WEST VIRGINIA LEGISLATURE
3rd EXTRAORDINARY SESSION, 1988

ENROLLED
Committee Substitute for
SENATE BILL NO. 14

(By Senator

PASSED June 27, 1988
In Effect from Passage
AN ACT to amend article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twelve-a; to amend and reenact section thirty-four, article one, chapter thirteen of said code; to amend and reenact sections three and five, article two, chapter seventeen-b of said code; to amend and reenact section six, article three of said chapter seventeen-b; to amend and reenact sections five-a, six, seven, nine and twenty-six, article two, chapter eighteen of said code; to further amend said article two by adding thereto eight new sections, designated sections six-a, six-b, six-c, eleven, fifteen-a, twenty-two, twenty-eight and twenty-nine; to further amend said chapter eighteen by adding thereto two new articles, designated articles two-e and two-f; to amend and reenact section four, article four of said chapter eighteen; to amend and reenact sections thirteen, fifteen, seventeen, eighteen-a and thirty-nine, article five of said chapter eighteen; to further amend said article five by adding thereto four new sections, designated sections fifteen-d, eighteen-c, twenty-six and forty; to amend and reenact sections
eighteen and twenty-six-h, article seven-a of said chapter eighteen; to amend and reenact sections one-a, two, four and five, article eight of said chapter eighteen; to further amend said article eight by adding thereto two new sections, designated section five-a and eleven; to amend and reenact sections two, four, five, six, six-a, eight, nine, ten, eleven, fourteen and twenty-two, article nine-a of said chapter eighteen; to further amend said article nine-a by adding thereto four new sections, designated sections five-a, thirteen-b, fourteen-a and twenty-three; to further amend said chapter eighteen by adding thereto a new article, designated article nine-d; to amend and reenact section five, article twenty of said chapter eighteen; to further amend said article twenty by adding thereto two new sections, designated sections seven and eight; to amend and reenact article twenty-one of said chapter eighteen; to further amend said chapter eighteen by adding thereto a new article, designated article thirty; to amend and reenact sections one, two, two-a, five and nine, article two, chapter eighteen-a of said code; to amend and reenact section one, article three of said chapter eighteen-a; to further amend said article three by adding thereto a new section, designated section eight; to amend and reenact sections five, five-c, eight, eight-a, eight-b and ten, article four of said chapter eighteen-a; to further amend said article four by adding thereto two new sections, designated sections ten-b and eighteen; to amend article five of said chapter eighteen-a by adding thereto a new section, designated section eight; to amend and reenact section three, article one, chapter twenty-nine-a of said code; to amend and reenact section one, article three of said chapter twenty-nine-a; and to further amend said chapter twenty-nine-a by adding thereto a new article, designated article three-a, all relating to public education and school finance; defining value for purpose of bonded indebtedness of school districts; denying or suspending instructional permit or operators license to person under age eighteen who has withdrawn from school prior to receipt of high school diploma or equivalent; requiring state board to file proposed rules with legislative oversight commission on education accountability; authorizing state board to develop alternative teacher training programs; requiring state board to consult with board of regents regarding all teacher preparation programs; requiring state board to implement
beginning teacher internship program by certain date; requiring state board to participate in work of national board for professional teaching standards and authorizing the state board to contract with such board and adopt or adapt work product for teaching certification; providing for establishment of faculty teams at each elementary school to set curriculum for kindergarten through fourth grade subject to approval of county board; authorizing team to apply to the state board for grant to develop and/or implement remedial and accelerated programs; directing state board to continue certain professional personnel academies; prohibiting state board from adopting rules which set daily instructional time requirements for kindergarten through fourth grade; specifying certain grade levels within which students receive certain instruction; clarifying subject matter of such instruction; referencing voter registration law; requiring instruction in substance abuse and health education, including prevention, transmission and spread of acquired immune deficiency syndrome and other sexually transmitted diseases; requiring involvement of department of health in rule-making; granting opportunity for parental examination of AIDS curriculum; providing exemption from instruction and penalties for violation of section; requiring state board to establish policy with certain required provisions for county boards to opt to grant sabbatical leaves to professional educators; requiring that certain percentage of such sabbaticals be granted to classroom teachers; requiring state board to study and make recommendations as to education law, including interpretations of statutes and administrative rules; requiring report to Legislature and the oversight commission on education accountability; requiring state board to study certain programs related to dropout prevention and report to Legislature; providing for the duties of boards of regional educational service agencies; requiring that state board and regional educational service agencies develop electronic instruction in certain circumstances; providing procedures regarding programs and services, including county participation; denying certain funding upon finding of inefficient nonparticipation by a county; authorizing establishment of school advisory councils upon petition to or discretion of school principal to be composed of elected members and appointees of the
principal; authorizing school advisory councils to propose alternatives to public school operation which meet or exceed high quality educational standards and achieve certain other objectives; providing for approval of proposed alternatives; authorizing waiver of certain district board rules to permit operation of proposed alternative; requiring report to legislative oversight commission on education accountability on rule waiver requests; making proposed alternatives eligible for certain competitive grants and incentive grant rewards; requiring state board to adopt policies to involve parents in their child's educational process; establishing competitive grant program for schools and school districts to implement exemplary and innovative programs to be awarded with regard to certain priorities based on measurable performance; requiring state board to establish rules therefor and to encourage private and other funding; stating purpose regarding high quality educational programs; establishing program for statewide testing of educational progress of students for stated purposes by stated dates in certain subject areas; providing for student make-up tests, exemption of exceptional children based on individualized education programs, notice to parents of student test scores and compilation of aggregate test scores for public inspection; requiring state board to adopt achievement standards for purposes of remediation; requiring county board to print and distribute school report cards with assistance of state board; requiring certain inclusions in report cards; providing for school and school district accreditation measured by compliance with high quality educational standards to be adopted by state board by certain date as determined by required annual reports and periodic unannounced visits by board-appointed review teams; defining levels of accreditation status; authorizing state board to declare state of emergency in certain circumstances and to intervene in the operation of the district to correct impairments; requiring accreditation information to be publicly available; creating misdemeanor of knowingly and intentionally reporting false information regarding education programs under article and providing penalty; providing for identification of and reward for schools of excellence in each regional educational service agency district in accordance with certain criteria determined by state board; providing additional
qualifications for county superintendents with exceptions thereto; authorizing counties to enter into cooperative agreements; requiring county boards to discuss and report on possibilities for district consolidation; authorizing establishment of year-round schools in accordance with state board rules; discouraging interruptions to the instructional day; requiring counties to schedule seven days outside school environment; stating findings regarding excess levies and equal educational opportunities; updating levy election provision; requiring county boards to provide in-service training on AIDS for school personnel and parents; requiring county boards of education to provide or contract with health agencies to provide developmental screening of children under compulsory school age; requiring coordination with other agencies and information to public on availability of developmental screening; exempting waiver requirement for excessive pupil/teacher ratio in certain circumstances; providing increased compensation to affected teachers; requiring state board to equitably assign students among classroom teachers; requiring state board to collect and report to the legislative oversight commission on education accountability information on class size and pupils per teacher per class in grades seven through twelve; requiring county boards to provide transitional and developmental kindergarten programs under guidelines and criteria established by state board for children who have not demonstrated readiness based on tests, other standards and professional judgment after consultation with the parent or guardian; providing for state appropriated funding for such programs; making legislative findings on suitability and need of school facilities being used for child day care and providing generally therefore in accordance with guidelines adopted by committee appointed by state superintendent; requiring professional positions for summer school to first be filled on the basis of certification and length of time employed in summer school program in county; requiring state board to establish guidelines for operation of public kindergarten and elementary schools on semester basis; requiring state board to select by certain date, on the basis of applications, at least four elementary schools with kindergarten programs from different regional educational service agency areas to be operated on a semester basis; requiring county boards to
pay retirement contributions for salaries paid in excess of certain amounts; deleting requirement for line item appropriation for payment of supplemental retirement benefit; providing that compulsory school attendance begins upon enrollment in a publicly supported kindergarten, with exceptions, and continues for as long as student is enrolled in school system after sixteenth birthday; increasing penalties, including school attendance, for parents' failure to comply with compulsory school attendance laws; transferring criminal liability from parent to student for truancy if student is age eighteen; providing for concurrent jurisdiction; increasing number of absences required before attendance director must act; requiring warrant for arrest of person accused of school attendance violation to be executed within ten days of issuance; requiring principal, administrative head or other chief administrator of schools to report unexcused absences and nonenrollees to county attendance director; requiring meeting with parent, guardian or custodian and pupil when pupil accumulates five unexcused absences during any one half of the instructional term; authorizing teacher, upon approval by principal, to use one noninstructional day for visitation to home of certain pupils; requiring reimbursement of teacher for visitation travel expenses; specifying procedures and circumstances for denial, suspension or revocation of driving privilege; including up to one thousand full-time equivalent adults enrolled in existing, regular secondary vocational programs for which no additional tuition or special fees are charged to be apportioned annually to the counties for inclusion in net enrollment computation; increasing minimum ratio of professional instructional personnel to adjusted enrollment; limiting the foundation allowance for professional educators and service personnel for the fiscal year beginning on the first day of July, one thousand nine hundred eighty-eight to amount allowable based on net enrollment in the school year one thousand nine hundred eighty-six—eighty-seven unless county's special education enrollment is less than sixteen and two tenths percent of net enrollment; prohibiting layoffs due to such provision; providing waiver of maximum ratio and growth cap for service personnel based on transportation needs and county's current expense
balance; establishing maximum ratios of professional educators and service personnel per net enrollment for purpose of basic foundation allowances; decreasing factor used in calculating unemployment compensation portion of foundation allowance for fixed charges; providing for teachers retirement fund allowance in foundation allowance for fixed charges; increasing foundation allowance for administrative cost and increasing distribution of such allowance to regional education service agencies; increasing the foundation allowance for other current expenses and substitutes and distributing such allowance in accordance with average daily enrollment; resetting amount to which increases in local share are added after certain date for foundation allowance to improve instructional programs; allocating fifty percent of increase in local share funds to school building capital improvement fund; limiting and prescribing such school building capital improvement amounts for the school year one thousand nine hundred eighty-eight—eighty-nine; prescribing expenditures for special education and other specified purposes; basing local share computation involving nonpublic utility property on assessed rather than appraised values and increasing the percentage applied to such values to determine local share; requiring minimum state appropriation for basic foundation program for stated fiscal years of no less than appropriation for fiscal year commencing the first day of July, one thousand nine hundred eighty-seven; appropriating two million dollars for remedial and accelerated programs; providing accrued funds due to changes in adjusted enrollment above that computed for stated school year be allocated sixty percent for salary equity and forty percent for remedial and accelerated programs; limiting advance funds for incentive for staffing improvement to extent appropriations are provided; providing counties with eighty percent of maximum state funds for personnel if certain criteria are met; expiring provisions relating to high quality educational standards and approval of county educational programs effective the thirty-first day of December, one thousand nine hundred eighty-eight; creating misdemeanor of knowingly and intentionally falsifying enrollment or attendance to obtain state funds and providing penalty; designating state board as school building authority and granting certain powers; defining terms and providing
generally for sale and refunding of bonds and determination of need; providing for higher education savings plan; exempting bonds and interest thereon from taxation by state or any political subdivision; authorizing authority to enter into agreement with trust company or bank to act as trustee for holders of bonds; requiring authority to make periodic payments from capitol improvement fund for deposit in special sinking fund of treasurer to meet requirements of bonds; prohibiting pledge of credit or taxing power of state by authority and specifying obligations or debts of authority not obligations or debts of state; providing for duties of state superintendent regarding juveniles and adults in correctional facilities; requiring state board to establish exceptional children program compliance review teams composed of five credentialed persons appointed by the state superintendent to conduct random, unannounced on-site program compliance reviews at least every four years in each county and recommend changes; requiring departments of health, human services and education to develop statewide plan for coordinating programs providing early intervention and developmental screening phased in for all developmentally delayed and at-risk children ages birth through five; providing for appointment of advisory council consisting of twelve credentialed persons to assist in developing the plan and performing other enumerated functions; authorizing the joint committee on education to disband or alter council functions as it deems advisable following submission of the first annual report by the council; providing for reimbursement of expenses of members; creating and providing generally for a scholarship fund administered by the board of regents to grant scholarships to prospective teachers; providing for selection of scholarship recipients; requiring board to solicit views of interested parties in developing selection criteria and procedures and determining projected needs; requiring repayment of scholarship for noncompliance with required agreement with exceptions; creating West Virginia higher education tuition trust act to permit tuition prepayment contracts and tuition trust account contracts for attendance at institutions of higher education; allowing certain tax deductions; creating board of directors and providing generally for board, contracts and fees; creating scholarship fund; expiring tuition trust act under certain circumstances;
providing for will and pleasure dismissal of certain county board employees upon approval of board; extending insurance for certain time after notice of classroom teacher's resignation; authorizing up to one-year leave of absence without pay for school personnel for pregnancy, childbirth, or adoptive or infant bonding upon notification; limiting number of pay grade H service personnel; requiring high school diploma, general educational development certificate, or enrollment in approved course as condition of employment by county board; limiting number of teaching and multi-school principalships based on student enrollment; removing certification requirement that alien person intend to become naturalized citizen; authorizing professional staff development council; deleting provision which denied equity money to counties which reduce funds allocated for salary supplements; requiring new equity appropriations to be apportioned to more closely align teachers and service personnel salaries with counterparts in contiguous states; creating service personnel class title for braille or sign language specialist and providing for salary at pay grade E; redefining secretary III; providing for multi-classification service personnel category and minimum pay; establishing minimum salary for service personnel extra-duty assignments; disregarding laws relating to hiring of professional personnel for certain intra-elementary school positions; limiting school employees' right to collect both workers' compensation and personal leave benefits; providing method for selection, recordation, review and distribution of exemplary teaching techniques and providing compensation for teachers whose exemplary techniques are utilized; providing that certain department of education personnel receive salary at least equal to that paid comparable professional personnel employed by county where office is located; exempting classroom teacher bonus from such minimum; providing for authority, qualifications, appointment, transfer and training rights and compensation of certain aides exercising control over pupils; requiring that state board rules be promulgated in accordance with article creating legislative oversight commission on education accountability; providing generally for such rule making, including notice requirements, registration with secretary of state, submission to Legislature, powers and duties of commission,
withdrawal or modification of rules, emergency rules, judicial review and other matters; and exempting prior policy from review by such commission.

Be it enacted by the Legislature of West Virginia:

That article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twelve-a; that section thirty-four, article one, chapter thirteen of said code be amended and reenacted; that sections three and five, article two, chapter seventeen-b of said code be amended and reenacted; that section six, article three of said chapter seventeen-b be amended and reenacted; that sections five-a, six, seven, nine and twenty-six, article two, chapter eighteen of said code be amended and reenacted; that said article two be further amended by adding thereto eight new sections, designated sections six-a, six-b, six-c, eleven, fifteen-a, twenty-two, twenty-eight and twenty-nine; that said chapter eighteen be further amended by adding thereto two new articles, designated articles two-e and two-f; that section four, article four of said chapter eighteen be amended and reenacted; that sections thirteen, fifteen, seventeen, eighteen-a, and thirty-nine, article five of said chapter eighteen be amended and reenacted; that said article five be further amended by adding thereto four new sections, designated sections fifteen-d, eighteen-c, twenty-six and forty; that sections eighteen and twenty-six-h, article seven-a of said chapter eighteen be amended and reenacted; that sections one-a, two, four and five, article eight of said chapter eighteen be amended and reenacted; that said article eight be further amended by adding thereto two new sections, designated sections five-a and eleven; that sections two, four, five, six, six-a, eight, nine, ten, eleven, fourteen and twenty-two, article nine-a of said chapter be amended and reenacted; that said article nine-a be further amended by adding thereto four new sections, designated sections five-a, thirteen-b, fourteen-a and twenty-three; that said chapter eighteen be further amended by adding thereto a new article, designated article nine-d; that section five, article twenty of said chapter eighteen be amended and reenacted; that said article twenty be amended by adding thereto two new sections, designated sections seven and eight; that article twenty-one of said chapter eighteen be amended and reenacted; that said chapter eighteen be further amended by adding thereto a new article, designated article thirty; that
sections one, two, two-a, five and nine, article two, chapter eighteen-a of said code be amended and reenacted; that section one, article three of said chapter eighteen-a be amended and reenacted; that said article three be further amended by adding thereto a new section, designated section eight; that sections five, five-c, eight, eight-a, eight-b and ten, article four of said chapter eighteen-a be amended and reenacted; that said article four be further amended by adding thereto two new sections, designated sections ten-b and eighteen; that article five of said chapter eighteen-a be amended by adding thereto a new section, designated section eight; that section three, article one, chapter twenty-nine-a of said code be amended and reenacted; that section one, article three of said chapter twenty-nine-a be amended and reenacted; and that said chapter twenty-nine-a be further amended by adding thereto a new article, designated article three-a, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12a. Additional modification reducing federal adjusted gross income.

1 In addition to amounts authorized to be subtracted from federal adjusted gross income pursuant to subsection (c) of section twelve of this article, any payment made under a tuition prepayment contract or tuition trust account contract, or both, as provided under section fourteen, article thirty, chapter eighteen of this code, shall also be an authorized modification reducing federal adjusted gross income.

CHAPTER 13. PUBLIC BONDED INDEBTEDNESS.

ARTICLE 1. BOND ISSUES FOR ORIGINAL INDEBTEDNESS.

§13-1-34. Bonded indebtedness of school districts; annual tax to be levied and collected to pay same; definition of value.

1 (a) Notwithstanding any other provision of this article or of any other law to the contrary, every school district, by and through its board of education, shall levy and collect in each year a direct annual tax on all taxable property in such school district sufficient to pay the principle and interest maturing in such year, together with any deficiencies for
prior years, within, and not exceeding thirty-four years, on
any bonded indebtedness of such school district, now or
hereafter contracted, not to exceed five percent of the value
of the taxable property therein to be ascertained in
accordance with section 8 of article X of the Constitution,
which levies shall be laid separate and apart and in addition
to the maximum rates provided for tax levies by school
districts on the several classes of property specified in
section 1, article X of the Constitution, but in the same
proportions as such maximum rates are levied on the
several classes of property, and which tax may be levied
outside the limits fixed by said section 1, article X of the
Constitution.

(b) The term “value” as used in this section and in
section 8, article X of the Constitution, is used in the same
context that the term “value” is used in section 1, article X
of the Constitution, and means the “worth in money” of a
piece of property — its market value for ad valorem
property tax purposes.

CHAPTER 17B. MOTOR VEHICLE OPERATORS’ AND
CHAUFFEURS’ LICENSES.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-3. What persons shall not be licensed; exceptions.

The department shall not issue any license hereunder:

(1) To any person, as an operator, who is under the age of
eighteen years: Provided, That under rules and regulations
to be established by the commissioner and in accordance
with the provisions hereinafter set forth in this subdivision
(1), a junior or probationary operator’s license may be
issued to any person between the ages of sixteen and
eighteen years, who complies with section eleven, article
eight, chapter eighteen of this code and is not otherwise
disqualified by law, upon application therefor on a form
prescribed by the commissioner and successful completion
of all examinations and driving tests required by law for the
issuance of an operator’s license to a person eighteen years
of age or older. The commissioner may impose reasonable
conditions or restrictions on the operation of a motor
vehicle by a person holding such junior or probationary
operator’s license, which conditions or restrictions shall be
printed on each such license. In addition to all other
provisions of this chapter for which a regular operator's or chauffeur's license may be revoked, suspended or cancelled, whenever a person holding such a junior or probationary operator's license does not comply with the provisions of section eleven, article eight, chapter eighteen of this code, (ii) operates a motor vehicle in violation of the conditions or restrictions set forth on such license, or (iii) has a record of two convictions for moving violations of the traffic regulations and laws of the road, which convictions have become final, the junior or probationary license of such person shall be permanently revoked, with like effect as if such person had never held a junior or probationary operator's license: Provided, however, That a junior or probationary operator's license shall be suspended for noncompliance with the provisions of section eleven, article eight, chapter eighteen of this code, and may be reinstated upon compliance: Provided further, That such junior or probationary operator's license shall be revoked upon one final conviction for any offense specified in section five, article three of this chapter. Under no circumstances shall such a license be revoked for convictions of offenses in violation of any regulation or law governing the standing or parking of motor vehicles. A person whose junior or probationary operator's license has been revoked shall not thereafter receive a junior or probationary operator's license, but such person, upon attaining the age of eighteen, shall be eligible, unless otherwise disqualified by law, for examination and driver testing for a regular operator's license or chauffeur's license. No person shall receive a junior or probationary operator's license unless the application therefor is accompanied by a writing, duly acknowledged, consenting to the issuance of such junior or probationary operator's license and executed (a) by the parents of the applicant, or (b) if only one parent is living, then by such parent, or (c) if the parents be living separate and apart, by the one to whom was awarded the custody of the applicant, or (d) if there is a guardian entitled to the custody of the applicant, then by such guardian. Upon attaining the age of eighteen years, a person holding an unrevoked junior or probationary operator's license shall, upon payment of the prescribed fee, be entitled to receive a regular operator's license or chauffeur's license without further examination or driver testing. When a junior license
is revoked as a result of two convictions for moving
violations of the traffic regulations and laws of the road as
hereinabove stated, the provisions of section one, article
four, chapter seventeen-d shall not apply;

(2) To any person, as a chauffeur, who is under the age of
eighteen years;

(3) To any person, as an operator or chauffeur, whose
license has been suspended, during such suspension, nor to
any person whose license (other than a junior or
probationary operator's license) has been revoked, except
as provided in section eight, article three of this chapter;

(4) To any person, as an operator or chauffeur, who is an
habitual drunkard, or is addicted to the use of narcotic
drugs;

(5) To any person, as an operator or chauffeur, who has
previously been adjudged to be afflicted with or suffering
from any mental disability or disease and who has not at the
time of application been restored to competency by judicial
decree or released from a hospital for the mentally
incompetent, upon the certificate of the superintendent of
such institution that such person is competent and not then
unless the commissioner is satisfied that such person is
competent to operate a motor vehicle with safety to persons
or property;

(6) To any person, as an operator or chauffeur, who is
required by this chapter to take an examination, unless
such person shall have successfully passed such
examination;

(7) To any person who is required under the provisions
of the motor vehicle safety responsibility laws of this state
to deposit proof of financial responsibility and who has not
deposited such proof;

(8) To any person when the commissioner has good
cause to believe that the operation of a motor vehicle on the
highways by such person would be inimical to public safety
or welfare.

§17B-2-5. Qualifications, issuance and fee for instruction
permits.

Any person who is at least sixteen years of age may apply
to the department for an instruction permit. The
department may, in its discretion, after the applicant has
appeared before the department of public safety and
5 successfully passed all parts of the examination other than
6 the driving test and presented documentation of
7 compliance with the provisions of section eleven, article
8 eight, chapter eighteen of this code, issue to the applicant an
9 instruction permit which shall entitle the applicant while
10 having such permit in his immediate possession to drive a
11 motor vehicle upon the public highways for a period of sixty
12 days when accompanied by a licensed operator or chauffeur
13 who is occupying a seat beside the driver, except in the
14 event the permittee is operating a motorcycle. Any such
15 instruction permit may be renewed or a new permit issued
16 for an additional period of sixty days. The fee for such
17 instruction permit shall be four dollars, one dollar of which
18 shall be paid into the state treasury and credited to the state
19 road fund, and the other three dollars of which shall be paid
20 into the state treasury and credited to the general fund to be
21 appropriated to the department of public safety for
22 application in the enforcement of the road law.

ARTICLE 3. CANCELLATION, SUSPENSION OR REVOCATION OF LICENSES.

§17B-3-6. Authority of department to suspend or revoke license; hearing.

1 The department is hereby authorized to suspend the
2 license of an operator or chauffeur without preliminary
3 hearing upon a showing by its records or other sufficient
4 evidence that the licensee:
5 (1) Has committed an offense for which mandatory
6 revocation of license is required upon conviction;
7 (2) Has by reckless or unlawful operation of a motor
8 vehicle, caused or contributed to an accident resulting in
9 the death or personal injury of another or property damage;
10 (3) Has been convicted with such frequency of serious
11 offenses against traffic regulations governing the
12 movement of vehicles as to indicate a disrespect for traffic
13 laws and a disregard for the safety of other persons on the
14 highways;
15 (4) Is an habitually reckless or negligent driver of a
16 motor vehicle;
17 (5) Is incompetent to drive a motor vehicle;
18 (6) Has permitted an unlawful or fraudulent use of such
19 license;
(7) Has committed an offense in another state which if committed in this state would be a ground for suspension or revocation;

(8) Has failed to pay or has defaulted on a plan for the payment of all costs, fines, forfeitures or penalties imposed by a magistrate court or municipal court within ninety days, as required by section two-a, article ten, chapter eight of this code;

(9) Has failed to appear or otherwise respond before a magistrate court or municipal court when charged with a motor vehicle violation as defined in section three-a, article three, chapter seventeen-b of this code;

(10) Is under the age of eighteen and has withdrawn either voluntarily or involuntarily from a secondary school, as provided in section eleven, article eight, chapter eighteen of this code.

The operator's or chauffeur's license of any person having his or her license suspended shall be reinstated if:

(A) The license was suspended under the provisions of subdivision (8) of this section and the payment of costs, fines, forfeitures or penalties imposed by the applicable court has been made; or

(B) The license was suspended under the provisions of subdivision (9) of this section, and the person having his or her license suspended has appeared in court and has prevailed against the motor vehicle violations charged, or such person has paid any and all costs, fines, forfeitures or penalties imposed by the applicable court.

Any reinstatement of a license under paragraph (A) or (B) of this subdivision shall be subject to a reinstatement fee designated in section nine of this chapter.

Upon suspending the license of any person as hereinbefore in this section authorized, the department shall immediately notify the licensee in writing, sent by registered mail to the address given by the licensee in applying for license, and upon his request shall afford him an opportunity for a hearing as early as practical within not to exceed twenty days after receipt of such request in the county wherein the licensee resides unless the department and the licensee agree that such hearing may be held in some other county. Upon such hearing the commissioner or his duly authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the
CHAPTER 18. EDUCATION.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-5a. Board rules to be filed with Legislature.

1 The state board of education shall file a copy of any rule that it proposes to promulgate, adopt, amend or repeal under the authority of the constitution or of this chapter with the legislative oversight commission on education accountability created pursuant to section eleven, article three-a, chapter twenty-nine-a. "Rule," as used herein, means a regulation, standard, statement of policy, or interpretation of general application and future effect.

§18-2-6. Training of teachers; accreditation, classification and standardization of schools; standards for degrees and diploma.

(a) The education of teachers in the state shall be under the general direction and control of the state board of education after consultation with the board of regents, which shall, through the state superintendent of schools, exercise supervisory control over teacher preparation including (1) those programs in all institutions of higher education, including student teaching in the public schools; and (2) any alternative training programs leading to licensure, in accordance with standards for program approval stated in writing by the board. Such standards shall include a provision for the study of multicultural education.

