall contain a detailed list of confidential information required and the purpose of its requirement.

(4) Develop a detailed data security plan that includes:

(A) Guidelines for the student data system and for individual student data including guidelines for authentication of authorized access;

(B) Privacy compliance standards;

(C) Privacy and security audits;

(D) Breach planning, notification and procedures;

(E) Data retention and disposition policies; and

(F) Data security policies including electronic, physical, and administrative safeguards, such as data encryption and training of employees;

(5) Ensure routine and ongoing compliance by the department with FERPA, other relevant privacy laws and policies, and the privacy and security policies and procedures developed under the authority of this act, including the performance of compliance audits;

(6) Ensure that any contracts that govern databases, assessments or instructional supports that include student or redacted data and are outsourced to private vendors include express provisions that safeguard privacy and security and include penalties for noncompliance; and

(7) Notify the Governor and the Legislature annually of the following:

(A) New student data proposed for inclusion in the state student data system. Any proposal by the Department of Education to collect new student data must include a statement regarding the purpose or reason and legal authority for the proposed collection. The proposal shall be announced to the general public for a review and comment period of at least sixty days and approved by the state board before it becomes effective. Any new student data collection approved by the state board is a provisional

requirement for a period sufficient to allow schools and school districts the opportunity to meet the new requirement;

(B) Changes to existing data collections required for any reason, including changes to federal reporting requirements made by the U.S. Department of Education and a statement of the reasons the changes were necessary;

(C) An explanation of any exceptions granted by the state board in the past year regarding the release or out-of-state transfer of student or redacted data; and

(D) The results of any and all privacy compliance and security audits completed in the past year. Notifications regarding privacy compliance and security audits shall not include any information that would itself pose a security threat to the state or local student information systems or to the secure transmission of data between state and local systems by exposing vulnerabilities.

(8) Notify the Governor upon the suspicion of a data security breach or confirmed breach and upon regular intervals as the breach is being managed. The parents shall be notified as soon as possible after the suspected or confirmed breach.

(9) Prohibit the collection of confidential student information as defined in subdivision ten of subsection (b) of this section.

(d) *Data Inventory - District Responsibilities.* - A school district shall not report to the state the following individual student data:

- (1) Juvenile delinquency records;
- (2) Criminal records;
- (3) Medical and health records; and
- (4) Student biometric information.

(e) *Data Inventory - School Responsibilities.* - Schools shall not collect the following individual student data:

- (1) Political affiliation and beliefs;
- (2) Religion and religious beliefs and affiliations;
- (3) Any data collected through affective computing;
- (4) Any data concerning the sexual orientation or beliefs about sexual orientation of the student or any student's family member; and
- (5) Any data concerning firearm's ownership by any member of a student's family.

(f) *Data Governance Manager.* - The state superintendent shall appoint a data governance manager, who shall report to and be under the general supervision of the state superintendent. The data governance manager shall have primary responsibility for privacy policy, including:

- (1) Assuring that the use of technologies sustain, and do not erode, privacy protections relating to the use, collection, and disclosure of student data;

(2) Assuring that student data contained in the student data system is handled in full compliance with the Student Data Accessibility, Transparency, and Accountability Act, FERPA, and other state and federal privacy laws;

(3) Evaluating legislative and regulatory proposals involving collection, use, and disclosure of student data by the Department of Education;

(4) Conducting a privacy impact assessment on proposed rules of the state board and department in general and on the privacy of student data, including the type of personal information collected and the number of students affected;

(5) Coordinating with the general counsel of the state board and department, other legal entities, and organization officers to ensure that programs, policies, and procedures involving civil rights, civil liberties, and privacy considerations are addressed in an integrated and comprehensive manner;

(6) Preparing a report to the Legislature on an annual basis on activities of the department that affect privacy, including complaints of privacy violations, internal controls, and other matters;

(7) Establishing department-wide policies necessary for implementing Fair Information Practice Principles to enhance privacy protections;

(8) Working with the Office of Data Management and Analysis, the general counsel, and other officials in engaging with stakeholders about the quality, usefulness, openness, and privacy of data;

(9) Establishing and operating a department-wide Privacy Incident Response Program to ensure that incidents are properly reported, investigated and mitigated, as appropriate;

(10) Establishing and operating a process for parents to file complaints of privacy violations;

(11) Establishing and operating a process to collect and respond to complaints of privacy violations and provides redress, as appropriate; and

(12) Providing training, education and outreach to build a culture of privacy across the department and transparency to the public.

The data governance manager shall have access to all records, reports, audits, reviews, documents, papers, recommendations, and other materials available to the department that relate to programs and operations with respect to his or her responsibilities under this section and shall make investigations and reports relating to the administration of the programs and operations of the department as are necessary or desirable.

(g) *Parental rights regarding child's information and education record.* - Parents have the right to inspect and review their child's education record maintained by the school and to request student data specific to their child's educational record. School districts must provide parents or guardians with a copy of their child's educational record upon request. Whenever possible, an electronic copy of the educational record must be provided if requested and the identity of the person requesting the information is verified as the parent or guardian.

The state board shall develop guidance for school district policies that:

(1) Annually notify parents of their right to request student information;

(2) Ensure security when providing student data to parents;

(3) Ensure student data is provided only to the authorized individuals;

(4) Detail the timeframe within which record requests must be provided;

(5) Ensure that school districts have a plan to allow parents to view and access data specific to their child's educational record and that any electronic access provided is restricted to eligible parties;

(6) Ensure compliance in the collection, use and disclosure of directory information and providing parents or guardians with a form to limit the information concerning their child in directory and subject to release; and

(7) Informing parents of their rights and the process for filing complaints of privacy violations.

(h) *State Board Rules.* - The state board shall adopt rules necessary to implement the provisions of the Student Data Accessibility, Transparency, and Accountability Act.

(i) *Effect on Existing Data.* - Upon the effective date of this section, any existing student data collected by the Department of Education shall not be considered a new student data collection under this section.

Bill Sponsors: Shott, McCuskey, Cowles, O'Neal, Butler, Marcum, Shaffer, Sobonya, Folk, Overington and Azinger

House Bill 4295 Relating to School Innovation Zones Act

Effective Date: June 1, 2016

Code Reference: Adds new sections to code: §18-5B-14, 18-5E-1, 18-5E-2, 18-5E-3, 18-5E-4, 18-5E-5, 18-5E-6, 18-5E-7

WVDE Contact: Michele Blatt, Chief Accountability Officer
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Bill Summary:

The bill terminates funding for School Innovation Zones and Local Solution Dropout Prevention and Recovery Innovation Zones.

The bill creates the Innovation in Education Act, which will be supported with funds previously used to support IZs. The purpose of the Act is to encourage and incentivize public schools to implement key innovational education priorities and improve overall student outcomes. The Act provides a mechanism for a public school to redesign its delivery of instruction, operate under greater flexibility and enhance student engagement to increase educational achievement for a school that demonstrates innovation in education in any of the following priority areas:

- Science, technology, engineering and math (STEM)
- Community school partnership
- Entrepreneurship
- Career pathways

The bill allows the state board may designate a school as a STEM, community school partnership, entrepreneurship or career pathways innovation in education school. The board is directed to enact a policy directing schools on the process for applying to be an innovation in education school. In awarding a designation to a school, the state board must:

- Grant a designation only to applicants who have demonstrated competence in all evaluation factors (as outlined in board policy) and who have demonstrated their capacity to operate an Innovation in Education school that will increase student achievement
- Base determinations on documented evidence collected through the application process
- If appropriate, include in a designation determination reasonable conditions that the applicant must meet before commencing operation under a designation
- Decline weak or inadequate applications and clearly state reasons for denial
- Convey decisions on applications to the applicants in writing

A STEM, community school partnership, entrepreneurship or career pathways innovation in education school designated must operate according to an innovation in education plan developed by the school faculty with input from the county board, the county superintendent and the students of such school, if the designated school is a high school. The innovation in education plan must address each of the following items:

- Description of how school will address overall climate and culture of the school as a high performing learning environment in which every child may succeed to the best of his/her ability, including but not limited to the following measurable annual goals:
 - Increase overall student achievement
 - Address dropout prevention
 - Transform school culture; and
- Curriculum plan
- Measurable annual performance goals that will serve as the basis of evaluating the Innovation in Education school, including but not limited to the following:
 - Student attendance
 - Student safety and discipline

- Student promotion and graduation and dropout rates
- Student performance on the state-wide summative assessment
- Progress in areas of academic underperformance
- Progress among subgroups of students, including low-income students and students receiving special education
- Postsecondary readiness (high schools only)
- Parent and community engagement
- Budget plan
- School schedule plan
- Staffing plan and professional development plan
- Policies and procedures plan that includes:
 - Detailed description of the unique operational policies and procedures to be used by the school seeking designation and how the procedures will support school performance and student achievement
 - Any exemption to rule, policy or statute the school is seeking
- School's plan, if any, for using additional internal/external metrics of the performance agreed to by the school and the county board to measure the school's performance and student success
- Opportunities and expectation for parent involvement
- Any other information required by the state board

An Innovation in Education school designated by the state board is not permitted to commence or continue operations without a signed operational agreement between the county board and the school principal.

Finally, the bill requires evaluation of Innovation in Education designated schools. After the third full year of designation, the county superintendent must issue a performance report summarizing the school's performance record based on the data collected under the school's plan and operational agreement. The report is to include information on any weaknesses or concerns perceived by the superintendent concerning the school that may jeopardize its designation. After the fourth year of the designation, the county superintendent shall submit an evaluation to the state board for review detailing whether or not the school has met its goals as outlined in the school's plan and operational agreement.

ARTICLE 5B. SCHOOL INNOVATION ZONES ACT.

§18-5B-14. Termination of funding for School Innovation Zones and Local Solution Dropout Prevention and Recovery Innovation Zones.

No school, group of schools, district, subdivision or department of a group of schools, or a subdivision or department of a school designated or to be designated as an Innovation Zone or Local Solution Dropout Prevention and Recovery Innovation Zone shall receive any funding pursuant to this article after June 30, 2016.

ARTICLE 5e. INNOVATION IN EDUCATION ACT.

§18-5E-1. Purpose.

The purpose of this act is to encourage and incentivize public schools to improve overall student outcomes through the implementation of key innovational priorities for improving education in the following areas:

- (1) Science, technology, engineering and math (STEM);
- (2) Community school partnership;
- (3) Entrepreneurship;
- (4) Career pathways; and
- (5) The arts.

This act provides a mechanism for public schools designated by the state board as Innovation in Education schools to redesign their curriculum, instructional delivery and instructional strategies, to enhance student engagement, to develop meaningful community partnerships and to operate under greater flexibility to increase student achievement.

§18-5E-2. Innovation in Education school defined.

(a) An Innovation in Education school is a public school in this state that applies to and is designated by the state board in accordance with this article as an Innovation in Education School with a principal focus in one of the following areas:

- (1) Science, technology, engineering and math (STEM);
- (2) Community school partnership;
- (3) Entrepreneurship;
- (4) Career pathways; and
- (5) The arts.

(b) Nothing in this article prohibits an Innovation in Education school from incorporating more than one of the attributes of STEM education, community school partnerships, entrepreneurship, career pathways or the arts into its program design, notwithstanding the primary designation under which it applies or is subsequently designated.

- (c) An Innovation in Education school:

(1) Shall provide a program of public education that includes one or more of the grade levels prekindergarten to grade twelve, including any associated post-secondary dual credit, advanced placement and industry or workforce credential programs;

(2) Shall design its educational program to meet or exceed the student performance standards required under section five, article two-e of this chapter and is subject to all student assessment, accreditation and federal accountability requirements applicable to other public schools in this state. However, nothing shall prohibit an Innovation in Education school from establishing additional student assessment measures or implementing competency-based course completion strategies that go beyond state requirements;

(3) Shall operate according to an Innovation in Education plan developed by the school's principal and faculty with input from its local school improvement council, the county board, the county superintendent and, if the school is a high school, the students of the school;

(4) Shall, if designated by the state board as an Innovation in Education Demonstration School, host visits and tours of its facility and programs to provide information and an opportunity to observe any successful innovations which may be replicated in other schools. The school may require the payment of a fee to off-set the cost of hosting such visits and tours; and

(5) May solicit and accept gifts, donations or grants for school purposes from public or private sources in any manner that is available to a local school district and expend or use such gifts, donations or grants in accordance with the conditions prescribed by the donor except that a gift, donation or grant may not be accepted if subject to a condition that is contrary to any provision of law or term of the school's Innovation in Education plan. Any monies received by an Innovation in Education school from any source remaining in the school's accounts at the end of a fiscal year shall remain in its accounts for use during subsequent fiscal years.

§18-5E-3. Application for Innovation in Education school designation; application review and approval; state board rule.

(a) The state board may designate a school as a STEM, community school partnership, entrepreneurship, career pathways or the arts Innovation in Education school in accordance with this article and shall promulgate a rule, including an emergency rule if necessary, in accordance with article three-b, chapter twenty-nine-a of this code to implement the provisions of this article. The rule shall include at least the following:

(1) A process for a school to apply for designation as an Innovation in Education school in STEM, community school partnership, entrepreneurship, career pathways or the arts;

(2) Clear and concise application evaluation factors in rubric form, including standards for the state board to review and make a determination of whether to designate an applicant as an Innovation in Education school;

(3) The manner, time and process for application submission;

(4) The form and necessary contents of the application, including but not limited to, the following:

(A) The proposed mission and vision of the school as it pertains to becoming an Innovation in Education school, including identification of the designation it seeks to obtain as a primary focus on which may include: (i) Science, technology, engineering and math (STEM); (ii) community school partnership; (iii) entrepreneurship; (iv) career pathways; or (v) the arts;

(B) An executive summary;

(C) The school's proposed academic program, including a description of the school's instructional design, learning environment, class structure, curriculum overview, teaching methods, research basis and other elements required in the school's Innovation in Education plan pursuant to section four of this article;

(D) A clear articulation of the areas of autonomy and flexibility in curriculum, budget, school schedule and calendar, professional development, and staffing policies and procedures which would require a waiver of policy or code; and

(E) The school's Innovation in Education plan; and

(7) Following the initial evaluation of Innovation in Education schools as provided in section six of this article, the process by which the state board will periodically review the performance and student success of Innovation in Education schools, reaffirm or reconsider the designation of a school, and identify exemplary schools to serve as demonstration sites.

(b) The state board may provide for the West Virginia Department of Education to independently assess applicants based on the evaluation factors rubric and provide the state board with this assessment. The state board shall consider the evaluation factors in rubric form in making any Innovation in Education school designation determination. In making a designation determination, the state board shall:

(1) Grant a designation only to applicants who have demonstrated competence in each element of the evaluation factors and who have demonstrated their capacity to operate an Innovation in Education school that will increase student achievement;

(2) Base determinations on documented evidence collected through the application review process;

(3) If appropriate, include in a designation determination reasonable conditions that the applicant must meet before commencing operation under the designation, including resubmission of the application;

(4) Decline weak or inadequate applications and clearly state its reasons for denial;

(5) Make and announce all designations of Innovation in Education schools in a meeting open to the public and clearly state in a resolution the reasons for the decisions. A copy of the resolution shall be submitted to Legislative Oversight Commission on Education Accountability; and

(6) Convey its determination on an application in writing to the applicant.

(c) An Innovation in Education school may not commence or continue operations without a signed operational agreement as provided in section five of this article between the county board and the school principal.

§18-5E-4. Innovation in Education Plan; required contents; measurable annual performance goals; uses.

The Innovation in Education Plan for a STEM, community school partnership, entrepreneurship, career pathways or the arts Innovation in Education school shall include each of the following:

(1) A description of how the school will address the overall climate and culture of the school as a high performing learning environment in which every child may succeed to the best of his or her ability, including but not limited to measurable annual goals to:

(A) Increase overall student achievement;

(B) Address dropout prevention; and

(C) Transform school culture;

(2) A curriculum plan that includes a detailed description of the curriculum and related programs for the proposed school and how the curriculum is expected to improve school performance and student achievement;

(3) Measurable annual performance goals to assess the school's performance and student success across multiple measures and that will serve as the basis evaluating the Innovation in Education school, including but not limited to, goals relating to the following:

(A) Student attendance;

(B) Student safety and discipline;

(C) Student promotion and graduation and dropout rates;

(D) Student performance on the state-wide summative assessment and other assessment required by the state board;

(E) Progress in areas of academic underperformance;

(F) Progress among subgroups of students, including, but not limited to, low-income students and students receiving special education;

(G) With respect to high school, postsecondary readiness, including the percentage of graduates submitting applications to postsecondary institutions, and postsecondary enrollment or employment; and

(H) Parent and community engagement; and

(4) A budget plan that includes a detailed description of how funds will be used in the proposed school to support school performance and student achievement that is or may be different than how funds are used in other public schools in the district;

(5) A school schedule plan that includes a detailed description of the ways the program or calendar of the proposed school may be enhanced or expanded;

(6) A staffing plan and professional development plan that includes a detailed description of how the school may provide professional development to its administrators, teachers and other staff;

(7) A policies and procedures plan that includes:

(A) A detailed description of the unique operational policies and procedures to be used by the school seeking designation and how the procedures will support school performance and student achievement; and

(B) Any exemptions to rule, policy or statute the school is seeking: *Provided*, That a school may not request an exemption nor may an exemption be granted from any assessment program required by the state board or any provision of law or policy required by the Every Student Succeeds Act of 2015 or other federal law;

(8) The school's plan, if any, for using additional internal and external metrics of the performance agreed to by the school and the county board to measure the school's performance and student success;

(9) Opportunities and expectations for parent involvement; and

(8) Any other information the state board requires.

§18-5E-5. Operational agreement between Innovation in Education school and county board.

An Innovation in Education school designated by the state board may not commence or continue operations without a signed operational agreement between the county board and the school principal which sets forth at least the following:

(1) Any conditions which must be met before the Innovation in Education school may begin full operations. If necessary, the full implementation of an Innovation in Education school may be postponed for up to one school year following its initial designation to enable all conditions necessary for full operation to be met;

(2) Any material term of the school's Innovation in Education Plan concerning curriculum, budget, school schedule, calendar, staffing, professional development and policies and procedures to be adhered to by both the county board and the school;

(3) An agreed-upon process for amending or refining the school's Innovation in Education Plan to improve the school's performance and student success, including but not limited to, the request for additional waivers of rules, policies, interpretations and statutes through the local school improvement council process;

(4) The annual performance targets set by the county board and the school to assess and evaluate the school's progress in achieving its annual measureable goals as set forth in its Innovation in Education Plan, including any additional internal and external metrics of performance agreed to by the school and the county board to measure the school's performance and student success. The annual performance targets may be refined or amended by mutual agreement of the county board and the school after the school has been fully operational for one year and has collected baseline performance data;

(5) The process and criteria that the county board will use to annually monitor and evaluate the overall performance and student success of the school, including a process to conduct annual site visits;

(6) Any information needed by the county board from the school for the purposes of accountability and reporting by the school on the implementation of its mission as an Innovation in Education school;

(7) The process the county board will use to notify the school of any deficiencies and the process by which the school may submit an improvement plan; and

(8) In the event that an Innovation in Education school's performance appears unsatisfactory, specific provisions addressing the parameters under which the county board may promptly notify the school in writing of perceived problems and provide reasonable opportunity for the school to remedy the problems, or if not remedied, may intervene or recommend to the state board that it place the school's designation on probationary status, require a remedial action plan and potentially revoke the designation. At a minimum, these parameters shall include the circumstances of poor fiscal management and a lack of academic progress.

§18-5E-6. Evaluation of Innovation in Education designated schools.

(a) During its third full year of operation the county superintendent shall issue a performance report on the Innovation in Education school. The performance report shall summarize the school's performance record to date based on the data collected under school's Innovation in Education Plan and operational agreement and shall provide notice of any weaknesses or concerns perceived by the superintendent concerning the school that may jeopardize its designation if not timely rectified. The school and the superintendent shall mutually agree to a reasonable time period for the school to respond to the performance report and submit any corrections to the report.

(b) After its fourth full year of operation, and periodically thereafter as may be provided by the state board, the Innovation in Education school shall be evaluated by the county superintendent. The county superintendent shall submit the evaluation to the county board and the state board. The evaluation shall determine whether the school has met the annual goals outlined in its Innovation in Education Plan and operational agreement and assess the implementation of the Innovation in Education plan at the school.

(c) The county superintendent may recommend to the county board and state board in the evaluation:

(1) To amend or suspend one or more components of the Innovation in Education Plan and operational agreement if the county superintendent determines an amendment or suspension is necessary to improve the performance and student success of the school;

(2) To amend or suspend one or more components of the Innovation in Education Plan and operational agreement if the county superintendent determines an amendment or suspension is necessary because of subsequent changes in the district that affect one or more components of such Innovation in Education Plan;

(3) To support continued operation of the Innovation in Education school in accordance with its Innovation in Education Plan and operational agreement; or

(4) To recommend to the state board that the school be designated as an Innovation in Education demonstration school based on its exemplary performance and student success.

(d) Based on the county superintendent's evaluation and a data analysis conducted by the West Virginia Department of Education the state board may:

(1) Amend or recommend an amendment to one or more components of the school's Innovation in Education Plan and operational agreement;

(2) Suspend one or more components of the school's Innovation in Education Plan and operational agreement;

(3) Affirm continuation of the Innovation in Education school under its current Innovation in Education Plan and operational agreement; or

(4) If it is determined that the school has substantially failed to meet the goals outlined in its Innovation in Education Plan and operational agreement, terminate the Innovation in Education designation of the school.

(e) An amendment, suspension or termination may not take place before the completion of the school year.

§18-5E-7. Innovation in education fund.

There is hereby created in the State Treasury a special revenue fund to be known as the "Innovation in Education Fund." The fund shall consist of all moneys received from whatever source to further the purpose of this article. The fund shall be administered by the state board solely for the purposes of this article, including providing grants and other financial assistance to innovation in education designated schools to implement and carry out such schools innovation in education plans. Any moneys remaining in the fund at the close of a fiscal year shall be carried forward for use in the next fiscal year. Fund balances shall be invested with the state's consolidated investment fund and any and all interest earnings on these investments shall be used solely for the purposes that moneys deposited in the fund may be used pursuant to this article.

House Bill 4301 **Relating to a framework for initiating comprehensive transformation of school leadership**

Effective Date: June 9, 2016

Code Reference: Adds new section to code: §18-2-36

WVDE Contact: Michele Blatt, Chief Accountability Officer, Division of School Effectiveness
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Bill Summary:

House Bill 4301 establishes a framework for leadership reform in West Virginia schools. Legislative findings based on Imagine West Virginia and the Education Efficiency Audit of West Virginia's Primary and Secondary Education System indicate that the principal exerts the most influence over the process of continuous school improvement. However, without teacher involvement in planning and implementation it is unlikely that improvement will be sustained. Further, in order for effective curriculum and instruction to occur, principals and teachers must engage in school-level needs assessment that drives professional learning and classroom instruction.

Increased demands on principals have resulted in limited time to fulfill the role of instructional leader. Principals must guide instruction while at the same time be effective managers and promoters of a cohesive climate and culture. According to legislative findings, models for distributed leadership among teachers and/or additional staff members should be vetted through stakeholder input.

The bill establishes a framework for comprehensive reform with the following considerations:

1. Leadership changes will impact not only the public education system but also educator certification programs. Therefore, the process will require purposeful planning and sequential steps to make both changes in preparation and support current leaders through the transition.
2. West Virginia school districts vary in terms of size, structure, and resources. Districts should be afforded appropriate flexibility with regard to the implementation process.
3. The state board will seek broad input from stakeholders such as principals, teachers, superintendents, county board members, legislators, educator preparation program personnel, a Governor's designee, etc. This group will provide guidance to the state board in the recommendation of amendments to state policy.

The bill lists issues for stakeholder consideration in specific detail, such as principal leadership, teacher leadership, a leadership development pipeline, and issues related to local and state systems of support.

No later than the regular Legislative session 2018 the state board will present stakeholder findings regarding: leadership structure and roles and responsibilities for principals and teacher leaders; pending and completed policy recommendations for amendments; a sequential outline of needed changes and phased implementation; and the estimated cost of the recommendations and statutory changes.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-36. Framework for initiating comprehensive transformation of school leadership.

(a) Legislative findings.--

(1) The report and recommendations of Imagine West Virginia on Transforming School Leadership in West Virginia are clearly on point that school leadership and the essential role of the principal in achieving a high performing school are well documented, long studied and too often set aside. The report and recommendations also clearly recognize the value of providing teachers with authentic opportunities and resources to lead, influence professional practice, and assume shared responsibility for school and classroom improvement. The recommendations related to school leadership, the role, preparation and selection of the principal and a career ladder for teacher leaders once again bring the importance of strong school-level instructional leadership, including mechanisms for career advancement for teachers in leadership roles, to the forefront of discussions on school improvement. The state board posted the report recommendations for comment with the intent of providing a starting point for deeper deliberation and stakeholder input.

(2) Among the general conclusions of the Education Efficiency Audit of West Virginia's Primary and Secondary Education System is the need to drive more educational decision-making down to the level closest to the students, to the classroom and building level, allowing principals to lead and teachers to deliver the most effective curriculum for their students, and then holding them accountable for student success. Such a system heightens the imperative for strong school leadership. The school climate and culture observed in high quality schools reflects strong leadership that develops shared beliefs and values among the staff, high expectations for all, and a safe, orderly and engaging environment. A key concept in developing good school leadership and then holding schools accountable for student performance is that they have the authority, resources and flexibility to affect the outcome.

(3) An increasing body of knowledge concludes that unless teachers are collectively involved in the planning and implementation of school improvement, it is unlikely to be sustained. Successful schools are distinguishable from unsuccessful ones by the frequency and extent to which teachers discuss professional practices, collectively design materials and inform and critique one another. Even successful schools must be self-renewing systems, learning organizations marked by deliberate effort to identify helpful knowledge and spread its use within the organization. Again, leadership by the principal combined with authentic roles for teacher leaders are necessary ingredients.

(4) The school responsibilities for accreditation adopted by the state board to implement West Virginia's performance based accreditation system embodied in section five, article two-e of this chapter, the Process for Improving Education, include a collective and collaborative process for continuous school improvement led by the principal. The process includes data analysis, goal setting, strategic planning, progress review and results analysis. It includes identifying what and where improvement is needed, establishing goals and a strategic plan for improved student learning, defining the roles and responsibilities of all team members, securing the professional development needed to achieve the goals, and sharing the responsibility and rewards for the results. The principal must foster and develop distributed leadership in order to focus collective action for improved school performance. The school's faculty and members of the Local School Improvement Council must participate effectively in the self-assessment and annual and cyclical reviews of school performance to effect a process of continuous improvement.

(5) The prior studies and Imagine WV report in which they are cited recognize that the job of principal has become overwhelming. The report focuses on instructional leadership as the most important role of the principal, but notes that it has become a less prominent function in the overall job of being a principal. The diminished time devoted to instructional leadership has been a gradual crowding out by other necessary functions, rather than a conscience choice. Just as important for high performing schools is the strong leadership role necessary for operations management, establishing the climate and culture of the school as a learning environment, and instructional leadership. All require strong leadership skills, but in a different context. They require different skill sets, all of which are needed to lead high quality schools.

The reality, however, is that these many responsibilities inherent in the operation of high quality schools compete for time and it is difficult for principals to do them all well. Various scenarios have been discussed for enabling a heightened focus on instructional leadership, including the introduction of school manager positions or the broader use of assistant principals in all schools to allow greater principal attention to instructional improvement. A further scenario builds upon the research that high quality schools are distinguishable by the collective and collaborative involvement of teachers in sustained school improvement. It brings a heightened focus on instructional leadership to assist, and under direction of, the principal by providing authentic opportunities for teacher leaders to participate and assume greater responsibility. This scenario involves various approaches to reward excellent teaching, to provide the time necessary for excellent teachers to lead instructional improvement, and to enable excellent teachers to advance in their teaching careers and levels of compensation through instructional leadership positions without leaving the classroom completely.

(6) Emerging research and policy direction toward distributed leadership and shared responsibility for results as cited in these findings, elevate the focus for all teachers on instructional improvement, and particularly for excellent teachers to assume instructional leadership roles. In most schools today, excellent teachers rarely have authority, time, or sustained incentives to lead while teaching. Developing models for supporting new teacher induction, for professional development and mentoring for struggling teachers, and for teacher collaboration on instructional improvement all involve a role for teacher leaders. As professional educators, teachers should have an established structure through which they can advance their careers as experienced instructional leaders without leaving classroom teaching completely. Like other professionals, teachers should be afforded an opportunity to take on more responsibility, share their expertise with other less experienced teachers and advance their teaching career as teacher leaders. Like other professions, teaching should provide for a routine progression of continuing education for license maintenance and opportunities for salary advancement as additional knowledge, skill and expertise are acquired that directly affect student learning. Examples of leadership roles that may be performed by teachers include serving on the school leadership team, leading collective and collaborative processes for strategic improvement planning, leading teacher collaboration processes within the school day, leading the faculty senate, serving on the local school improvement council, supervising student teachers, serving as mentors and models for new and struggling teachers and teachers-in-residence, and helping arrange school level professional development. Ideally, in an opportunity culture for teachers, career paths and teacher pay will recognize and reward the value of excellent teaching and teacher leadership roles for extending excellent teaching to all students consistently.

(7) Education is a human resources intensive endeavor. It competes for talented professionals with other occupations with higher levels of compensation, particularly in the STEM fields. While opportunities for career advancement and added compensation for teachers under career ladder type arrangements may improve the attractiveness of the profession for excellent teachers, it will not replace the need for general salary increases. In West Virginia and nationally, the enrollments in college and university teacher preparation programs are declining. For West Virginia particularly, the need to recruit and retain excellent teachers is exacerbated by the increasing numbers of retirements of a very senior teaching force. Increasingly important will be a variety of methods for encouraging and supporting an interest in the teaching profession, preparing the next generation of educators, actively recruiting top talent graduating from teacher preparation programs and supporting their development through the first years of their careers. In the human resources intensive business of education, human resource development should not be left to chance.