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

(b) To give prospective teachers the teaching experience needed to demonstrate competence, as a prerequisite to licensure, the state board of education may enter into an agreement with county boards of education for the use of the public schools. Such agreement shall recognize student
teaching as a joint responsibility of the teacher preparation
institution and the cooperating public schools and shall
include (1) the minimum qualifications for the employment
of public school teachers selected as supervising teachers;
(2) the remuneration to be paid public school teachers by
the state board, in addition to their contractual salaries, for
supervising student teachers; and (3) minimum standards
to guarantee adequacy of facilities and program of the
public school selected for student teaching. The student
teacher, under the direction and supervision of the
supervising teacher, shall exercise the authority of a
substitute teacher.
Institutions of higher education approved for teacher
preparation may cooperate with each other and with one or
more county boards of education in the organization and
operation of centers to provide selected phases of the
teacher preparation program such as student teaching or
internship programs, instruction in methodology, seminar
programs for college students, first year teachers and
supervising teachers.
Such institutions of higher education and participating
county boards of education may budget and expend funds
for the operation of such centers through payments to the
appropriate fiscal office of the county designated by mutual
agreement of participating county school boards and higher
education institutions to serve as the administering agency
of the center.
The provisions of this section shall not be construed to
require the discontinuation of an existing student teacher
training center or school which meets the standards of the
state board of education.
(c) Notwithstanding any other provision of this article
to the contrary, the state board of education is authorized to
develop alternative training programs leading to licensure
in accordance with rules and regulations adopted by the
state board of education after consultation with the board
of regents: Provided, That no teacher shall be permanently
certified who has not completed a core curriculum, as
determined by the state board after consultation with the
board of regents, in an approved teacher preparation or
improvement program at an accredited institution of higher
education.
The state board shall also develop and implement a beginning teacher internship program by the first day of July, one thousand nine hundred ninety. (d) The state board shall make 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 the granting of diplomas and other certificates of proficiency, except those conferred or granted by institutions of higher education. No institution of less than collegiate or university status may grant any diploma or other certificate of proficiency on any basis of work or merit below the minimum standards prescribed by the state board of education. All institutions of higher education approved for teacher preparation in the school year of one thousand nine hundred sixty-two—sixty-three shall continue to hold that distinction so long as they meet the minimum standards for teacher preparation. Nothing contained herein shall infringe upon the rights granted to any institution by charter given according to law previous to the adoption of this code.

No charter or other instrument containing the right to issue diplomas or other certificates of proficiency shall 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 such diplomas or other certificates of proficiency has first been approved in writing by the state board of education.

§18-2-6a. Participation in National Standards Board.

The state board shall participate in the work of, and may contract with, the National Board for Professional Teaching Standards, Inc., to develop processes, procedures and assessment measures for the independent certification of teachers and may adopt or adapt the product of such work for the granting of teaching certificates valid in the public schools of the state.

§18-2-6b. Establishment of school teams.

There shall be established at each elementary school in the state a team composed of the school principal, the counselor designated to serve that school and three teachers
4 from the kindergarten through fourth grade faculty chosen
5 by that faculty.
6 The school team shall establish the programs and
7 methods for implementing a curriculum based on state-
8 approved learning outcomes for kindergarten through
9 fourth grade based on the needs of the individual school
10 with a focus on the basic skills of reading, composition and
11 mathematics. The curriculum thus established shall be
12 submitted to the county board of education for approval or
13 for return to the school for reconsideration.
14 The school team may apply for a grant from the state
15 board of education for the development and/or
16 implementation of remedial and accelerated programs to
17 meet the needs of the students at the individual school.

§18-2-6c. Teachers' forum; teachers' academy; principals'
academy; other training and development
programs.

1 The Legislature, recognizing the positive contributions
2 which the previously established teachers' forums,
3 teachers' academy and principals' academy have made to
4 excellence in education throughout the public school
5 system, hereby directs the board to continue these programs
6 and to develop plans for the expansion and improvement of
7 these programs and for the establishment of other training
8 and staff development programs designed to promote and
9 encourage excellence in the public schools of West Virginia.

§18-2-7. Courses of study; language of instruction.

1 The state board of education shall prescribe minimum
2 standards in the courses of study to be offered in elementary
3 schools, high schools, vocational schools and in all other
4 kinds, grades and classes of schools or departments thereof,
5 which may now or hereafter be maintained in the state, in
6 whole or in part, from any state fund or funds: Provided,
7 That the courses of study in the public schools in the state
8 shall be prepared by the faculties, teachers or other
9 constituted authority thereof, and shall, before going into
10 effect, be submitted to the state board of education for its
11 approval. The basic language of instruction in all schools,
12 public, private and parochial, shall be the English language
13 only. The state board shall not adopt any policies, or rules
which set out time requirements within the instructional
day for instruction in kindergarten through fourth grade.

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

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

(b) The state board of education shall cause to be taught
in all of the public schools of this state the subject of health
education, including instruction in any of the grades six
through twelve as deemed appropriate by the county board,
on (1) the prevention, transmission and spread of acquired
immune deficiency syndrome and other sexually
transmitted diseases and (2) substance abuse, including the
nature of alcoholic drinks and narcotics, tobacco products,
and other potentially harmful drugs, with special
instruction as to their effect upon the human system and
upon society in general. The course curriculum
requirements and materials for such instruction shall be
adopted by the state board by rule in consultation with the
department of health.
An opportunity shall be afforded to the parent or guardian of a child subject to instruction in the prevention, transmission and spread of acquired immune deficiency syndrome and other sexually transmitted diseases to examine the course curriculum requirements and materials to be used in such instruction. The parent or guardian may exempt such child from participation in such instruction by giving notice to that effect in writing to the school principal.

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


The state board shall by the first day of December, one thousand nine hundred eighty-eight, establish by policy a sabbatical leave program. Such program participation shall be considered optional for each county board. Individuals employed as professional educators, as defined in section one, article one, chapter eighteen-a of this code, and aides shall be eligible for the sabbatical leave program: Provided, That such aides have a cumulative grade point of three and two tenths on a possible four point scale pursuant to successful completion of at least sixty-four semester hours of course work at an approved institution of higher education. Such policy shall establish the educational objectives, peer selection criteria and other guidelines the board deems necessary. The sabbatical leave policy shall provide that not less than ninety-five percent of sabbatical leaves granted shall be for classroom teachers and such policy shall not provide for the granting of sabbatical leave to any employee who has fewer than ten years of West Virginia public school service, nor shall compensation during such leave be more than one half of the employee's regular salary. While on sabbatical leave the employee shall be deemed to be a full-time employee for purposes of years of experience and participation in the teachers retirement...
system and the public employee insurance program. Any
employee receiving a sabbatical leave shall be required to
return to employment by the board which granted the leave
for a period of at least one year or repay the compensation
and benefits received during that time and have deducted
the retirement credit and years of service credit accrued
during sabbatical leave: Provided, however, That
sabbatical leaves for teachers and certain aides shall be
optional by the respective boards of education.


The state board of education shall conduct a
comprehensive study of the administrative rules adopted by
the board, the state superintendent's interpretations and
the West Virginia statutes relating to education that are the
basis of the rules, and interpretations. The study shall
include recommendations to revise or to repeal certain
rules, interpretations or statutes with specific attention to
be given to reducing paperwork for classroom teachers. The
state superintendent shall prepare a written report
detailing the findings, conclusions and recommendations
generated by the study to be presented to the legislative
oversight commission on education accountability by the
first day of December, one thousand nine hundred eighty-
eight.

§18-2-22. State board study of programs related to school
dropout prevention.

The state board shall review the dropout program
developed in the state of Wisconsin, commonly referred to
as “learnfare”, and other alternative educational programs
commonly referred to as “ocean-quest” and “vision-quest”,
and shall make a report to the Legislature with appropriate
recommendations by the first day of December, one
thousand nine hundred eighty-eight.

§18-2-26. Establishment of multi-county regional educational
service agencies; purposes; authority to
implement regional services.

(a) In order to consolidate and administer more
effectively existing educational programs and services and
in order to equalize and extend educational opportunities,
the state board of education shall establish multi-county
5 regional educational service agencies for the purpose of
6 providing high quality, cost effective educational programs
7 and services to the county school systems, and shall make
8 such rules as may be necessary for the effective
9 administration and operation of such agencies.
10 (b) In furtherance of these purposes, it is the duty of the
11 board of directors of each regional educational service
12 agency to continually explore possibilities for the delivery
13 of services on a regional basis which will facilitate equality
14 in the educational offerings among counties in its service
15 area, permit the delivery of high quality educational
16 programs at a lower per student cost, strengthen the cost
17 effectiveness of education funding resources, reduce
18 administrative and/or operational costs, and promote the
19 efficient administration and operation of the public school
20 systems generally.
21 Technical, operational, programmatic or professional
22 services would be among the types of services appropriate
23 for delivery on a regional basis.
24 (c) A regional educational service agency may
25 implement regional programs and services by a majority
26 vote of its board of directors. When said vote is not
27 unanimous, the board of directors shall file a plan for the
28 service or program delivery with the state board describing
29 the program or service, the manner of delivery and the
30 projected savings and/or the improved quality of the
31 program or service. The state board shall promulgate rules
32 requiring a county board that declines to participate in such
33 programs or services to show just cause for not
34 participating and the estimated savings accruing to the
35 county therefrom. If a county board fails to show that
36 savings will accrue to the county or the quality of the
37 program will be significantly and positively affected as a
38 result of its decision not to participate, the state board shall
39 withhold from the county's foundation allowance for
40 administrative cost the lesser of the amount of the
41 estimated savings or the allocation for the county's
42 foundation allowance for administrative cost.
43 (d) The state board, in conjunction with the various
44 regional educational service agencies, shall develop an
45 effective model for the regional delivery of instruction in
46 subjects where there exists low student enrollment or a
47 shortage of certified teachers or where such delivery
method substantially improves the quality of an instructional program. Such model shall incorporate an interactive electronic classroom approach to instruction. To the extent funds are appropriated or otherwise available, county boards or regional educational service agencies may adopt and utilize the model for the delivery of such instruction.

(e) A regional board shall be empowered to receive and disperse funds from the state and federal governments, member counties, gifts and grants.


1 (a) Upon petition to the school principal by at least twenty percent of the school community, or at the discretion of the principal without a petition, a school advisory council shall be established consisting of the principal, who shall serve as the ex officio, nonvoting chairman of the council, three teachers elected by secret ballot by and from teachers employed at the school on the date notice of such election was given, one school service personnel elected by secret ballot by and from school service personnel employed at the school on the date notice of such election was given, three parents of students enrolled at the school elected by secret ballot by and from such parents, and two at-large members who reside in the school's attendance area appointed by the principal subject to approval of the elected members of the council. For the purposes of this section, the school community shall consist of the classroom teachers as defined in section one, article one, chapter eighteen-a of this code, the service personnel, the parents and administrators of the school taken together.

Following such petition, the principal shall arrange for such elections to be held prior to the thirty-first day of October of each school year and shall give notice of the elections at least one week prior to the elections being held. To the extent practical, all elections shall be held within the same week. Persons elected to the council may only be replaced upon death, resignation, change of employment status, failure to appear at three consecutive meetings of the committee for which reasonable notice was given or, in the case of the parent members, discontinuance of their child's enrollment at that school. In the case of replacement, an election shall be held to elect another qualified person to
Each member of the committee must be given written notice two weeks in advance of any committee meeting.

(b) A school advisory council may propose alternatives to the operation of the public school which will meet or exceed the high quality standards established by the state board and will increase administrative efficiency, enhance the delivery of instructional programs, promote community involvement in the local school system or improve the educational performance of the school generally. The alternatives proposed by the council may include matters which require the waiver of district board policies or rules other than those relating to due process rights. For an alternative to be proposed, at least five of the members must vote in favor thereof.

To facilitate the work of the school advisory councils, any district board policy which exceeds the requirements of a written state board policy shall specify the extent to which the requirements exceed those of the state board.

Whenever a school advisory council decides to propose an alternative, it shall forward a copy of the proposal to the school district board. The school district board shall acknowledge receipt of the proposed alternative, promptly review the proposed alternative and, in its discretion, approve the alternative or reply to the advisory council within a reasonable time as to its reasons for not approving the proposed alternative.

(c) The state board shall by the first day of July of each year submit a report to the legislature identifying all policy or rule waiver requests received in the preceding school year and the disposition of each.

(d) School advisory councils shall be considered for the receipt of school of excellence competitive grant awards under section twenty-nine of this article, and may receive and expend such grants for the purposes provided in such section.

(e) In any and all matters which may fall within the scope of the school advisory councils and the school teams authorized in section six-b of this article, the school teams shall be deemed to have jurisdiction.

(f) The state board shall further adopt policies to involve parents in their child's educational process.
§18-2-29. Competitive grant program for selected schools and school districts.

The state board shall establish no later than the school year one thousand nine hundred eighty-nine—ninety, a competitive grant program whereby schools may be awarded grants to implement exemplary and innovative programs designed to improve instruction. The priority for rewarding competitive grants to schools shall be for schools having probationary accreditation status, as defined in section five-c, article two-e, chapter eighteen, and school districts having nonapproval accreditation status as defined in section five-d, article two-e, chapter eighteen. Approval of the competitive grants shall be based on measurable performance and progress towards achieving full accreditation for the school or school district. Such measurable performance shall include criteria such as: (a) student achievement gain; (b) student attendance; (c) teacher attendance; (d) parent participation; (e) reduction in the amount of paperwork required of teachers; and (f) any other factor promoting the attainment of full accreditation for the school or school district. The state board shall promulgate rules which ensure that the school or school district utilizes these funds appropriately. The state board shall encourage the donation of funds from private and other sources to augment state funding for the program.

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-1. Legislative purpose.

The purpose of this article is to provide for the establishment of high quality educational standards, to provide for the evaluation of student progress in attaining the knowledge and skills essential for them to become productive members of society, and to provide assurances to the public that a thorough and efficient system of education is being provided for all public school children in West Virginia.

§18-2E-2. Statewide testing of educational progress program (WV-STEP); purposes, development and implementation of program.

(a) The state board of education shall establish a
program for the statewide testing of the educational
progress of public school students in attaining a high
quality education, hereinafter referred to as the WV-STEP
program.

The WV-STEP program shall provide information to:

(1) Assess the overall academic progress of students,
including (i) identifying individual students' academic
weaknesses and readiness, and (ii) identifying students who
may need remediation;

(2) Assist the teacher in determining student
promotion;

(3) Compare achievement of students in West Virginia
to achievement of students on a national basis;

(4) Assess the strengths and weaknesses of school
performance;

(5) Assess the effects of state and local educational
programs;

(6) Make decisions at the state and local level with
regard to educational matters, including (i) the need for new
or revised educational programs and the need to terminate
existing educational programs, (ii) overall curriculum
development and revision activities, and (iii) teacher
training and staff development activities; and

(7) Inform the public of the overall quality of education
in individual schools and school districts.

(b) The state board shall prepare detailed design
specifications for the WV-STEP program which accomplish
the following:

(1) Take into account the state learning outcome
statements in the basic skill areas of reading, composition,
mathematics and other subject areas as determined by the
state board; and

(2) Include testing of students' higher level cognitive
thinking in each subject area tested.

"Learning outcome statements" mean statements
developed and adopted by the state board which for the
purposes of this article have been fully and properly field
tested to insure their reliability and validity in indicating
the knowledge base and skills expected of students for
particular subject areas and which may be used to measure
indicators of statewide standards for student progress in
attaining a high quality education.

(c) The state board shall implement the WV-STEP
program as follows:
(1) Beginning in the school year one thousand nine hundred ninety—ninety-one, and continuing thereafter:

(i) A test designed to measure a student's readiness to begin the formal school curriculum shall be administered to all public school students during the second half of the kindergarten grade. The results of the readiness test shall be used to assist the teacher in determining which students are in need of a transitional kindergarten program or to provide appropriate developmental activities in the first grade; and

(ii) A criterion referenced test measuring competencies based on the learning outcome statements shall be administered to all public school students in grades one, two, three and four to measure student academic progress in reading, composition and mathematics in those respective grades. The results of the tests shall be used to identify each student's deficiencies, aid in determining instruction needed by the student in achieving the statewide standards established for the respective grade and assist the teacher in determining student promotion.

(2) Beginning in the school year one thousand ninety-one—ninety-two, and continuing thereafter:

(i) A criterion referenced test measuring competencies based on the learning outcome statements that measure reading, composition and mathematics in grade five shall be administered to all public school students in grade five. Each year thereafter, a criterion referenced test for these subject areas shall be administered to students in the next higher grade through grade eight; and

(ii) Criterion referenced testing measuring competencies based on the learning outcome statements in additional subject areas shall be implemented as funds are available on a schedule determined by the board.

(3) Beginning in the school year one thousand nine hundred ninety—ninety-one, and continuing thereafter, National Assessment of Educational Progress Program tests shall be administered in academic areas at the various grades designated by the National Assessment of Educational Progress officials to provide comparisons of West Virginia students to a national sample.

(d) The state board shall revise and update the learning outcome statements as necessary and shall determine a schedule for the annual administration of the WV-STEP
program tests. The state superintendent is responsible for
the overall development, implementation and monitoring
of the program. The state board may establish a pilot
program to implement the WV-STEP program prior to the
required implementation dates under subsection (c) of this
section.
(e) Any student who is unable to take any of the tests
prescribed in this section because of absence from school
and provides school authorities with a valid reason for such
absence shall be given the missed test as soon as possible
following the student’s return to school. An exceptional
child is subject to testing under the WV-STEP program only
to the extent specified in that child’s individualized
education program (IEP).
(f) The parent or guardian of each student tested under
the WV-STEP program shall be notified in writing of the
students test score, along with the average test score of all
other students in the same grade at the school. The state
board shall promulgate rules for the compilation of
aggregate test scores by grade in such manner as to permit
the comparison of student performance at different schools
within and among the various school districts. The test
scores of all students taking the test at each school shall be
compiled by the district pursuant to such rules, shall be
made available for public inspection and shall be included
in the school and county report cards under section four of
this article. However, no individual student’s WV-STEP
scores may be disclosed to the public.
(g) The department of education shall take necessary
administrative action under section five of this article to
monitor and evaluate the curriculum and instruction
methods in each school district to insure compliance with
the standards and purposes of this article.
§18-2E-3. Compensatory and remedial instruction programs;
uniform promotion criteria.
(a) The Legislature finds and declares that student
progress towards attainment of a high quality education is
enhanced when students are afforded the opportunity to
remediate their academic deficiencies when they occur, and
before moving on to higher level work. Therefore, the state
board shall develop and adopt rules in accordance with the
provisions of this section, and which complement and are
coordinated with federally funded compensatory education programs, requiring school districts to provide compensatory and remedial instruction programs for students who fail to meet or exceed the statewide standards for student progress in the subject matter and in the grades in which the students are tested under the WV-STEP program. Compensatory and remedial programs may include special homework, tutorial sessions, extended school day instruction, modified instructional materials, other modifications in the instructional program, summer school instruction, retention in grade and such other programs as are appropriate for providing special instruction inside or outside the regular classroom designed to increase student knowledge in given subject areas. The guidelines shall provide for notification to the parent or guardian of the educational deficiency of a student subject to remediation and shall encourage their involvement in the remediation effort, including allowances for alternative remediation plans to be implemented by the parent or guardian with approval of the teacher. The guidelines shall further provide for every student who receives a score on the WV-STEP test below state standard to be re-tested prior to promotion to the next higher grade, except that students who are assigned to a compensatory or remediation program may be re-tested at any time during such program at the discretion of the teacher to determine the student's continued need for the program and upon receiving a score at or above state standard shall not again be re-tested at that level.

The purpose of the compensatory and remedial programs shall be to (1) reduce the number of students who fail to make acceptable progress towards attaining a high quality education as indicated by their scores on the WV-STEP program tests and (2) improve the academic performance of students who have scored below the standard and who in the opinion of the teacher will not be able to achieve the standard through regular classroom instruction.

A school district board of education may request from the state board in writing a waiver from the guidelines established by the state board if:

(1) The implementation of compensatory and remedial programs under the guidelines would cause an undue
financial hardship or the district has a low number of
students requiring such programs; and
(2) The district board implements an alternative plan of
remediation approved by the state board for those students
who would be required to attend such programs under this
section.
(b) Whenever a student who is tested under the WV-
STEP program receives a score below the state standard in a
particular subject area at that student's grade level and, in
the judgement of the teacher, the level of knowledge of the
student in the subject area will not sufficiently improve
through instruction in the regular classroom to enable the
student to obtain a score at or above state standard upon
re-testing and/or the student's level of knowledge in the
subject area would improve to a greater extent from
participation in programs which cannot be reasonably
accomplished in the regular classroom, the teacher shall
assign the student to complete a remediation program in
that subject.
(c) Instruction in remedial, compensatory and
enrichment programs shall be accomplished at such times
as will result in minimum disruption in the student's
instruction in the basic skills in the regular classroom and
to the extent possible shall use existing personnel.
(d) The state board shall establish uniform criteria
based on the learning outcome statements and the results of
the Statewide Testing of Educational Progress (WV-STEP)
program tests to assist the teacher in determining the
promotion of students to the next higher grade. The criteria
shall include a requirement that every student has taken the
WV-STEP test at least one time during the school year.
Whenever a student who is re-tested prior to promotion
under the WV-STEP program receives a total test score that
is below the state standard at that student's grade level, the
teacher shall (1) assign the student to a remediation
program that includes re-testing to be successfully
completed prior to promotion to the next higher grade, (2)
retain the student at the same grade level in the following
year, or (3) state in writing to the principal, to be forwarded
to the district superintendent, that (i) the performance of a
student on a re-test does not accurately reflect the student's
level of knowledge based on performance in the class during
the year and that the student should be promoted to the next
higher grade despite having received a total test score below state standard, or (ii) the student has been previously retained under this section, is achieving at his or her potential despite the test score, and would not academically benefit from being retained at the current grade level.

A student may be retained under this section only one time for each grade level.

If a student is retained for one school year under this subsection, the district board shall provide assistance to the student that is designed to meet that student's individual learning needs.

(e) The superintendent of the school district shall report annually to the state board detailed information as required by the state board concerning test scores and any waivers granted under this section.

(f) School districts shall annually evaluate the compensatory and remedial programs in the district as prescribed by state board rules. If the average WV-STEP test scores of students assigned to the programs do not show acceptable improvement as determined by the state board, the programs must undergo formal process evaluation. Further state funding will be contingent upon an approved corrective action plan.

(g) By November first of each year the state board shall report to the Legislature an analysis of test scores and data for the preceding school year including an analysis by the department of education of data necessary to evaluate at the school level the effectiveness of the remedial and compensatory education programs and the per student cost of each classification of student under the rules of the board. Additionally, a longitudinal analysis of the data must be provided to determine the long term effect of program participation on academic achievement of students.

(h) Notwithstanding any other provisions of statute or rules, testing of students for comparison with national norms or for the purposes of this section shall be limited to six instructional days in each school year unless the difference between the number of days required and six are added to the instructional term for students and the employment term for necessary personnel.

(i) Nothing in this section shall be construed to prevent a teacher from exercising his or her judgement in the
assignment of remedial course work, the retention of
students at the same grade level or in the practice of other
academically sound principles to increase the classroom
performance of students despite a student’s WV-STEP test
score at or above the state standard.

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

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

(b) The school report cards shall include:

(1) The following indicators of student performance at
the school in comparison with the county, state, regional,
and national student performance, as applicable: student
performance by grade level in the various subjects tested
under the Statewide Testing of Educational Progress
program; school attendance rates; the percent of students
not promoted to next grade; the graduation rate; and
student mobility (turnover shown as a percent of transfers
out and a percent of transfers in); and

(2) The following indicators of school performance in
comparison with the aggregate of all other schools in the
county and the state, as applicable: average class size;
percent of enrollments in courses in high school
mathematics, science, English and social science; amount of
time per day devoted to mathematics, science, English and
social science at middle, junior high and high school grade
levels; percent of enrollments in college preparatory,
general education and vocational education programs;
pupil-teacher ratio; number of exceptions to pupil-teacher
ratio requested by the county board and the number of
exceptions granted; the number of split-grade classrooms; pupil-administrator ratio; operating expenditure per pupil; county expenditure by fund in graphic display; and the average degree classification and years of experience of the administrators and teachers at the school.

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

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

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

The report cards shall be completed and disseminated prior to the first day of January, one thousand nine hundred eighty-nine, and in each year thereafter, and shall be based upon information for the current school year, or for the most recent school year for which such information is available, in which case such year shall be clearly footnoted.

(e) In addition to the requirements of subsection (c) of this section, the school district report card shall list (1) the names of the members of the district school board, the dates upon which their terms expire and whether they have
attended an orientation program for new members approved by the state board and conducted by the West Virginia school board association or other approved organizations, and other school board member training programs, and (2) the names of the district school superintendent and every assistant and associate superintendent and any training programs related to their area of school administration which they have attended. Such information shall also be reported by district in the statewide school report card.

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

§18-2E-5. School accreditation; standards compliance board; approval status; intervention to correct impairments.

(a) The purpose of this section is to provide assurances that a thorough and efficient system of education is being provided for all West Virginia public school students on an equal educational opportunity basis and that the high quality standards are being met. A system for the review of school district educational plans, performance based accreditation and periodic, random, unannounced on-site effectiveness reviews of district educational systems, including individual schools within the districts, shall provide assurances that the high quality standards, established pursuant to subsection (b) of this section, are being met. A performance-based accreditation system shall provide assurances that the high quality standards, established pursuant to subsection (c) of this section, are being met.

(b) On or before the first day of January, one thousand nine hundred eighty-nine, the state board of education shall establish and adopt high quality educational standards in the areas of curriculum, finance, transportation, special education, facilities, administrative practices, training of school district board members and administrators, personnel qualifications, professional development and evaluation, student and school performance and other such areas as determined by the state board of education. Each school district shall submit an annual improvement plan
designed around locally identified needs showing how the educational program of each school in the district will meet or exceed the high quality standards.

A performance-based accreditation system shall be the only statewide system used for accrediting or classifying the public schools in West Virginia. The state board shall establish a schedule and shall review each school within a district and each school district board of education for accreditation.

(c) On or before the first day of July, one thousand nine hundred eighty-nine, the state board of education shall establish and adopt a system which measures the performance of each school on the following measures of student and school performance: Student performance by grade level in the various subjects tested under the Statewide Testing of Educational Progress program; school attendance rates; student dropout rate; the percent of students promoted to next grade and the number of waivers of the promotion standard granted; the graduation rate; average class size; pupil-teacher ratio; number of exceptions to pupil-teacher ratio requested by the county board and the number of exceptions granted; the number of split-grade classrooms; pupil-administrator ratio; and the operating expenditure per pupil.

The state board annually shall review the information submitted for each school and shall issue to every school: (1) full accreditation status; or (2) probationary accreditation status.

Full accreditation status shall be given to a school when the measure of the school’s performance on the above indicators is at a level which would be expected when all of the high quality educational standards are being met. Probationary accreditation status shall be given to a school when the measure of the school’s performance is below such level.

Whenever a school is given probationary accreditation status, the district board shall implement an improvement plan which is designed to increase the performance of the school to a full accreditation status level within one year.

(d) Whenever the state board of education determines that the quality of education in a school is seriously impaired, the state superintendent, with approval of the state board, shall appoint a team of three improvement
consultants to make recommendations within sixty days of appointment for correction of the impairment. Upon approval of the recommendations by the state board, the recommendations shall be made to the district board of education. If progress in correcting the impairment is not made within six months of receipt of the recommendations, the state superintendent shall provide consultation and assistance to the district board to (1) improve personnel management, (2) establish more efficient financial management practices, (3) improve instructional programs and policies or (4) make such other improvements as may be necessary to correct the impairment. If the impairment is not corrected within one year of receipt of the recommendations, the district shall be given probationary approval status or nonapproval status.

(e) Whenever a school is given probationary status or is determined to be seriously impaired and fails to improve its status within one year, any student attending such school may transfer once to the nearest fully accredited school, subject to approval of the fully accredited school and at the expense of the school from which the student transferred.

(f) The state board of education shall issue one of the following accreditation levels to each school district board of education: (1) full approval, (2) probationary approval or (3) nonapproval. Full approval shall be given to a district board whose educational system meets or exceeds all of the high quality standards adopted by the state board and whose schools have all been given full accreditation status. Full approval shall be for a period not to exceed four years.

Probationary approval shall be given to a district board of education whose educational program has not met the high quality standards, or which has one or more schools in the district given probationary status. Probationary approval is a warning that the district board must make specified improvements. If the high quality standards are not met during the succeeding year, or the number of schools in the district given probationary status is not reduced to a number that would allow full accreditation to be granted in the following year, the district board shall be automatically given nonapproval. In addition, nonapproval shall be given to a district board of education which fails to
submit an annual program plan or fails to demonstrate a reasonable effort to meet the high quality standards.

(g) Whenever nonapproval status is given to a district, the state board of education shall declare a state of emergency in the district and may intervene in the operation of the district to (1) limit the authority of the district superintendent and district board of education 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 policies, and such other areas as may be designated by the state board by rule, (2) take such direct action as may be necessary to correct the impairment and (3) declare that the office of the district superintendent is vacant.

(h) To assist the state board in determinations of the accreditation status of schools and the approval status of school districts under this section, the state board shall from time to time appoint an educational standards compliance review team to make unannounced on-site reviews of the educational programs in any school or school district in the state to assess compliance of the school or district with the high quality standards adopted by the state board, including but not limited to facilities, administrative procedures, transportation, food services and the audit of all matters relating to school finance, budgeting and administration.

The teams shall be composed of not more than ten persons, not more than half of whom may be members of or currently employed by the state board, who possess the necessary knowledge, skills and experience to make an accurate assessment of such educational programs. The educational standards compliance team shall report the findings of its on-site reviews to the state board of education for inclusion in the determination of a school's or district's accreditation or approval status as applicable.

The state board of education shall encourage the sharing of information to improve school effectiveness among the districts.

The state board shall make accreditation information available to the Legislature, the governor, the general public and to any individuals who request such information.
The state board shall fully implement the accreditation system established under this article for all schools on the first day of July, one thousand nine hundred eighty-nine, and may pilot test the system prior to that date. The state board shall adopt rules necessary to implement the provisions of this article.

§18-2E-6. Falsifying reports; penalty.

It shall be unlawful for any person knowingly and intentionally to falsely report any information required under this article. Any person who violates the provisions of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned in the county jail for not more than one year, or fined not more than one thousand dollars, or both.

ARTICLE 2F. SCHOOLS OF EXCELLENCE.

§18-2F-1. State board to establish criteria for selecting schools of excellence; annual school of excellence awards.

The state board of education shall promulgate rules outlining criteria for the identification of schools of excellence. Such criteria shall include, but not be limited to, improvement in student achievement in comparison to state and national norms, improvement in reducing drop-out rates, improvement in standardized test scores, implementation of advanced or innovative programs, parent and community involvement, student attendance and other factors which promote excellence in education. Such rules shall be promulgated by the first day of July, one thousand nine hundred eighty-nine. No school shall be prohibited by such rules from applying for consideration as a school of excellence.

Each year, the state board shall select one high school, one middle or junior high school, and one elementary school within each regional educational service agency district, and one vocational school selected on a statewide basis to be awarded school of excellence status.

§18-2F-2. Teachers, students to be honored; parents and community honored.

The state board shall promulgate rules outlining appropriate methods of recognizing and honoring teachers, students attending schools of excellence, and parents or
members of the school community who have contributed to excellence in education at the school.

ARTICLE 4. COUNTY SUPERINTENDENT OF SCHOOLS.

§18-4-4. Compensation generally; master's degree or equivalent required for new appointee.

On or before the first day of May of the year in which the superintendent is appointed, the board shall fix the annual salary of the superintendent for the period of appointment for the term beginning on the first day of July following. The board shall pay the salary from the general current expense fund of the district: Provided, That any newly appointed superintendent not employed as a superintendent on the effective date of this section shall meet the requirements set forth in section two of this article and shall hold a superintendent's certificate and at least a master's degree or its equivalent related to public school education plus twenty-four semester hours related to public school education earned at an institution of higher education approved to offer graduate work: Provided, however, That any assistant superintendent employed in this state on the effective date of this section who was employed as a county superintendent in this state shall not be required to meet the requirements of this section.

ARTICLE 5. COUNTY BOARD OF EDUCATION.


The boards, subject to the provisions of this chapter and the rules and regulations of the state board, shall have authority:

(1) To control and manage all of the schools and school interests for all school activities and upon all school property, whether owned or leased by the county, including the authority to require that records be kept of all receipts and disbursements of all funds collected or received by any principal, teacher, student or other person in connection therewith, any programs, activities or other endeavors of any nature operated or carried on by or in the name of the school, or any organization or body directly connected with the school, to audit such records and to conserve such funds, which shall be deemed quasi-public moneys, including securing surety bonds by expenditure of board moneys;
(2) To establish schools, from preschool through high school, inclusive of vocational schools; and to establish schools and programs, or both, for post high school instruction, subject to approval of the state board of education;

(3) To close any school which is unnecessary and to assign the pupils thereof to other schools: Provided, That such closing shall be officially acted upon and teachers and service personnel involved notified on or before the first Monday in April, in the same manner as provided in section four of this article, except in an emergency, subject to the approval of the state superintendent, or under subdivision (5) of this section;

(4) To consolidate schools;

(5) To close any elementary school whose average daily attendance falls below twenty pupils for two months in succession and send the pupils to other schools in the district or to schools in adjoining districts. If the teachers in the school so closed are not transferred or reassigned to other schools, they receive one month's salary;

(6) (a) To provide at public expense adequate means of transportation, including transportation across county lines, for all children of school age who live more than two miles distance from school by the nearest available road; to provide at public expense and according to such regulations as the board may establish, adequate means of transportation for school children participating in board-approved curricular and extracurricular activities; and to provide in addition thereto at public expense, by rules and regulations and within the available revenues, transportation for those within two miles distance; to provide in addition thereto, at no cost to the board and according to rules and regulations established by the board, transportation for participants in projects operated, financed, sponsored or approved by the commission on aging: Provided, That all costs and expenses incident in any way to transportation for projects connected with the commission on aging shall be borne by such commission, or the local or county chapter thereof: Provided, however, that in all cases the school buses owned by the board of education shall be driven or operated only by drivers regularly employed by the board of education: Provided
further, That the county board may provide, under rules established by the state board, for the certification of professional employees as drivers of board-owned vehicles with a seating capacity of less than ten passengers used for the transportation of pupils for school-sponsored activities other than transporting students between school and home: And provided further, That the use of such vehicles shall be limited to one for each school-sponsored activity: And provided further, That buses shall be used for extracurricular activities as herein provided only when the insurance provided for by this section shall have been effected; (b) To enter into agreements with one another to provide, on a cooperative basis, adequate means of transportation across county lines for children of school age subject to the conditions and restrictions of subdivisions (6) and (8) of this section; (7) To lease school buses operated only by drivers regularly employed by the board to public and private nonprofit organizations or private corporations to transport school-age children to and from camps or educational activities in accordance with rules and regulations established by the board. All costs and expenses incurred by or incidental to the transportation of such children shall be borne by the lessee; (8) To provide at public expense for insurance against the negligence of the drivers of school buses, trucks or other vehicles operated by the board; and if the transportation of pupils be contracted, then the contract therefor shall provide that the contractor shall carry insurance against negligence in such an amount as the board shall specify; (9) To provide solely from county funds for all regular full-time employees of the board all or any part of the cost of a group plan or plans of insurance coverage not provided or available under the West Virginia public employees insurance act; (10) To employ teacher aides, to provide in-service training for teacher aides, the training to be in accordance with rules and regulations of the state board and, in the case of service personnel assuming duties as teacher aides in exceptional children programs, to provide a four-clock-hour program of training prior to such assignment which
shall, in accordance with rules and regulations of the state board, consist of training in areas specifically related to the education of exceptional children;

(11) To establish and conduct a self-supporting dormitory for the accommodation of the pupils attending a high school or participating in a post high school program and of persons employed to teach therein;

(12) To employ legal counsel;

(13) To provide appropriate uniforms for school service personnel;

(14) To provide at public expense and under regulations as established by any county board of education for the payment of traveling expenses incurred by any person invited to appear to be interviewed concerning possible employment by such county board of education;

(15) To allow or disallow their designated employees to use publicly provided carriage to travel from their residences to their workplace and return: Provided, That such usage is subject to the supervision of such board and is directly connected with and required by the nature and in the performance of such employee's duties and responsibilities;

(16) To provide, at public expense, adequate public liability insurance, including professional liability insurance for board employees; and

(17) To enter into agreements with one another to provide, on a cooperative basis, improvements to the instructional needs of each county. Said cooperative agreements may be used to employ specialists in a field of academic study or support functions or services, therefor. Such agreements shall be subject to approval by the state board of education.

The county superintendents of schools and the county boards of two or more adjoining counties shall communicate with one another for the purpose of scheduling one or more joint meetings to discuss the potential advantages of consolidation of their county school systems. As soon as the joint meeting is set, each county board or county superintendent shall notify the state superintendent of schools in writing, of the time, place and date of the meeting.

The county superintendents shall submit written reports
of the joint meetings to the state superintendent. These
reports shall be submitted on or before the fifteenth day of
December, one thousand nine hundred eighty-eight, and
contain a discussion of the advantages and disadvantages of
the joint establishment of county systems, together with
recommendations for the implementation for joint
establishment of county school systems.

The state superintendent of schools shall submit a written
report to the state board of education, which shall consider
all reports and recommendations and then report its
recommendations on the joint establishment of county
school systems to the Legislature on or before the first day
of February, one thousand nine hundred eighty-nine.

"Quasi-public funds" as used herein means any money
received by any principal, teacher, student or other person
for the benefit of the school system as a result of curricular
or noncurricular activities.

The board of each county shall expend under such
regulations as it establishes for each child an amount not to
exceed the proportion of all school funds of the district that
each child would be entitled to receive if all the funds were
distributed equally among all the children of school age in
the district upon a per capita basis.

§18-5-15. School term; exception; levies; ages of persons to
whom schools are open.

(a) The board shall provide a school term for its schools
which shall be comprised of (a) an employment term for
teachers, and (b) an instructional term for pupils. Nothing
in this section shall prohibit the establishment of year-
round schools in accordance with rules to be established by
the state board.

The employment term for teachers shall be no less than
ten months, a month to be defined as twenty employment
days exclusive of Saturdays and Sundays: Provided, That
the board may contract with all or part of the personnel for
a longer term. The employment term shall be fixed within
such beginning and closing dates as established by the state
board: Provided, however, That the time between the
beginning and closing dates does not exceed forty-three
weeks.

Within the employment term there shall be an
instructional term for pupils of not less than one hundred
eighty nor more than one hundred eighty-five instructional days: Provided, That the minimum instructional term may be decreased, by order of the state superintendent of schools, in any West Virginia county declared to be a federal disaster area by the Federal Emergency Management Agency. Instructional and noninstructional activities may be scheduled during the same employment day. Noninstructional interruptions to the instructional day shall be minimized to allow the classroom teacher to teach. The instructional term shall commence no earlier than the first day of September and shall terminate no later than the eighth day of June.

Noninstructional days in the employment term may be used for making up canceled instructional days, curriculum development, preparation for opening and closing of the instructional term, in-service and professional training of teachers, teacher-pupil-parent conferences, professional meetings and other related activities. In addition, each board shall designate and schedule for teachers and service personnel seven days to be used by the employee outside the school environment. However, no more than seven noninstructional days, except holidays, may be scheduled prior to the first day of January in a school term.

Notwithstanding any other provisions of the law to the contrary, if the board has canceled instructional days equal to the difference between the total instructional days scheduled and one hundred seventy-eight, each succeeding instructional day canceled shall be rescheduled, utilizing only the remaining noninstructional days, except holidays, following such cancellation, which are available prior to the second day before the end of the employment term established by such county board.

Where the employment term overlaps a teacher's or service personnel's participation in a summer institute or institution of higher education for the purpose of advancement or professional growth, the teacher or service personnel may substitute, with the approval of the county superintendent, such participation for not more than five of the noninstructional days of the employment term.

The board may extend the instructional term beyond one hundred eighty-five instructional days provided the employment term is extended an equal number of days. If the state revenues and regular levies, as provided by law,
are insufficient to enable the board of education to provide
for the school term, the board may at any general or special
election, if petitioned by at least five percent of the
qualified voters in the district, submit the question of
additional levies to the voters. If at the election a majority of
the qualified voters cast their ballots in favor of the
additional levy, the board shall fix the term and lay a levy
necessary to pay the cost of the additional term. The
additional levy fixed by the election shall not continue
longer than five years without submission to the voters. The
additional rate shall not exceed by more than one hundred
percent the maximum school rate prescribed by article
eight, chapter eleven of the code, as amended.

(b) The Legislature finds and declares that excess levies
as they currently exist create unequal educational
opportunities from county to county based on the difference
in the will of the voters and also based on the differences in
property wealth among the counties; that prior to the first
day of July, one thousand nine hundred ninety-four, the
Legislature shall proceed to equalize educational
opportunities over and above the opportunities afforded by
each county's property values by considering the existence
or nonexistence of excess levies as a factor in the
distribution of equity moneys; and that on and after the
first day of July, one thousand nine hundred ninety-four,
the Legislature shall implement a plan for the equitable
distribution of funds so as to eliminate the inequities
resulting from county excess levies.

(c) The public schools shall be open for the full
instructional term to all persons who have attained the
entrance age as stated in section five, article two and section
eighteen, article five, chapter eighteen of this code:
Provided, That persons over the age of twenty-one may
enter only those programs or classes authorized by the state
board of education and deemed appropriate by the county
board of education conducting any such program or class:
Provided, however, That authorization for such programs
or classes shall in no way serve to affect or eliminate
programs or classes offered by county boards of education
at the adult level for which fees are charged to support such
programs or classes.
§18-5-15d. In-service training programs in the prevention, transmission, spread and treatment of acquired immune deficiency syndrome; parent attendance.

1. Under guidelines established by the department of education in consultation with the department of health, training programs on the prevention, transmission, spread and treatment of acquired immune deficiency syndrome shall be provided by the county boards as in-service training for all school personnel. The county boards shall encourage the attendance of parents at these programs and notify such parents to the fullest extent practicable, including notification in written form and by publication.

§18-5-17. Compulsory preenrollment hearing, vision and speech and language testing; developmental screening for children under compulsory school age.

(a) All children entering public school for the first time in this state shall be given prior to their enrollments screening tests to determine if they might have vision or hearing impairments or speech and language disabilities. County boards of education may provide, upon request, such screening tests to all children entering nonpublic school. County boards of education shall conduct these screening tests for all children through the use of trained personnel. Parents or guardians of children who are found to have vision or hearing impairments or speech and language disabilities shall be notified of the results of these tests and advised that further diagnosis and treatment of the impairments or disabilities by qualified professional personnel is recommended.

(b) County boards of education shall provide or contract with appropriate health agencies to provide, upon the request of a parent or guardian residing within the district, developmental screening for their child or children under compulsory school attendance age: Provided, That a county board is not required to provide such screening to the same child more than once in any one school year. Developmental screening is the process of measuring the progress of children to determine if there are problems or potential problems or advanced abilities in the areas of
understanding language, perception through sight, perception through hearing, motor development and hand-eye coordination, health, and psycho-social or physical development. The boards shall coordinate the provision of developmental screening with other public agencies and the interagency plan for exceptional children under section eight, article twenty of this chapter to avoid the duplication of services and to facilitate the referral of children and their parents or guardians who need other services. The county boards shall provide notice to the public of the availability of these services.

(c) The state board of education is hereby authorized to promulgate rules consistent with this section. The state superintendent is directed to apply for federal funds, if available, for the implementation of the requirements of this section.


County boards of education shall provide, by the school year one thousand nine hundred eighty-three—eighty-four, and thereafter, sufficient personnel, equipment and facilities as will ensure that each first and second grade classroom, or classrooms having two or more grades that include either the first or second grades, shall not have more than twenty-five pupils for each teacher of the grade or grades and shall not have more than twenty pupils for each kindergarten teacher per session, unless the state superintendent has excepted a specific classroom upon application therefor by a county board.

County boards shall provide by the school year one thousand nine hundred eighty-four—eighty-five, and continue thereafter, sufficient personnel, equipment and facilities as will ensure that each third, fourth, fifth and sixth grade classroom, or classrooms having two or more grades that include one or more of the third, fourth, fifth and sixth grades, shall not have more than twenty-five pupils for each teacher of the grade or grades.

Beginning with the school year one thousand nine hundred eighty-six—eighty-seven, and thereafter, no county shall maintain a greater number of classrooms having two or more grades that include one or more of the grade levels referred to in this section than were in existence in said county as of the first day of January, one
thousand nine hundred eighty-three: *Provided,* That for the prior school years, and only if there is insufficient classroom space available in the school or county, a county may maintain one hundred ten percent of such number of classrooms.

During the school year one thousand nine hundred eighty-four—eighty-five, and thereafter, the state superintendent is authorized, consistent with sound educational policy, (a) to permit on a statewide basis, in grades four through six, more than twenty-five pupils per teacher in a classroom for the purposes of instruction in physical education, and (b) to permit more than twenty pupils per teacher in a specific kindergarten classroom and twenty-five pupils per teacher in a specific classroom in grades one through six during a school year in the event of extraordinary circumstances as determined by the state superintendent after application by a county board of education.

The state board of education shall establish guidelines for the exceptions authorized in this section, but in no event shall the superintendent except classrooms having more than three pupils above the pupil-teacher ratio as set forth in this section.

The requirement for approval of an exception to exceed the twenty pupils per kindergarten teacher per session limit or the twenty-five pupils per teacher limit in grades one through six is waived in schools where the schoolwide pupil-teacher ratio is twenty-five or less in grades one through six: *Provided,* That a teacher shall not have more than three pupils above the teacher/pupil ratio as set forth in this section. Any kindergarten teacher who has more than twenty pupils per session and any classroom teacher of grades one through six who has more than twenty-five pupils shall be paid additional compensation based on the affected classroom teacher's average daily salary divided by twenty for kindergarten teachers or twenty-five for teachers of grades one through six for every day the additional pupils are enrolled in the teacher's classroom.

All such additional compensation shall be paid from county funds exclusively.

No provision of this section is intended to limit the number of pupils per teacher in a classroom for the purpose of instruction in choral, band or orchestra music.
Each school principal shall assign students equitably among the classroom teachers, taking into consideration reasonable differences due to subject areas and/or grade levels.

The state board of education shall collect from each county board of education information on class size and the number of pupils per teacher for all classes in grades seven through twelve. The state board shall report such information to the legislative oversight commission on education accountability before the first day of January of each year.

§18-5-18c. Transitional or developmental kindergartens. — Program created; eligibility and standards for placement; qualifications of teachers; funding.

County boards shall provide by the school year one thousand nine hundred eighty-nine—ninety, and continuing thereafter, transitional or developmental kindergarten programs for children identified as needing additional physical, social, emotional, perceptual or intellectual experiences. Students who have completed a state-certified kindergarten program and have not demonstrated readiness for first grade work as indicated by tests and other standards are eligible for the transitional or developmental kindergarten program.

Placement of these children shall be based on a comprehensive standardized readiness assessment and the judgment of the teacher and other professional personnel after consultation with the parent or guardian. Counties may designate one or more schools for a transitional or developmental kindergarten program and transport children to these schools.

Provisions shall be made for transitional or developmental kindergarten teachers to communicate on a regular basis with other teachers, professional personnel and representatives of other appropriate agencies.

The state board, with the advice of the state superintendent, shall establish and prescribe guidelines and criteria relating to the establishment, operation and successful completion of transitional or developmental kindergarten programs in accordance with the other provisions of this section and high quality educational programs.
Funding to implement the transitional or developmental kindergarten program during the fiscal year one thousand nine hundred eighty-nine and thereafter shall be appropriated from the general revenues of the state to the state board for distribution to the counties.

Any additional costs incurred by the county boards of education by reason of this section shall be fully reimbursed by the state board of education to the extent such funding is not provided pursuant to article nine-a of this chapter.


The Legislature finds that school facilities are suitable for the provision of child day care and that such day care centers are needed by school personnel and other parents in the school and the community. Therefore, on or before the first day of April of each year, each county board of education shall compile a list of facilities under the jurisdiction of the county board of education which would have space available for child day care for the benefit of school employees and others during the next ensuing school year. Such space shall be made available thereafter for use as a child day care facility upon the decision of the county board or upon written request therefor by a duly authorized representative of the local membership of a statewide association of school personnel, a parent-teacher association or any other entity recognized by the county board as suitably responsible for the implementation of such program in the county until such time as the space is deleted from the list for good cause shown.

The child care facility shall be operated in accordance with guidelines to be adopted by a committee appointed by the state superintendent which shall include representatives of the legislature, the department of human services, at least two individuals active in statewide associations of school personnel, at least two individuals active in parent-teacher associations, and at least two county school administrators. Such guidelines may provide that the child day care facility be funded by the parents, the school personnel or parent-teacher associations, the county board of education or any combination of funding, including independent or federal funding sources. Within such guidelines and dependent upon adequate facilities and
personnel, any county board of education may extend use of
the child day care facility to other than school personnel.
Upon decision by the county board and in accordance
with state law, any child care facility operated pursuant to
the provisions of this section may be deemed operated by
the county for purposes of liability and insurance.
Personnel hired therefor may be deemed county school
personnel or may be independent contractors pursuant to a
management contract entered into between the county
board and the child care providers. Any parent-teacher
association, school personnel association or other entity
involved in implementation of the program may also be
party to such contract.
Schools need not be open for any other purpose for such
day care centers to operate.

§18-5-39. Establishment of summer school programs; tuition.

1 Inasmuch as the present county school facilities for the
most part lie dormant and unused during the summer
months, and inasmuch as there are many students who are
in need of remedial instruction and others who desire
accelerated instruction, it is the purpose of this section to
provide for the establishment of a summer school program,
which program is to be separate and apart from the full
school term as established by each county.

2 The board of education of any county shall have authority
to establish a summer school program utilizing the public
school facilities and to charge tuition for students who
attend such summer school, such tuition not to exceed in
any case the actual cost of operation of such summer school
program: Provided, That any deserving pupil whose
parents, in the judgment of the board, are unable to pay
such tuition, may attend at a reduced charge or without
charge. The county board of education shall have the
authority to determine the term and curriculum of such
summer schools based upon the particular needs of the
individual county. The curriculum may include, but is not
limited to, remedial instruction, accelerated instruction,
and the teaching of manual arts. The term of such summer
school program may not be established in such a manner as
to interfere with the regular school term.

3 The county boards may employ as teachers for this
summer school program any certified teacher. Certified
teachers employed by the county board to teach in the summer school program shall be paid an amount to be determined by the county board and shall enter into a contract of employment in such form as is prescribed by the county board: Provided, That teachers who teach summer courses of instruction which are offered for credit and which are taught during the regular school year shall be paid at the same daily rate such teacher would receive if paid in accordance with the then current minimum monthly salary in effect for teachers in that county. Any funds accruing from such tuitions shall be credited to and expended within the existing framework of the general current expense fund of the county board. Notwithstanding any other provision of this code to the contrary, the board shall fill professional positions established pursuant to the provisions of this section on the basis of certification and length of time the professional has been employed in the county’s summer school program. In the event that no employee who has been previously employed in the summer school program holds a valid certification or licensure, a board shall fill the position as a classroom teaching position in accordance with section eight-b, article four, chapter eighteen-a of this code.

§18-5-40. School entry age; operation of schools on semester basis.

(a) The state board shall establish guidelines prior to the first day of January, one thousand nine hundred eighty-nine, for the operation of public kindergarten and elementary schools on a semester basis within the applicable provisions of this article and chapter relating to the school term. Notwithstanding any other provision of this code to the contrary relating to compulsory school attendance, any child required or allowed by proximity to attend a school operated on a semester basis shall be deemed to have reached compulsory school age and shall enroll as follows: (1) For the fall semester, in such year when the sixth birthday is reached on or between the first day of July and the last day of December, and (2) for the spring semester, when the sixth birthday is reached on or between the first day of January and the last day of June of that year: Provided, That the state board shall establish guidelines for enrollment prior to a child’s reaching compulsory school
age. Student progress within and between the various grade
levels shall be determined on a semester by semester basis,
and promotion or assignment to the middle or junior high
school grade levels is conditioned upon completion of either
of the last two semesters offered at the elementary school.
(b) By the school year one thousand nine hundred eighty-
nine—ninety, the state board shall select at least four
elementary schools with kindergarten programs which may
be operated on a semester basis upon applications
submitted, with preference being given in such selection to
schools in different regional education service agency areas
to the extent reasonable and practical based on the
applications. The operation of these schools on a semester
basis shall be phased in by grade level beginning with
kindergarten and progressing by one additional grade level
in each successive school year until all of the grade levels
offered at that school are operated on a semester basis.

ARTICLE 1A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-18. Funds created; fund transfers.

1 The funds created are the teachers accumulation fund,
2 the employers accumulation fund, the benefit fund, the
3 reserve fund and the expense fund. Each fund shall
4 constitute a separate trust.
5 (a) The teachers accumulation fund shall be the fund in
6 which the contributions of members shall be accumulated.
The accumulated contributions of a member returned to
7 him upon his withdrawal, or paid to his estate or designated
8 beneficiary in the event of death, shall be paid from the
9 teachers accumulation fund. Any accumulated
10 contributions forfeited by failure to claim such
11 contributions shall be transferred from the teachers
12 accumulation fund to the reserve fund.
13 (b) Beginning on the first day of July, one thousand nine
14 hundred eighty-four, contributions of employers, equaling
15 annually the members' contributions, shall be deposited in
16 the employers accumulation fund through state
17 appropriations, and such amounts shall be included in the
18 budget bill submitted annually by the governor.
19 Beginning on the first day of July, one thousand nine
20 hundred eighty-nine, each county shall deposit in the
21 employers accumulation fund an amount equal to one and
23 one half percent of all salary paid in excess of that
24 authorized for minimum salaries in sections two and eight-
25 a, article four, chapter eighteen-a of this code and any
26 salary equity authorized in section five of said article or any
27 county supplement equal to the amount distributed for
28 salary equity among the counties; beginning on the first day
29 of July, one thousand nine hundred ninety, the rate shall
30 increase to three percent; beginning on the first day of July,
31 one thousand nine hundred ninety-one, the rate shall
32 increase to four and one half percent; and beginning on the
33 first day of July, one thousand nine hundred ninety-two and
34 thereafter, the rate shall be six percent.
35 (c) The benefit fund shall be the fund from which
36 annuities shall be paid. Upon the retirement of a member,
37 his accumulated contributions shall be transferred from the
38 teachers accumulation fund to the benefit fund; the
39 accumulated employers' contribution shall be transferred
40 from the employers accumulation fund to the benefit fund;
41 and annually a sum for prior service pension and disability
42 credits, if needed, shall be transferred from the reserve fund
43 to the benefit fund. Any deficit occurring in the benefit fund
44 which is not automatically met by payments to that fund, as
45 provided for by this article, shall be met by additional
46 transfers from the employers accumulation fund and, if
47 necessary, by transfers from the teachers accumulation
48 fund.
49 (d) The retirement board is hereby authorized to accept
50 gifts and bequests. All gifts, bequests and interest earnings
51 from investments received by the board shall be deposited
52 in the reserve fund. Any funds that may come into
53 possession of the retirement system in this manner or which
54 may be transferred from the teachers accumulation fund by
55 reason of the lack of a claimant or because of a surplus in
56 any of the funds, or any other moneys the disposition of
57 which is not otherwise provided for, shall be credited to the
58 reserve fund. The retirement board shall allow interest on
59 the contributions in the teachers accumulation fund. Such
60 interest shall be paid from the reserve fund and credited to
61 the teachers accumulation fund. Any deficit occurring in
62 any fund which would not be automatically covered by the
63 payments to that fund as otherwise provided by this article
64 shall be met by transfers from the reserve fund to such fund.
65 In the reserve fund shall be accumulated moneys from
retirement board appropriations to pay the accrued liabilities of the system, caused by the granting of prior service, ad hoc increases granted prior to the first day of July, one thousand nine hundred eighty, and disability pensions. Costs associated with board investments, such as premiums, accrued interest and commissions, shall be paid from the reserve fund.

(e) The expense fund shall be the fund from which shall be paid the expense incurred in the administration of the retirement system. The retirement board is herewith authorized to pay, from the expense fund, membership fees in such voluntary organizations as the national council on teacher retirement, anything in this code to the contrary notwithstanding. Interest on loans to members shall be deposited in the expense fund.

The retirement board is herewith given sole authority to direct and approve the making of any and all fund transfers as provided herein, anything in this code to the contrary notwithstanding.

§18-7A-26h. Supplemental benefits for certain annuitants.