(b) *Legislative purpose, intent, process for stakeholder input; items for recommendation.--*

(1) The purpose of this section is to provide a framework for development of the statutory and policy changes needed to support and sustain a comprehensive transformation of school leadership. A further purpose of this section is to initiate the comprehensive transformation of school leadership through a general statement of legislative intent to pursue this change in public policy and, thereby, provide assurances and parameters under which the work toward this change may proceed. It is expected that the transformation will affect both the public education system and the educator preparation programs at institutions of higher education to develop, prepare and credential teacher, principal and administrative

leaders to accomplish a systemic change in school leadership. It is expected that the transformation will involve multiple, and in some cases sequential, steps that may require a period of years to accomplish to ensure that the necessary supports are in place to enable school leaders to meet the expectations of new roles and responsibilities and to finance the necessary improvements.

(2) It is further expected that the transformation will involve roles and responsibilities for leadership that may not match the certification and training of all of those currently in leadership positions. Therefore, the options for implementation will need to take the existing legacy into account to minimize cost and system disruption while bringing new models of leadership for instructional improvement to every school expeditiously. Finally, it is expected that district size and resources, school size and programmatic level, existing leadership positions, and differences in school performance may all be factors that will affect the transformation of school leadership within the various school systems and they should be afforded ample local flexibility for establishing priorities and implementation within their schools.

(3) The findings set forth in subsection (a) of this section provide a context for considering a leadership framework that promotes instructional improvement and for determining the statutory and policy changes needed to enable it. It is the intent of the Legislature to begin this transformation through a process of broad stakeholder input to consider and make recommendations to accomplish this task. Therefore, the state board shall convene the relevant stakeholders, including, but not limited to, principals, teachers, superintendents, county board members, educator preparation program personnel, legislators or their designees and a Governor's designee to assist the state board in developing state board policies, practices and recommended statutory changes consistent with the findings of this section. Among the issues the state board shall consider are:

(A) Issues relating to principal leadership that include, but are not limited to, the following:

(i) A clear definition of the role and responsibilities of principals and assistant principals in statute and policy that include leadership for instructional improvement;

(ii) The role and responsibilities of the principal as the legally responsible party in charge of the school with the added need for authority and flexibility to delegate responsibilities to accomplish a distributed leadership model for instructional improvement;

(iii) Leadership standards that include the essential role of the principal for leadership in developing a culture of collegiality and professionalism among the staff so that improving student learning is a shared responsibility;

(iv) The scope of topics to be covered in the preparation programs and certifications for principals and assistant principals;

(v) A process of preparing new principals that may include clinical experiences and mentoring through a partnership between higher education and county boards. It may include a commitment of county board resources to assist in the training, as well as a commitment from the candidate to stay in the system for some period of time;

(vi) The additional school-level tools needed to give good principals the flexibility and authority necessary for success, including additional independent, school-level authority needed to adequately fulfill the responsibilities;

(vii) A method of implementation under which the capacity of the principal for leading is a condition precedent to implementation of methods for distributed leadership;

(viii) Limitations on the employment of new principals to those candidates prepared and credentialed under the new standards, or some comparable standards approved by the state board, and limitations on the applicability of Master's degrees in education administration for advanced salary

classification if earned after a certain date following state board approval of a new preparation program; and

(ix) Differentiation and improvements in the salary schedules and increments for principals subject to the newly defined roles and responsibilities for school leadership;

(B) Issues relating to teacher leadership that include, but are not limited to, the following:

(i) Various approaches that reward excellent teaching, provide authentic opportunities for excellent teachers to influence professional practice and enable excellent teachers to advance in their teaching careers and compensation without leaving the classroom completely including, but are not limited to, incentive increments, career lattice steps and career ladder positions;

(ii) Incentive increments in the salary scale for advanced degrees, approved course work or advanced certification in the teacher's area of certification and for excellent teaching;

(iii) Career lattice steps that provide extra pay and/or extra time for teachers for specific types of assignments made by the principal or, in some cases, by the faculty senate for instructional and school improvement work. These types of steps may not be permanent and may change or involve different teachers and team members from time to time depending on the needs of the school and the ability of teachers to participate;

(iv) Career ladder steps that are permanent steps for master teachers who possess the appropriate leadership certification to progress in teacher leadership positions with additional compensation and reduced teaching load to assume duties under the direction of the principal without leaving the classroom completely;

(v) A clear definition in statute and policy of the role and responsibilities of career ladder teacher leaders that includes leadership for instructional improvement;

(vi) Career ladder teacher leader standards that include the essential role of leadership in developing a culture of collegiality and professionalism among the staff so that improving student learning is a shared responsibility;

(vii) The scope of topics to be covered in the preparation programs and certifications for career ladder teacher leaders;

(viii) Appropriate limitations on the number of teachers in career lattice positions and on the number of teachers in career ladder positions, separately, for schools of different size and programmatic level; and

(ix) An additional incentive increment in the salary scale for excellent teachers and principals who accept transfer to a low performing school for a certain number of years;

(C) Issues relating to a leadership development pipeline that include, but are not limited to, the following:

(i) A comprehensive leadership development process for school systems to identify, recruit and train outstanding leadership candidates consistent with numbers needed to meet the projected needs of the school system;

(ii) A method for school-level identification of those teachers who most clearly demonstrate budding leadership qualities as potential candidates for development into the career ladder teacher leaders, assistant principals and principals of the future;

(iii) Appropriate school district and higher education partnerships for preparation, support and credentialing at each step so the focus on instructional leadership will become pervasive; and

(iv) Allowances that may be necessary to fill positions during the transition to new leadership models; and

(D) Issues related to local and state systems of support that include, but are not limited to, the following:

(i) Information management tools that enhance the capacity of school leaders and leadership teams to quickly assemble performance information on student learning and other aspects of the school's learning environment into the actionable intelligence needed for strategic planning, adjusting instructional strategies and focusing on individual student needs;

(ii) School-level tools or resources that give principals a flexible, timely and targeted way to meet the professional development needs of teachers at their school;

(iii) Methods to help ensure the uniformity and inter-rater reliability of the portion of the professional personnel performance evaluation based on teaching standards;

(iv) Additional state-level infrastructure that may be needed to support the additional credentialing and monitoring of course work and degree attainment for salary progressions and new leadership positions;

(v) Methods to support, encourage and facilitate school-level leadership for instructional improvement, to endorse and encourage innovation to improve the success of all students rather than rely on top-down enforcement of one size fits all approaches to education; and

(vi) Methods to establish an emphasis on human resource management including, but not limited to, approaches to improve the position posting and recruitment of new graduates for shortage area positions, and improving the retention of new professional personnel.

(c) Reports and recommendations to Legislature and Governor.--

(1) Not later than regular session of the Legislature, 2018, the state board shall make a report to the Joint Standing Committee on Education and the Governor on transforming school leadership including, at a minimum:

(A) Recommendations on a general leadership structure and definitions of the roles and responsibilities for principals and teacher leaders;

(B) Identification of affected statutes and policies, including pending and completed policy revisions, and recommendations for statutory amendments, if any, needed to effectuate its recommendations;

(C) An outline of sequential implementation of the changes needed to transform school leadership, and recommendations for phased implementation, if any; and

(D) The estimated costs of implementation of the recommendations and statutory changes necessary to effectuate the recommendations along with potential funding sources from improved efficiencies or other cost savings from the 5 elimination of unnecessary operations or programs.

Bill Sponsors: Espinosa, Westfall, Ambler, Cooper, D. Evans, Statler, Hamrick, Kurcaba, Rohrbach, Upson and Householder

House Bill 4316 **Relating to reimbursement of certification fee for National Board for Professional Teaching Standards certification**

Effective Date: June 9, 2016

Code Reference: Amends §18A-4-2a

WVDE Contact: Robert Hagerman, Executive Director, Office of Educator Effectiveness & Licensure, rhagerma@k12.wv.us 304.558.7010

Bill Summary:

The bill makes a technical improvement in the language for the reimbursement of teachers for fees upon enrollment, completion or renewal of National Board for Professional Teaching Standards (NBPTS) certification. Currently completion is defined as submitting “ten scorable entries,” however, the NBPTS has changed its definition several times over the years and the current statutory definition is no longer valid. The new language requires the submission of satisfactory evidence to the West Virginia Department of Education, rather than relying on a specific parameter of the NBPTS that may change.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

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

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

(b) (1) Three thousand five hundred dollars shall be paid annually to each classroom teacher who holds a valid certificate issued by the National Board for Professional Teaching Standards for the life of the certification, but in no event more than ten years for any one certification.

(2) Three thousand five hundred dollars shall be paid annually to each classroom teacher who holds a valid renewal certificate issued by the National Board for Professional Teaching Standards for the life of the renewal certificate, but in no event more than ten years for any one renewal certificate.

(c) The payments:

(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.

(d) For initial certification, one half of the certification fee shall be paid for reimbursement once to each teacher who ~~enrolls~~ submits satisfactory evidence to the West Virginia Department of Education of enrollment in the program for the National Board for Professional Teaching Standards certification ~~and as verified by the National Board for Professional Teaching Standards. The remaining~~ one half of the certification fee shall be paid for reimbursement once to each teacher who ~~completes~~ submits satisfactory evidence to the West Virginia Department of Education of completion of the National Board for Professional Teaching Standards certification. ~~Completion shall be defined as the completion of ten scorable entries,~~ as verified by the National Board for Professional Teaching Standards. Teachers who achieve National Board for Professional Teaching Standards certification may be reimbursed a maximum of \$600 for expenses actually incurred while obtaining the National Board for Professional Teaching Standards certification.

(e) For renewal certification, each teacher who completes the National Board for Professional Teaching Standards certification renewal process shall be reimbursed for the renewal certification fee. Completion of the certification renewal process means the submission of satisfactory evidence to the West Virginia Department of Education of the successful renewal of the ten-year certification as verified by the National Board for Professional Teaching Standards.

(f) The state board shall establish selection criteria for the teachers by the legislative rule required pursuant to subsection (h) of this section.

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

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

Bill Sponsors: Espinosa, Ellington, Duke, Perry, Moye, Upson, Wagner, Ambler, Cooper, D. Evans and Kelly

**House Bill 4351 Transferring the Cedar Lakes Camp and Conference Center from the
West Virginia Board of Education to the Department of Agriculture**

Effective Date: July 1, 2016

Code Reference: Adds §18-2-16b

WVDE Contact: Mary Catherine Tuckwiller, Board Attorney
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Bill Summary:

This bill provides for the transfer of the Cedar Lakes Camp and Conference Center (“Cedar Lakes”) and its facilities from the West Virginia Board of Education to the Department of Agriculture. All real and personal property, inclusive of operating funds are included in the transfer. Employees are transferred to the Department of Agriculture at their existing hourly rate and with all accrued benefits, as will and pleasure employees exempt from classified service coverage.

Active full-time permanent employees will participate in the Public Employees Retirement System (PERS) effective July 1, 2016, retroactive to original date of hire with Cedar Lakes. The Consolidated Public Retirement Board (“CPRB”) is responsible for transferring assets and service credit from the Teachers Retirement System Trust Fund into PERS no later than December 30, 2016. The CPRB is charged with computing assets and liabilities for all employees, retirees, beneficiaries, disabled retirees and terminated inactive members for the purpose of transfer.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-16b. State camp and conference center; property transferred; powers and duties of Commissioner of Agriculture.

(a) Effective July 1, 2016, the state camp and conference center, known as the Cedar Lakes Camp and Conference Center and its facilities, authorized to be owned and operated by the West Virginia Board of Education under sections sixteen and sixteen-a, article two, chapter eighteen of this code is transferred to the Department of Agriculture. All real and personal property held by the West Virginia Board of Education, including all operating funds for the operations of the camp and conference center, and all employees of the West Virginia Board of Education primarily dedicated to those operations, are transferred to the Department of Agriculture, at their existing hourly rate and with all accrued benefits. All employees shall become will and pleasure employees in accordance with section four, article six, chapter twenty-nine of the code of West Virginia, and are exempt from coverage by classified service. The Commissioner of the Department of Agriculture is given all those powers, duties and responsibilities relating to the state camp and conference center previously vested in the West Virginia Board of Education and its Division of Vocational Education.

(b) All active full-time, permanent employees transferred to the Department of Agriculture pursuant to subsection (a) shall participate in the Public Employees Retirement System beginning July 1, 2016. Notwithstanding the provisions of article ten, chapter five of this code, employees transferred pursuant to this section shall be considered a member of the Public Employees Retirement System as of their original date of hire with the Cedar Lake Camp and Conference Center.

(c) The Consolidated Public Retirement Board shall transfer assets and service credit from the Teachers Retirement System Trust Fund into the Public Employees Retirement System Trust Fund for those employees who were members in the Teachers Retirement System no later than December 30, 2016. The amount of service credit recognized by the Teachers Retirement System as of June 30, 2016 for the transferring employees shall be the service credit transferred and recognized by the Public Employees Retirement System.

The amount of assets to be transferred for each employee who is a member of the Teachers Retirement System shall be computed as of July 1, 2016, using the July 1, 2015, actuarial valuation of the Teachers Retirement System, and updated with seven and one-half percent annual interest to the date of the actual asset transfer. The market value of the assets of the transferring employees in the Teachers Retirement System shall be determined as of the end of the month preceding the actual transfer. To determine the computation of the asset share to be transferred, the Consolidated Public Retirement Board shall:

(1) Compute the market value of the Teachers Retirement System assets as of the July 1, 2015, actuarial valuation date under the actuarial valuation approved by the Consolidated Public Retirement Board;

(2) Compute the actuarial accrued liabilities for all Teachers Retirement System retirees, beneficiaries, disabled retirees and terminated inactive members as of the July 1, 2015, actuarial valuation date;

(3) Compute the market value of active member assets in the Teachers Retirement System as of July 1, 2015, by reducing the assets value under subdivision (1) of this subsection by the inactive liabilities under subdivision (2) of this subsection;

(4) Compute the actuarial accrued liability for all active Teachers Retirement System members as of the July 1, 2015, actuarial valuation date approved by the Consolidated Public Retirement Board;

(5) Compute the funded percentage of the active members' actuarial accrued liabilities under the Teachers Retirement System as of July 1, 2015, by dividing the active members' market value of assets

under subdivision (3) of this subsection by the active members' actuarial accrued liabilities under subdivision (4) of this subsection;

(6) Compute the actuarial accrued liabilities under the Teachers Retirement System as of July 1, 2015, for active employees transferring to the Public Employees Retirement System; and

(7) Determine the assets to be transferred from the Teachers Retirement System to the Public Employees Retirement System by multiplying the active members' funded percentage determined under subdivision (5) of this subsection by the transferring active members' actuarial accrued liabilities under the Teachers Retirement System under subdivision (6) of this subsection and adjusting the asset transfer amount by interest at seven and five-tenths percent for the period from the calculation date of July 1, 2015, through the first day of the month in which the asset transfer is to be completed.

(d) Once an employee transfers from the Teachers Retirement System to the Public Employees Retirement System, the Teachers Retirement System shall bar any further liability and the transfer is an agreement whereby the transferring employee forever indemnifies and holds harmless the Teachers Retirement System from providing him or her any form of retirement benefit whatsoever until that employee obtains other employment which would make him or her eligible to reenter the Teachers Retirement System with no credit whatsoever for the amounts transferred to the Public Employees Retirement System.

(e) Assets for employees who are members in the Teachers Defined Contribution System pursuant to article seven-b, chapter eighteen, shall remain invested in his or her Teachers Defined Contribution retirement account until termination of employment with the Department of Agriculture.