Any annuitant who is receiving a retirement annuity of less than seven thousand five hundred dollars annually on the effective date of this section shall receive a supplemental benefit, prospectively, under this section: Provided, That the effective date of retirement for such annuitant was prior to the first day of July, one thousand ninety-nine, and he had ten years or more of credited service at the time of such retirement. For the purposes of this section, “effective date of retirement” means the last day of actual employment, or the last day carried on the payroll of the employer, whichever is later, together with a meeting fully of all eligibility requirements for retirement prior to the aforesaid effective date. Any annuitant retired pursuant to the disability provisions of this article shall be considered to have had ten years or more credited service at the time of such retirement.

Each such annuitant shall receive as his supplemental benefit an increased annual amount which is the product of the sum of eighteen dollars multiplied by his years of credited service: Provided, That the total annuity of any annuitant affected by the provisions of this section, together with any of the other provisions of this article,
shall not exceed seven thousand five hundred dollars annually.

Any annuitant receiving the supplemental benefit provided for herein for the annuity payment period just prior to the first day of July, one thousand nine hundred eighty-five, or any annuitant made newly eligible for receipt of such supplemental benefit on such date, shall receive a nineteen percent increase in the amount of such supplemental benefit prior received or newly calculated, effective on and after the first day of July, one thousand nine hundred eighty-five, and irrespective of the maximum total annuity proviso, and limitation of seven thousand five hundred dollars annually. In any fiscal year in which pay increases are granted by the Legislature to active teachers, there may also be given an increase in retirement benefits for retired teachers, if funding is available for this purpose.

For the purpose of calculating the supplemental benefit provided in this section, fractional parts of a service credit year are to be disregarded unless in excess of one half of a credited service year, in which event the same shall constitute a full year of service credit.

On or after the first day of July, one thousand nine hundred eighty-two, for the purpose of computation for determination of eligibility and for the amount of any supplemental benefit hereunder, separate computation shall be made of a retirant’s own benefit and that which may be receivable as beneficiary of another, under the provisions of this article, with each such benefit being eligible for the supplemental benefit herein provided.

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-la. Compulsory school attendance; public school entrance requirements; exceptions thereto.

Notwithstanding the provisions of section one of this article, compulsory school attendance shall begin with the school year in which the sixth birthday is reached prior to September one of such year or upon enrolling in a publicly supported kindergarten program and continue to the sixteenth birthday or for as long as the student shall continue to be enrolled in a school system after the sixteenth birthday: Provided, That a child may be removed from such kindergarten program when the principal,
teacher and parent or guardian concur that the best interest
of the child would not be served by requiring further
attendance: Provided, however, That the principal shall
make the final determination with regard to compulsory
school attendance in a publicly supported kindergarten
program: Provided further, That the compulsory school
attendance provision of this article shall be enforced
against a person eighteen years of age or older for as long as
the person continues to be enrolled in a school system, and
shall not be enforced against the parent, guardian, or
custodian of such person.

Attendance at a state-approved or Montessori
kindergarten, as provided for in section eighteen, article
five of this chapter, shall be deemed school attendance for
purposes of this section. Prior to entrance into the first
grade in accordance with section five, article two of this
chapter, each child must have either (1) successfully
completed such publicly or privately supported, state-
approved kindergarten program or Montessori
kindergarten program, or (2) successfully completed an
entrance test of basic readiness skills approved by the
county in which the school is located: Provided, That such
test be administered in lieu of kindergarten attendance only
under extraordinary circumstances to be determined by the
board. Notwithstanding the provisions of this section and
of section five, article two of this chapter and section
eighteen, article five of this chapter, a county board may
provide for advanced entrance or placement under policies
adopted by said board for any child who has demonstrated
sufficient mental and physical competency for such
entrance or placement. Nothing herein shall prevent a
student from another state from enrolling in a public school
in West Virginia in such grade as the student was enrolled at
the school from which the student transferred.

§18-8-2. Offenses; penalties; cost of prosecution.

Any person who, after receiving due notice as hereinafter
provided, shall fail to cause a child or children in that
person's legal or actual charge to attend school as
hereinbefore provided, shall be guilty of a misdemeanor,
and shall, upon conviction thereof, be fined not less than
fifty nor more than one hundred dollars together with the
costs of prosecution, or confined in jail not less than five nor
more than twenty days. The magistrate or judge may require the parent or parents to bring the child to school and remain through the school day until such time as the magistrate or judge may determine as appropriate. Every day a child is out of school contrary to the provisions of this article shall constitute a separate offense. Magistrates shall have concurrent jurisdiction with circuit courts for the trial of offenses arising under this section.

Whenever a person accused of violating any of the provisions of this article has been tried and acquitted, the cost of prosecution shall be paid by the county board of education out of the maintenance fund of the county.

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

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

In the case of five consecutive or ten total unexcused absences of a child during a single semester, the attendance director or assistant shall serve written notice to the parent, guardian or custodian of such child that the attendance of such child at school is required and that within ten days of receipt of such notice the parent, guardian or custodian, accompanied by the child, if possible, shall report in person to the school the child attends for a conference with the principal or other designated representative of the school in order to discuss and correct the circumstances causing the inexcusable absences of the child; and if the parent, guardian or custodian does not comply with the provisions of this article, then the attendance director or assistant shall make complaint against such parent, guardian or custodian before a magistrate of the county. The attendance director or assistant may serve such notice for other absences from school found to be in violation of law. For any similar subsequent offense in any school year no notice shall be required. If it appears from the complaint that there is probable cause to believe that an offense has been
committed and that the accused has committed it, a warrant
for the arrest of the accused shall issue to any officer
authorized by law to arrest persons charged with offenses
against the state. More than one warrant may be issued on
the same complaint. The warrant shall be executed within
ten days of its issuance.

The magistrate court clerk, or the clerk of the circuit
court performing the duties of the magistrate court as
authorized in section eight, article one, chapter fifty of this
code, shall assign the case to a magistrate within ten days of
execution of the warrant. The hearing shall be held within
twenty days of the assignment to the magistrate, subject to
lawful continuance. The magistrate shall provide to the
accused at least ten days’ advance notice of the date, time
and place of the hearing.

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

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

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

(a) Assist in directing the taking of the school census to
see that it is taken at the time and in the manner provided by
law;
(b) Confer with principals and teachers on the comparison of school census and enrollment for the detection of possible nonenrollees;

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

d) Prepare a report for submission by the county superintendent to the state superintendent of schools on school attendance, at such times and in such detail as may be required; also, file with the county superintendent and county board of education at the close of each month a report showing activities of the school attendance office and the status of attendance in the county at the time;

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

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

g) Assist in such other ways as the county superintendent may direct for improving school attendance.

§18-8-5. Duties of principal, administrative head or other chief administrator.

1 It shall be the duty of the principal, administrative head or other chief administrator of each school, whether public or private, to make prompt reports to the county attendance director, or proper assistant, of all cases of unexcused absences arising within the school which require the services of an attendance worker. Such reports shall be on the form prescribed for such purpose, by telephone, or in person, and shall include essential information about the child and the name and residence of any parent, guardian or custodian of a child.

2 It shall also be the duty of each principal, administrative head or other chief administrator of each public school to ascertain and report promptly the name of any parent, guardian or custodian of any child of compulsory school age as defined in this article who was or should be enrolled in the school reporting and who has not enrolled in any school that year. By way of ascertaining the status of school attendance, each principal, administrative head or other
chief administrator shall compare the school census with
the school enrollment at the opening of the school term and
each month thereafter, or as directed by the county
superintendent of schools, and report the same to the
county attendance director: Provided, That any child who
was or should be enrolled in a particular school, but who is
at the time enrolled in another school shall be considered as
attending the school in which enrolled and shall be included
only in the report of attendance from the school in which the
child is enrolled at the time.

If the principal, administrative head or other chief
administrator of a school determines that an enrolled pupil
has accumulated unexcused absences from attendance at
such school for five instructional days during any one half
of the instructional term, the principal, administrative head
or other chief administrator shall contact any parent,
guardian or custodian of the pupil and shall hold a meeting
with any person so contacted, and the pupil, and any other
person that the administrator deems a relevant participant
in such meeting.

§18-8-5a. Home visitations.

If approved by the principal, administrative head or other
chief administrator, a teacher may use one noninstructional
day during an employment term for the purpose of home
visitations with the parent, guardian or custodian of any
pupil or pupils designated by the principal, administrative
head or other chief administrator. Priority shall be given to
those pupils identified as potential school dropouts or
whose school attendance is otherwise jeopardized.

Such home visitations shall be deemed the equivalent of
one day of continuing education in accordance with rules
and regulations of the state board requiring such education.
The county board may adopt rules and regulations
regarding such home visitations and shall reimburse a
teacher for the necessary traveling expenses upon
presentation of an itemized, sworn statement.

§18-8-11. School attendance as condition of licensing for
privilege of operation of motor vehicle.

(a) In accordance with the provisions of sections three
and five, article two, chapter seventeen-b of this code, the
department of motor vehicles shall deny a license or
instruction permit for the operation of a motor vehicle to
any person under the age of eighteen who does not at the
time of application present a diploma or other certificate of
graduation issued to the person from a secondary high
school of this state or any other state, or documentation that
the person (1) is enrolled and making satisfactory progress
in a course leading to a general educational development
certificate (GED) from a state approved institution or
organization, or has obtained such certificate, (2) is enrolled
in a secondary school of this state or any other state, or (3) is
excused from such requirement due to circumstances
beyond his or her control.

(b) The attendance director or chief administrator shall
provide documentation of enrollment status on a form
approved by the department of education to any student
sixteen years of age or older upon request who is properly
enrolled in a school under the jurisdiction of said official for
presentation to the department of motor vehicles on
application for or reinstatement of an instruction permit or
license to operate a motor vehicle. Whenever a student
sixteen years of age or older withdraws from school, except
as provided in subsection (d) of this section, the
attendance director or chief administrator shall notify the
department of motor vehicles of such withdrawal. Within
five days of receipt of such notice, the department of motor
vehicles shall send notice to the licensee that the license will
be suspended under the provisions of section three, article
two, chapter seventeen-b of this code on the thirtieth day
following the date the notice was sent unless
documentation of compliance with the provisions of this
section is received by the department of motor vehicles
before such time.

(c) For the purposes of this section, withdrawal shall be
defined as more than ten consecutive or fifteen days total
unexcused absences during a single semester. For the
purposes of this section, suspension or expulsion from
school or imprisonment in a jail or a penitentiary is not a
circumstance beyond the control of such person.

(d) Whenever the withdrawal from school of such
student, or such student's failure to enroll in a course
leading to or to obtain a GED or high school diploma, is
beyond the control of such student, or is for the purpose of
transfer to another school as confirmed in writing by the
students parent or guardian, no such notice shall be sent to
the department of motor vehicles to suspend the student’s
motor vehicle operator’s license, and if the student is
applying for a license, the attendance director or chief
documentation to present to the department of motor
to excuse such student from the provisions of this
section. The school district superintendent (or the
appropriate school official of any private secondary school)
with the assistance of the county attendance director and
any other staff or school personnel, shall be the sole judge of
whether such withdrawal is due to circumstances beyond
the control of such person.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.


1 For the purpose of this article:
2 “State board” means the West Virginia board of
3 education.
4 “County board” or “board” means a county board of
5 education.
6 “Professional salaries” means the state legally mandated
7 salaries of the professional educators as provided in article
8 four, chapter eighteen-a of this code.
9 “Professional educator” shall be synonymous with and
shall have the same meaning as “teacher” as defined in
10 section one, article one, chapter eighteen of this code.
11 “Professional instructional personnel” means a
12 professional educator whose regular duty is as that of a
13 classroom teacher, librarian or counselor. A professional
14 educator having both instructional and administrative or
15 other duties shall be included as professional instructional
16 personnel for that ratio of the school day for which he is
17 assigned and serves on a regular full-time basis in
18 appropriate instruction, library or counseling duties.
19 “Service personnel salaries” shall mean the state legally
20 mandated salaries for service personnel as provided in
21 section eight-a, article four, chapter eighteen-a of the code.
22 “Service personnel” shall mean all personnel as provided
23 for in section eight, article four, chapter eighteen-a of this
code. For the purpose of computations under this article of
24 ratios of service personnel to adjusted enrollment, a service
employee shall be counted as that number found by dividing his number of employment days in a fiscal year by two hundred: Provided, That the computation for any such person employed for three and one-half hours or less per day as provided in section eight-a, article four, chapter eighteen-a of this code, shall be calculated as one half an employment day.

"Net enrollment" means the number of pupils enrolled in special education programs, kindergarten programs and grades one to twelve, inclusive, of the public schools of the county. Commencing with the school year beginning on the first day of July, one thousand nine hundred eighty-eight, net enrollment further shall include adults enrolled in regular, secondary vocational programs existing as of the effective date of this section: Provided, That net enrollment shall include no more than one thousand such adults counted on the basis of full-time equivalency and apportioned annually to each county in proportion to the adults participating in regular secondary vocational programs in the prior year counted on the basis of full-time equivalency: Provided, however, That no tuition or special fees beyond that required of the regular secondary vocational student is charged for such adult students.

"Adjusted enrollment" means the net enrollment plus twice the number of pupils enrolled for special education, all adjusted to the equivalent of the instructional term and in accordance with such eligibility requirements and rules as established by the state board, but no pupil shall be counted more than once by reason of transfer within the county or from another county within the state, and no pupil shall be counted who attends school in this state from another state.

"Levies for general current expense purposes" means on each hundred dollars of valuation, twenty-two and five tenths cents on Class I property, forty-five cents on Class II property, and ninety cents on Classes III and IV property. "Basic resources per pupil" for the state and the several counties means the total of (a) property tax revenues computed at the maximum regular levy rates as provided by section six-c, article eight, chapter eleven of this code, at a uniform rate of ninety-five percent, but excluding revenues from increased levies as provided in section ten, article X of the Constitution of West Virginia, and (b) basic state aid as
provided in sections twelve and thirteen of this article, but
excluding the foundation allowance to improve
instructional programs as provided in section ten of this
article, and excluding any funds appropriated for the
purpose of achieving salary equity among county board
employees, this total divided by the number of students in
adjusted enrollment: Provided, That any year's allocations
to the counties of the eighty percent portion of the
foundation allowance to improve instructional programs,
as provided in section ten of this article, shall be determined
on the basis of the immediately preceding school year's
basic resources per pupil.

§18-9A-4. Foundation allowance for professional educators.

1 The basic foundation allowance to the county for
professional educators shall be the amount of money
required to pay the state minimum salaries, in accordance
with provisions of article four, chapter eighteen-a of the
code, to such personnel employed: Provided, That in
making this computation no county shall receive an
allowance for such personnel which number is in excess of
fifty-five professional educators to each one thousand
students in adjusted enrollment: Provided, however, That
any county not qualifying under the provision of section
fourteen of this article shall be eligible for a growth rate in
professional personnel in any one year not to exceed twenty
percent of its total potential increase under this provision,
except that in no case shall such limit be fewer than five
professionals: Provided further, That the number of and the
allowance for personnel paid in part by state and county
funds shall be prorated: And provided further, That where
two or more counties join together in support of a
vocational or comprehensive high school or any other
program or service, the professional educators for such
school or program may be prorated among the participating
counties on the basis of each one's enrollment therein and
that such personnel shall be considered within the above-
stated limit: And provided further, That in the school year
beginning the first day of July, one thousand nine hundred
eighty-eight, and the succeeding school year, each county
board shall establish and maintain a minimum ratio of fifty
professional instructional personnel per one thousand
students in adjusted enrollment, and in the school year
beginning the first day of July, one thousand nine hundred ninety, and for each succeeding school year, each county board shall establish and maintain a minimum ratio of fifty-one professional instructional personnel per one thousand students in adjusted enrollment. Any county board which does not establish and maintain this minimum ratio shall suffer a pro rata reduction in the allowance for professional educators under this section, and, further, any county board which does not establish and maintain this minimum ratio shall utilize any and all allocations to it by provision of section fourteen of this article solely to employ professional instructional personnel until the minimum ratio is attained: And provided further, That for the fiscal year commencing on the first day of July, one thousand nine hundred eighty-eight, only, the foundation allowance for professional educators for a county board of education shall be equal to the amount allowable based upon the actual ratio of professional educators per one thousand students in net enrollment for which the county board of education received state reimbursement during the school year one thousand nine hundred eighty-seven—eighty-eight, except that this provision shall not apply to those counties whose percent rate of special education enrollment to net enrollment is less than sixteen and two tenths percent. No person employed prior to the first day of July, one thousand nine hundred eighty-eight, shall have their employment terminated because of a reduction in force resulting from the provisions of this section. Reductions in force will be achieved only through attrition and early retirement.

§18-9A-5. Foundation allowance for service personnel.

The basic foundation allowance to the county for service personnel shall be the amount of money required to pay the annual state minimum salaries in accordance with the provisions of article four, chapter eighteen-a of the code, to such service personnel employed: Provided, That no county shall receive an allowance for an amount in excess of thirty-four service personnel per one thousand students in adjusted enrollment: Provided, however, That the state superintendent of schools is authorized in accordance with rules and regulations established by the state board and upon request of a county superintendent, to waive the maximum ratio of thirty-four service personnel per one
thousand students in adjusted enrollment and the twenty
percent per year growth cap provided in this section in
those cases where the state superintendent determines that
student population density and miles of bus route driven
justify such waiver, except that no waiver shall be granted
to any county whose financial statement shows a net
balance in general current expense funds greater than three
percent at the end of the previous fiscal year: Provided
further, That on or before the first day of each regular
session of the Legislature, the state board, through the state
superintendent, shall make to the Legislature a full report
concerning the number of waivers granted and the fiscal
impact related thereto: And provided further, That for the
fiscal year commencing on the first day of July, one
thousand nine hundred eighty-eight, only, the foundation
allowance for service personnel for a county board of
education shall be equal to the amount allowable based
upon the actual ratio of service personnel per one thousand
net enrollment for which the county board of education
received state reimbursement during the school year one
thousand nine hundred eighty-seven—eighty-eight, except
that this provision shall not apply to those counties whose
percent rate of special education enrollment to net
enrollment is less than sixteen and two tenths percent.
Every county shall utilize methods other than reduction in
force, such as attrition and early retirement, before
implementing their reductions in force policy to comply
with the limitations of this section.
For any county which has in excess of thirty-four service
personnel per one thousand students in adjusted
enrollment, such allowance shall be computed based upon
the average state minimum pay scale salary of all service
personnel in such county: Provided, That for any county
having fewer than thirty-four service personnel per one
thousand students in adjusted enrollment, in any one year,
the number of service personnel used in making this
computation may be increased the succeeding years by no
more than twenty percent per year of its total potential
increase under this provision, except that in no case shall
such limit be fewer than two service personnel until the
county attains the maximum ratio set forth: Provided,
however, That where two or more counties join together in
support of a vocational or comprehensive high school or any other program or service, the service personnel for such school or program may be prorated among the participating counties on the basis of each one's enrollment therein and that such personnel shall be considered within the above-stated limit.

§18-9A-5a. Ratio of foundation allowances for professional educators and service personnel to net enrollment.

(a) The purpose of this section is to establish maximum ratios between the numbers of professional educators and service personnel in the counties which are funded through the public school support plan and the net enrollment in the counties, such ratios are in addition to the ratios provided for in sections four and five of this article. It is the intent of the Legislature to adjust these ratios pursuant to legislative act as may be appropriate when additional personnel are needed to perform additional duties.

(b) Commencing with the school year one thousand nine hundred eighty-nine—ninety, and each year thereafter, in computing the basic foundation allowance to a county for professional educators and the basic foundation allowance to a county for service personnel under sections four and five of this article, a county shall not receive an allowance for such personnel which number per one thousand students in net enrollment is in excess of the number of professional educators and the number of service personnel in the county computed as follows:

<table>
<thead>
<tr>
<th>For the school year</th>
<th>Maximum Professional educators per 1000 net enrollment the preceding year</th>
<th>Maximum service personnel per 1000 net enrollment the preceding year</th>
</tr>
</thead>
<tbody>
<tr>
<td>1989-90</td>
<td>76.5</td>
<td>45.5</td>
</tr>
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<td>1990-91</td>
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<tr>
<td>1991-92</td>
<td>75.5</td>
<td>44.5</td>
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<tr>
<td>1992-93</td>
<td>75.0</td>
<td>44.0</td>
</tr>
<tr>
<td>1993-94</td>
<td>74.5</td>
<td>43.75</td>
</tr>
<tr>
<td>1994-95 and thereafter</td>
<td>74.0</td>
<td>43.5</td>
</tr>
</tbody>
</table>

(c) No person employed prior to the first day of July, one
thousand nine hundred eighty-eight, will be laid off because of a reduction in force resulting from the provisions of this section. Reductions in force will be achieved only through attrition and early retirement.

§18-9A-6. Foundation allowance for fixed charges.
1 The total allowance for fixed charges shall be the sum of the following:
2 (1) The sum of the foundation allowance for professional educators and the foundation allowance for other personnel, as determined in sections four and five above, multiplied by the current social security rate of contribution; plus
3 (2) The sum of the foundation allowance for professional educators and the foundation allowance for other personnel, as determined in sections four and five above, multiplied by four hundredths of one percent as an allowance for unemployment compensation contribution; plus
4 (3) The sum of the foundation allowance for professional educators and the foundation allowance for other personnel, as determined in sections four and five above, multiplied by the rate which is derived by dividing the total contributions for workers' compensation for professional educators and other personnel by the total of the state minimum salaries. The computation of this rate shall be determined by using data of the most recent year for which available; plus
5 (4) The teachers retirement fund allowance as determined in section six-a of this article.

§18-9A-6a. Teachers retirement fund allowance.
1 The total teachers retirement fund allowance shall be the sum of the basic foundation allowance for professional educators and the basic foundation allowance for service personnel, as provided in sections four and five of this article; all salary equity appropriations authorized in section five, article four of chapter eighteen-a; and such amounts as are to be paid by the counties pursuant to sections five-a and five-b of said article to the extent such county salary supplements are equal to the amount distributed for salary equity among the counties, multiplied by the following factors for the following fiscal years:
12 Fiscal year  Factor
13 1988-89  3.5%
14 1989-90  6.0%
15 1990-91  7.5%
16 1991-92  9.0%
17 1992-93 10.5%
18 1993-94 12.0%
19 1994-95 13.5%
20 1995-96 and thereafter 15.0%

The teachers retirement fund allowance amounts shall be accumulated in the employers accumulation fund of the state teachers retirement system pursuant to section eighteen, article seven-a, of this chapter, and shall be in lieu of the contribution required of employers pursuant to subsection (b) of said section eighteen as to all personnel included in the allowance for state aid in accordance with sections four and five of this article.


The allowance for administrative cost shall be equal to one and two tenths percent of the allocation for professional educators, as determined in section four of this article. Distribution of the computed allowance shall be made as follows:

(1) Seven twelfths of the allowance shall be distributed to the counties in equal amounts; and

(2) Five twelfths of the allowance shall be distributed to the regional education service agencies in accordance with rules adopted by the state board. The allowance for regional education service agencies shall be excluded from the computation of total basic state aid as provided for in section twelve of this article.

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

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

(1) For current expense, for the year one thousand nine hundred eighty-eight—eighty-nine only, seven and seven tenths percent of the sum of the computed state allocation for professional educators and service personnel as determined in sections four and five of this article, and thereafter the rate shall be eight and two tenths percent.
Distribution to the counties shall be made proportional to the average of each county's average daily attendance for the preceding year and the county's second month net enrollment; plus

(2) For professional educator substitutes or current expense, two and five-tenths percent of the computed state allocation for professional educators as determined in section four of this article. Distribution to the counties shall be made proportional to the total county allocation for professional educators; plus

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

§18-9A-10. Foundation allowance to improve instructional programs.

(a) Commencing with the school year beginning on the first day of July, one thousand nine hundred eighty-eight, and thereafter, twenty-eight million one hundred forty-four thousand two hundred seventy-nine dollars, in addition to funds which accrue from allocations due to increase in total local share above that computed for the school year beginning on the first day of July, one thousand nine hundred eighty-eight, from balances in the general school fund, or from appropriations for such purpose shall be allocated to increase state support of counties as follows:

(1) Twenty percent of these funds shall be allocated to the counties proportional to adjusted enrollment; and

(2) Each county whose allocation in subsection (1) is less than one hundred thousand dollars in any fiscal year shall then receive an amount which equals the difference between such amount received and one hundred thousand dollars.

(b) The remainder of these funds shall be allocated according to the following plan for progress toward basic resources per pupil equity:

Beginning with the county which has the lowest basic resources per pupil and progressing through the counties successively to and beyond the county with the highest basic resources per pupil, the funds available shall be
allocated in amounts necessary to increase moneys available to the county or counties to the basic resources per pupil level, as nearly as is possible, of the county having the next higher basic resources per pupil: Provided, That to be eligible for its allocation under this section, a county board shall lay the maximum regular tax rates set out in section six-c, article eight, chapter eleven of this code: Provided, however, That moneys allocated by provision of this section shall be used to improve instructional programs according to a plan for instructional improvement which the affected county board shall file with the state board by the first day of August of each year, to be approved by the state board by the first day of September of that year if such plan substantially complies with standards to be adopted by the state board: Provided further, That no part of this allocation may be used to employ professional educators in counties until and unless all applicable provisions of sections four and fourteen of this article have been fully utilized. Such instructional improvement plan shall be made available for distribution to the public at the office of each affected county board.

(c) Commencing with the school year beginning on the first day of July, one thousand nine hundred eighty-eight, and thereafter, fifty percent of the funds which accrue due to an increase in local share above that computed for the school year beginning on the first day of July, one thousand nine hundred eighty-seven, shall be paid into the school building capital improvements fund created by section five, article nine-d of this chapter, and shall be used solely for the purposes of said article nine-d: Provided, That for the school year one thousand nine hundred eighty-eight—eighty-nine such amount shall not exceed two million dollars: Provided, however, That one million six hundred twenty-three thousand dollars of such amount for the school year one thousand nine hundred eighty-eight—eighty-nine, shall be used for vocational education facilities.

(d) There shall be appropriated seven million four hundred ten thousand six hundred sixty-eight dollars for aid to counties which may be expended by the county boards for the initiation, and/or improvements of special education programs including employment of new special education professional personnel solely serving exceptional
children; instructional programs which utilize state of the art technology; training of educational personnel to work with exceptional children; and supportive costs such as materials, transportation, contracted services, minor renovations and other costs directly related to the special education delivery process prescribed by the state board. The appropriation may also be used for nonpersonnel costs associated with the maintenance of special education programs in accordance with such rules as established by the state board. The appropriation includes out-of-state instruction and may be expended to provide instruction, care and maintenance for educable persons who are severely handicapped and for whom the state provides no facilities.

(e) There shall be appropriated two million one thousand seven hundred thirty-two dollars to be used by the state department of education which may be expended for the purposes of paying staff and operating costs of both administrative/program personnel and instructional personnel delivering education to handicapped children in facilities operated by the state department of health; paying state department of education staff, current expenses and equipment; supporting a gifted summer camp; and supporting special state projects including but not limited to (1) an instructional materials center for visually handicapped children at the West Virginia Schools for the Deaf and the Blind, (2) the state special olympics program, (3) the West Virginia advisory council for the education of exceptional children at the West Virginia College of Graduate of Studies, (4) statewide training activities or other programs benefiting exceptional children, and (5) the state very special arts program.


(a) On the basis of the most recent survey of property valuations in the state, completed as to all classes of property in all counties determined by the tax commissioner under present or former provisions of this article, the state board shall for each county compute by application of the levies for general current expense purposes, as defined in section two of this article, the amount of revenue which such levies would produce if
levied upon one hundred percent of the appraised value of each of the several classes of property contained in the report or revised report of such value, made to it by the tax commissioner as follows: (1) The state board shall first take ninety-seven and one-half percent of the amount ascertained by applying these rates to the total assessed public utility valuation in each classification of property in the county. (2) The state board shall then apply these rates to the appraised value of other property in each classification in the county as determined by the tax commissioner and shall deduct therefrom five percent as an allowance for the usual losses in collections due to discounts, exonerations, delinquencies and the like. Fifty percent of the amount so determined shall be added to the ninety-seven and one-half percent of public utility taxes computed as provided above and this total shall be the local share of the particular county.