Bill Sponsors: Westfall, Atkinson, Butler, Ihle, Cadle, B. White, Hamrick and McCuskey

House Bill 4417 Increasing wages protected from garnishment

Effective Date: June 7, 2016

Code Reference: Amends §46A-2-130

WVDE Contact: Terry Harless, Chief Financial Officer
tharless@k12.wv.us; 304.558.2686

Bill Summary:

This bill relates to limitations of garnishment of wages, and defines garnishment as any legal or equitable procedure through which the earnings of an individual are required to be withheld for payment of a debt.

The bill provides that the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment to enforce payment of a judgment arising from a consumer credit sale or consumer loan may not exceed the lesser of: (a) Twenty percent of his or her disposable earnings for that week, or (b) the amount by which his or her disposable earnings for that week exceed fifty times the federal minimum hourly wage prescribed by section 6(a) (1) of the "Fair Labor Standards Act of 1938," U.S.C. Title 19, Sec. 206(a)(1), in effect at the time the earnings are payable.

ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-130. Limitation on garnishment.

(1) For the purposes of the provisions in this chapter relating to garnishment:

(a) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld; and

(b) "Garnishment" means any legal or equitable procedure through which the earnings of an individual are required to be withheld for payment of a debt.

(2) The maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment to enforce payment of a judgment arising from a consumer credit sale or consumer loan may not exceed the lesser of:

(a) Twenty percent of his or her disposable earnings for that week, or

(b) The amount by which his or her disposable earnings for that week exceed ~~thirty~~ fifty times the federal minimum hourly wage prescribed by section 6(a) (1) of the "Fair Labor Standards Act of 1938," U.S.C. Title 19, Sec. 206(a)(1), in effect at the time the earnings are payable.

(c) In the case of earnings for a pay period other than a week, the commissioner shall prescribe by rule a multiple of the federal minimum hourly wage equivalent in effect to that set forth in subdivision (b), subsection (2) of this section.

(3) No court may make, execute or enforce an order or process in violation of this section. Any time after a consumer's earnings have been executed upon pursuant to article five-a or article five-b, chapter thirty-eight of this code by a creditor resulting from a consumer credit sale, consumer lease or consumer loan, such consumer may petition any court having jurisdiction of such matter or the circuit court of the county wherein he or she resides to reduce or temporarily or permanently remove such execution upon his or her earnings on the grounds that such execution causes or will cause undue hardship to him or her or his or her family. When such fact is proved to the satisfaction of such court, it may reduce or temporarily or permanently remove such execution.

(4) No garnishment governed by the provisions of this section will be given priority over a voluntary assignment of wages to fulfill a support obligation, a garnishment to collect arrearages in support payments, or a notice of withholding from wages of amounts payable as support, notwithstanding the fact that the garnishment in question or the judgment upon which it is based may have preceded the support-related assignment, garnishment, or notice of withholding in point of time or filing.

Bill Sponsors: Shott, Hanshaw, Rowe, Marcum, Shaffer, Manchin, Summers, Kessinger, Ireland and Skinner

House Bill 4461 **Relating to School Building Authority School Major Improvement Fund eligibility**

Effective Date: June 9, 2016

Code Reference: Amends §18-9D-15

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

Bill Summary:

Currently, to be eligible for a Major Improvement Fund award from the School Building Authority (SBA), each county board of education must have expended in the previous year an amount of county moneys equal to or exceeding the lowest average amount of money included in the county board's maintenance budget over any three of the previous five years and must have budgeted an amount equal to or greater than the average in the current fiscal year.

The bill eliminates the strict formula described above and instead requires county boards of education to provide annual school facility maintenance expenditure data to the SBA. This data will be jointly reviewed by the SBA and the West Virginia Department of Education Office of School Facilities and Transportation to assist the SBA in its determination of the most meritorious projects to be funded through the School Major Improvement Fund.

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-15. Legislative intent; allocation of money among categories of projects; lease-purchase options; limitation on time period for expenditure of project allocation; county maintenance budget requirements; project disbursements over period of years; preference for multicounty arrangements; submission of project designs; set-aside to encourage local participation.

(a) It is the intent of the Legislature to empower the School Building Authority to facilitate and provide state funds and to administer all federal funds provided for the construction and major improvement of school facilities so as to meet the educational needs of the people of this state in an efficient and economical manner. The authority shall make funding determinations in accordance with the provisions of this article and shall assess existing school facilities and each facility's school major improvement plan in relation to the needs of the individual student, the general school population, the communities served by the facilities and facility needs statewide.

(b) An amount that is not more than three percent of the sum of moneys that are determined by the authority to be available for distribution during the then current fiscal year from:

(1) Moneys paid into the School Building Capital Improvements Fund pursuant to section ten, article nine-a of this chapter;

(2) The issuance of revenue bonds for which moneys in the School Building Debt Service Fund or the Excess Lottery School Building Debt Service Fund are pledged as security;

(3) Moneys paid into the School Construction Fund pursuant to section six of this article; and

(4) Any other moneys received by the authority, except moneys paid into the School Major Improvement Fund pursuant to section six of this article and moneys deposited into the School Access Safety Fund pursuant to section five, article nine-f of this chapter, may be allocated and may be expended by the authority for projects authorized in accordance with the provisions of section sixteen of this article that service the educational community statewide or, upon application by the state board, for educational programs that are under the jurisdiction of the state board. In addition, upon application by the state board or the administrative council of an area vocational educational center established pursuant to article two-b of this chapter, the authority may allocate and expend under this subsection moneys for school major improvement projects authorized in accordance with the provisions of section sixteen of this article proposed by the state board or an administrative council for school facilities under the direct supervision of the state board or an administrative council, respectively. Furthermore, upon application by a county board, the authority may allocate and expend under this subsection moneys for school major improvement projects for vocational programs at comprehensive high schools, vocational programs at comprehensive middle schools, vocational schools cooperating with community and technical college programs, or any combination of the three. Each county board is encouraged to cooperate with community and technical colleges in the use of existing or development of new vocational technical facilities. All projects eligible for funds from this subsection shall be submitted directly to the authority which shall be solely responsible for the project's evaluation, subject to the following:

(A) The authority may not expend any moneys for a school major improvement project proposed by the state board or the administrative council of an area vocational educational center unless the state board or an administrative council has submitted a ten-year facilities plan; and

(B) The authority shall, before allocating any moneys to the state board or the administrative council of an area vocational educational center for a school improvement project, consider all other funding sources available for the project.

(c) An amount that is not more than two percent of the moneys that are determined by the authority to be available for distribution during the current fiscal year from:

(1) Moneys paid into the School Building Capital Improvements Fund pursuant to section ten, article nine-a of this chapter;

(2) The issuance of revenue bonds for which moneys in the School Building Debt Service Fund or the Excess Lottery School Building Debt Service Fund are pledged as security;

(3) Moneys paid into the School Construction Fund pursuant to section six of this article; and

(4) Any other moneys received by the authority, except moneys deposited into the School Major Improvement Fund and moneys deposited into the School Access Safety Fund pursuant to section five, article nine-f of this chapter, shall be set aside by the authority as an emergency fund to be distributed in accordance with the guidelines adopted by the authority.

(d) An amount that is not more than five percent of the moneys that are determined by the authority to be available for distribution during the current fiscal year from:

(1) Moneys paid into the School Building Capital Improvements Fund pursuant to section ten, article nine-a of this chapter;

(2) The issuance of revenue bonds for which moneys in the School Building Debt Service Fund or the Excess Lottery School Building Debt Service Fund are pledged as security;

(3) Moneys paid into the School Construction Fund pursuant to section six of this article; and

(4) Any other moneys received by the authority, except moneys deposited into the School Major Improvement Fund and moneys deposited into the School Access Safety Fund pursuant to section five, article nine-f of this chapter, may be reserved by the authority for multiuse vocational-technical education facilities projects that may include post-secondary programs as a first priority use. The authority may allocate and expend under this subsection moneys for any purposes authorized in this article on multiuse vocational-technical education facilities projects, including equipment and equipment updates at the facilities, authorized in accordance with the provisions of section sixteen of this article. If the projects approved under this subsection do not require the full amount of moneys reserved, moneys above the amount required may be allocated and expended in accordance with other provisions of this article. A county board, the state board, an administrative council or the joint administrative board of a vocational-technical education facility which includes post-secondary programs may propose projects for facilities or equipment, or both, which are under the direct supervision of the respective body: *Provided*, That the authority shall, before allocating any moneys for a project under this subsection, consider all other funding sources available for the project.

(e) The remaining moneys determined by the authority to be available for distribution during the then current fiscal year from:

(1) Moneys paid into the School Building Capital Improvements Fund pursuant to section ten, article nine-a of this chapter;

(2) The issuance of revenue bonds for which moneys in the School Building Debt Service Fund or the Excess Lottery School Building Debt Service Fund are pledged as security;

(3) Moneys paid into the School Construction Fund pursuant to section six of this article; and

(4) Any other moneys received by the authority, except moneys deposited into the School Major Improvement Fund and moneys deposited into the School Access Safety Fund pursuant to section five, article nine-f of this chapter, shall be allocated and expended on the basis of need and efficient use of resources for projects funded in accordance with the provisions of section sixteen of this article.

(f) If a county board proposes to finance a project that is authorized in accordance with section sixteen of this article through a lease with an option to purchase leased premises upon the expiration of the total lease period pursuant to an investment contract, the authority may not allocate moneys to the county board in connection with the project: *Provided*, That the authority may transfer moneys to the state board which, with the authority, shall lend the amount transferred to the county board to be used only for a one-time payment due at the beginning of the lease term, made for the purpose of reducing annual lease payments under the investment contract, subject to the following conditions:

(1) The loan shall be secured in the manner required by the authority, in consultation with the state board, and shall be repaid in a period and bear interest at a rate as determined by the state board and the authority and shall have any terms and conditions that are required by the authority, all of which shall be set forth in a loan agreement among the authority, the state board and the county board;

(2) The loan agreement shall provide for the state board and the authority to defer the payment of principal and interest upon any loan made to the county board during the term of the investment contract, and annual renewals of the investment contract, among the state board, the authority, the county board and a lessor, subject to the following:

(A) In the event a county board which has received a loan from the authority for a one-time payment at the beginning of the lease term does not renew the lease annually until performance of the investment contract in its entirety is completed, the county board is in default and the principal of the loan, together with all unpaid interest accrued to the date of the default, shall, at the option of the authority, in consultation with the state board, become due and payable immediately or subject to renegotiation among the state board, the authority and the county board;

(B) If a county board renews the lease annually through the performance of the investment contract in its entirety, the county board shall exercise its option to purchase the leased premises;

(C) The failure of the county board to make a scheduled payment pursuant to the investment contract constitutes an event of default under the loan agreement;

(D) Upon a default by a county board, the principal of the loan, together with all unpaid interest accrued to the date of the default, shall, at the option of the authority, in consultation with the state board, become due and payable immediately or subject to renegotiation among the state board, the authority and the county board; and

(E) If the loan becomes due and payable immediately, the authority, in consultation with the state board, shall use all means available under the loan agreement and law to collect the outstanding principal balance of the loan, together with all unpaid interest accrued to the date of payment of the outstanding principal balance; and

(3) The loan agreement shall provide for the state board and the authority to forgive all principal and interest of the loan upon the county board purchasing the leased premises pursuant to the investment contract and performance of the investment contract in its entirety.

(g) To encourage county boards to proceed promptly with facilities planning and to prepare for the expenditure of any state moneys derived from the sources described in this section, any county board or other entity to whom moneys are allocated by the authority that fails to expend the money within three years of the allocation shall forfeit the allocation and thereafter is ineligible for further allocations pursuant to this section until it is ready to expend funds in accordance with an approved facilities plan: *Provided*, That the authority may authorize an extension beyond the three-year forfeiture period not to exceed an additional two years. Any amount forfeited shall be added to the total funds available in the School Construction Fund of the authority for future allocation and distribution. Funds may not be distributed for any project under this article unless the responsible entity has a facilities plan approved by the state board and the School Building Authority and is prepared to commence expenditure of the funds during the fiscal year in which the moneys are distributed.

(h) The remaining moneys that are determined by the authority to be available for distribution during the then current fiscal year from moneys paid into the School Major Improvement Fund pursuant to section six of this article shall be allocated and distributed on the basis of need and efficient use of resources for projects authorized in accordance with the provisions of section sixteen of this article, subject to the following:

(1) The moneys may not be distributed for any project under this section unless the responsible entity has a facilities plan approved by the state board and the authority and is to commence expenditures of the funds during the fiscal year in which the moneys are distributed;

(2) Any moneys allocated to a project and not distributed for that project shall be deposited in an account to the credit of the project, the principal amount to remain to the credit of and available to the project for a period of two years; and

(3) Any moneys which are unexpended after a two-year period shall be redistributed on the basis of need from the School Major Improvement Fund in that fiscal year.

(i) Local matching funds may not be required under the provisions of this section. However, this article does not negate the responsibilities of the county boards to maintain school facilities. ~~To be eligible~~ Therefore, as a prerequisite for eligibility to receive an allocation of school major improvement funds from the authority, a county board must ~~have expended in the previous fiscal year an amount of county moneys equal to or exceeding the lowest average amount of money included in the county board's maintenance budget over any three of the previous five years and must have budgeted an amount equal to or greater than the average in the current fiscal year.~~ Provided, provide annual school facility maintenance expenditure data to the authority which shall be jointly reviewed by the authority and the state Department of Education Office of School Facilities and Transportation to assist the authority in its determination of the most meritorious projects to be funded through the School Major Improvement Fund. The state board shall promulgate rules relating to county boards' school facility maintenance budgets, including items which shall be included in ~~the~~ these budgets.

(j) Any county board may use moneys provided by the authority under this article in conjunction with local funds derived from bonding, special levy or other sources. Distribution to a county board, or to the state board or the administrative council of an area vocational educational center pursuant to subsection (b) of this section, may be in a lump sum or in accordance with a schedule of payments adopted by the authority pursuant to guidelines adopted by the authority.

(k) Funds in the School Construction Fund shall first be transferred and expended as follows:

(1) Any funds deposited in the School Construction Fund shall be expended first in accordance with an appropriation by the Legislature.

(2) To the extent that funds are available in the School Construction Fund in excess of that amount appropriated in any fiscal year, the excess funds may be expended for projects authorized in accordance with the provisions of section sixteen of this article.

(l) It is the intent of the Legislature to encourage county boards to explore and consider arrangements with other counties that may facilitate the highest and best use of all available funds, which may result in improved transportation arrangements for students or which otherwise may create efficiencies for county boards and the students. In order to address the intent of the Legislature contained in this subsection, the authority shall grant preference to those projects which involve multicounty arrangements as the authority shall determine reasonable and proper.

(m) County boards shall submit all designs for construction of new school buildings to the School Building Authority for review and approval prior to preparation of final bid documents. A vendor who has

been debarred pursuant to the provisions of sections thirty-three-a through thirty-three-f, inclusive, article three, chapter five-a of this code may not bid on or be awarded a contract under this section.