Effective the first day of July, one thousand nine hundred eighty-two, fifty-five percent of the amount so determined shall be added to the ninety-seven and one half percent of public utility taxes computed as provided above and this total shall be the local share of the particular county: Provided, That for the fiscal year beginning on the first day of July, one thousand nine hundred eighty-eight, the state board shall apply these rates to the assessed taxable value of other property in each classification in the county and shall deduct therefrom five percent as an allowance for the usual losses in collections due to discounts, exonerations, delinquencies and the like. Ninety percent of the amount so determined shall be added to the public utility taxes computed as provided above: Provided, however, That for the fiscal year beginning on the first day of July, one thousand nine hundred eighty-nine, and thereafter, the state board shall apply these rates to the assessed taxable value of other property in each classification in the county and shall deduct five percent as an allowance for the usual losses in collections due to discounts, exonerations, delinquencies and the like. All of the amount so determined shall be added to the public utility taxes computed as provided above.

(b) The tax commissioner shall make or cause to be made an appraisal in the several counties of the state of all nonutility real property and of all nonutility personal
property which shall be based upon true and actual value as
set forth in article three, chapter eleven of this code. In
determining the value of personal property—other than all
machinery, equipment, furniture and fixtures of any
industrial plant, mine, quarry or installation and of any
commercial, industrial or professional establishment—the
tax commissioner shall prescribe accepted methods of
determining such values. The tax commissioner shall in
accordance with such methods determine the value of such
property.

For the purpose of appraising commercial, industrial and
professional properties, the tax commissioner, after
consultation with the county commission, may employ a
competent property appraisal firm or firms, which
appraisals shall be under his supervision and direction.

In making or causing to be made such appraisal, the tax
commissioner shall employ such assistance as available
appropriations will permit and shall prescribe and use such
accepted methods and procedures for checking property
values and determining the amount of property in the
several classes of property provided by law as are
customarily employed for appraisal purposes.

(c) Such appraisal of all said property in the several
counties shall be completed prior to the first day of July, one
thousand nine hundred sixty-seven. Each year after the
completion of the property appraisal in a county the tax
commissioner shall maintain the appraisal by making or
causing to be made such surveys, examinations, audits,
maps and investigations of the value of the several classes of
property in each county which should be listed and taxed
under the several classifications, and shall determine the
appraised value thereof. On the basis of information so
ascertained, the tax commissioner shall annually revise his
reports to the Legislature and to the state board concerning
such appraisals, such reports to be made not later than the
first day of January of each year.

(d) The tax commissioner shall prescribe appropriate
methods for the appraisal of the various types of property
subject to taxation as public utilities and the types of
property which are to be included in the operating property
of a public utility and thereby not subject to taxation by the
county assessor. Only parcels or other property, or portions
thereof, which are an integral part of the public utility's
function as a utility shall be included as operating property.
(e) As information from such appraisal of property in a county under the provisions of this section becomes available for a district, municipality and county, the tax commissioner shall notify the county commission and the assessor of said county that such information is available and shall make available to said county commission and assessor all data, records and reports or other information relating to said work, along with a list of any properties in said district, municipality and county which are entered on the assessment rolls but for which no appraisal has been made, a list of any properties which were appraised but which cannot be found on the assessment rolls and a list of all properties carried on the assessment rolls which have not been identified on the map. Said list shall set forth the name of the owner and a description of the property and the reason, if known, for its failure to have been entered on the assessment rolls or to have been appraised or to have been identified on the map, as the case may be.

(f) As such appraisal of property in a county, under this section, is completed to the extent that a total valuation for each class of property can be determined, such appraisal shall be delivered to the assessor and the county commission, and in each assessment year commencing after such appraisal is so delivered and received, the county assessor and the county commission, sitting as a board of equalization and review, shall use such appraised valuations as a basis for determining the true and actual value for assessment purposes of the several classes of property. The total assessed valuation in each of the four classes of property shall not be less than fifty percent nor more than one hundred percent of the appraised valuation of each said class of property: Provided, That beginning July one, one thousand nine hundred eighty-one, the total assessed valuation in each of the four classes of property shall not be less than sixty percent of the appraised valuation of each said class of property.

(g) Whenever in any year a county assessor or a county commission shall fail or refuse to comply with the provisions of this section in setting the valuations of property for assessment purposes in any class or classes of property in the county, the state tax commissioner shall review the valuations for assessment purposes made by the county assessor and the county commission and shall direct
the county assessor and the county commission to make
such corrections in the valuations as may be necessary so
that they shall comply with the requirements of chapter
eleven of this code and this section, and the tax
commissioner shall enter the county and fix the assessments
at the required ratios. Refusal of the assessor or the county
commission to make such corrections shall constitute
grounds for removal from office.

(h) In any year in which the total assessed valuation of a
county shall fail to meet the minimum requirements above
set forth, the county commission of such county shall
allocate for such year to the county board of education from
the tax levies allowed to the county commission a sufficient
portion of its levies as will, when applied to the valuations
for assessment purposes of such property in the county,
provide a sum of money equal to the difference between the
amount of revenue which will be produced by application of
the allowable school levy rates defined in section two of this
article upon the valuations for assessment purposes of such
property and the amount of revenue which would be yielded
by the application of such levies to fifty percent of the total
of appraised valuations of such property. In the event the
county commission shall fail or refuse to make the
reallocation of levies as provided for herein, the county
board of education, the tax commissioner, the state board,
or any other interested party, shall have the right to enforce
the same by writ of mandamus in any court of competent
jurisdiction.

(i) In conjunction with and as a result of the appraisal
herein set forth the tax commissioner shall have the power,
and it shall be his duty, to establish a permanent records
system for each county in the state, consisting of:

(1) Tax maps of the entire county drawn to scale or
aerial maps, which maps shall indicate all property and lot
lines, set forth dimensions or areas, indicate whether the
land is improved, and identify the respective parcels or lots
by a system of numbers or symbols and numbers, whereby
the ownership of such parcels and lots can be ascertained by
reference to the property record cards and property owner's
index;

(2) Property record cards arranged geographically
according to the location of property on the tax maps, which
cards shall set forth the location and description thereof,
the acreage or dimensions, description of improvements, if
any, the owner's name, address and date of acquisition, the
purchase price, if any, set forth in the deed of acquisition,
the amount of tax stamps, if any, on the deed, the assessed
valuation, and the identifying number or symbol and
number, shown on the tax map; and
(3) Property owner's index consisting of an alphabetical
listing of all property owners, setting forth brief
descriptions of each parcel or lot owned and cross-indexed
with the property record cards and the tax map.
(j) The tax commissioner is hereby authorized and
empowered to enter into such contracts as may be
necessary, and for which funds may be available, to
establish the permanent records system herein provided
for, or may through his staff and employees, prepare and
complete such system.
All microfilm photography and original copies of tax
maps created under the provisions of this section are the
property of the state of West Virginia and the reproduction,
copying, distribution or sale of such microfilm,
photography or tax maps or any copies thereof without the
written permission of the state tax commissioner is
prohibited. Any person who shall violate the provisions of
this paragraph shall be guilty of a misdemeanor, and, upon
conviction thereof, shall be fined not less than fifty dollars
nor more than three hundred dollars, or imprisoned in the
county jail not less than thirty days nor more than one year,
or both fined and imprisoned. Magistrates shall have
concurrent jurisdiction with other courts having
jurisdiction for the trial of all misdemeanors arising under
this paragraph.
The tax commissioner shall by uniform rules establish a
procedure for the sale of reproduction of microfilm,
photography and maps and may pay for having such
reproductions made from the appropriation for "property
appraisal." Any funds received as a result of the sale of such
reproductions shall be deposited to the appropriated
account from which the payment for reproduction is made.
(k) The cost of conducting the appraisal herein provided
for shall be borne jointly by the state and the several
counties in the following manner and terms: There shall be
appropriated from the general revenue fund annually an
amount sufficient to maintain the appraisal in all counties
of the state. Each county shall furnish, through its county commission, not more than ten percent of the cost of such appraisal or reappraisal and permanent records system for each county. Such county costs may be paid over a period of three years with the approval of the tax commissioner. In those instances where the cost of the appraisal, reappraisal or permanent records system required by this section has been paid by the tax commissioner from funds appropriated for these purposes, the share of such cost allocated to each county shall, upon receipt thereof by the tax commissioner, be deposited to the appropriated account from which such payments have been made. In those instances where a county has heretofore employed a professional appraisal firm to conduct an appraisal or reappraisal of all or part of nonutility property within the past seventeen years, and such appraisal has been accepted by the tax commissioner, with the county having borne in excess of ten percent of the cost of such appraisal, reappraisal, and permanent records system, monetary reimbursement of one third of such excess costs shall be made by the tax commissioner from funds appropriated for such purpose, to such county, yearly, for a period of three years, in order to establish the joint sharing of such costs as hereinbefore set forth.

(l) The county assessor and the county commission shall comply with the provisions of chapter eleven of this Code in determining the true and actual value of property for assessment purposes and shall not arbitrarily use a direct percentage application to the appraisal valuations, whether complete appraisal or spot survey, of any class of property or property within a class for such purposes.

(m) The provisions of this section shall not be construed to alter or repeal in any manner the provisions of chapter eleven of this Code, but shall be construed in pari materia therewith, and compliance with this section by the assessor and county commission shall be considered, pro tanto, as compliance with said chapter eleven.

§18-9A-13b. Allowances for remedial and accelerated education programs and salary equity.

For the fiscal years commencing on the first day of July, one thousand nine hundred eighty-eight and eighty-nine, only, the total state appropriation for the basic foundation program shall be no less than the state appropriation for the
fiscal year which began on the first day of July one thousand nine hundred eighty-seven.

For the fiscal year commencing on the first day of July, one thousand nine hundred eighty-eight, there shall be appropriated two million dollars to the state board to develop and implement remedial and accelerated programs in the counties including grants to those individual schools which have developed remedial plans and whose plans are approved by the state board.

Commencing with the school year beginning on the first day of July, one thousand nine hundred eighty-eight, and thereafter, funds which accrue from allocations due to changes in adjusted enrollment above that computed for the school year beginning on the first day of July, one thousand nine hundred eighty-seven, or from appropriations for such purpose, shall be allocated to increase state support for salary equity and to develop and implement remedial and accelerated programs in the following manner:

Sixty percent of these funds shall be allocated for the purpose of attaining salary equity among the counties pursuant to section five, article four, chapter eighteen-a; and

Forty percent of these funds shall be allocated to implement remedial and accelerated programs as developed under guidelines of the state board.


(a) In order to encourage counties to move toward new and improved programs and to reduce class size, counties having ratios of adjusted enrollment to professional staff higher than the state average will be granted, to the extent appropriations are provided, advance funds to employ sufficient additional staff to reach the state average:

Provided, That in any one fiscal year no more than one half of such additional staff may be counted under this provision. Such funds shall be granted to each eligible county based on data at the end of the second month of school but only on the basis of actual staff members employed.

(b) Counties having ratios of adjusted enrollment to service personnel higher than the state average will be granted, to the extent appropriations are provided, funds to
§18-9A-14a. Incentive for administrative efficiency.

(a) Notwithstanding any other provision to the contrary, and in order to encourage county superintendents to more fully utilize their administrative capabilities and provide them with increased fiscal flexibility, each county shall be granted the funds equal to the eighty percent of the difference between the total amount received pursuant to sections four and six of this article based on actual professional educators employed and the amount the county would receive if they employed the maximum professional educators allowed pursuant to section four of this article using that county's average funded state minimum salary for professional educators for such computation: Provided, That the following three conditions are all met the prior year:

1. The county maintained the minimum instructional personnel ratio set forth in section four of this article;
2. The county reduced the number of maximum class size exemptions, if any, as provided for in section eighteen-a, article five of this chapter, by twenty-five percent over the prior year; and
3. The county reduced the number of split grade exemptions, if any, as provided for in section eighteen-a, article five of this chapter, by twenty-five percent over the prior year.

(b) Each county shall also be granted the funds equal to eighty percent of the difference between the total amount received pursuant to sections five and six of this article based on actual service personnel employed and the amount the county would receive if they employed the maximum service personnel allowed pursuant to section five of this article, using the county's average state funded minimum salary for service personnel for such computation: Provided, That in the prior year the number of professional educators who do not spend at least seventy-five percent of their work day assigned to a local school or schools shall not

employ service personnel to progress toward the state average: Provided, That in any fiscal year the number of service personnel for which funds are allocated shall not exceed that number of service personnel by which the counties' computations for allocations may be increased as provided in section five of this article.
(c) The provisions of this section shall commence with the school year beginning on the first day of July, one thousand nine hundred eighty-nine, and continue thereafter.


(a) The purpose of this section is to declare the intent of the Legislature to provide a thorough and efficient system of education for West Virginia public school students. High quality educational standards shall be provided all public school students on an equal educational opportunity basis. A system for the review of county educational plans and the on-site reviews of county educational programs shall provide assurances that the high quality standards, established pursuant to this section, are being met.

On or before January one, one thousand nine hundred eighty-five, the state board of education shall establish and adopt high quality educational standards and shall provide each county board of education a copy thereof.

On or before July one, one thousand nine hundred eighty-five, and each July one thereafter, each county board of education shall file an annual specific program plan with the state department of education. The program plan shall, at a minimum, meet the statewide high quality educational standards as established by the state board of education.

The purpose of the program plan is to allow county boards of education flexibility in developing school improvement programs structured around locally identified needs, but in compliance with the high quality standards adopted by the state board of education. High quality standards must be met in curriculum, finance, transportation, special education, facilities, textbooks, personnel qualifications and other such areas as determined by the state board of education.

The state department of education shall review the plans annually and conduct an on-site review of each county’s educational program every fourth year. The state board of...
education shall have authority to issue four types of recognition status: (1) full approval, (2) substantial approval, (3) probationary and (4) nonapproval.

Full approval status may be granted to a county board of education whose educational program has undergone an on-site evaluation by representatives of the state department of education and has met the high quality standards adopted by the state board of education. Full approval status shall be for a period not to exceed four years.

Substantial approval status may be granted to a county board of education whose educational program has satisfied all conditions identified under full approval status, with the exception of an on-site review, or all conditions identified under full approval have been satisfied except that one or more of the high quality standards have not been met but will be attained within one year, as described in an acceptable plan of action.

Probationary status is given to a county board of education whose educational program has not met the high quality standards. Probationary status is a warning that the county board of education must make specified improvements. If progress is not made toward meeting the high quality standards during the succeeding year, the county board of education is automatically placed on nonapproval status.

Nonapproval status is given to a county board of education which fails to submit an annual program plan, fails to give evidence of meeting the high quality standards or has not demonstrated a reasonable effort to meet such standards.

(b) After the thirty-first day of December, one thousand nine hundred eighty-eight, the approval of educational programs based on high quality educational standards established by the state board shall be in accordance with the provisions of article two-e of this chapter and the provisions of this chapter shall expire.

§18-9A-23. Obtaining state funds by falsifying reports; penalty.

1 It shall be unlawful for any person knowingly and intentionally to falsify any enrollment or attendance...
Enr. Com. Sub. for S. B. No. 14] 3 reports for the purpose of obtaining state funds allocated to a county under the provisions of this article. Any person who violates the provisions of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail for not more than six months, or fined not more than one thousand dollars, or both.

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-1. State board of education to act as school building authority for purposes of this article; powers.

1 The state board of education as heretofore created and constituted under the provisions of section one, article two of this chapter, is the school building authority for the purposes of this article and as such, may exercise all of the powers and functions granted to it under the provisions of this article.

2 The acts performed by the state board of education in its capacity as the school building authority are solely the acts of the authority.


1 The following terms, wherever used or referred to in this article, shall have the following meanings, unless a different meaning clearly appears from the context:

2 (1) “Authority” means the school building authority of West Virginia or if said authority shall be abolished, any board or officer succeeding to the principal functions thereof, or to whom the powers given to said authority shall be given by law;

3 (2) “Bonds” means bonds issued by the authority pursuant to this article;

4 (3) “Project” or “capital improvement project” means the new construction, major renovation, repair and safety upgrading of facilities, buildings and structures for school purposes including the acquisition of land for current or future use in connection therewith, equipment, machinery, furnishings, installation of utilities and other similar items convenient in connection with placing the foregoing into operation, but may not include such items as books, fuel, supplies and other items which are customarily deemed to result in a current operating charge;

5 (4) “Cost of project” means the cost of construction,
renovation, repair and safety upgrading of facilities,
buildings and structures for school purposes; the cost of
land, equipment, machinery, furnishings, installation of
utilities and other similar items convenient in connection
with placing the foregoing into operation; and the cost of
financing, interest during construction, professional
service fees and all other charges or expenses necessary,
appurtenant or incidental to the foregoing, including the
cost of administration of this article;
(5) “Revenue” or “revenues” mean moneys deposited in
the school building capital improvements fund pursuant to
the operation of subsection (b), section ten, article nine-a of
this chapter; any moneys received, directly or indirectly,
from any source for the use of all or any part of any project
completed pursuant to this article; and any other moneys
received by the authority for the purposes of this article.


The school building authority has power:
(1) To sue and be sued, plead and be impleaded;
(2) To have a seal and alter the same at pleasure;
(3) To contract to acquire and to acquire, in the name of
the authority by purchase, lease-purchase, or otherwise,
real property or rights or easements necessary or
convenient for its corporate purposes and to exercise the
power of eminent domain to accomplish such purposes;
(4) To acquire, hold and dispose of real and personal
property for its corporate purposes;
(5) To make bylaws for the management and rule of its
affairs;
(6) With the consent of the attorney general of the state
of West Virginia, to use the facilities, office, assistants and
employees of the attorney general in all legal matters
relating to or pertaining to the authority;
(7) To appoint officers, agents and employees, and fix
their compensation;
(8) To make contracts, and to execute all instruments
necessary or convenient to effectuate the intent of, and to
exercise the powers granted to it by, this article;
(9) To renegotiate all contracts entered into by it
whenever, due to a change in situation, it appears to the
authority that its interests will be best served;
(10) To acquire by purchase, eminent domain or otherwise all real property or interests therein necessary or convenient to accomplish the purposes of this article;

(11) To require proper maintenance and insurance of any project authorized hereunder;

(12) To charge rent for the use of all or any part of a project or buildings at any time financed, constructed, acquired or improved in whole or in part with the revenues of the authority;

(13) To acquire land, buildings and capital improvements to existing school buildings and property, by lease from a private or public lessor for a term not to exceed twenty-five years, with or without an option to purchase pursuant to an investment contract with said lessor, for use as public school facilities on such terms and conditions as may be determined to be in the best interests of the authority and consistent with the purposes of this article.

(14) To accept and expend any gift, grant, contribution, bequest or endowment of money to, or for the benefit of, the authority, from the state of West Virginia or any other source for any or all of the purposes specified in this article or for any one or more of such purposes as may be specified in connection with such gift, grant, contribution, bequest or endowment;

(15) To enter on any lands and premises for the purpose of making surveys, soundings and examinations; and

(16) To do all things necessary or convenient to carry out the powers given in this article.

§18-9D-4. School building authority authorized to issue revenue bonds for prioritized school building capital improvement projects; refunding bonds authorized; local contribution required.

The school building authority may, in accordance with the provisions of this article, issue revenue bonds of the authority from time to time, either to finance the cost of school building capital improvement projects for public schools in this state, as determined on the basis of need by resolution of the authority, or to refund, at the discretion of the authority, bonds issued and outstanding under and pursuant to the provisions of this article. The principal of, interest and redemption premium, if any, on such bonds
shall be payable solely from the special fund herein provided for such payment.

The resolution of the authority shall be in accordance with such order of priority as the facility needs of each county have been determined on the basis of need: Provided, That priority shall be given first to (1) counties utilizing facilities which do not meet state board of education health and safety standards, (2) counties whose net enrollment has increased for each of the two school years immediately preceding a determination by the authority that a need exists, and (3) counties which have, pursuant to section thirteen-a, article five of this chapter, approved a plan to consolidate under-utilized schools. Funds may be made available only to counties which have retired a bond issue within the past five years. Counties which meet these eligibility criteria must provide a twenty-five per cent match per project in order to receive state funds. The authority shall present such expenditures to the governor for inclusion in the annual budget bill and may only be expended with the approval of the Legislature as indicated by direct appropriation therefor.

§18-9D-5. School building authority authorized to offer individual higher education savings plans.

(a) Legislative findings. — The Legislature hereby finds and declares that:

(1) It is an essential function of state government to encourage post secondary education in order to have well-educated citizens.

(2) Tuition costs at institutions of higher education are difficult for many to afford and are difficult to predict in order to enable individuals and families to plan.

(3) It is in the best interest of the people of this state to encourage state residents desiring a public higher education to enroll in state public institutions of higher learning and to enhance and foster the ability of West Virginia residents to choose an independent institution of higher education in order to provide well-educated citizens and to encourage state residents desiring an independent higher education to enroll in an independent degree-granting college or university.

(4) Students in elementary and secondary schools tend
to achieve a higher standard of performance when the 
payment of tuition for their higher education is secured.

(5) Providing assistance to assure the higher education 
of citizens of this state is necessary and desirable for the 
public health, safety and welfare.

(b) Purpose. — In light of the findings described in 
subsection (a) of this section and in light of the purposes of 
this article, the Legislature declares that the purpose of this 
section is to encourage education and the means of 
education by (1) authorizing establishment of individual 
higher education savings plan programs; and (2) providing 
for the funds invested in this program through the purchase 
of state building authority revenue bonds to be used to 
make capital improvements to primary and secondary 
educational facilities in this state, as provided in this 
article.

(c) Authorization. — The state school building 
authority is authorized to offer to the general public one or 
more individual higher education savings plan programs. In 
order to establish, operate and maintain an efficient and 
effective program or programs, the state school building 
authority shall have such additional powers as are 
necessary or reasonably desirable to implement such a 
program or programs. These additional powers shall 
include, but are not limited to the power to:

(1) Issue revenue bonds under this article in 
denominations of twenty-five, fifty, one hundred and five 
hundred dollars.

(2) Permit employees to purchase bonds through payroll 
deductions by their employer.

(3) Offer different classes of bonds and different bond 
terms which take into consideration the short term nature 
and purpose of an individual participating in an individual 
higher education savings plan program.

(4) Offer a rate of interest on bonds purchased under 
this program which encourages maximum participation.

(5) Execute a separate trust agreement under section 
twelve of this article for bonds sold pursuant to an 
individual higher education savings plan program 
established under this section.

(d) Construction. — Other sections of this article which 
apply generally to bonds issued under this article shall 
apply to the revenue bonds issued under this section. If any
language in this section conflicts with language in another
section of this article, the language of this section shall
control unless such a construction would be unlawful, or
would not be in the public interest, or would be contrary to
the statements of finding and purpose in this section.

(e) Tax treatment.

(1) The amount which an individual invests during his
taxable year in the purchase of revenue bonds issued under
this section shall be allowed as a deduction from federal
adjusted gross income for purposes of the tax imposed by
article twenty-one, chapter eleven of this code, except as
provided in paragraph (3).

(2) The interest which an individual earns on revenue
bonds issued under this section shall not be subject to the
tax imposed by article twenty-one, chapter eleven of this
code, except as provided in subdivision (3) of this
subsection.

(3) If the owner of a bond purchased under this section
sells it during a taxable year and does not spend the entire
amount for tuition and fees, books, reasonable room and
board and child care to attend an institution which is
accredited to award higher education degrees by the West
Virginia board of regents, or any successor thereto, or by its
equivalent in another state, the proceeds of the sale not so
spent shall be taxed under article twenty-one, chapter
eleven of this code, by application of the highest marginal
rate applicable to the taxpayer to the amount not so spent.
Additionally, a penalty equal to ten percent of the tax due
shall be imposed, which penalty may be waived by the tax
commissioner if the taxpayer shows that this failure was
due to reasonable cause and not due to willful neglect. The
amount of tax and penalty so imposed shall be due and
payable on the fifteenth day of the fourth month of the
taxable year immediately succeeding the taxable year in
which the bond was sold.

(f) Reports. — The school building authority and the
trustee of an individual higher education savings plan
program shall make such reports regarding such bonds to
the tax commissioner and to the individuals of record who
own the bonds with respect to bond principal and interest
(and the years to which they relate) and such other matters
as the tax commissioner may require. The reports required by this section shall be filed with the tax commissioner at least annually, at such time and in such manner as the tax commissioner may by regulation require.

§18-9D-6. School building capital improvements fund in state treasury; collections to be paid into special fund; authority to pledge such collections as security for revenue bonds; authority to finance projects on a cash basis.

There is created in the state treasury, a school building capital improvements fund to be expended by the authority for the purposes of this article.

The school building authority shall have authority to pledge all or such part of the revenues paid into the school building capital improvements fund as may be needed to meet the requirements of any revenue bond issue or issues authorized by this article, including the payment of principal of, interest and redemption premium, if any, on such revenue bonds, the establishing and maintaining of a reserve fund or funds for the payment of the principal of, interest and redemption premium, if any, on such revenue bond issue or issues when other moneys pledged may be insufficient therefor and including such additional protective pledge of revenues as the authority in its discretion may provide by resolution authorizing the issue of such bonds and in any trust agreement made in connection therewith, and the authority may further provide in such resolution and in such trust agreement, for such priorities on the revenues paid into such school building capital improvements fund as may be necessary for the protection of the prior rights of the holders of bonds issued at different times under the provisions of this article.

Any balance remaining in the school building capital improvements fund after the authority has issued bonds authorized by this article, and after the requirements of all funds including reserve funds established in connection with the bonds issued pursuant to this article have been satisfied, may be used for the redemption of any of the outstanding bonds issued hereunder which by their terms are then redeemable, or for the purchase of such bonds at the market price, but at not exceeding the price, if any, at
which such bonds shall in the same year be redeemable, and
all bonds redeemed or purchased shall forthwith be
canceled and shall not again be issued.

The school building authority, in its discretion, may use
the moneys in the school building capital improvements
fund to finance the cost of projects on a cash basis. Any
pledge of moneys in such fund for revenue bonds shall be a
prior and superior charge on such fund over the use of any of
the moneys in such fund to pay for the cost of any project on
a cash basis: Provided, That any expenditures from such
fund, other than for the retirement of revenue bonds, may
only be made by the authority to meet the cost of a
predetermined capital improvements project, in such order
or priority as the facility needs of each county have been
determined on the basis of need by resolution of the
authority. The allocation of funding for such purposes shall
have been agreed upon by the school building authority and
presented to the governor for inclusion in the annual budget
bill, and may only be expended with the approval of the
Legislature as indicated by direct appropriation therefor.

§18-9D-7. Authority to fix and collect rents.

The authority may fix and collect a rental fee for the use
of all or any part of a capital improvement project
completed under this article to provide revenues for deposit
in the school building capital improvements fund to pay, in
whole or in part, the principal of, interest and redemption
premium, if any, on the bonds authorized to be issued
pursuant to this article as the same mature and become due
and to make all reserve and other payments to be required
by the proceedings which authorize such bonds; to provide
any additional protective pledge of revenues and reserve or
other payments as the school building authority may in its
discretion require by the resolution authorizing any issue of
bonds pursuant to this article and any trust agreement
made in connection therewith; and to make any other
payments required or authorized by this article or any
proceedings, resolutions or trust agreements authorized
hereunder.

§18-9D-8. Issuance of revenue bonds; use of proceeds; bonds
exempt from taxation.

The issuance of revenue bonds under the provisions of
this article shall be authorized from time to time by
resolution or resolutions of the school building authority,
which shall set forth the proposed projects and provide for
the issuance of bonds in amounts sufficient, when sold as
hereinafter provided, to provide moneys deemed by the
authority sufficient to pay such costs, less the amounts of
any other funds available for said costs or from any
appropriation, grant or gift therefor. Such resolution shall
prescribe the rights and duties of the bondholders and the
school building authority, and for such purpose may
prescribe the form of the trust agreement hereinafter
referred to. The bonds may be issued from time to time, in
such amounts, shall be of such series, bear such date or
dates, mature at such time or times not exceeding forty
years from their respective dates, bear interest at such rate
or rates; be in such denominations; be in such form, either
coupon or registered, carrying such registration,
exchangeability and interchangeability privileges; be
payable in such medium of payment and at such place or
places within or without the state; be subject to such terms
of redemption at such prices not exceeding one hundred five
percent of the principal amount thereof; and be entitled to
such priorities on the revenues paid into the school building
authority capital improvements fund as may be provided in
the resolution authorizing the issuance of the bonds or in
any trust agreement made in connection therewith. The
bonds shall be signed by the governor, and by the president
or vice president of the authority, under the great seal of the
state, attested by the secretary of state, and the coupons
attached thereto shall bear the facsimile signature of the
president or vice president of the authority. In case any of
the officers whose signatures appear on the bonds or
coupons cease to be such officers before the delivery of such
bonds, such signatures shall nevertheless be valid and
sufficient for all purposes the same as if such officers had
remained in office until such delivery. Such revenue bonds
shall be sold in such manner as the authority may determine
to be for the best interests of the state.