(n) The authority may elect to disburse funds for approved construction projects over a period of more than one year subject to the following:

(1) The authority may not approve the funding of a school construction project over a period of more than three years;

(2) The authority may not approve the use of more than fifty percent of the revenue available for distribution in any given fiscal year for projects that are to be funded over a period of more than one year; and

(3) In order to encourage local participation in funding school construction projects, the authority may set aside limited funding, not to exceed \$500,000, in reserve for one additional year to provide a county the opportunity to complete financial planning for a project prior to the allocation of construction funds. Any funding shall be on a reserve basis and converted to a part of the construction grant only after all project budget funds have been secured and all county commitments have been fulfilled. Failure of the county to solidify the project budget and meet its obligations to the state within eighteen months of the date the funding is set aside by the authority will result in expiration of the reserve and the funds shall be reallocated by the authority in the succeeding funding cycle.

Bill Sponsors: Arvon, Duke, Espinosa, Howell, Hill, Blackwell and Border

House Bill 4487 **Relating to state retirement systems**

Effective Date: June 8, 2016

Code Reference: Amends §5-10-2, 5-10-14, 18-7A-17a

WVDE Contact: Terry Harless, Chief Financial Officer
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Bill Summary:

The bill pertains to the state retirement system. It defines compensation and employee for the Public Employees Retirement System (PERS), requires payment of reinstatement interest in PERS in certain circumstances, authorizes purchase of retroactive service credit in certain circumstances and, with certain circumstances, provides that failure of employees to pay the Teachers Retirement System (TRS) according to a contract to purchase military service credit to be treated as an overpayment or excess contribution.

The bill mandates that the retirement board 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. The bill defines "Armed Forces" to include 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 cannot exceed ten years for any one member, nor can it exceed twenty-five percent of total service at the time of retirement.

The bill also allows certain retirement credits to temporary employees of the Legislature.

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§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 of this article: *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 of this 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 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 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 ~~se~~ 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 Correction of 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, ~~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 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 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 the~~ contributions would have been refused by the board: *Provided, however*, That a current legislative employee purchasing retroactive credit under this section ~~does shall do~~ so within twenty-four months of ~~becoming a member of the system or no later than December 31, 2008,~~ beginning contributions to the retirement system as a legislative employee or no later than December 31, 2016, whichever occurs ~~last~~ later: *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 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.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§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~~ fourteen-c 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.

Bill Sponsors: Folk, Walters, Kurcaba and Marcum

House Bill 4507 **Providing an employer may grant preference in hiring to a veteran or disabled veteran**

Effective Date: June 10, 2016

Code Reference: Amends §5-11-9; Adds new section to code: §5-11-9a

WVDE Contact: Heather Hutchens, General Counsel
hhutchens@k12.wv.us; 304.558.3667

Bill Summary:

The bill provides that an employer may grant preference in hiring to a veteran or disabled veteran who has been honorably discharged from the United States Armed Services so long as the veteran or disabled veteran meets all of the knowledge, skills, and eligibility requirements of the job and so long as granting the preference does not violate any state equal employment opportunity law.

The term “veteran” means any person who has received an honorable discharge and: (a) Has provided more than one hundred eighty consecutive days of full-time, active-duty service in the United States Armed Services or Reserve components thereof, including the National Guard; or (b) has a service-connected disability rating fixed by the United States Department of Veterans Affairs.

Note: The hiring of educators and service personnel is primarily guided by W. Va. Code §§18A-4-7a and 18A-4-8b, respectively. To the extent that those statutes do not specifically prescribe the criteria that must be considered when hiring an individual, preference for veterans or disabled veterans may be given.

ARTICLE 11. HUMAN RIGHTS COMMISSION.

§5-11-9. Unlawful discriminatory practices.

It shall be an unlawful discriminatory practice, unless based upon a bona fide occupational qualification, or except where based upon applicable security regulations established by the United States or the State of West Virginia or its agencies or political subdivisions:

(1) For any employer to discriminate against an individual with respect to compensation, hire, tenure, terms, conditions or privileges of employment if the individual is able and competent to perform the services required even if such individual is blind or disabled: *Provided*, That it shall not be an unlawful discriminatory practice for an employer to observe the provisions of any bona fide pension, retirement, group or employee insurance or welfare benefit plan or system not adopted as a subterfuge to evade the provisions of this subdivision;: *Provided, however, That an employer may grant preference in hiring to a veteran or a disabled veteran in accordance with the provisions of section nine-a of this article without violating the provisions of this article.*

(2) For any employer, employment agency or labor organization, prior to the employment or admission to membership, to: (A) Elicit any information or make or keep a record of or use any form of application or application blank containing questions or entries concerning the race, religion, color, national origin, ancestry, sex or age of any applicant for employment or membership; (B) print or publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specifications or discrimination based upon race, religion, color, national origin, ancestry, sex, disability or age; or (C) deny or limit, through a quota system, employment or membership because of race, religion, color, national origin, ancestry, sex, age, blindness or disability;

(3) For any labor organization because of race, religion, color, national origin, ancestry, sex, age, blindness or disability of any individual to deny full and equal membership rights to any individual or otherwise to discriminate against such individual with respect to hire, tenure, terms, conditions or privileges of employment or any other matter, directly or indirectly, related to employment;

(4) For an employer, labor organization, employment agency or any joint labor-management committee controlling apprentice training programs to:

(A) Select individuals for an apprentice training program registered with the State of West Virginia on any basis other than their qualifications as determined by objective criteria which permit review;

(B) Discriminate against any individual with respect to his or her right to be admitted to or participate in a guidance program, an apprenticeship training program, on-the-job training program or other occupational training or retraining program;

(C) Discriminate against any individual in his or her pursuit of such programs or to discriminate against such a person in the terms, conditions or privileges of such programs;

(D) Print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for these programs or to make any inquiry in connection with a program which expresses, directly or indirectly, discrimination or any intent to discriminate unless based upon a bona fide occupational qualification;

(5) For any employment agency to fail or refuse to classify properly, refer for employment or otherwise to discriminate against any individual because of his or her race, religion, color, national origin, ancestry, sex, age, blindness or disability;

(6) For any person being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodations to:

(A) Refuse, withhold from or deny to any individual because of his or her race, religion, color, national origin, ancestry, sex, age, blindness or disability, either directly or indirectly, any of the accommodations, advantages, facilities, privileges or services of the place of public accommodations;

(B) Publish, circulate, issue, display, post or mail, either directly or indirectly, any written or printed communication, notice or advertisement to the effect that any of the accommodations, advantages, facilities, privileges or services of any such place shall be refused, withheld from or denied to any individual on account of race, religion, color, national origin, ancestry, sex, age, blindness or disability, or that the patronage or custom thereof of any individual, belonging to or purporting to be of any particular race, religion, color, national origin, ancestry, sex or age, or who is blind or disabled, is unwelcome, objectionable, not acceptable, undesired or not solicited; or

(7) For any person, employer, employment agency, labor organization, owner, real estate broker, real estate salesman or financial institution to:

(A) Engage in any form of threats or reprisal, or to engage in, or hire, or conspire with others to commit acts or activities of any nature, the purpose of which is to harass, degrade, embarrass or cause physical harm or economic loss or to aid, abet, incite, compel or coerce any person to engage in any of the unlawful discriminatory practices defined in this section;

(B) Willfully obstruct or prevent any person from complying with the provisions of this article, or to resist, prevent, impede or interfere with the commission or any of its members or representatives in the performance of a duty under this article; or

(C) Engage in any form of reprisal or otherwise discriminate against any person because he or she has opposed any practices or acts forbidden under this article or because he or she has filed a complaint, testified or assisted in any proceeding under this article.

§5-11-9a. Veterans preference not a violation of equal employment opportunity under certain circumstances.

An employer may grant preference in hiring to a veteran or disabled veteran who has been honorably discharged from the United States Armed Services: *Provided*, That the veteran or disabled veteran meets all of the knowledge, skills, and eligibility requirements of the job, and provided further that, granting the preference does not violate any state equal employment opportunity law. For purposes of this section, the term "veteran" means any person who has received an honorable discharge and: (a) Has provided more than one hundred eighty consecutive days of full-time, active-duty service in the United States Armed Services or Reserve components thereof, including the National Guard; or (b) has a service-connected disability rating fixed by the United States Department of Veterans Affairs.

Bill Sponsors: Upson, J. Nelson, Cooper, Blair, Trecost, Householder, Espinosa and Frich

House Bill 4566 **Relating to school personnel**

Effective Date: July 1, 2016

Code Reference: Amends §18-4-2, 18A-2-2, 18A-2-5a, 18A-2-6, 18A-2-7, 18A-2-8a, 18A-4-7a, 18A-4-8b, 18A-4-8e, 18A-5-8; Adds new section to code: §18A-2-7b

WVDE Contact: Heather Hutchens, General Counsel
hhutchens@k12.wv.us; 304.558.3667

Bill Summary:

The bill makes the following changes to statutes regarding school personnel:

§18-4-2 – Adds assistant and associate superintendents to the individuals to be included under provisions for permanent administrative certification for superintendents.

§18A-2-2 - Moves the deadline from March 1 to May 1 to terminate continuing contracts of professionals; requires the WVDE to report disqualifications to teach based on violation of contract to the National Association of State Directors of Teacher Education and Certification database; and moves the deadline from January 15 to March 1 for notice of retirement for professionals to qualify for \$500 bonus.

§18A-2-5a - Moves the deadline from February 1 to March 1 for notice of retirement for service personnel to qualify for \$500 bonus, if bonus is authorized by county board and paid from local funds.

§18A-2-6 – Moves the deadline from March 1 to May 1 to terminate continuing contracts of service personnel.

§18A-2-7 - Moves the deadlines from March 1 to April 1 for notice of consideration for transfer of school personnel and from April 15 to May 1 for a hearing on the proposed transfer if demanded by the personnel; moves the deadline from April 15 to May 1 for furnishing list personnel considered for transfer to county board; changes the form of notification that must be provided to personnel on the list from certified mail, return receipt requested, to broader written receipt notification documented by the superintendent; and aligns provisions allowing transfers to accommodate unforeseen changes after assignments are made by moving the date from March 1 to May 1 to match the other decision deadlines.

§18A-2-7b - Consolidates in a new section all provisions restricting voluntary transfers of personnel to posted vacant positions prior to beginning of instructional term with changes as follows:

- Provisions for professionals are moved from §18A-4-7a(m). The requirement for the county superintendent to report each transfer made to the state board is deleted.
- Provisions for service persons employed and assigned as an autism mentor or aide who work with students with autism, or as a paraprofessional, interpreter, early childhood classroom assistant teacher, or aide who work with a student with an exceptionality whose IEP requires one-on-one services are moved from §18A-5-8. Early childhood classroom assistant teacher who works with a student with an exceptionality whose IEP requires one-on-one services has been added. The beginning date of the limitation has been moved from after 5 days to after 20 days prior to the beginning of the instructional term. The requirement for the county superintendent to report each transfer made to the state board is deleted.
- Provisions limiting aide transfers are moved from §18A-5-8 and are applied to all other service persons except extracurricular assignments for bus operators. The limit begins after 20 days prior to the beginning of the instructional term. Transfers are limited to one time during any one half of the instructional term unless otherwise mutually agreed upon.

A provision is added for a person returning from an approved leave of absence to fill a vacant position.

§18A-2-8a - Moves the deadline from April 15 to May 1 for providing the county board a list of probationary teachers recommended for rehire for the next year.

§18A-4-7a - Removes requirement to submit lateral transfer policies to state board to be complied for reports to LOCEA (consistent with SB 369, previously passed by the Legislature). This section also changes the provisions for filling positions known on or before March 1 to exist for the next school year. Rather than going exclusively to employees subject to release, the new provisions would allow the board to fill the positions from among all qualified applicants. All applicants subject to release shall be considered to be applicants for all positions for which they are qualified and shall be considered before the position is posted for nonemployees.

§18A-4-8b - Requires vacancies to be filled within 20 days from the closing date of the posting period, rather than after the five-day minimum posting period. The requirement to notify all applicants of status of his or her application after a hiring decision made is removed, with only the successful applicant to be notified. The requirement to notify service personnel on the preferred recall list from time to time by certified mail of all position openings is replaced with a requirement to send it annually, with written receipt notification document by the superintendent, and instructions on accessing the postings on any website maintained by or available for the use of the county board.

§18A-4-8e - Requires the state board to review and, if needed, update competency tests for service personnel at least every five years and removes the requirement to provide a minimum one day of appropriate in-service training to employees to assist them in preparing to take the competency tests.

§18A-5-8 - Deletes provisions related to voluntary transfers that are moved to the new section (§18A-2-7b) discussed above.

ARTICLE 4. COUNTY SUPERINTENDENT OF SCHOOLS.

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

(a) Each county superintendent shall hold a professional administrative certificate endorsed for superintendent, or a first class permit endorsed for superintendent, subject to the following:

(1) A superintendent who holds a first class permit may be appointed for one year only, and may be reappointed two times for an additional year each upon an annual evaluation by the county board and a determination of satisfactory performance and reasonable progress toward completion of the requirements for a professional administrative certificate endorsed for superintendent;

(2) Any candidate for superintendent, assistant superintendent or associate superintendent, who possesses an earned doctorate from an accredited institution of higher education and either has completed three successful years of teaching in public education or has the equivalent of three years of experience in management or supervision as defined by state board rule, after employment by the county board shall be granted a permanent administrative certificate and shall be a licensed county superintendent;

(3) The state board shall promulgate a legislative rule in accordance with article three-b, chapter twenty-nine-a of this code, to address those cases where a county board finds that course work needed by the county superintendent who holds a first class permit is not available or is not scheduled at state institutions of higher education in a manner which will enable the county superintendent to complete normal requirements for a professional administrative certificate within the three-year period allowed under the permit; and

(4) Any person employed as assistant superintendent or educational administrator prior to June 27, 1988, and who was previously employed as superintendent is not required to hold the professional administrative certificate endorsed for superintendent.

(b) In addition to other requirements set forth in this section, a county superintendent shall meet the following health-related conditions of employment:

(1) Before entering upon the discharge of his or her duties, file with the president of the county board a certificate from a licensed physician certifying the following:

(A) A tuberculin skin test, of the type Mantoux test (PPD skin test), approved by the Director of the Division of Health, has been made within four months prior to the beginning of the term of the county superintendent; and

(B) The county superintendent does not have tuberculosis in a communicable state based upon the test results and any further study;

(2) After completion of the initial test, the county superintendent shall have an approved tuberculin skin test once every two years or more frequently if medically indicated. Positive reactors to the skin test are to be referred immediately to a physician for evaluation and indicated treatment or further studies;

(3) A county superintendent who is certified by a licensed physician to have tuberculosis in a communicable stage shall have his or her employment discontinued or suspended until the disease has been arrested and is no longer communicable; and

(4) A county superintendent who fails to complete required follow-up examinations as set forth in this subsection shall be suspended from employment until a report of examination is confirmed.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 2. SCHOOL PERSONNEL.

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

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

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

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

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

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

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

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

(B) By written resignation of the teacher on or before ~~March~~ May 1 to initiate termination of a continuing contract;

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

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

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

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

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

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

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

(1) Fails to fulfill his or her contract with the board, unless prevented from doing so by personal illness or other just cause or unless released from his or her contract by the board, or

(2) Violates any lawful provision of his or her contract: *Provided*, That the marriage of a teacher is not considered a failure to fulfill, or violation of, the contract.