Any pledge of revenues for such revenue bonds made by
the school building authority shall be valid and binding
between the parties from the time the pledge is made; and
the revenues so pledged shall immediately be subject to the
liens of such pledge without any further physical delivery
The lien of such pledge shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise, irrespective of whether such parties have notice of the lien of such pledge, and such pledge shall be a prior and superior charge over any other use of such revenues so pledged.

The proceeds of such bonds shall be used solely for the payment of the cost of those projects as generally and specifically set forth in the resolution authorizing those bonds, and shall be deposited in the state treasury in a special fund to be disbursed as provided by law for the disbursement of any other state funds. If the proceeds of such bonds, by error in calculations or otherwise, shall be less than the cost of such projects, additional bonds may in like manner be issued to provide the amount of the deficiency; and unless otherwise provided for in the resolution or trust agreement hereinafter mentioned, such additional bonds shall be deemed to be of the same issue, and shall be entitled to payment from the same fund, without preference or priority, as the bonds before issued for such projects. If the proceeds of bonds issued for such projects exceed the cost thereof, the surplus may be used for such other projects as the school building authority may determine or in such other manner as the resolution authorizing such bonds may provide. Prior to the preparation of definitive bonds, the authority may, under like restrictions, issue temporary bonds with or without coupons, exchangeable for definitive bonds upon the issuance of such definitive bonds.

After the issuance of any of such revenue bonds, the revenues pledged therefor shall not be reduced as long as any of such revenue bonds are outstanding and unpaid except under such terms, provisions and conditions as shall be contained in the resolution, trust agreement or other proceedings under which such revenue bonds were issued.

Such revenue bonds and the revenue refunding bonds, and bonds issued for combined purposes shall, together with the interest thereon, be exempt from all taxation by the state of West Virginia, or by any county, school district, municipality or political subdivision thereof.
§18-9D-9. Issuance of revenue refunding bonds; use of moneys; power to enter into escrow agreements; call for redemption.

The issuance of revenue refunding bonds under the provisions of this article shall be authorized by resolution of the school building authority and shall otherwise be subject to the limitations, conditions and provisions of other revenue bonds under this article. Such revenue refunding bonds may be issued in an amount at the option of the authority sufficient to pay either in full or together with interest earned on the investment of the proceeds thereof, whether or not at the time of the issuance of the revenue refunding bonds the hereafter mentioned bonds are payable or callable for optional redemption; (1) the redemption premium, if any, on such outstanding bonds or the prior redemption thereof; (2) the interest due and payable on such outstanding bonds to and including the first date upon which said outstanding bonds are callable prior to maturity, not exceeding, however, ten years from the date of issuance of such revenue refunding bonds, or the dates upon which the principal of said outstanding bonds mature before such first date on which the same are callable prior to maturity, including any interest theretofore accrued and unpaid; and (3) all expenses of the issuance and sale of said revenue refunding bonds, including all necessary financial and legal expenses, and also including the creation of initial debt service reserve funds. Any revenues pledged with respect to the outstanding bonds may be used for any or all of the purposes stated in (1), (2) and (3) above or may be deposited in a sinking fund or reserve fund or other funds for the issue of bonds which have been issued wholly or in part for the purpose of such refunding. Such amount of the proceeds of the revenue refunding bonds as shall be sufficient for the payment of the principal of, interest and redemption premium, if any, on such outstanding bonds which will not be immediately due and payable shall be deposited in trust, for the sole purpose of making such payments, with the treasurer of the state of West Virginia. Any of the moneys so deposited in trust may, prior to the date on which such moneys will be needed for the payment of principal of, interest and redemption premium, if any, on such outstanding bonds, be invested and reinvested as
determined by the authority, in whole or in part: (a) In
direct obligations issued by the United States of America or
one of its agencies or in direct obligations of the state of
West Virginia, (b) in obligations unconditionally
guaranteed by the United States of America as to principal
and interest, or (c) in certificates of deposit of a banking
corporation or association which is a member of the federal
deposit insurance corporation, or successor; but any such
certificates of deposit must be fully secured as to both
principal and interest by pledged collateral consisting of
direct obligations of or obligations guaranteed by the
United States of America, or direct obligations of the state
of West Virginia, having a market value, excluding accrued
interest, at all times at least equal to the amount of the
principal of and accrued interest on such certificates of
deposit. Any such investments must mature, or be payable
in advance of maturity at the option of the holder, and must
bear interest in such manner as to provide funds which,
together with uninvested money, will be sufficient to pay
when due or called for redemption the bonds refunded,
together with interest accrued and to accrue thereon and
redemption premiums, if any, and such refunding bonds’
proceeds or obligations so purchased therewith shall be
deposited in escrow and held in trust for the payment and
redemption of the bonds refunded: Provided, That if
interest earned by any investment in such escrow is shown
to be in excess of the amounts required from time to time for
the payment of interest on and principal of the refunded
bonds, including applicable redemption premium, then
such excess may be withdrawn from escrow and disbursed
in such manner as the authority shall by resolution
determine, subject to the provisions of section five of this
article. Any moneys in the sinking or reserve funds or other
funds maintained for the outstanding bonds to be refunded
may be applied in the same manner and for the same
purpose as are the net proceeds of refunding bonds or may
be deposited in the special fund or any reserve funds
established for account of the refunding bonds.

The authority to issue revenue refunding bonds shall be in
addition to any other authority to refund bonds conferred
by law.

The school building authority shall have power to enter
into such escrow agreements and to insert therein such
protective and other covenants and provisions as it may
consider necessary to permit the carrying out of the
provisions of this article and to insure the prompt payment
of the principal of and interest and redemption premiums
on the revenue bonds refunded.

Where any revenue bonds to be refunded are not to be
surrendered for exchange or payment and are not to be paid
at maturity with escrowed obligations, but are to be paid
from such source prior to maturity pursuant to call for
redemption exercised under a right of redemption reserved
in such revenue bonds, the authority shall, prior to the
issuance of the refunding bonds, determine which
redemption date or dates shall be used, call such revenue
bonds for redemption and provide for the giving of the
notice of redemption required by the proceedings
authorizing such revenue bonds. Where such notice is to be
given at a time subsequent to the issuance of the refunding
bonds, the necessary notices may be deposited with the
state treasurer or the bank acting as escrow agent of the
refunding bond proceeds and the escrow agent
appropriately instructed and authorized to give the
required notices at the prescribed time or times. If any
officer of the public body signing any such notice shall no
longer be in office at the time of the utilization of the notice,
the notice shall nevertheless be valid and effective for its
intended purpose.

§18-9D-10. Bonds may be issued for combined purposes.

The school building authority may authorize by one or
more resolutions a single issue of bonds for the combined
purposes of refunding the outstanding bonds as herein
authorized and financing one or more of the projects
authorized hereunder.


The revenue bonds, revenue refunding bonds and bonds
issued for combined purposes under the provisions of this
article shall, independently of the requirements of any
other provision of law and solely by virtue of the provisions
of this section, be and have all the qualities and incidents of
negotiable instruments.
§18-9D-12. Trust agreements for holders of bonds.

The school building authority may enter into an agreement or agreements with any trust company, or with any bank having the powers of a trust company, either within or outside the state, to act as trustee for the holders of bonds issued hereunder, setting forth therein such duties and containing such legally binding covenants of the school building authority with the holders of the bonds in respect to the payment of the bond; the fixing and collecting of rents hereinbefore referred to; the completion of authorized projects; the custody, safeguarding and disposition of the proceeds of the bonds, and the moneys in such special funds, sinking funds, reserve funds, or any other moneys or funds, notwithstanding provisions of this article to the contrary; the security for moneys on hand or on deposit, and the rights and remedies of the trustee and the holders of the bonds, as may be agreed upon with the purchasers of such bonds; provisions restricting the individual right of action of bondholders as is customary in trust agreements respecting bonds and debentures of municipal corporations, protecting and enforcing the rights and remedies of the trustee and the bondholders; and provisions as to any other matters which are deemed necessary and advisable by the school building authority in the best interests of the state and to enhance the marketability of the bonds. Any such agreement entered into by the school building authority shall be binding in all respects on such authority and its successors from time to time in accordance with the terms thereof; and all the provisions thereof shall be enforceable by appropriate proceedings at law or in equity, or otherwise.


From the school building capital improvement fund the school building authority shall make periodic payments to the state treasurer in an amount sufficient to meet the requirements of any issue of bonds sold under the provisions of this article, as may be specified in the resolution of the authority authorizing the issue thereof and in any trust agreement entered into in connection therewith. The payments so made shall be placed by the treasurer in a special sinking fund which is hereby pledged.
to and charged with the payment of the principal of the
bonds of such issue and the interest thereon, and to the
redemption or repurchase of such bonds, such sinking fund
to be a fund for all bonds of such issue without distinction or
priority of one over another, except as may be provided in
the resolution authorizing such issue of bonds. The moneys
in the special sinking fund, less such reserve for payment of
principal and interest and redemption premium, if any, as
may be required by the resolution of the school building
authority, authorizing the issue and any trust agreement
made in connection therewith, may be used for the
redemption of any of the outstanding bonds payable from
such fund which by their terms are then redeemable, or for
the purchase of bonds at the market price, but at not
exceeding the price if any, at which such bonds shall in the
same year be redeemable; and all bonds redeemed or
purchased shall forthwith be canceled and shall not again
be issued.

§18-9D-14. Credit of state not pledged.

No provisions of this article shall be construed to
authorize the school building authority at any time or in any
manner to pledge the credit or taxing power of the state, nor
shall any of the obligations or debts created by the school
building authority under the authority herein granted be
deemed to be obligations of the state.

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

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

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) Preparing the necessary rules, regulations, 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.
(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, chapter eighteen
of this code, receive an education in accordance with state
and federal laws: Provided, That the state superintendent
shall also assure that adults in correctional facilities shall
receive an education to the extent funds are provided
therefor.
(6) Performing such other duties and assuming such
other responsibilities in connection with this program as
may be needed.
(7) Nothing herein contained 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.
§18-20-7. Exceptional children program compliance review
teams.
The state board shall establish exceptional children
program compliance review teams to conduct random
unannounced on-site reviews of such programs at least
every four years in each county for the purpose of reviewing
identification procedures, complying with any or all
applicable laws and policies, delivering services, verifying
enrollment and attendance reports, recommending
changes, and fulfilling such other duties as may be
established by the state board.
Each review team unit shall consist of five members
including one member of an exceptional children advocacy
group who is not an employee of any county or state
government agency, one teacher of exceptional children in
§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, multi-disciplinary 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 one thousand nine hundred ninety-one. 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;
(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.

ARTICLE 21. UNDERWOOD-SMITH TEACHER SCHOLARSHIP PROGRAM.

§18-21-1. Scholarship fund created; purposes; funding.

(a) It is the purpose of this article to encourage and enable individuals who are outstanding high school graduates and who demonstrate an interest in teaching to pursue teaching careers at the pre-school, elementary or secondary levels in the public schools of this state. The board of regents may promulgate reasonable rules under this article in furtherance of this purpose. All rules so promulgated shall be filed with the secretary of state.

(b) For the purposes of this article, “board”, means the board of regents unless the context in which used clearly indicates otherwise.

(c) There is hereby created in the state treasury a special revolving fund to be known as the “Underwood-Smith Teacher Scholarship Fund” to be administered by the board of regents solely for granting scholarships to prospective teachers in accordance with this article. Any moneys which may be appropriated by the Legislature or received by the
board from other sources for the purposes of this article shall be deposited in the fund, and any moneys remaining in the fund at the close of a fiscal year shall be carried forward for use in the next fiscal year. Any moneys repaid to the board of regents by reason of default of a scholarship agreement under this article shall also be deposited in the fund. 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 for which moneys invested were appropriated or otherwise received.

(d) The board of regents may accept and expend any gift, grant, contribution, bequest, endowment, or other money for the purposes of this article and shall make a reasonable effort to encourage support for the scholarship program from all sources.

(e) For the purpose of encouraging support for the scholarship program from private sources, the board of regents may set aside no more than half of the funds appropriated by the Legislature for Underwood-Smith teacher scholarships to be used to match two state dollars to each private dollar from a nonstate source contributed on behalf of a specific institution of higher education in this state.

§18-21-2. Selection criteria and procedures.

(a) The board of regents shall designate an existing state-sanctioned scholarship selection agency or panel to select the recipients of Underwood-Smith teacher scholarships who meet the eligibility criteria set forth in subsection (b) of this section. If no such agency or panel exists, the governor shall appoint a scholarship selection panel for this purpose which shall consist of seven persons representative of public school administrators, teachers, including pre-school teachers, and parents.

(b) Selections of Underwood-Smith teacher scholarship recipients shall be made from aides as defined in section eight, article four of chapter eighteen-a of this code, who have a cumulative grade point of three and two tenths on a possible scale of four after successfully completing two years of course work at an approved institution of higher education or students who are West Virginia residents and...
have graduated or who are graduating from high school, and who rank in the top ten percent of their graduating class or the top ten percent statewide of those West Virginia students taking the American College Test, except that selections of the teacher scholarship recipients at the master's degree level shall be made from students who have graduated or are graduating in the top ten percent of their college graduating class. The board shall develop criteria and procedures for the selection of recipients which may include, but not be limited to, the applicant's grade point average, involvement in extra-curricular activities, financial need, current academic standing, and an expression of interest in teaching as expressed in an essay written by the applicant. The board may also require the applicant to furnish letters of recommendation from teachers and others. The selection criteria and procedures shall also reflect the present and projected teacher needs of the state, including the demand for and supply of early childhood, elementary and secondary teachers and teachers with training in specific academic disciplines.

(c) In developing the selection criteria and procedures to be used by the panel, the board shall solicit the views of public and private education agencies and institutions and other interested parties. These views (1) shall be solicited by means of written and published selection criteria and procedures in final form for implementation and (2) may be solicited by means of public hearings on the present and projected teacher needs of the state or such other methods as the board may determine to be appropriate to gather such information.

(d) The board shall make application forms for Underwood-Smith teacher scholarships available to public and private high schools in the state and in other locations convenient to applicants, parents and others.

§18-21-3. Scholarship agreement.

(a) Each recipient of an Underwood-Smith teacher scholarship shall enter into an agreement with the board of regents under which the recipient shall:

(1) Provide the board with evidence of compliance with subsection (a), section four of this article; and

(2) Within a ten-year period after completing the teacher education for which the scholarship was awarded,
teach full time under contract with a county board of
education (A) in a public education program in the state for
a period of not less than two years for each year for which a
scholarship was received, or (B) in this state in a teacher
shortage area as determined by the state board of
education, in an exceptional children program in this state,
or in a school in an economically disadvantaged area of this
state for not less than one year for each year for which a
scholarship was received; or
(3) Repay all or part of an Underwood-Smith teacher
scholarship received under this article plus interest and, if
applicable, reasonable collection fees, in compliance with
rules issued by the board under subsection (b), section four
of this article, except as provided in subsections (c) and (d)
of said section four.
(b) Scholarship agreements shall fully disclose the
terms and conditions under which assistance under this
article is provided and under which repayment may be
required, including:
(1) A description of the conditions and procedures to be
established under section four of this article; and
(2) A description of the appeals procedure required to
be established under section four of this article.
§18-21-4. Renewal conditions; noncompliance; deferral;
excusal.
(a) The recipient of an Underwood-Smith teacher
scholarship is eligible for scholarship renewal only during
such periods that the board finds the recipient is:
(1) Enrolled as a full-time student in an accredited
institution of higher education in this state;
(2) Pursuing a course of study leading to teacher
certification at the pre-school, elementary or secondary
level in this state; and
(3) Maintaining satisfactory progress as determined by
the institution of higher education the recipient is
attending; and
(4) Complying with such other standards as the board
may establish by rule.
(b) Recipients found by the board to be in
noncompliance with the agreement entered into under
section three of this article shall be required to repay the
amount of the scholarship awards received, plus interest
and, where applicable, reasonable collection fees, on a
schedule and at a rate of interest to be prescribed by the
board by rule. The board shall provide by rule for
procedures for proration of the amount to be repaid by a
recipient who teaches for part of the period required under
subsection (a), section three of this article and for appeal
procedures under which a recipient may appeal any
determination of noncompliance.
(c) A recipient shall not be considered in violation of the
agreement entered into under section three of this article
during any period in which the board finds that the
recipient is:
(1) Pursuing a full-time course of study at an accredited
institution of higher education;
(2) Serving, not in excess of three years, as a member of
the armed services of the United States;
(3) Seeking and unable to find full-time employment as
teachers in a public education or exceptional children
program in the state; or
(4) Satisfying the provisions of additional repayment
exemptions that may be prescribed by the board by rule.
(d) A recipient shall be excused from repayment of a
teacher scholarship received under this article if the
recipient dies or becomes permanently and totally disabled
as established by sworn affidavit of a qualified physician.
§18-21-5. Amount and duration of scholarship; relation to
other assistance.
(a) Subject to subsection (b) of this section, each
recipient of an Underwood-Smith teacher scholarship is
eligible to receive assistance of up to five thousand dollars
for each academic year of higher education in preparation
for becoming a pre-school, elementary or secondary teacher
in the public schools of this state. No individual may receive
scholarship assistance for more than four academic years
for the completion of a bachelor's degree and two academic
years for completion of a master's degree.
(b) No individual shall receive a scholarship award
under this article which exceeds the cost of attendance at
the institution the individual is attending. The board shall
establish the cost of attendance by rule based on the actual
cost of tuition and fees, and reasonable allowances for
books, educational supplies, room and board and other
to account the amount of financial aid assistance the
necessitated by individual circumstances. For the
purposes of establishing an award amount, the board shall
take into account the amount of financial aid assistance the
recipient has or will receive from all other sources. If the
amount of the Underwood-Smith teacher scholarship
assistance award and the amount of assistance awards
which the recipient has received from all other sources
exceed the cost of attendance, the Underwood-Smith
teacher scholarship shall be reduced by the amount by
which such combined assistance exceeds the cost of
attendance, except that when other assistance to be
received by the recipient includes assistance from the West
Virginia higher education grant program, the amount to be
received from the higher education grant program shall
first be reduced.

ARTICLE 30. WEST VIRGINIA HIGHER EDUCATION TUITION TRUST
ACT.

§18-30-1. Title.

This article shall be known and may be cited as the “West
Virginia Higher Education Tuition Trust Act.”

§18-30-2. Legislative findings and purpose.

The Legislature hereby finds and declares that it is in the
best interests of the state to encourage its citizens to obtain
a higher education. The Legislature further finds that
tuition costs at institutions of higher education are difficult
for many to either afford or to predict so they can plan for a
higher education.

In light of these findings, the Legislature declares the
purpose of this article and the West Virginia higher
education tuition trust fund created by this article is to
courage students and their parents to plan for attendance
at an institution of higher education, to enable them to
finance the cost of a higher education in this state by
providing economic protection against rising tuition costs
at state institutions of higher education and economic
assistance for attendance at other institutions of higher
education in this state, and to enhance access to all
institutions of higher education to benefit the state of West
Virginia and its people.
§18-30-3. Definitions.

As used in this article, except where the context clearly requires otherwise:

(a) “Average tuition cost” means the weighted average cost per semester for full-time, resident, undergraduate attendance at any state institution of higher education, such weighted average cost to be arrived at by adding the products of the cost of tuition at each state institution of higher education for full-time attendance per semester times its total number of full-time-equivalent undergraduate students during a fiscal year, and then dividing that sum by the total number of full-time-equivalent undergraduate students attending all state institutions of higher education in that fiscal year;

(b) “Board” means the board of directors of the West Virginia higher education tuition trust board provided for in section five of this article;

(c) “Contract” means a tuition prepayment contract or a tuition trust account contract, or both;

(d) “Fund” means the West Virginia higher education tuition trust fund created in section seven of this article;

(e) “Institution of higher education” means any public or private, nonprofit, accredited, degree-granting college or university;

(f) “Purchaser” means a person who makes or is obligated to make payments pursuant to a tuition prepayment contract or tuition trust account contract, or both;

(g) “Qualified beneficiary” means any resident of this state, or any other state, who is named as such in the tuition prepayment contract or tuition trust account contract;

(h) “Standard tuition unit” means the weighted average tuition cost divided by the minimum number of credits per semester required for full-time enrollment to reflect a cost per credit;

(i) “State institution of higher education” means state colleges, state universities and any community college as those terms are defined in section two, article twenty-six of this chapter;

(j) “Trust” means the West Virginia higher education tuition trust created in section four of this article;

(k) “Tuition” means the cost of tuition and all
mandatory fees required of resident, undergraduate students per semester at state institutions of higher education including, but not limited to, fees required pursuant to sections one, one-a, one-b and four, article twenty-four of this chapter.

(l) “Tuition prepayment contract” means a contract entered into by the trust and a purchaser pursuant to section eight of this article; and

(m) “Tuition trust account contract” means a contract entered into by the trust and a purchaser pursuant to section nine of this article.

§18-30-4. West Virginia higher education tuition trust created.

(a) There is created a public body corporate and politic to be known as the West Virginia higher education tuition trust. The trust shall be within the office of the state treasurer and may utilize the services, personnel and equipment of such office, but shall exercise its prescribed statutory powers, duties and functions independently of the head of that office.

(b) The purposes, powers and duties of the West Virginia higher education tuition trust are vested in and shall be exercised by a board of directors.

§18-30-5. Appointment of board of directors; terms; compensation; proceedings generally.

(a) The board of directors shall consist of the chancellor of the board of regents, who shall be the chairman of the board, the state treasurer, and the state superintendent of schools, who shall serve as ex officio voting members of the board, and six other members with knowledge, skill and experience in an academic, business or financial field, who shall be residents of the state appointed by the governor, by and with the advice and consent of the Senate. Of the six appointed members, four shall be appointed from nominations as follows: One shall be a private citizen not employed by or an officer of the state or any political subdivision thereof appointed from one or more nominees of the speaker of the House of Delegates; one shall be a private citizen not employed by or an officer of the state or any political subdivision thereof appointed from one or more nominees of the president of the Senate; one shall be a president of a state institution of higher education who
shall be appointed from one or more nominees of the council of presidents of state colleges and universities; and one shall represent the interests of private institutions of higher education located in this state who shall be appointed from one or more nominees of the West Virginia association of private colleges. Of these six members first appointed, two shall be appointed for terms that expire on the thirty-first day of December, one thousand nine hundred eighty-nine, two shall be appointed for terms that expire on the thirty-first day of December, one thousand nine hundred ninety, and two shall be appointed for a term that expires on the thirty-first day of December, one thousand nine hundred ninety-one. Following the expiration of these fixed terms, a member shall be appointed for a term of three years. A member shall serve until a successor is appointed, and a vacancy shall be filled for the balance of the unexpired term in the same manner as the original appointment. The chancellor, treasurer, state superintendent or president of a state institution of higher education may appoint a designee to serve as a voting member of the board in such person's absence.

(b) Members of the board shall serve without compensation, but shall receive reimbursement for reasonable and necessary expenses actually incurred in the performance of their duties as board members unless such member is otherwise reimbursed as an employee of the state.

(c) A majority of the members of the board serving shall constitute a quorum for the transaction of business at a meeting of the board, or the exercise of a power or function of the trust, notwithstanding the existence of one or more vacancies. Voting upon action taken by the board shall be conducted by majority vote of the members present in person at a meeting of the board, and, if authorized by the bylaws of the board and when a quorum is present in person at the meeting, by use of amplified telephonic equipment. The board shall meet at the call of the chairman and as may be provided in its bylaws. Meetings of the board may be held anywhere within the state.

(d) The board is subject to the open governmental proceedings and freedom of information provisions of article nine-a, chapter six, and chapter twenty-nine-b, respectively, of this code.
§18-30-6. Powers generally.

1 In addition to the powers granted by other provisions of this article, the board has the powers necessary or convenient to carry out and effectuate the purposes, objectives and provisions of this article, the purposes and objectives of the trust and the powers delegated by other laws or executive orders, including, but not limited to, the power to:

2 (1) Invest any money of the trust, at the board's discretion, with the West Virginia state board of investments, or in any instruments, obligations, securities or property authorized under article six, chapter twelve of this code for the investment of state moneys;

3 (2) Name and use depositories for its money in such manner as is prescribed for the deposit of state moneys;

4 (3) Pay money to institutions of higher education on account of a qualified beneficiary as provided in a contract made with the trust and to enter into contractual or other arrangements that are necessary or appropriate with institutions of higher education in order to fulfill the trust's obligations under tuition prepayment and tuition trust account contracts;

5 (4) Administer the higher education tuition trust fund pursuant to section seven and other provisions of this article;

6 (5) To make, execute and deliver contracts in accordance with the provisions of sections eight and nine of this article, which contracts shall set forth terms and conditions relating to payment, benefits, withdrawal and any other provisions which clarify the rights and duties of the parties to the contracts;

7 (6) Employ and delegate to an executive secretary or others such functions and authority as the board considers necessary or appropriate, including, but not limited to, the hiring, oversight and supervision of employees of the trust;

8 (7) Utilize the services, personnel and equipment of the treasurer's office for the provision of all or a portion of the services necessary for the management and operation of the trust;

9 (8) Contract with others, public or private, for goods and any services necessary for the management and operation of the trust, including the office of the attorney
(9) Solicit and accept gifts, grants, loans and other aids from any person or the federal, state or a local government or any agency of the federal, state or a local government, and to participate in any other way in any federal, state or local government program,

(10) Certify and approve contracts entered into with a private sector investment manager which provide equivalent benefits, rights and duties to purchasers, beneficiaries, the trust and state institutions of higher education as a contract offered by the trust, including provisions relating to administrative fees, charges and penalties, and the disposition of amounts resulting therefrom;

(11) Charge, impose and collect administrative fees, charges and penalties in connection with any refund or transfer to an institution of higher education outside this state and provide for reasonable penalties, including default, for delinquent payment of amounts due under a tuition prepayment or tuition trust account contract, or for fraud;

(12) Procure insurance against any loss in connection with the trust's property, assets or activities;

(13) Sue and be sued; have a seal and alter the same at pleasure; have perpetual succession; make, execute and deliver any additional contracts, conveyances and other instruments necessary or convenient to the exercise of its powers; and make and amend bylaws;

(14) Indemnify or procure insurance indemnifying any member of the board from personal loss or accountability from liability resulting from a member's action or inaction as a member of the board;

(15) Establish policies, procedures and any other criteria necessary or convenient to implement this act;

(16) Impose reasonable limits on the number of participants in the trust; and

(17) Make transfers of trust moneys to the Lincoln scholarship fund created in section fifteen of this article.
§18-30-7. Higher education tuition trust fund created; assets generally; expenditures; exemption from taxation; excess funds.

(a) The higher education tuition trust fund is hereby created, to be under the jurisdiction and control of the board. Payments received by the trust from purchasers on behalf of qualified beneficiaries or from any other source, public or private, shall be placed in the fund. The fund may be divided into separate accounts.

(b) Assets of the trust shall not be considered state money. The assets of the trust shall be preserved, invested and expended solely pursuant to and for the purposes set forth in this act and shall not be loaned or otherwise transferred or used by the state for any purpose other than the purposes of this act: Provided, That this section shall not be construed to prohibit the trust from investing in, by purchase or otherwise, bonds, notes or other obligations of the state, an agency of the state or an instrumentality of the state.

(c) Unless otherwise provided by resolution of the board, assets of the trust shall be expended in the following order of priority:

(1) To make payments to institutions of higher education on account of qualified beneficiaries;

(2) To make refunds upon termination of a contract;

(3) To pay the costs of administration, management and organization of the trust and the fund not to exceed three fourths of the amount of any management and administrative withholding fees per year collected by the trust;

(4) To make transfers of moneys in the fund from management and administrative withholding fees for tuition trust account contracts, less any amounts used for the purposes of subdivision (3) of this subsection, to the Lincoln scholarship fund created in section fifteen of this article; and

(5) To the extent moneys in the fund from management and administrative withholding fees for tuition prepayment contracts are in excess of those needed to insure the actuarial soundness of the trust with regard to these contracts, to make transfers of such excess funds, less any amounts used for the purposes of subdivision (3) of this subsection, to the Lincoln scholarship fund created in section fifteen of this article.

(d) Assets of the trust may be invested in such manner as is prescribed under article six, chapter twelve of this code for
the investment of state funds in any instrument, obligation, security or property considered appropriate by the trust and may be pooled for investment purposes with investments of the state, including, but not limited to, state pension funds. (e) The property of the trust and its income and operation shall be exempt from all taxation by this state or any of its political subdivisions.

§18-30-8. Tuition prepayment contract provisions.

(a) A tuition prepayment contract shall provide for the purchase of tuition guarantees which may be used by a qualified beneficiary to attend without additional cost any state institution of higher education to which the qualified beneficiary is admitted as an undergraduate, except such increases as shall be mandated due to any nonresident status of the beneficiary, for such number of semesters or credit hours as are purchased pursuant to and stated in the tuition prepayment contract. In the event the qualified beneficiary chooses and is admitted to a private institution of higher education in this state, the trust shall pay such institution an amount equal to the average tuition cost or the cost of the standard tuition units, whichever has been purchased. In the event the qualified beneficiary chooses and is admitted to an institution of higher education located outside this state, the trust shall pay the institution pursuant to subsection (c), section ten of this article.

(b) In addition, a tuition prepayment contract shall set forth in a clear, understandable manner all of the following:

(1) A management fee not to exceed three percent per year as to amounts under a tuition prepayment contract;

(2) The amount of withholding fee not to exceed twenty percent of accrued earnings where a refund is made or where the benefits of a contract are transferred to an institution of higher education located outside this state, unless such institution has a reciprocal agreement with the board of regents pursuant to section ten-b, article twenty-six of this chapter and the qualified beneficiary is enrolled in a program covered by the agreement;

(3) The amount of the payment or payments required from the purchaser on behalf of the qualified beneficiary, which payments may be in lump sum or periodic;

(4) The terms and conditions for making the payment, including, but not limited to, the date or dates upon which
the payment, or portions of the payment, shall be due, and
provisions for making payments in lump sums, periodic
sums or payroll deductions;
(5) Provisions for late payment charges and for default;
(6) The name and age of the qualified beneficiary under
the contract. The purchaser, with the approval of and on
conditions determined by the trust, may subsequently sub-
stitute another person for the qualified beneficiary original-
ly named, but may not sell or otherwise transfer the contract
without the prior approval of the trust;
(7) The name of the person entitled to terminate the
contract, which, as provided by the contract, may be the
purchaser, the qualified beneficiary, or a person to act on
behalf of the purchaser or qualified beneficiary, or any
combination of these persons;
(8) The terms and conditions under which the contract
may be terminated or transferred out of state in accordance
with section ten of this article, and the amount of the refund
to which the person terminating the contract, or specifically
the purchaser or designated qualified beneficiary if the
contract so provides, shall be entitled upon termination. The
contract shall specifically state whether the trust shall re-
fund any investment income attributable to the payments;
(9) The period of time from the beginning to the end of
which the qualified beneficiary may receive the benefits
under the contract: Provided, That such time shall be ex-
tended for such amount of time as the qualified beneficiary is
on active duty in the military services of the United States at
a time within which a Federal Selective Service Act is in
effect;
(10) All other rights and obligations of the purchaser and
the trust; and
(11) Other terms, conditions and provisions as the trust
considers in its sole discretion to be necessary or
appropriate.
(c) The form of any tuition prepayment contract to be
entered into by the trust shall first be approved by the board.
(d) A tuition prepayment contract shall be exempt from
the Uniform Securities Act, chapter thirty-two of this code.
(e) A tuition prepayment contract may provide that, if
after a number of years specified in the contract the contract
has not been terminated or the qualified beneficiary's rights
under the contract have not been exercised and after the
trust has made a reasonable effort to locate the purchaser and qualified beneficiary or the agent of either, the rights of the qualified beneficiary, the purchaser or the agent of either shall be considered terminated.


(a) A tuition trust account contract shall provide for the establishment of a trust account with the trust by the purchaser on behalf of a qualified beneficiary which shall be transferred on a semester basis to any institution of higher education to which the qualified beneficiary is admitted to meet the cost of tuition and all mandatory fees for so many semesters as the qualified beneficiary is in attendance and funds in the account are available therefor.

(b) In addition, a tuition trust account contract shall set forth in a clear, understandable manner all of the following:

(1) A management fee not to exceed three percent per year as to amounts under a tuition trust account contract;

(2) The amount of withholding fee not to exceed twenty percent of accrued earnings where a refund is made or where the benefits of a contract are transferred to an institution of higher education located outside this state, unless such institution has a reciprocal agreement with the board of regents pursuant to section ten-b, article twenty-six of this chapter and the qualified beneficiary is enrolled in a program covered by the agreement;

(3) The name and age of the qualified beneficiary under the contract. The purchaser, with the approval of and on conditions determined by the trust, may subsequently substitute another person for the qualified beneficiary originally named, but may not sell or otherwise transfer the contract without the prior approval of the trust;

(4) The name of the person entitled to terminate the contract, which, as provided by the contract, may be the purchaser, the qualified beneficiary, or a person to act on behalf of the purchaser or qualified beneficiary, or any combination of these persons;

(5) The terms and conditions under which the contract may be terminated or transferred out of state in accordance with section ten of this article, and the amount of the refund to which the person terminating the contract, or specifically the purchaser or designated qualified beneficiary if the
(a) A tuition prepayment contract and tuition trust account contract shall authorize a termination of the contract when any one of the following occurs:

1. The qualified beneficiary dies or is certified by a qualified physician to be permanently totally disabled. In such event, notwithstanding any other provisions of this article, the total investment plus all accrued interest, if any, shall be refunded to the person authorized under the contract to receive the refund;

2. The qualified beneficiary is not admitted to an institution of higher education after making proper application or fails to meet the standards for continued admission to an institution of higher education;

3. The qualified beneficiary certifies to the trust, after he or she has a high school diploma or has reached the age of
majority, that he or she has decided not to attend an
institution of higher education and requests, in writing,
before the fifteenth day of July of the year in which the
qualified beneficiary receives a high school diploma or
reaches the age of majority, that the contract be terminated;
(4) The qualified beneficiary offers proof of the
completion of the requirements for a degree pursuant to a
two-year program at an institution of higher education and
chooses no further attendance at an institution of higher
education;
(5) The qualified beneficiary is on active duty in the
military services of the United States at a time within which
a Federal Selective Service Act is in effect; or
(6) Other circumstances, determined by the trust and set
forth in the contract, occur.
(b) Such refund shall be an amount equal to the sum of
payments and, if the contract so provides, accrued interest,
minus applicable management and withholding fees and
any amounts transferred to an institution of higher
education prior to termination of the contract.
(c) A tuition prepayment contract and tuition trust
account contract shall authorize a person who is entitled
under the contract to transfer the benefits of the contract
and to direct the payment of such benefits, less any
withholding fee stated in the contract, to an institution of
higher education located outside this state: Provided, That
such withholding fee shall not be applied to a qualified
beneficiary enrolled in a program at an institution of higher
education with which the board of regents has a reciprocal
agreement pursuant to section ten-b, article twenty-six of
this chapter and such program is covered by the agreement.


1 The board shall annually prepare or cause to be prepared
an accounting of the trust, including all administrative
costs and the actuarial soundness of the trust, and shall
transmit a copy of the accounting to the governor, the
president of the Senate, the speaker of the House of
Delegates and the respective minority leaders of the Senate
and House of Delegates. The board shall also make
available the accounting of the trust to the purchasers of the
trust. The accounts of the board shall be subject to annual
§18-30-12. Administration of trust.

(a) The trust shall be administered in a manner reasonably designed to be actuarially sound such that the assets of the trust will be sufficient to defray the obligations of the trust.

(b) The trust board shall annually evaluate and cause to be evaluated by a nationally recognized actuary the actuarial soundness of the trust and determine the additional assets needed, if any, to defray the obligations of the trust. If there are not funds sufficient to ensure the actuarial soundness of the trust as determined by the nationally recognized actuary, the trust shall adjust payments of subsequent purchasers to ensure its actuarial soundness. If there are insufficient numbers of new purchasers to ensure the actuarial soundness of the tuition prepayment contracts of the trust, the available assets of the trust attributable to the tuition prepayment contracts shall be immediately prorated among the then existing tuition prepayment contracts, and these shares shall be applied, at the option of the person to whom the refund is payable or would be payable under the contract upon termination of the contract, either towards the tuition prepayment contract for a qualified beneficiary or disbursed to the person to whom the refund is payable or would be payable under the contract upon termination.

§18-30-13. Conditions precedent to administration of trust; disclaimer; enforcement.

(a) A tuition prepayment contract or tuition trust account contract shall not be entered into by the trust until the Internal Revenue Service has issued a ruling or opinion regarding the federal tax consequences of any benefits or refunds received from the trust under the applicable contract. If a ruling or opinion is rendered by the Internal Revenue Service that any benefits or refunds under either contract are subject to federal taxation, the board shall present a report to the Legislature outlining recommendations for the modification and continuance of the trust or of any provisions under which such ruling or opinion was rendered, including a recommendation as to
whether the trust should proceed to enter into such contracts. If continuation is recommended, the report shall also include measures which may be taken to provide that any benefits or refunds, or certain benefits or refunds, shall not be considered actually or constructively to be income for purposes of taxation. An unfavorable ruling or opinion regarding the federal tax consequences of any benefits or refunds pertaining to one of these contracts shall not preclude the trust from entering into the other contracts.

(b) Before entering into a tuition prepayment contract or tuition trust account contract with purchasers, the state shall solicit answers to appropriate ruling requests from the federal Securities and Exchange Commission regarding the application of federal security laws to the trust. No contracts may be entered without the trust making known to the Legislature the status of the request.

(c) Nothing in this article or in a contract entered into pursuant to this article may be construed as a promise or guarantee by the trust or the state that a person will be admitted to a particular institution of higher education, will be allowed to continue to attend an institution of higher education after having been admitted or will be graduated from an institution of higher education.

(d) The board, state institutions of higher education, purchasers and qualified beneficiaries may enforce this article and any contract entered into pursuant to this article in the circuit court of Kanawha County.


As provided in section twelve-a, article twenty-one, chapter eleven of this code, the purchaser may subtract for state income tax purposes from federal adjusted gross income the following payments made by the purchaser in the tax year:

(1) The amount of payment made under a tuition prepayment contract or tuition trust account contract, or both; and

(2) The amount of payment made under a contract with a private sector investment manager, broker-dealer or agent approved by the securities division of the state auditor of this state or the federal Securities and Exchange Commission for the private placement of contracts under
this article, such contract to be certified and approved by
the board to provide equivalent benefits, rights and duties
to purchasers, beneficiaries, the trust and institutions of
higher education as a tuition prepayment contract or a
tuition trust account contract.

§18-30-15. Lincoln scholarship fund created.
There is created in the state treasury under the
jurisdiction and control of the board a Lincoln scholarship
fund for the purpose of providing scholarships for residents
of this state to attend any state institution of higher
education. This scholarship fund shall be administered
pursuant to rules promulgated by the board of regents:
Provided, That certain funds may be set aside to enable and
to help ensure that any group of people determined to be
underrepresented at state institutions of higher education
know about, apply and qualify for such scholarships. The
Lincoln scholarship fund account shall be separate from all
other accounts of the board.

§18-30-16. Liberal construction; severability.
(a) This article shall be construed liberally to effectuate
the legislative intent, the purposes of the article, and as
complete and independent authority for the performance of
each and every act and thing authorized in the article, and
all powers granted herein shall be broadly interpreted to
effectuate such intent and purposes and not as to limitation
of powers.
(b) If any section, subsection, paragraph, clause or
provision of this article shall be adjudged unconstitutional
or ineffective, no other section, subsection, paragraph,
clause or provision of this article shall on account thereof be
considered invalid or ineffective, and the applicability or
invalidity of any section, subsection, paragraph, clause or
provision of this article in any one or more instances or
under any one or more circumstances shall not be taken to
affect or prejudice its applicability or validity in any other
instance or under any other circumstance.

§18-30-17. Expiration of act.
This article is repealed effective the first day of January,
one thousand nine hundred ninety-two, if the trust has not
entered into a tuition prepayment contract or tuition trust
account contract with a purchaser before that date.
CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-1. Employment in general.

1 The employment of professional personnel shall be made by the board only upon nomination and recommendation of the superintendent. In case the board refuses to employ any or all of the persons nominated, the superintendent shall nominate others and submit the same to the board at such time as the board may direct. All personnel so nominated and recommended for employment and for subsequent assignment shall meet the certification, licensing, training, and other eligibility classifications as may be required by provisions of this chapter and by state board regulation.

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

§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.

1 Before entering upon their duties, all teachers shall execute a contract with their boards of education, which contract shall state the salary to be paid and shall be in the form prescribed by the state superintendent of schools.

2 Every such contract shall be signed by the teacher and by the president and secretary of the board of education, and when so signed shall be filed, together with the certificate of the teacher, by the secretary of the office of the board.

3 A teachers' contract, under this section, shall be for a term of not less than one nor more than three years; and 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 the same, and the board of education enter into a new contract of
employment, it shall be a continuing contract: Provided, 
that any teacher holding a valid certificate with less than a 
bachelor's degree who is employed in a county beyond the 
said three-year probationary period shall upon qualifying 
for said professional certificate based upon a bachelor's 
degree, if reemployed, be granted continuing contract 
status: Provided, however, That 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 such 
employment is during the next succeeding school year or 
immediately following an approved leave of absence 
extending no more than one year.
The continuing contract of any 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 (1) by a majority vote of the full membership of 
the board before April first 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 
thereon, or (2) by written resignation of the teacher before 
that date. Such termination shall take effect at the close of 
the school year in which the contract is so terminated: 
Provided, That the contract may be terminated at any time 
by mutual consent of the school board and the teacher, and 
that this section shall not affect the powers of the school 
board to suspend or dismiss a principal or teacher pursuant 
to section eight of this article: Provided, however, That 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 one thousand nine hundred eighty- 
four, and one thousand nine hundred eighty-five, shall 
remain in full force and effect: Provided further, That a 
continuing contract shall 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. But in case 
of such dismissal, the teachers so dismissed shall be placed 
upon a preferred list in the order of their length of service 
with that board, and no teacher shall be employed by the 
board until each qualified teacher upon the preferred list, in 
order, shall have been offered the opportunity for
reemployment: And provided further, That he has not accepted a teaching position elsewhere. Such reemployment shall be upon a teacher's preexisting contract and shall have the same effect as though the contract had been suspended during the time the teacher was not employed.

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

Any teacher who fails to fulfill his contract with the board, unless prevented from so doing by personal illness or other just cause, or unless released from such contract by the board, or who violates any lawful provision thereof, shall be 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 such teacher on file for a period of one year for such violation: Provided, That marriage of a teacher shall not be considered a failure to fulfill, or violation of, the contract.

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


(a) Any teacher who is returning from an approved leave of absence that extended for a period of one year or less shall be reemployed by the county board with the right to be restored to the same assignment of position or duties
held prior to the approved leave of absence. Such teacher
shall retain all seniority, rights and privileges which had
accrued at the time of the approved leave of absence, and
shall have all rights and privileges generally accorded
teachers at the time of the reemployment.
(b) An employee shall notify the county board at least
ten working days prior to beginning a leave of absence. The
county board shall approve such leave of absence for any
teacher or service personnel who requests an extended
leave of absence without pay for any period of time not
exceeding one year for the purpose of pregnancy, childbirth
or adoptive or infant bonding. An employee shall not be
required to use accumulated annual leave or sick leave prior
to taking an extended leave of absence.
(c) Such employee who returns from an approved leave
of absence for the purpose of pregnancy, childbirth or
adoptive or infant bonding which lasted for a period of one
year or less than one year shall be reemployed with the right
to be restored to the same assignment of position or duties
and benefits held prior to the approved leave of absence.
Such employee shall retain all rights and privileges
generally accorded employees at the time of the
reemployment.
§18A-2-5. Employment of service personnel; limitation.
The board is authorized to employ such service personnel,
including substitutes, as is deemed necessary for meeting
the needs of the county school system: Provided, That the
board may not employ a number of such personnel whose
minimum monthly salary under section eight-a, article four
of this chapter is specified as pay grade “H”, which number
exceeds the number employed by the board on the first day
of March, one thousand nine hundred eighty-eight.
Effective the first day of July, one thousand nine hundred
eighty-eight, a county board shall not employ for the first
time any person who has not obtained a high school diploma
or general educational development certificate (GED) or
who is not enrolled in an approved adult education course
by the date of employment in preparation for obtaining a
GED: Provided, however, That such employment is
contingent upon continued enrollment or successful
completion of the GED program.
Before entering upon their duties service personnel shall execute with the board a written contract which shall be in the following form:

"COUNTY BOARD OF EDUCATION

SERVICE PERSONNEL CONTRACT OF EMPLOYMENT

THIS (Probationary or Continuing) CONTRACT OF EMPLOYMENT, made and entered into this ______ day of _________, 19____, by and between THE BOARD OF EDUCATION OF THE COUNTY OF ________

a corporation, hereinafter called the 'Board,' and (Name of Employee), of (Mailing Address), hereinafter called the 'Employee.' WITNESSETH, that whereas, at a lawful meeting of the Board of Education of the County of ________ held at the offices of said Board, in the City of _____________, _______ County, West Virginia, on the ______ day of _______, 19____, the Employee was duly hired and appointed for employment as a (Job Classification) at (Place of Assignment) for the school year commencing ______ for the employment term and at the salary and upon the terms hereinafter set out.

NOW, THEREFORE, pursuant to said employment, Board and Employee mutually agree as follows:

(1) The Employee is employed by the Board as a (Job Classification) at (Place of Assignment) for the school year or remaining part thereof commencing ______, 19____.

The period of employment is ______ days at an annual salary of $_______ at the rate of $______ per month.

(2) The Board hereby certifies that the Employee's employment has been duly approved by the Board and will be a matter of the Board's minute records.

(3) The services to be performed by the Employee shall be such services as are prescribed for the job classification set out above in paragraph (1) and as defined in Section 8, Article 4, Chapter 18A of the Code of West Virginia, as amended.

(4) The Employee may be dismissed at any time for immorality, incompetency, cruelty, insubordination, intemperance or willful neglect of duty pursuant to the provisions of Section 8, Article 2, Chapter 18A of the Code of West Virginia, as amended.

(5) The Superintendent of the _______ County Board of Education, subject to the approval of the Board, may
transfer and assign the Employee in the manner provided by Section 7, Article 2, Chapter 18A of the Code of West Virginia, as amended.

(6) This contract shall at all times be subject to any and all existing laws, or such laws as may hereafter be lawfully enacted, and such laws shall be a part of this contract.

(7) This contract may be terminated or modified at any time by the mutual consent of the Board and the Employee.

(8) This contract must be signed and returned to the Board at its address of __________ within thirty days after being received by the Employee.

(9) By signing this contract the Employee accepts employment upon the terms herein set out.

WITNESS the following signatures as of the day, month and year first above written:

__________, (President, ________. County Board of Education) ________, (Secretary, ________ County Board of Education) ________, (Employee)"

The use of this form shall not be interpreted to authorize boards to discontinue any employee's contract status with the board or rescind any rights, privileges or benefits held under contract or otherwise by any employee prior to the effective date of this section.

Each contract of employment shall be designated as a probationary or continuing contract. The employment of service personnel shall be made a matter of minute record. The employee shall return the contract of employment to the county board of education within thirty days after receipt or otherwise he shall forfeit his right to employment.

Under such regulation and policy as may be established by the county board, service personnel selected and trained for teacher-aide classifications, such as monitor aide, clerical aide, classroom aide and general aide, shall work under the direction of the principal and teachers to whom assigned.


Upon the recommendation of the county superintendent of schools, the county board of education shall employ and assign, through written contract, public school principals who shall supervise the management and the operation of the school or schools to which they are assigned. Such
principals shall hold valid administrative certificates appropriate for their assignments.

Under the supervision of the superintendent and in accordance with the rules and regulations of the county board of education, the principal shall assume administrative and instructional supervisory responsibility for the planning, management, operation and evaluation of the total educational program of the school or schools to which he is assigned.

The principal may submit recommendations to the superintendent regarding the appointment, assignment, promotion, transfer and dismissal of all personnel assigned to the school or schools under said principal's control. Such recommendation shall be submitted in writing as prescribed by the superintendent.

The principal shall perform such other duties as may be assigned by the superintendent pursuant to the rules and regulations of the county board of education.

Upon recommendation of the county superintendent of schools, the county board of education shall, when needed, employ and assign, through written contract, assistant principals who shall work under the direction of the school principal. Such assistant principals shall hold valid administrative certificates appropriate for their assignments.

Beginning with the school year one thousand nine hundred eighty-eight—eighty-nine, no county shall have more teaching principalships or multi-school principalships than was present on the first day of January, one thousand nine hundred eighty-eight: Provided, That any school that has a nonteaching principal as of the first day of January, one thousand nine hundred eighty-eight, shall continue to have a full-time principal if that school does not drop below a student enrollment of one hundred seventy students for two consecutive years: Provided, however, That where enrollments exceed four hundred students there will be no additional schools assigned to that principal, and no principal shall be assigned to more than two campuses.

Nothing herein shall prohibit a county board from assigning a nonteaching principal to a school with fewer than one hundred seventy students.
Nothing contained in this section shall be construed to reduce or limit the rights and privileges of principals and assistant principals as teachers under the provisions of section one, article one, chapter eighteen of the code of West Virginia as amended; section one, article one, chapter eighteen-a; and other provisions of this code.

ARTICLE 3. TRAINING, CERTIFICATION, LICENSING.

§18A-3-1. Teacher certification; required; expiration; qualifications; certification of aliens.

Any professional educator, as defined in article one of this chapter, who is employed within the public school system of the state shall hold a valid teaching certificate licensing him to teach in the public schools in the specializations and grade levels as shown on his certificate for the period of his employment. If a teacher is employed in good faith on the anticipation that he is eligible for a certificate and it is later determined that he was not eligible, the state superintendent of schools may authorize payment by the county board of education to the teacher for a time not exceeding three school months or the date of notification of his ineligibility, whichever shall occur first. All certificates shall expire on June thirtieth of the last year of their validity irrespective of the date of issuance. A certificate to teach shall not be granted to any person who is not a citizen of the United States, is not of good moral character and physically, mentally and emotionally qualified to perform the duties of a teacher and who has not attained the age of eighteen years on or before the first day of October of the year in which his certificate is issued; except, that an exchange teacher from a foreign country, or an alien person who meets the requirements to teach may be granted a permit to teach within the public schools of the state.

§18A-3-8. Staff development programs.

The Legislature finds the professional expertise and insight of the classroom teacher shall allow educators peer control of staff development programs. Upon petition of ten percent of professional educators and an affirmative majority vote of all county professional educators voting, a professional staff development council
shall be established. The professional educators may openly nominate and elect a nine to fifteen member council comprised of proportional representation from the major school levels and from vocational, special education and other specialties in proportion to their employment numbers in said county. Such councils shall have final authority to propose staff development programs for their peers based upon rules established by statute and/or the state board of education, and the council on professional education.

The county superintendent or a designee shall enjoy an advisory, nonvoting role on said council. The county board shall make available an amount equal to one tenth of one percent of the amounts provided in accordance with section four, article nine-a, chapter eighteen of this code and credit such funds to an account to be used by the council to fulfill its objectives. The local board will have final approval of all proposed disbursements.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-5. Salary equity among the counties; state salary supplement.

To assist the state in meeting its objective of salary equity among the counties, on and after the first day of July, one thousand nine hundred eighty-four, subject to available state appropriations and the conditions set forth herein, each teacher and school service personnel shall receive a supplemental amount in addition to the amount from the state minimum salary schedules provided for in this article. State funds for this purpose shall be paid within the West Virginia public school support plan in accordance with article nine-a, chapter eighteen of this code. The amount allocated for salary equity shall be apportioned between teachers and school service personnel in direct proportion to that amount necessary to support the professional salaries and service personnel salaries statewide under sections four and five, article nine-a, chapter eighteen of this code: Provided, That in making such division an adequate amount of state equity funds shall be reserved to finance the appropriate foundation allowances and staffing incentives provided for in said article nine-a.

Pursuant to this section, each teacher and school service personnel shall receive the amount that is the difference
between their authorized state minimum salary and ninety-
five percent of the maximum salary schedules prescribed in
sections five-a and five-b of this article, reduced by any
amount provided by the county as a salary supplement for
teachers and school service personnel on the first day of
January of the fiscal year immediately preceding that in
which the salary equity appropriation is distributed:
Provided, That no amount received pursuant to this section
shall be decreased as a result of any county supplement
increase instituted after the first day of January, one
thousand nine hundred eighty-four, unless and until the
objective of salary equity is reached: Provided, however,
That any amount received pursuant to this section may be
reduced proportionately based upon the amount of funds
appropriated for this purpose.
No county may reduce any salary supplement that was in
effect on the first day of January, one thousand nine
hundred eighty-four, except as permitted by sections five-a
and five-b of this article.

§18A-4-5c. Equity appropriation from surplus revenues.

1 Notwithstanding the provisions of section five of this
article, any moneys appropriated and expended for equity
that are in addition to such amounts as were expended for
such purpose prior to the effective date of this section shall
be apportioned between teachers and school service
personnel in such proportion as necessary to align more
closely teachers and school service personnel with their
counterparts in the contiguous states: Provided, That an
adequate amount of such funds shall be reserved to finance
the appropriate foundation allowances and staffing
incentives provided for in article nine-a of chapter
eighteen.

§18A-4-8. Employment term and class titles of service
personnel: definitions.

1 The purpose of this section is to establish an employment
term and class titles for service personnel. The employment
term for service personnel shall be no less than ten months,
a month being defined as twenty employment days:
Provided, That the county board of education may contract
with all or part of these personnel for a longer term. The
beginning and closing dates of the ten-month employment
term shall not exceed forty-three weeks. Service personnel employed on a yearly or twelve-month basis may be employed by calendar months. Whenever there is a change in job assignment during the school year, the minimum pay scale and any county supplement shall be applicable.

Service personnel employed in the same classification for more than the two hundred day minimum employment term shall be paid for additional employment at a daily rate of not less than the daily rate paid for the two hundred day minimum employment term.

No service employee, without his agreement, shall be required to report for work more than five days per week and no part of any working day may be accumulated by the employer for future work assignments, unless the employee agrees thereto.

Should an employee whose regular work week is scheduled from Monday through Friday agree to perform any work assignments on a Saturday or Sunday, the employee shall be paid for at least one-half day of work for each such day he reports for work, and if the employee works more than three and one-half hours on any Saturday or Sunday, he shall be paid for at least a full day of work for each such day.

Custodians required to work a daily work schedule that is interrupted, that is, who do not work a continuous period in one day, shall be paid additional compensation which shall be equal to at least one eighth of their total salary as provided by their state minimum salary and any county pay supplement, and payable entirely from county funds.

Upon the change in classification or upon meeting the requirements of an advanced classification of or by any employee, his salary shall be made to comply with the requirements of this article, and to any county salary schedule in excess of the minimum requirements of this article, based upon his advanced classification and allowable years of employment.

An employee’s contract as provided in section five, article two of this chapter shall state the appropriate monthly salary the employee is to be paid, based on the class title as provided in this article and any county salary schedule in excess of the minimum requirements of this article.