The State Department of Education or board may hold all papers and credentials of the teacher on file for a period of one year for the violation and shall report such disqualification status in the National Association of State Directors of Teacher Education and Certification (NASDTEC) database system.

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

(g) (1) A classroom teacher who gives written notice to the county board on or before ~~January 15~~ March 1 of the school year of his or her retirement from employment with the board at the conclusion of the

school year shall be paid \$500 from the early notification of retirement line item established for the Department of Education for this purpose, subject to appropriation by the Legislature. If the appropriations to the Department of Education for this purpose are insufficient to compensate all applicable teachers, the Department of Education shall request a supplemental appropriation in an amount sufficient to compensate all such teachers. Additionally, if funds are still insufficient to compensate all applicable teachers, the priority of payment is for teachers who give written notice the earliest. This payment may not be counted as part of the final average salary for the purpose of calculating retirement.

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

§18A-2-5a. Authorizing payment for notification of retirement.

Each county board is authorized to pay, entirely from local funds, \$500 or less to any service employee, or to any professional employee who is not a classroom teacher, who gives written notice to the county board on or before ~~the first day of February~~ March 1 of the school year of his or her retirement from employment with the board at the conclusion of the school year.

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

After three years of acceptable employment, each service ~~personnel employee person~~ employee person who enters into a new contract of employment with the board shall be granted continuing contract status: ~~Provided, That,~~ A service ~~personnel employee person~~ employee person holding continuing contract status with one county shall be granted continuing contract status with any other county upon completion of one year of acceptable employment if such employment is during the next succeeding school year or immediately following an approved leave of absence ~~extending which extends~~ no more than one year. The continuing contract of any such employee shall remain in full force and effect except as modified by mutual consent of the school board and the employee, unless and until terminated with written notice, stating cause or causes, to the employee, by a majority vote of the full membership of the board on or before ~~March 4~~ May 1 of the then current year, or by written resignation of the employee on or before that date. The affected employee has the right of a hearing before the board, if requested, before final action is taken by the board upon the termination of such employment.

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

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

(a) The superintendent, subject only to approval of the board, may assign, transfer, promote, demote or suspend school personnel and recommend their dismissal pursuant to provisions of this chapter. However, an employee shall be notified in writing by the superintendent on or before ~~March 4~~ April 1 if he or she is being considered for transfer or to be transferred. Only those employees whose consideration for transfer or intended transfer is based upon known or expected circumstances which will require the transfer of employees shall be considered for transfer or intended for transfer and the

notification shall be limited to only those employees. Any teacher or employee who desires to protest the proposed transfer may request in writing a statement of the reasons for the proposed transfer. The statement of reasons shall be delivered to the teacher or employee within ten days of the receipt of the request. Within ten days of the receipt of the statement of the reasons, the teacher or employee may make written demand upon the superintendent for a hearing on the proposed transfer before the county board. The hearing on the proposed transfer shall be held on or before ~~April 15~~ May 1. At the hearing, the reasons for the proposed transfer must be shown.

(b) The superintendent at a meeting of the board on or before ~~April 15~~ May 1 shall furnish in writing to the board a list of teachers and other employees to be considered for transfer and subsequent assignment for the next ensuing school year. An employee who was not provided notice and an opportunity for a hearing pursuant to subsection (a) of this section may not be included on the list. All other teachers and employees not so listed shall be considered as reassigned to the positions or jobs held at the time of this meeting. The list of those recommended for transfer shall be included in the minute record of the meeting and all those so listed shall be notified in writing and shall be delivered ~~in writing, by certified mail, return receipt requested, to the persons' last known addresses~~ within ten days following the board meeting, of their having been so with written receipt notification documented by the superintendent, and shall state that the person is being recommended for transfer and subsequent assignment and the reasons therefor.

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

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

(e) Notwithstanding this section or any provision of this code, when actual student enrollment in a grade level or program, unforeseen on or before ~~March 4~~ May 1 of the preceding school year, permits the assignment of fewer teachers or service personnel to or within a school under any pupil-teacher ratio, class size or caseload standard established in section eighteen-a, article five, chapter eighteen of this code or any policy of the state board, the superintendent, with board approval, may reassign the surplus personnel to another school or to another grade level or program within the school if needed there to comply with any such pupil-teacher ratio, class size or caseload standard.

(1) Before any reassignment may occur pursuant to this subsection, notice shall be provided to the employee and the employee shall be provided an opportunity to appear before the county board to state the reasons for his or her objections, if any, prior to the board voting on the reassignment.

(2) Except as otherwise provided in subdivision (1) of this subsection, the reassignment may be made without following the notice and hearing provisions of this section, and at any time during the school year when the conditions of this subsection are met: *Provided*, That the reassignment may not occur after the last day of the second school month.

(3) A professional employee reassigned under this subsection shall be the least senior of the surplus professional personnel who holds certification or licensure to perform the duties at the other school or at the grade level or program within the school.

(4) A service employee reassigned under this subsection shall be the least senior of the surplus personnel who holds the same classification or multiclassification needed to perform the duties at the other school or at the grade level or program within the same school.

(5) No school employee's annual contract term, compensation or benefits shall be changed as a result of a reassignment under this subsection.

§18A-2-7b. Limitations on voluntary transfer of school employees to posted vacant position after twentieth day prior to beginning of instructional term.

(a) The Legislature finds that it is not in the best interest of the students particularly in the elementary grades to have multiple teachers for any one grade level or course during the instructional term. Therefore, it is the intent of the Legislature that the filling of positions through transfers of personnel from one professional position to another after the twentieth day prior to the beginning of the instructional term should be kept to a minimum in accordance with the following:

(1) After the twentieth day prior to the beginning of the instructional term, no person employed and assigned to a professional position may transfer to another professional position in the county during that instructional term unless the person holding that position does not have valid certification;

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

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

(4) The county board, upon recommendation of the superintendent may fill a position before the next instructional term when it is determined to be in the best interest of the students.

(b) The Legislature finds that it is not in the best interest of students with autism or with an exceptionality whose IEP requires one-on-one services, or students in the early childhood years, to have multiple teachers, mentors, aides, paraprofessionals, interpreters or any combination thereof during the instructional term. Therefore, it is the intent of the Legislature that after the twentieth day prior to the beginning of the instructional term, filling positions through transfers of personnel from one position to another be kept to a minimum for autism mentors and aides who work with students with autism and for paraprofessionals, interpreters, early childhood classroom assistant teachers and aides who work with students with exceptionalities whose IEPs require one-on-one services, in accordance with the following:

(1) After the twentieth day prior to the beginning of the instructional term, a service person may not transfer to another position in the county during that instructional term, unless he or she does not have valid certification, if the service person is employed and assigned as an autism mentor or aide who works with students with autism, or as a paraprofessional, interpreter, early childhood classroom assistant teacher, or aide who works with a student with an exceptionality whose IEP requires one-on-one services;

(2) The aide, autism mentor, paraprofessional, interpreter or early childhood classroom assistant teacher may apply for any posted, vacant position with the successful applicant assuming the position at the beginning of the next instructional term; and

(3) The county board, upon recommendation of the superintendent, may fill a position before the beginning of the next instructional term when it is determined to be in the best interest of the students.

(c) Except as provided in subsection (b) of this section, after the twentieth day prior to the beginning of the instructional term, a service person may transfer to another position of employment one time only during any one half of the instructional term, unless otherwise mutually agreed upon by the service person and the county superintendent, or the superintendent's designee, subject to county board approval. During the first year of employment as a service person, a service person may not transfer to another position of employment during the first one half of the instructional term unless mutually agreed upon by the service person and county superintendent, subject to county board approval, except as follows:

(1) Upon return from an approved leave of absence, a service person may fill a vacant position for which he or she is qualified or holds valid certification;

(2) A service person may apply for a posted, vacant position at any time. The successful applicant for the position may not assume the position until the beginning of the next one half of the instructional term; and

(3) Extracurricular assignments for school bus operators pursuant to section sixteen, article four of this chapter are exempt from the requirements of this subsection.

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

The superintendent at a meeting of the board on or before ~~April 15~~ May 1 of each year shall provide in writing to the board a list of all probationary teachers that he or she recommends to be rehired for the next ensuing school year. The board shall act upon the superintendent's recommendations at that meeting in accordance with section one of this article. The board at this same meeting shall also act upon the retention of other probationary employees as provided in sections two and five of this article. Any such probationary teacher or other probationary employee who is not rehired by the board at that meeting shall be notified in writing, by certified mail, return receipt requested, to such persons' last known addresses within ten days following said board meeting, of their not having been rehired or not having been recommended for rehiring.

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

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

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

(a) A county board of education shall make decisions affecting the filling of vacancies in professional positions of employment on the basis of the applicant with the highest qualifications: *Provided*, That the county superintendent shall be hired under separate criteria pursuant to section two, article four, chapter eighteen of this code.

(b) In judging qualifications for the filling of vacancies of professional positions of employment, consideration shall be given to each of the following:

(1) Appropriate certification, licensure or both;

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

(3) The amount of course work, degree level or both in the relevant field and degree level generally;

(4) Academic achievement;

(5) In the case of a ~~classroom teaching position or the position of principal or classroom teaching position~~, certification by the National Board for Professional Teaching Standards;

(6) Specialized training relevant to performing the duties of the job;

(7) Past performance evaluations conducted pursuant to section twelve, article two of this chapter and section two, article three-c of this chapter or, in the case of a classroom teacher, past evaluations of the applicants performance in the teaching profession;

(8) Seniority;

(9) Other measures or indicators upon which the relative qualifications of the applicant may fairly be judged;

(10) In the case of a classroom teaching position, the recommendation of the principal of the school at which the applicant will be performing a majority of his or her duties; and

(11) In the case of a classroom teaching position, the recommendation, if any, resulting from the process established pursuant to the provisions of section five, article five-a, chapter eighteen of this code by the faculty senate of the school at which the employee will be performing a majority of his or her duties.

(c) ~~In considering the~~ When filling of a vacancy pursuant to this section, a county board is entitled to determine the appropriate weight to apply to each of the criterion when assessing an applicants qualifications: *Provided*, That if one or more permanently employed instructional personnel apply for a classroom teaching position and meet the standards set forth in the job posting, each criterion under subsection (b) of this section shall be given equal weight except that the criterion in subdivisions (10) and (11) shall each be double weighted.

(d) For a classroom teaching position, if the ~~recommendations resulting from the operations of principal and faculty senate recommend the same applicant pursuant to subdivisions (10) and (11), subsection (b) of this section are for the same applicant, and the superintendent concurs with that those recommendations~~, then the other provisions of subsections (b) and (c) of this section do not apply and the county board shall appoint that applicant notwithstanding any other provision of this code to the contrary.

(e) The state board shall promulgate a rule, including an emergency rule if necessary, in accordance with the provisions of article three-b, chapter twenty-nine-a of this code to implement and interpret the provisions of this section, ~~including provisions that~~ The rule may provide for the compensation based on the appropriate daily rate of a classroom teacher who directly participates in making recommendations pursuant to this section to be compensated at the appropriate daily rate during for periods of participation beyond his or her individual contract.

(f) The recommendations of the principal and faculty senate made pursuant to subdivisions (10) and (11), subsection (b) of this section shall be ~~made~~ based on a determination as to which applicant is the most highly qualified for the position: *Provided*, That nothing in this subsection ~~shall may~~ require principals or faculty senates to assign any amount of weight to any factor in making a recommendation.

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

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

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

(j) Employment for a full employment term ~~shall equal~~ equals one year of seniority, but ~~no~~ an employee may not accrue more than one year of seniority during any given fiscal year. Employment for less than the full employment term shall be prorated. A random selection system established by the employees and approved by the county board shall be used to determine the priority if two or more employees accumulate identical seniority: *Provided*, That when two or more principals have accumulated identical seniority, decisions on reductions in force shall be based on qualifications.

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

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

(2) Notwithstanding any provision of this code to the contrary, ~~all employees subject to release shall be considered applicants~~ for any vacancy in an established, existing or newly created position that, on or before ~~February 15~~ March 1, is known to exist for the ensuing school year, ~~and for which they are qualified, and,~~ upon recommendation of the superintendent, the board shall appoint the successful applicant from among ~~them before posting such vacancies for application by other persons~~ all qualified applicants. All employees subject to release shall be considered applicants for the positions for which they are qualified and shall be considered before posting such vacancies for application by nonemployees:

(3) An employee subject to release shall be employed in any other professional position where the employee is certified and was previously employed or to any lateral area for which the employee is certified, licensed or both, if the employees seniority is greater than the seniority of any other employee in that area of certification, licensure or both;

(4) If an employee subject to release holds certification, licensure or both in more than one lateral area and if the employees seniority is greater than the seniority of any other employee in one or more of those areas of certification, licensure or both, the employee subject to release shall be employed in the professional position held by the employee with the least seniority in any of those areas of certification, licensure or both; and

(5) If, prior to August 1 of the year, a reduction in force is approved, the reason for any particular reduction in force no longer exists as determined by the county board in its sole and exclusive judgment, the board shall rescind the reduction in force or transfer and shall notify the released employee in writing of his or her right to be restored to his or her position of employment. Within five days of being so notified, the released employee shall notify the board, in writing, of his or her intent to resume his or her position of employment or the right to be restored shall terminate. Notwithstanding any other provision of this subdivision, if there is another employee on the preferred recall list with proper certification and higher seniority, that person shall be placed in the position restored as a result of the reduction in force being rescinded.

(l) For the purpose of this article, all positions which meet the definition of "classroom teacher" as defined in section one, article one of this chapter shall be lateral positions. For all other professional positions, the county board of education shall adopt a policy by October 31, 1993, and may modify the policy thereafter as necessary, which defines which positions shall be lateral positions. In adopting the policy, the board shall submit a copy of its policy to the state board within thirty days of adoption or any modification, and the state board shall compile a report and submit the report to the Legislative Oversight Commission on Education Accountability by December 31, 1993, and by that date in any succeeding year in which any county board submits a modification of its policy relating to lateral positions. ~~In adopting the policy, the board shall~~ give consideration to the rank of each position in terms of title; nature of responsibilities; salary level; certification, licensure or both; and days in the period of employment.

~~(m) After the twentieth day prior to the beginning of the instructional term, no person employed and assigned to a professional position may transfer to another professional position in the county during that instructional term unless the person holding that position does not have valid certification. The provisions of this subsection are subject to the following: All professional personnel whose seniority with the county board is insufficient to allow their retention by the county board during a reduction in work force shall be placed upon a preferred recall list. As to any professional position opening within the area where they had previously been employed or to any lateral area for which they have certification, licensure or both, the employee shall be recalled on the basis of seniority if no regular, full-time professional personnel, or those returning from leaves of absence with greater seniority, are qualified, apply for and accept the position.~~

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

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

~~(3) The county board, upon recommendation of the superintendent may fill a position before the next instructional term when it is determined to be in the best interest of the students. The county superintendent shall notify the state board of each transfer of a person employed in a professional position to another professional position after the twentieth day prior to the beginning of the instructional term;~~

~~(4) The provisions of this subsection do not apply to the filling of a position vacated because of resignation or retirement that became effective on or before the twentieth day prior to the beginning of the instructional term, but not posted until after that date; and~~

~~(5) The Legislature finds that it is not in the best interest of the students particularly in the elementary grades to have multiple teachers for any one grade level or course during the instructional term. It is the intent of the Legislature that the filling of positions through transfers of personnel from one professional position to another after the twentieth day prior to the beginning of the instructional term should be kept to a minimum.~~

~~(n) All professional personnel whose seniority with the county board is insufficient to allow their retention by the county board during a reduction in work force shall be placed upon a preferred recall list. As to any professional position opening within the area where they had previously been employed or to any lateral area for which they have certification, licensure or both, the employee shall be recalled on the basis of seniority if no regular, full-time professional personnel, or those returning from leaves of absence with greater seniority, are qualified, apply for and accept the position. Before position openings that are known or expected to extend for twenty consecutive employment days or longer for professional personnel may be filled by the board, the board shall be required to notify all qualified professional personnel on the preferred list and give them an opportunity to apply, but failure to apply shall not cause the employee to forfeit any right to recall. The notice shall be sent by certified mail to the last known address of the employee, and it shall be the duty of each professional personnel to notify the board of continued availability annually, of any change in address or of any change in certification, licensure or both.~~

~~(o) Before position openings that are known or expected to extend for twenty consecutive employment days or longer for professional personnel may be filled by the board, the board shall be required to notify all qualified professional personnel on the preferred list and give them an opportunity to apply, but failure to apply shall not cause the employee to forfeit any right to recall. The notice shall be sent by certified mail to the last known address of the employee, and it shall be the duty of each professional personnel to notify the board of continued availability annually, of any change in address or of any change in certification, licensure or both. Openings in established, existing or newly created positions shall be processed as follows:~~

~~(1) Boards shall be required to post and date notices of each opening at least once. At their discretion, boards may post an opening for a position other than classroom teacher more than once in order to attract more qualified applicants. At their discretion, boards may post an opening for a classroom~~

teacher one additional time after the first posting in order to attract more qualified applicants only if fewer than three individuals apply during the first posting subject to the following:

(A) Each notice shall be posted in conspicuous working places for all professional personnel to observe for at least five working days;

(B) At least one notice shall be posted within twenty working days of the position openings and shall include the job description;

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

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

(E) 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;

(2) No vacancy may be filled until after the five-day minimum posting period of the most recent posted notice of the vacancy;

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

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

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

(p) ~~Openings in established, existing or newly created positions shall be processed as follows:~~ Notwithstanding any other provision of the code to the contrary, where the total number of classroom teaching positions in an elementary school does not increase from one school year to the next, but there exists in that school a need to realign the number of teachers in one or more grade levels, kindergarten through six, teachers at the school may be reassigned to grade levels for which they are certified without that position being posted: *Provided*, That the employee and the county board mutually agree to the reassignment.

~~(1) Boards shall be required to post and date notices of each opening at least once. At their discretion, boards may post an opening for a position other than classroom teacher more than once in order to attract more qualified applicants. At their discretion, boards may post an opening for a classroom teacher one additional time after the first posting in order to attract more qualified applicants only if fewer than three individuals apply during the first posting subject to the following:~~

~~(A) Each notice shall be posted in conspicuous working places for all professional personnel to observe for at least five working days;~~

~~(B) At least one notice shall be posted within twenty working days of the position openings and shall include the job description;~~

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

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

~~(E) 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;~~

~~(2) No vacancy shall be filled until after the five-day minimum posting period of the most recent posted notice of the vacancy;~~

~~(3) If one or more applicants under all the postings for a vacancy meets the qualifications listed in the job posting, the successful applicant to fill the vacancy shall be selected by the board within thirty working days of the end of the first posting period;~~

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

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

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

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

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

~~(r) Reductions in classroom teaching positions in elementary schools shall be processed as follows: Any board failing to comply with the provisions of this article may be compelled to do so by mandamus and shall be liable to any party prevailing against the board for court costs and reasonable attorney fees as determined and established by the court. Further, employees denied promotion or employment in violation of this section shall be awarded the job, pay and any applicable benefits retroactive to the date of the violation and payable entirely from local funds. Further, the board shall be liable to any party prevailing against the board for any court reporter costs including copies of transcripts.~~

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

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

~~(s) Any board failing to comply with the provisions of this article may be compelled to do so by mandamus and shall be liable to any party prevailing against the board for court costs and reasonable attorney fees as determined and established by the court. Further, employees denied promotion or employment in violation of this section shall be awarded the job, pay and any applicable benefits retroactive~~

to the date of the violation and payable entirely from local funds. Further, the board shall be liable to any party prevailing against the board for any court reporter costs including copies of transcripts. The county board shall compile, update annually on July 1 and make available by electronic or other means to all employees a list of all professional personnel employed by the county, their areas of certification and their seniority.

(t) The county board shall compile, update annually on July 1 and make available by electronic or other means to all employees a list of all professional personnel employed by the county, their areas of certification and their seniority. Notwithstanding any other provision of this code to the contrary, upon recommendation of the principal and approval by the classroom teacher and county board, a classroom teacher assigned to the school may at any time be assigned to a new or existing classroom teacher position at the school without the position being posted.

(u) Notwithstanding any other provision of this code to the contrary, upon recommendation of the principal and approval by the classroom teacher and county board, a classroom teacher assigned to the school may at any time be assigned to a new or existing classroom teacher position at the school without the position being posted.

(v) The amendments to this section during the 2013 regular session of the Legislature shall be effective for school years beginning on or after July 1, 2013, and the provisions of this section immediately prior to those amendments remain in effect until July 1, 2013.

§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 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 persons 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 in existing or newly created positions shall be filled within twenty working days from the ~~posting date notice of any job vacancies of existing or newly created positions~~ closing date of the job posting for the position.

(4) The county board shall notify ~~any person who has applied for job posted pursuant to this section of his or her application~~ the successful applicant 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 notification shall be sent by certified mail to the last known address of the service person annually, with written receipt notification documented by the superintendent, and shall list instructions to access job postings on any website maintained by or available for the use of the county board. Each service person shall notify the county board of any change of address.~~

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

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

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

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

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

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

(a) The state board shall develop and make available competency tests for all of the classification titles defined in section eight of this article and listed in section eight-a of this article for service personnel. The board shall review and, if needed, update the competency tests at least every five years. Each classification title defined and listed is considered a separate classification category of employment for service personnel and has a separate competency test, except for those class titles having Roman numeral designations, which are considered a single classification of employment and have a single competency test.

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

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

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

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

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

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

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

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

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

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

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

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

~~(g) A minimum of one day of appropriate in-service training is provided to employees to assist them in preparing to take the competency tests.~~ Competency tests are used to determine the qualification of new applicants seeking initial employment in a particular classification title as either a regular or substitute employee.

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

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

~~(i) Notwithstanding any provisions in this code to the contrary, once an employee holds or has held a classification title in a category of employment, that employee is considered qualified for the classification title even though that employee no longer holds that classification. The requirements of this section do not alter the definitions of class titles as provided in section eight of this article or the procedure and requirements of section eight-b of this article.~~

~~(j) The requirements of this section do not alter the definitions of class titles as provided in section eight of this article or the procedure and requirements of section eight-b of this article. Notwithstanding any other provision of this code to the contrary and notwithstanding any rules of the school board concerning school bus operator certification, the certification test for school bus operators shall be required as follows, and school bus operators may not be required to take the certification test more frequently:~~

~~(k) Notwithstanding any other provision of this code to the contrary and notwithstanding any rules of the School Board concerning school bus operator certification, the certification test for school bus operators shall be required as follows, and school bus operators may not be required to take the certification test more frequently:~~

(1) For substitute school bus operators and for school bus operators with regular employee status but on a probationary contract, the certification test shall be administered annually;

(2) For school bus operators with regular employee status and continuing contract status, the certification test shall be administered triennially; and

(3) For substitute school bus operators who are retired from a county board and who at the time of retirement had ten years of experience as a regular full-time bus operator, the certification test shall be administered triennially.

(4) *School bus operator certificate.*

(A) A school bus operator certificate may be issued to a person who has attained the age of twenty-one, completed the required training set forth in state board rule, and met the physical requirements and other criteria to operate a school bus set forth in state board rule.

(B) The state superintendent may, after ten days' notice and upon proper evidence, revoke the certificate of any bus operator for any of the following causes:

(i) Intemperance, untruthfulness, cruelty or immorality;

(ii) Conviction of or guilty plea or plea of no contest to a felony charge;

(iii) Conviction of or guilty plea or plea of no contest to any charge involving sexual misconduct with a minor or a student;

(iv) Just and sufficient cause for revocation as specified by state board rule; and

(v) Using fraudulent, unapproved or insufficient credit to obtain the certificates.

(vi) Of the causes for certificate revocation listed in this paragraph (B), the following causes constitute grounds for revocation only if there is a rational nexus between the conduct of the bus operator and the performance of the job:

(I) Intemperance, untruthfulness, cruelty or immorality;

(II) Just and sufficient cause for revocation as specified by state board rule; and

(III) Using fraudulent, unapproved or insufficient credit to obtain the certificate.

(C) The certificate of a bus operator may not be revoked for either of the following unless it can be proven by clear and convincing evidence that the bus operator has committed one of the offenses listed in this subsection and his or her actions render him or her unfit to operate a school bus:

(i) Any matter for which the bus operator was disciplined, less than dismissal, by the employing county board; or

(ii) Any matter for which the bus operator is meeting or has met an improvement plan determined by the county board.

(D) The state superintendent shall designate a review panel to conduct hearings on certificate revocations or denials and make recommendations for action by the state superintendent. The state board, after consultation with employee organizations representing school service personnel, shall promulgate a rule to establish the review panel membership and composition, method of appointment, governing principles and meeting schedule.

(E) It is the duty of any county superintendent who knows of any acts on the part of a bus operator for which a certificate may be revoked in accordance with this section to report the same, together with all the facts and evidence, to the state superintendent for such action as in the state superintendent's judgment may be proper.

(F) If a certificate has been granted through an error, oversight or misinformation, the state superintendent may recall the certificate and make such corrections as will conform to the requirements of law and state board rules.

(5) The state board shall promulgate, in accordance with article three-b, chapter twenty-nine-a of this code, revised rules in compliance with this subsection.

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-8. Authority of certain aides to exercise control over students; compensation; transfers.

(a) Within the limitations provided in this section, any aide who agrees to do so shall stand in the place of the parent or guardian and shall exercise such authority and control over students as is required of a teacher as provided in section one of this article. The principal shall designate aides in the school who agree to exercise that authority on the basis of seniority as an aide and shall enumerate the instances in which the authority shall be exercised by an aide when requested by the principal, assistant principal or professional employee to whom the aide is assigned.

(b) The authority provided for in subsection (a) of this section does not extend to suspending or expelling any student, participating in the administration of corporal punishment or performing instructional duties as a teacher or substitute teacher. However, the authority extends to supervising students undergoing in-school suspension if the instructional duties required by the supervision are limited solely to handing out class work and collecting class work. The authority to supervise students undergoing in-school suspension does not include actual instruction.

(c) An aide designated by the principal under subsection (a) of this section shall receive a salary not less than one pay grade above the highest pay grade held by the service person under section eight-a, article four of this chapter and any county salary schedule in excess of the minimum requirements of this article.

(d) An aide may not be required by the operation of this section to perform noninstructional duties for an amount of time which exceeds that required under the aide's contract of employment or that required of other aides in the same school unless the assignment of the duties is mutually agreed upon by the aide and the county superintendent, or the superintendent's designated representative, subject to county board approval.

(1) The terms and conditions of the agreement shall be in writing, signed by both parties, and may include additional benefits.

(2) The agreement shall be uniform as to aides assigned similar duties for similar amounts of time within the same school.

(3) Aides have the option of agreeing to supervise students and of renewing related assignments annually. If an aide elects not to renew the previous agreement to supervise students, the minimum salary of the aide shall revert to the pay grade specified in section eight-a, article four of this chapter for the classification title held by the aide and any county salary schedule in excess of the minimum requirements of this article.

(e) For the purposes of this section, aide means any aide class title as defined in section eight, article four of this chapter regardless of numeric classification.

~~(f) Subject to the limitations set forth in subsection (g) of this section, an aide may transfer to another position of employment one time only during any one half of a school term, unless otherwise mutually agreed upon by the aide and the county superintendent, or the superintendent's designee, subject to county board approval. During the first year of employment as an aide, an aide may not transfer to another position of employment during the first one-half school term of employment unless mutually agreed upon by the aide and county superintendent, subject to county board approval.~~

~~(g) Autism mentors and aides providing services to children diagnosed as autistic or with autism spectrum disorder; and paraprofessionals, interpreters and aides providing one-on-one services to students with exceptionalities as required by the students' individualized education programs (IEP).~~

~~(1) Legislative findings and intent.~~

~~(A) The Legislature finds that it is not in the best interest of a student with autism or a student with an exceptionality whose IEP requires one-on-one services to have multiple teachers, mentors, aides, paraprofessionals, interpreters or any combination thereof during the instructional term; and~~

~~(B) It is the intent of the Legislature that filling positions through transfers of personnel from one position to another after the fifth day prior to the beginning of the instructional term be kept to a minimum for autism mentors and aides who work with students with autism and for paraprofessionals, interpreters and aides who work with students with exceptionalities whose IEPs require one-on-one services.~~

~~(2) Transfer limitations and conditions.~~

~~(A) Notwithstanding the provisions of subsection (f) of this section, after the fifth day prior to the beginning of the instructional term, a service person may not transfer to another position in the county during that instructional term, unless he or she does not have valid certification, if the service person is employed and assigned as an autism mentor or aide who works with students with autism, or as a paraprofessional, interpreter or aide who works with a student with an exceptionality whose IEP requires one-on-one services.~~

~~(B) The provisions of this subsection are subject to the following conditions:~~

~~(i) The aide, autism mentor, paraprofessional or interpreter may apply for any posted, vacant position with the successful applicant assuming the position at the beginning of the next instructional term;~~

~~(ii) The county board, upon recommendation of the superintendent, may fill a position before the beginning of the next instructional term when it is determined to be in the best interest of the students; and~~

~~(iii) The county superintendent shall notify the State Board when a service person who is subject to the provisions of this subsection is transferred to another position after the fifth day prior to the beginning of the instructional term;~~

~~(h) (f) Regular service personnel employed in a category of employment other than aide who seek employment as an aide shall hold a high school diploma or shall have received a general educational development certificate and shall have the opportunity to receive appropriate training pursuant to subsection (j), section thirteen, article five, chapter eighteen of this code and section two, article twenty of said chapter.~~

Bill Sponsors: Esphinosa, Duke, Statler and D. Evans

House Bill 4618 **Relating to limitations on use of a public official's name or likeness**

Effective Date: June 10, 2016

Code Reference: Repeals §6B-2-5c; Adds new sections to code: §6B-2B-1, §6B-2B-2, §6B-2B-3, §6B-2B-4, §6B-2B-5, §6B-2B-6

WVDE Contact: Sarah Stewart, Director of Policy and Government Relations
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Bill Summary:

The bill places limitations on a public official's use of his or her name or likeness. For purposes of the limitation, a public official is defined as "any person who is elected or appointed to any state, county or municipal office or position, including boards, agencies, departments and commissions, or in any other regional or local governmental agency."

Specifically, neither public officials, their agents, nor anyone on the public payroll may place the public official's name or likeness on trinkets that have been paid for with public funds. However, a public official is permitted to expend a minimal amount of public funds to purchase writing utensils to be used during ceremonial signings. Public officials, their agents, and anyone on the public payroll are also prohibited from expending public funds to utilize the public official's name or likeness for the purpose of advertising to the general public. Notwithstanding these prohibitions, the following conducted is specifically allowed by the bill:

- Public official's name/likeness may be used in a public announcement/mass media communication when necessary, reasonable and appropriate to relay specific public safety, health or emergency information.
- Public official's name/likeness may appear on agency's social media and website so long as it adheres to the social media/website limitations listed below.
- Public official's name/likeness may be disseminated on press releases or information via email, social media or other public media tools for official purposes if: (1) it is intended for a legitimate news or informational purpose; (2) it is not intended as a means of promotion of the public official; and (3) it is not being used as educational material.

In addition to the foregoing prohibitions, public officials, their agents, and anyone on the public payroll may not place the public officials name or likeness on (1) publically owned vehicles or (2) any educational material that is paid for with public funds (excluding any reports that are required by law).

The bill sets the following parameters on the use of a public officials name or likeness on a public agency's website and social media:

- Public official's name/likeness must be reasonable, incidental, appropriate and has a primary purpose of promoting the agency's mission and services (rather than promotion of the public official).
- Public official's name/likeness may only appear on agency's website home page and on any pages or sections devoted to biographical information regarding the public official.

The bill also states that a public agency's website/social media may not provide links or reference to a public official's or public employee's personal or campaign social media or website.

The bill does provide a few exceptions to the aforementioned prohibitions on the use of a public official's name/likeness:

- Public official's name/likeness may be used on official records, reports, letterhead, documents, certificates or instructional materials issued in course of the public official's duties
- Public official's name/likeness may be used on official documents used in the normal course of

agency business, such as facsimile cover sheets, press release headers, office signage and envelopes, etc.

- West Virginia Division of Tourism may use public official's name/likeness for tourism promotion
- Certain employees of public institutions of higher education may use his or her name/likeness for certain activities
- Prohibitions contained in bill do not apply to items paid for with public official's personal money
- Prohibitions contained in bill do not apply to items or materials required by law to contain the public official's name/likeness

Any prohibited items/materials in possession of a public official/agency may not be distributed after the effective date of the bill. Such items/materials may be distributed if the public official's name/likeness is removed or covered. Such items may also be donated to surplus, charity or an organization serving the poor and needy.

If any provision of the bill creates an undue hardship or significant financial impact on an agency, an agency may seek a written exemption from the West Virginia Ethics Commission.

ARTICLE 2B. LIMITATIONS ON A PUBLIC OFFICIAL FROM USING HIS OR HER NAME OR LIKENESS.

~~6B-2-5c. Limitations on a public official from using his or her name or likeness.~~

~~(a) Public officials, their agents, or anyone on public payroll may not:~~

~~(1) Use the public official's name or likeness on any publicly-owned vehicles;~~

~~(2) Place the public official's name or likeness on trinkets paid for by public funds;~~

~~(3) Use public funds, including funds of the office held by the public official, public employees, or public resources to distribute, disseminate, publish or display the public official's name or likeness for the purpose of advertising including, but not limited to, billboards, public service announcements, communication sent by mass mailing, or any other publication or media communication intended for general dissemination to the public.~~

~~(4) Use public funds or public employees, other than employees for security services, for entertainment activities within forty-five days of a primary, general, or special election in which the public official or agent is a candidate.~~

~~(b) For purposes of this section:~~

~~(1) "Agent" means any volunteer or employee, contractual or permanent, serving at the discretion of a public official; and~~

~~(2) "Trinkets" means items of tangible personal property that are not vital or necessary to the duties of the public official's or public employee's office, including, but not limited to, the following: magnets, mugs, cups, key chains, pill holders, band-aid dispensers, fans, nail files, matches and bags.~~

~~(c) This section does not prohibit public officials from using their names or likenesses on any official record or report, letterhead, document or certificate, or instructional material issued in the course of their duties as public officials, or on promotional materials used for tourism promotion.~~

~~(d) This section shall not be interpreted as prohibiting public officials from using public funds to communicate with constituents in the normal course of their duties as public officials so long as such communications do not include any reference to voting in favor of the public official in an election.~~

~~(e) The commission may propose rules and emergency rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine a of this code to effectuate this section by July 1, 2015.~~

§6B-2B-1. Definitions.

As used in this article:

(a) "Advertising" means publishing, distributing, disseminating, communicating or displaying information to the general public through audio, visual or other media tools. It includes, but is not limited to, billboard, radio, television, mail, electronic mail, publications, banners, table skirts, magazines, social media, websites and other forms of publication, dissemination, display or communication.

(b) "Agent" means any volunteer or employee, contractual or permanent, serving at the discretion of a public official or public employee.

(c) "Educational materials" means publications, guides, calendars, handouts, pamphlets, reports or booklets intended to provide information about the public official or governmental office. It includes information or details about the office, services the office provides to the public, updates on laws and services and other informational items that are intended to educate the public.

(d) "Instructional material" means written instructions explaining or detailing steps for completion of a governmental agency document or form.

(e) "Likeness" means a photograph, drawing or other depiction of an individual.

(f) "Mass media communication" means communication through audio, visual, or other media tools, including U.S. mail, electronic mail, and social media, intended for general dissemination to the public. Examples include mass mailing by U.S. mail, list-serve emails and streaming clips on websites. It does not include: (i) Regular responses to constituent requests or questions during the normal course of business; or (ii) communications that are authorized or required by law to be publicly disseminated, such as legal notices.

(g) "Public employee" means any full-time or part-time employee of any state, or political subdivision of the state, and their respective boards, agencies, departments and commissions, or in any other regional or local governmental agency.

(h) "Public official" means any person who is elected or appointed to any state, county or municipal office or position, including boards, agencies, departments and commissions, or in any other regional or local governmental agency.

(i) "Public payroll" means payment of public monies as a wage or salary from the state, or political subdivision of the state, or any other regional or local governmental agency, whether accepted or not.

(j) "Social media" means forms of electronic communication through which users create online communities to share information, ideas, personal messages and other content. It includes web and mobile-based technologies which are used to turn communication to interactive dialogue among organizations, communities and individuals. Examples include, but are not limited to, Facebook, MySpace, Twitter and YouTube.

(k) "Trinkets" means items of tangible personal property that are not vital or necessary to the duties of the public official's or public employee's office, including, but not limited to, the following: magnets, mugs, cups, key chains, pill holders, band-aid dispensers, fans, nail files, matches and bags.

§6B-2B-2. Limitations on a public official from using his or her name or likeness.

(a) *Trinkets* - Public officials, their agents, or anyone on public payroll may not place the public official's name or likeness on trinkets paid for with public funds: *Provided*, That when appropriate and reasonable, public officials may expend a minimal amount of public funds for the purchase of pens, pencils or other markers to be used during ceremonial signings.

(b) *Advertising*- (1) Public officials, their agents, or anyone on public payroll may not use public funds, including funds of the office held by the public official, public employees, or public resources to distribute, disseminate, publish or display the public official's name or likeness for the purpose of advertising to the general public.

(2) Notwithstanding the prohibitions in subdivision (1) of this subsection, the following conduct is not prohibited:

(A) A public official's name and likeness may be used in a public announcement or mass media communication when necessary, reasonable and appropriate to relay specific public safety, health or emergency information.

(B) A public official's name and likeness may appear on an agency's social media and website provided it complies with section three of this article.

(C) Dissemination of office press releases or agency information via email, social media or other public media tools for official purposes is not considered advertising or prohibited under this subsection, if it: (i) is intended for a legitimate news or informational purpose; (ii) is not intended as a means of promotion of the public official; and (iii) is not being used as educational material.

(3) Banners and table skirts are considered advertising and may not include the public official's name or likeness.

(4) Nothing in this article shall be interpreted as prohibiting public officials from using public funds to communicate with constituents in the normal course of their duties as public officials if the communications do not include any reference to voting in favor of the public official in an election.

(c) Vehicles- Public officials, their agents, or any person on public payroll may not use or place the public official's name or likeness on any publicly owned vehicles.

(d) Educational Materials- A public official's name or likeness may not be placed on any educational material that is paid for with public funds: *Provided*, That this prohibition does not apply to the submission of a report required to be issued by law.

§6B-2B-3. Limitations on promotion through social media.

(a) A public official's name and likeness may appear on a public agency's website and social media subject to the following restrictions:

(1) The public official's name may appear throughout the website if it is reasonable, incidental, appropriate and has a primary purpose to promote the agency's mission and services rather than to promote the public official.

(2) The public official's likeness may only appear on the agency's website home page and on any pages or sections devoted to biographical information regarding the public official.

(3) The public official's name and likeness may appear on the agency's social media if it is reasonable, incidental, appropriate and has a primary purpose to promote the agency's mission and services rather than to promote the public official.

(b) This section does not apply to personal or non-public agency social media accounts.

(c) A public agency's website or social media may not provide links or reference to a public official's or public employee's personal or campaign social media or website.

§6B-2B-4. Exceptions to use of name or likeness.

(a) A public official may use his or her name or likeness on any official record or report, letterhead, document or certificate or instructional material issued in the course of his or her duties as a public official: *Provided*, That other official documents used in the normal course of the agency, including, but not limited to, facsimile cover sheets, press release headers, office signage and envelopes may include the public official's name: *Provided, however*, If the official documents are reproduced for distribution or dissemination to the public as educational material, the items are subject to the prohibitions in subsection (d), section two of this article.

(b) When appropriate and reasonable, the West Virginia Division of Tourism may use a public official's name and likeness on material used for tourism promotion.

(c) The prohibitions contained in this article do not apply to any person who is employed as a member of the faculty, staff, administration, or president of a public institution of higher education and who is engaged in teaching, research, consulting, coaching, recruiting or publication activities: *Provided*, That

the activity is approved as a part of an employment contract with the governing board of the institution of higher education or has been approved by the employee's department supervisor or the president of the institution by which the faculty or staff member is employed.

(d) The prohibitions contained in section two of this article do not apply to a public official's campaign-related expenditures or materials.

(e) The prohibitions contained in section two of this article do not apply to items paid for with the public official's personal money.

(f) The prohibitions contained in section two of this article do not apply to items or materials required by law to contain the public official's name or likeness.

§6B-2B-5. Existing items as of the effective date.

(a) If a public official, public employee or public agency possesses items or materials in contravention of this rule or section five-c, article two of this chapter that were purchased prior to the effective date, the public official, public employee or public agency may not continue to distribute, disseminate, communicate or display publicly these items or materials.

(b) Notwithstanding the prohibition in subsection (a) of this section,

(1) Materials may be used publicly if the public official's name or likeness are permanently removed or covered: *Provided*, That a public official's name or likeness may be covered with a sticker, be marked out or obliterated in any other manner;

(2) The public agency may use the items or materials for internal use if they are not publicly distributed, disseminated, communicated or displayed; and

(3) When appropriate and in compliance with law, a public agency may donate the items to surplus, charity or an organization serving the poor and needy.

§6B-2B-6. Allowance for exemption.

If any of the prohibitions contained in this article create an undue hardship or will cause significant financial impact upon the public agency to bring existing material, vehicles or items into compliance with this article, the public agency may seek a written exemption from the West Virginia Ethics Commission. In any request, the Ethics Commission shall make public the name of public agency seeking the exemption, along with the affected public official, if any.

Bill Sponsors: Sobonya, Ireland, Foster, Zatezalo, Fast, Rowe, Deem, Skinner, Folk, Manchin and Marcum

House Bill 4730 **Relating to computer science courses of instruction**

Effective Date: June 10, 2016

Code Reference: Adds new section to code: §18-2-12

WVDE Contact: Clayton Burch, Chief Academic Officer
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Bill Summary:

This bill adds a new section of code requiring the state board to create a plan for the implementation of computer science instruction and learning standards prior to the start of the 2017 Legislative session. The plan is to include recommendations for a core set of learning standards designed to provide the foundation for a complete computer science curriculum at the K-12 level, including:

- Elementary – introduction to fundamental concepts of computer science to all students
- Secondary – computer science for credit and may fulfill a computer science, math or science graduation credit

The plan is to encourage schools to offer additional secondary-level computer science courses, with increasing availability of rigorous computer science for all students.

Additionally, the plan is to include recommendations for teaching standards and secondary certificate endorsements if necessary for teachers to deliver curriculum appropriate to meet the standards, and recommendations for units of instruction or courses in academic and vocational settings that complement existing K-12 computer science and IT curricula including AP and professional IT certifications.

Finally, the bill states that plan's proposal for implementation should not exceed four years.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-12. Computer science courses of instruction; learning standards; state board plan development.

(a) Legislative findings:

(1) Computer technology increasingly is pervasive in nearly every function of society from consumer products to transportation, communications, electrical infrastructure, logistics, agriculture, medical treatments, research, security and financial transactions;

(2) The U. S. Bureau of Labor Statistics predicts that by 2024, there will be more than 800,000 new jobs in the STEM fields and more than two-thirds of these directly will be in computing occupations;

(3) Studying computer science prepares students to enter many career areas, both within and outside of computing, teaching them logical reasoning, algorithmic thinking, design and structured problem solving skills applicable in many contexts from science and engineering to the humanities and business;

(4) Computer science is an established discipline at the collegiate and post-graduate levels but, unfortunately, computer science concepts and courses have not kept pace in the K-12 curriculum to the point that the nation faces a serious shortage of computer scientists at all levels that is likely to continue for the foreseeable future; and

(5) Organizations such as the Computer Science Teachers Association, the International Society for Technology in Education and technology industry leaders have developed recommendations for standards, curriculum and instructional resources for computer technology learning in K-12 schools.

(b) Prior to the 2017 regular legislative session, the state board shall submit a plan to the Legislative Oversight Commission on Education Accountability for the implementation of computer science instruction and learning standards in the public schools. The Plan shall include at least the following:

(1) Recommendations for a core set of learning standards designed to provide the foundation for a complete computer science curriculum and its implementation at the K–12 level including, but not limited to:

(A) Introducing the fundamental concepts of computer science to all students, beginning at the elementary school level;

(B) Presenting computer science at the secondary school level in a way that is both accessible and worthy of an academic curriculum credit and may fulfill a computer science, math, or science graduation credit;

(C) Encouraging schools to offer additional secondary-level computer science courses that will allow interested students to study facets of computer science in more depth and prepare them for entry into the work force or college; and

(D) Increasing the availability of rigorous computer science for all students.

(2) Recommendations for teaching standards and secondary certificate endorsements if necessary for teachers to deliver curriculum appropriate to meet the standards;

(3) Recommendations for units of instruction or courses in academic and vocational technical settings that complement any existing K–12 computer science and IT curricula where they are already established, especially the Advanced Placement computer science curricula and professional IT certifications; and

(4) Proposals for implementation of the recommendations over a period not to exceed four years and estimates of any associated additional costs.

(c) Nothing in this section requires adoption or implementation of any specific recommendation or any level of appropriation by the Legislature.

Bill Sponsors: Espinosa, Hamrick, Kurcaba, Hicks, Ellington, Blackwell, Statler and Rohrbach