The column heads of the state minimum pay scale and
class titles, set forth in section eight-a of this article, are defined as follows:

“Pay grade” means the monthly salary applicable to class titles of service personnel.

“Years of employment” means the number of years which an employee classified as service personnel has been employed by a board of education in any position prior to or subsequent to the effective date of this section and including service in the armed forces of the United States if the employee were employed at the time of his induction.

For the purpose of section eight-a of this article, years of employment shall be limited to the number of years shown and allowed under the state minimum pay scale as set forth in section eight-a of this article.

“Class title” means the name of the position or job held by service personnel.

“Accountant I” means personnel employed to maintain payroll records and reports and perform one or more operations relating to a phase of the total payroll.

“Accountant II” means personnel employed to maintain accounting records and to be responsible for the accounting process associated with billing, budgets, purchasing and related operations.

“Accountant III” means personnel who are employed in the county board of education office to manage and supervise accounts payable and/or payroll procedures.

“Aide I” means those personnel selected and trained for teacher-aide classifications such as monitor aide, clerical aide, classroom aide or general aide.

“Aide II” means those personnel referred to in the “Aide I” classification who have completed a training program approved by the state board of education, or who hold a high school diploma or have received a general educational development certificate. Only personnel classified in an Aide II class title shall be employed as an aide in any special education program.

“Aide III” means those personnel referred to in the “Aide I” classification who hold a high school diploma or a general educational development certificate, and have completed six semester hours of college credit at an institution of higher education or are employed as an aide in a special education program and have one year’s experience as an aide in special education.
“Aide IV” means personnel referred to in the “Aide I” classification who hold a high school diploma or a general education development certificate and who have completed eighteen hours of state board-approved college credit at a regionally accredited institution of higher education, or who have completed fifteen hours of state board-approved college credit at a regionally accredited institution of higher education and successfully completed an in-service training program determined by the state board to be the equivalent of three hours of college credit.

“Audiovisual technician” means personnel employed to perform minor maintenance on audiovisual equipment, films, supplies and the filling of requests for equipment.

“Auditor” means personnel employed to examine and verify accounts of individual schools and to assist schools and school personnel in maintaining complete and accurate records of their accounts.

“Braille or sign language specialist” means personnel employed to provide braille and/or sign language assistance to students.

“Bus operator” means personnel employed to operate school buses and other school transportation vehicles as provided by the state board of education.

“Buyer” means personnel employed to review and write specifications, negotiate purchase bids and recommend purchase agreements for materials and services that meet predetermined specifications at the lowest available costs.

“Cabinet maker” means personnel employed to construct cabinets, tables, bookcases and other furniture.

“Cafeteria manager” means personnel employed to direct the operation of a food services program in a school, including assigning duties to employees, approving requisitions for supplies and repairs, keeping inventories, inspecting areas to maintain high standards of sanitation, preparing financial reports and keeping records pertinent to food services of a school.

“Carpenter I” means personnel classified as a carpenter’s helper.

“Carpenter II” means personnel classified as a journeyman carpenter.

“Chief mechanic” means personnel employed to be responsible for directing activities which ensure that

135 student transportation or other board-owned vehicles are
136 properly and safely maintained.
137 “Clerk I” means personnel employed to perform clerical
138 tasks.
139 “Clerk II” means personnel employed to perform general
140 clerical tasks, prepare reports and tabulations and operate
141 office machines.
142 “Computer operator” means qualified personnel
143 employed to operate computers.
144 “Cook I” means personnel employed as a cook’s helper.
145 “Cook II” means personnel employed to interpret menus,
146 to prepare and serve meals in a food service program of a
147 school and shall include personnel who have been employed
148 as a “Cook I” for a period of four years, if such personnel
149 have not been elevated to this classification within that
150 period of time.
151 “Cook III” means personnel employed to prepare and
152 serve meals, make reports, prepare requisitions for
153 supplies, order equipment and repairs for a food service
154 program of a school system.
155 “Crew leader” means personnel employed to organize the
156 work for a crew of maintenance employees to carry out
157 assigned projects.
158 “Custodian I” means personnel employed to keep
159 buildings clean and free of refuse.
160 “Custodian II” means personnel employed as a watchman
161 or groundsman.
162 “Custodian III” means personnel employed to keep
163 buildings clean and free of refuse, to operate the heating or
164 cooling systems and to make minor repairs.
165 “Custodian IV” means personnel employed as head
166 custodians. In addition to providing services as defined in
167 “Custodian III,” their duties may include supervising other
168 custodian personnel.
169 “Director or coordinator of services” means personnel
170 not defined as professional personnel or professional
171 educators in section one, article one of this chapter, who are
172 assigned to direct a department or division.
173 “Draftsman” means personnel employed to plan, design
174 and produce detailed architectural/engineering drawings.
175 “Electrician I” means personnel employed as an
176 apprentice electrician helper or who holds an electrician
177 helper license issued by the state fire marshal.
“Electrician II” means personnel employed as an electrician journeyman or who holds a journeyman electrician license issued by the state fire marshal.

“Electronic technician I” means personnel employed at the apprentice level to repair and maintain electronic equipment.

“Electronic technician II” means personnel employed at the journeyman level to repair and maintain electronic equipment.

“Executive secretary” means personnel employed as the county school superintendent’s secretary or as a secretary who is assigned to a position characterized by significant administrative duties.

“Food services supervisor” means qualified personnel not defined as professional personnel or professional educators in section one, article one of this chapter, employed to manage and supervise a county school system’s food service program. The duties would include preparing in-service training programs for cooks and food service employees, instructing personnel in the areas of quantity cooking with economy and efficiency, and keeping aggregate records and reports.

“Foremen” means skilled persons employed for supervision of personnel who work in the areas of repair and maintenance of school property and equipment.

“General maintenance” means personnel employed as helpers to skilled maintenance employees and to perform minor repairs to equipment and buildings of a county school system.

“Glazier” means personnel employed to replace glass or other materials in windows and doors and to do minor carpentry tasks.

“Graphic artist” means personnel employed to prepare graphic illustrations.

“Groundsmen” means personnel employed to perform duties that relate to the appearance, repair and general care of school grounds in a county school system. Additional assignments may include the operation of a small heating plant and routine cleaning duties in buildings.

“Handyman” means personnel employed to perform routine manual tasks in any operation of the county school system.
"Heating and air conditioning mechanic I" means personnel employed at the apprentice level to install, repair and maintain heating and air conditioning plants and related electrical equipment.

"Heating and air conditioning mechanic II" means personnel employed at the journeyman level to install, repair and maintain heating and air conditioning plants and related electrical equipment.

"Heavy equipment operator" means personnel employed to operate heavy equipment.

"Inventory supervisor" means personnel who are employed to supervise or maintain operations in the receipt, storage, inventory and issuance of materials and supplies.

"Keypunch operator" means qualified personnel employed to operate keypunch machines or verifying machines.

"Locksmith" means personnel employed to repair and maintain locks and safes.

"Lubrication man" means personnel employed to lubricate and service gasoline or diesel-powered equipment of a county school system.

"Machinist" means personnel employed to perform machinist tasks which include the ability to operate a lathe, planer, shaper, threading machine and wheel press. Such personnel should also have ability to work from blueprints and drawings.

"Mail clerk" means personnel employed to receive, sort, dispatch, deliver or otherwise handle letters, parcels and other mail.

"Maintenance clerk" means personnel employed to maintain and control a stocking facility to keep adequate tools and supplies on hand for daily withdrawal for all school maintenance crafts.

"Mason" means personnel employed to perform tasks connected with brick and block laying and carpentry tasks related to such laying.

"Mechanic" means personnel employed who can independently perform skilled duties in the maintenance and repair of automobiles, school buses and other mechanical and mobile equipment to use in a county school system.

"Mechanic assistant" means personnel employed as a mechanic apprentice and helper.
“Multi-classification” means personnel employed to perform tasks that involve the combination of two or more class titles in this section or as created by the West Virginia board of education. In such instances the minimum salary scale shall be the higher pay grade of the class titles involved.

“Office equipment repairman I” means personnel employed as an office equipment repairman apprentice or helper.

“Office equipment repairman II” means personnel responsible for servicing and repairing all office machines and equipment. Personnel shall be responsible for parts being purchased necessary for the proper operation of a program of continuous maintenance and repair.

“Painter” means personnel employed to perform duties of painting, finishing and decorating of wood, metal and concrete surfaces of buildings, other structures, equipment, machinery and furnishings of a county school system.

“Plumber I” means personnel employed as an apprentice plumber and helper.

“Plumber II” means personnel employed as a journeyman plumber.

“Printing operator” means personnel employed to operate duplication equipment, and as required, to cut, collate, staple, bind and shelve materials.

“Printing supervisor” means personnel employed to supervise the operation of a print shop.

“Programmer” means personnel employed to design and prepare programs for computer operation.

“Roofing/sheet metal mechanic” means personnel employed to install, repair, fabricate and maintain roofs, gutters, flashing and duct work for heating and ventilation.

“Sanitation plant operator” means personnel employed to operate and maintain a water or sewage treatment plant to ensure the safety of the plant’s effluent for human consumption or environmental protection.

“School bus supervisor” means qualified personnel employed to assist in selecting school bus operators and routing and scheduling of school buses, operate a bus when needed, relay instructions to bus operators, plan emergency routing of buses and promoting good relationships with parents, pupils, bus operators and other employees.
“Secretary I” means personnel employed to transcribe from notes or mechanical equipment, receive callers, perform clerical tasks, prepare reports and operate office machines.

“Secretary II” means personnel employed in any elementary, secondary, kindergarten, nursery, special education, vocational or any other school as a secretary. The duties may include performing general clerical tasks, transcribing from notes or stenotype or mechanical equipment or a sound-producing machine, preparing reports, receiving callers and referring them to proper persons, operating office machines, keeping records and handling routine correspondence. There is nothing implied herein that would prevent such employees from holding or being elevated to a higher classification.

“Secretary III” means personnel assigned to the county board of education office administrators in charge of various instructional, maintenance, transportation, food services, operations and health departments, federal programs or departments with particular responsibilities of purchasing and financial control or any personnel who have served in a position which meets the definition of “secretary II” or “secretary III” herein for twelve years.

“Supervisor of maintenance” means skilled personnel not defined as professional personnel or professional educators as in section one, article one of this chapter. The responsibilities would include directing the upkeep of buildings and shops, issuing instructions to subordinates relating to cleaning, repairs and maintenance of all structures and mechanical and electrical equipment of a board of education.

“Supervisor of transportation” means qualified personnel employed to direct school transportation activities, properly and safely, and to supervise the maintenance and repair of vehicles, buses, and other mechanical and mobile equipment used by the county school system.

“Switchboard operator-receptionist” means personnel employed to refer incoming calls, to assume contact with the public, to direct and to give instructions as necessary, to operate switchboard equipment and to provide clerical assistance.
"Truck driver" means personnel employed to operate light or heavy duty gasoline and diesel-powered vehicles. "Warehouse clerk" means personnel employed to be responsible for receiving, storing, packing and shipping goods. "Watchman" means personnel employed to protect school property against damage or theft. Additional assignments may include operation of a small heating plant and routine cleaning duties. "Welder" means personnel employed to provide acetylene or electric welding services for a school system.

In addition to the compensation provided for in section eight-a of this article, for service personnel, each service employee shall, notwithstanding any provisions in this code to the contrary, be entitled to all service personnel employee rights, privileges and benefits provided under this or any other chapter of this code without regard to such employee's hours of employment or the methods or sources of compensation.

Service personnel whose years of employment exceed the number of years shown and provided for under the state minimum pay scale set forth in section eight-a of this article, may not be paid less than the amount shown for the maximum years of employment shown and provided for in the classification in which he is employed.

The county boards shall review each service personnel employee job classification annually and shall reclassify all service employees as required by such job classifications. The state superintendent of schools is hereby authorized to withhold state funds appropriated pursuant to this article for salaries for service personnel who are improperly classified by such county boards. Further, he shall order county boards to correct immediately any improper classification matter and with the assistance of the attorney general shall take any legal action necessary against any county board to enforce such order.

The state board of education is authorized to establish other class titles of service personnel positions and jobs not listed in this section. The state board of education is further authorized to provide appropriate pay grades for such positions and jobs but pay shall be established within the minimum salary scale in section eight-a of this article.
No service employee, without his written consent, may be reclassified by class title, nor may a service employee, without his written consent, be relegated to any condition of employment which would result in a reduction of his salary, rate of pay, compensation or benefits earned during the current fiscal year or which would result in a reduction of his salary, rate of pay, compensation or benefits for which he would qualify by continuing in the same job position and classification held during said fiscal year and subsequent years.

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 his reasonable attorney fee, as determined and established by the court.

§18A-4-8a. Service personnel minimum monthly salaries.

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<td>109</td>
<td>On and after the first day of July, one thousand nine hundred eighty-six, the minimum monthly pay for each service employee whose employment is for a period of more</td>
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than three and one-half hours a day shall be at least the
amounts indicated in the "state minimum pay scale" as set
forth in this section, and the minimum monthly pay for each
service employee whose employment is for a period of three
and one-half hours or less a day shall be at least one half the
amount indicated in the "state minimum pay scale" set
forth in this section.

Any service employee required to work on any legal
school holiday shall be paid at a rate one and one-half times
his usual hourly rate.

Any full-time service personnel required to work in
excess of their normal working day during any week which
contains a school holiday for which they are paid shall be
paid for such additional hours or fraction thereof at a rate of
one and one-half times their usual hourly rate and paid
entirely from county board of education funds.

No service employee shall have his daily work schedule
changed during the school year without his written consent,
and his required daily work hours shall not be changed to
prevent the payment of time and one-half wages or the
employment of another employee.

The minimum pay for extra-duty assignments as defined
in section eight-b of this article shall be no less than one-
seventh of the employee's daily total salary for each hour
the employee is involved in performing the assignment and
paid entirely from local funds. The salary for any fraction of
an hour the employee is involved in performing the
assignment shall be pro-rated accordingly. When
performing extra-duty assignments, employees who are
regularly employed on a one-half day salary basis shall
receive the same hourly extra-duty assignment pay
computed as though such an employee were employed on a
full-day salary basis.

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

(a) The seniority of professional personnel shall be
determined on the basis of the length of time the employee
has been professionally employed by the county board of
education. For purposes of establishing seniority as
hereinafter provided, when an employee holds valid
certification or licensure in one or more areas, the seniority
shall accrue in each area. 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.

A county board of education shall make decisions
affecting promotion and filling of any classroom teacher's
position occurring on the basis of qualifications. If the
applicant with the most seniority is not selected for the
position a written statement of reasons shall be given to the
applicant with the most seniority with suggestions for
improving the applicant's qualifications.

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:

Provided, That such employee shall be employed in any
other professional position where he had previously been
employed or to any lateral area for which he is certified
and/or licensed if his seniority is greater than the seniority
of any other employee in that area of certification and/or
licensure.

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 and/or licensure, such 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 such 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 such 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 and/or licensure.

Boards shall be required to post and date notices of all
openings in established, existing or newly created positions
in conspicuous working places for all professional
personnel to observe for at least five working days. The
notice of such position openings shall include the job
description. No vacancy shall be filled until after the five-
day minimum posting period: Provided, That no vacancy
which occurs after the beginning of the semester
instructional term shall be required to be posted until the
sixtieth day of the semester at which time all job openings
shall be posted with the successful applicant assuming the
position at the beginning of the next semester.

Notwithstanding any other provision of the code to the
contrary, where the total number of classroom teaching
positions in an elementary school remains the same from
one school year to the next, but there exists in that school a
need to increase the number of teachers in one or more
grade levels, kindergarten through six, and there exists a
need to decrease the number of teachers in one or more
other grade levels, kindergarten through six, a teacher in
the school and assigned to a grade level to be decreased, may
be reassigned to a grade level to be increased for which the
teacher is certified without that position being posted,
provided that the employee and the county board of
education mutually agree to the reassignment.

(b) A county board of education shall make decisions
affecting promotion and 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, article four of this chapter, on the
basis of seniority, qualifications and evaluation of past
service.

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

1. Regularly employed service personnel;
2. Service personnel whose employment has been discontinued in accordance with this section;
3. Professional personnel who held temporary service personnel jobs or positions prior to the ninth day of June, one thousand nine hundred eighty-two, and who apply only for such temporary jobs or positions;
4. Substitute service personnel; and
5. New service personnel.

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

A promotion shall be defined as any change in his employment that the employee deems to improve his working circumstance within his classification category of employment and shall include 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. Each class title listed in section eight, article four of this chapter shall be considered a separate classification category of employment for service personnel, except for those class titles having Roman numeral designations, which shall be considered a single classification of employment. The cafeteria manager class title shall be included in the same classification category as cooks. The executive secretary class title shall be included in the same classification category as secretaries.

For purposes of determining seniority under this section an employee’s seniority begins on the date that he enters into his assigned duties.

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

Boards shall be required to post and date notices of all job vacancies of established existing or newly created positions in conspicuous working places for all school service employees to observe for at least five working days. The notice of such job vacancies shall include the job description, the period of employment, the amount of pay and any benefits and other information that is helpful to the employees to understand the particulars of the job. After the five day minimum posting period all vacancies shall be filled within twenty working days from the posting date notice of any job vacancies of established existing or newly created positions.

All decisions by county boards of education concerning reduction in work force of service personnel shall be made on the basis of seniority, as hereinafter provided. The seniority of any such service personnel shall be determined on the basis of the length of time the employee has been employed by the county board of education within a particular job classification. For the purpose of establishing seniority for a preferred recall list as hereinafter provided, when an employee has been employed in one or more classifications, the seniority accrued in each previous classification shall be retained by the employee. Should a county board of education be required to reduce the number of employees within a particular job classification, the employee with the least amount of seniority within that classification or grades of classification shall be properly released and employed in a different grade of that classification if there is a job
vacancy: Provided, That if there is no job vacancy for
employment within such classification or grades of
classification, he shall be employed in any other job
classification which he previously held with the county
board if there is a vacancy and shall retain any seniority
accrued in such job classification or grade of classification.
If two or more employees accumulate identical seniority,
the priority shall be determined by a random selection
system established by the employees and approved by the
county board.
All employees 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 and shall be recalled to employment by
the county board on the basis of seniority.
Employees placed upon the preferred list shall be recalled
to any position openings by the county board within the
classification(s), where they had previously been employed,
or to any lateral position for which the employee is qualified
or to a lateral area for which an employee has certification
and/or licensure.
Employees on the preferred recall list shall not forfeit
their right to recall by the county board if compelling
reasons require an employee to refuse an offer of
reemployment by the county board.
The county board shall be required to notify all
employees on the preferred recall list of all position
openings that from time to time exist. Such notice shall be
sent by certified mail to the last known address of the
employee; it shall be the duty of each such employee to
notify the county board of any change in the address of such
employee.
No position openings may be filled by the county board,
whether temporary or permanent, until all employees on
the preferred recall list have been properly notified of
existing vacancies and have been given an opportunity to
accept reemployment.
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 his reasonable attorney fee, 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 retroactively 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.

§18A-4-10. Personal leave for illness and other causes; leave banks; substitutes.

1. At the beginning of the employment term, any full-time employee of a county board of education shall be entitled annually to at least one and one-half days personal leave for each employment month or major fraction thereof in the employee's employment term. Unused leave shall be accumulative without limitation and shall be transferable within the state. A change in job assignment during the school year shall in no way affect the employee's rights or benefits.

2. A regular full-time employee who is absent from assigned duties due to accident, sickness, death in the immediate family, or other cause authorized or approved by the board, shall be paid the full salary from his regular budgeted salary appropriation during the period which such employee is absent, but not to exceed the total amount of leave to which such employee is entitled: Provided, That each such employee shall be permitted three days of such leave annually, which may be taken without regard to the cause for the absence, except that personal leave without cause may not be taken on consecutive work days unless authorized or approved by the employee's principal or immediate supervisor, as the case may be: Provided, however, That notice of such leave day shall be given to the employee's principal or immediate supervisor, as the case may be, at least twenty-four hours in advance, except that in the case of sudden and unexpected circumstances, such notice shall be given as soon as reasonably practicable; however, the use of such day may be denied if, at the time notice is given, either fifteen percent of the employees or three employees, whichever is greater, under the supervision of the principal or immediate supervisor, as the case may be, have previously notified the principal or immediate supervisor of their intention to use that day for such leave: Provided further, That such leave shall not be used in connection with a concerted work stoppage or
strike. Where the cause for leave had its origin prior to the
beginning of the employment term, the employee shall be
paid for time lost after the start of the employment term. If
an employee should use personal leave which the employee
has not yet accumulated on a monthly basis and
subsequently leave the employment, the employee shall be
required to reimburse the board for the salary or wages paid
to him for such unaccumulated leave.
Prior to the first day of January, one thousand nine
hundred eighty-nine, the state board shall establish rules,
effective on said date, to restrict the payment of personal
leave benefits and the charging of personal leave time used
to an employee receiving a workers' compensation benefit
from a claim filed against and billed to the employee's
board. If an employee is awarded such benefit, such
employee shall receive personal leave compensation only to
the extent such compensation is required, when added to
the workers' compensation benefit, to equal the amount of
compensation regularly paid such employee. If personal
leave compensation equal to the employee's regular pay is
paid prior to the award of the workers' compensation
benefit, such amount which, when added to the benefit, is in
excess of the employee's regular pay shall be deducted from
the employee's subsequent pay. The employee's accrued
personal leave days shall be charged only for such days as
equal the amount of personal leave compensation required
to compensate the employee at the employee's regular rate
of pay.
The board may establish reasonable rules for reporting
and verification of absences for cause; and if any error in
reporting absences should occur it shall have authority to
make necessary salary adjustments in the next pay after the
employee has returned to duty or in the final pay if the
absence should occur during the last month of the
employment term.
A county board of education may establish a personal
leave bank or banks to which employees may contribute no
more than two days of personal leave per school year:
Provided, That such bank or banks be established either
jointly or separately for both professional personnel and
school service personnel and that a bank be available to all
school personnel. Such personal leave bank shall be
established and operated pursuant to rules adopted by the county board: Provided, however, That such rules may limit the maximum number of days used by an employee, shall require that leave bank days be used only by an active employee with less than five days accumulated personal leave who is absent from work due to accident or illness of such employee, and shall prohibit the use of such days with the extension of insurance coverage pursuant to section twelve, article sixteen, chapter five of this code. Such rules shall require that contributions shall reduce, to the extent of such contribution, the number of personal leave days to which an employee is entitled: Provided further, That such contribution shall not reduce personal leave days without cause to which an employee is entitled. No employee may be compelled to contribute to such personal leave bank.

When an allowable absence does not directly affect the instruction of the pupils or when a substitute employee may not be required because of the nature of the work and the duration of the cause for the allowable absence of the regular employee, the administration, subject to board approval, may use its discretion as to the need for a substitute where limited absence may prevail.

If funds in any fiscal year, including transfers, are insufficient to pay the full cost of substitutes for meeting the provisions of this section, the remainder shall be paid on or before the thirty-first day of August from the budget of the next fiscal year.

Any board of education shall have authority to supplement such leave provisions in any manner it may deem advisable in accordance with applicable rules of the state board and the provisions of this chapter and chapter eighteen of this code.

§18A-4-10b. Demonstration of exemplary teaching techniques.

The Legislature recognizes that the nature of teaching restricts the interaction of teachers in the classroom and their opportunity to observe exemplary instructional techniques of their colleagues. To facilitate a process for sharing successful pedagogy, the state board, through regional educational service agencies, shall develop a process to record and distribute exemplary teaching techniques by any electronic means available.
The teachers at any school within a regional educational service agency may nominate by consensus one teacher per year from that school whose teaching techniques they believe to be exemplary. Such nomination shall be completed no later than the first day of January in any school year. Upon such nomination, the principal shall arrange through the regional educational service agency for the recording of that teacher's exemplary teaching techniques. Following completion of such recording, the regional educational service agency shall make arrangements and schedule a date and location for those teachers whose teaching techniques were recorded to review the teaching techniques recorded in the region and determine which best demonstrate exemplary teaching techniques in different subject areas. Teachers whose recorded teaching techniques are selected shall receive a bonus equal to the highest average two-day pay for a teacher in the region.

The state board shall compile the recorded teaching techniques selected by the teachers, produce copies of the recording and provide a method for distribution on a statewide and regional basis.

§18A-4-18. Department of education certified staff salaries.

Personnel employed by the state department of education who are required to hold a teaching certificate shall receive a salary that is at least equal to the salary paid to comparable professional personnel employed by the county board wherein their office is located, minus the six hundred dollars authorized pursuant to section two of this article for classroom teachers with twenty years of experience.

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-8. Authority of certain aides to exercise control over pupils; compensation; transfers.

(a) Within the limitations provided herein, 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 pupils as is required of a teacher as defined and provided in section one of this article. The principal shall designate such aides in the school who agree to exercise such authority on the basis of seniority as an aide and shall enumerate the instances in which such authority shall be
exercised by an aide when requested by the principal, assistant principal or professional employee to whom the aide is assigned: Provided, That such authority does not extend to suspending or expelling any pupil, participating in the administration of corporal punishment or performing instructional duties as a teacher or substitute teacher.

An aide designated by the principal under this subsection shall receive a salary not less than one pay grade above the minimum salary to which said aide would otherwise be entitled under section eight-a of this article, and any county salary schedule in excess of the minimum requirements of this article.

(b) An aide shall 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 such duties is mutually agreed upon by the aide and the county superintendent, or the superintendent's designated representative, subject to board approval. The terms and conditions of such agreement shall be in writing, signed by both parties, and may include additional benefits. Such agreement shall be uniform as to aides assigned similar duties for similar amounts of time within the same school. Aides shall have the option of agreeing to supervise students and of renewing related assignments annually: Provided, That should an aide elect not to renew the previous agreement to supervise students, the minimum salary of such aide shall revert to the pay grade specified in section eight-a of this article for the classification title held by the aide and any county salary schedule in excess of the minimum requirements of this article.

(c) For the purposes of this section, aide shall mean and include any aide class title as defined in section eight, article four of this chapter, regardless of numeric classification.

(d) Notwithstanding the provisions of section eight-b, article four of this chapter, an aide shall be employed on the basis of (1) qualifications, including but not limited to education, training and experience, and (2) seniority. Qualifications shall not include additional college credits beyond that currently required. With regard to such qualifications, the county board shall establish and make
available to service personnel a written policy to be used
when regular service personnel who are employed in a
different category of employment other than an aide are to
be employed in an aide position. An aide may transfer to
another position of employment one time only during any
half of a school term, unless otherwise mutually agreed
upon by the aide and the county superintendent, or the
superintendent’s designee, subject to board approval:
Provided, That during the first year of employment as an
aide, an aide shall 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 board approval.
(e) Regular service personnel employed in a category of
employment other than aide who seek employment as an
aide shall be required to hold a high school diploma or have
received a general educational development certificate and
shall have opportunity to receive appropriate training
pursuant to subsection (10), section thirteen, article five,
chapter eighteen of this code and section two, article twenty
of said chapter.

CHAPTER 29A. STATE ADMINISTRATIVE PROCEDURES.

ARTICLE 1. DEFINITIONS AND APPLICATION OF CHAPTER.

§29A-1-3. Application of chapter; limitations.

1 (a) The provisions of this chapter do not apply in any
respect whatever to executive orders of the governor, which
orders to the extent otherwise lawful, shall be effective
according to their terms: Provided, That the executive
orders shall be admitted to record in the state register when
and to the extent the governor deems suitable and shall be
included therein by the secretary of state when tendered by
the governor.

(b) Except as to requirements for filing in the state
register, and with the Legislature or its rule-making review
committee, provided in this chapter or other law, the
provisions of this chapter do not apply in any respect
whatever to the West Virginia board of probation and
parole, the public service commission, the board of public
works sitting as such and the West Virginia board of
regents: Provided, That rules of such agencies shall be filed
in the state register in the form prescribed by this chapter
and be effective no sooner than sixty consecutive days after being so filed: Provided, however, That the rules promulgated by the state colleges and universities shall only be filed with the West Virginia board of regents: Provided further, That such agencies may promulgate emergency rules in conformity with section fifteen, article three of this chapter.

(c) The provisions of this chapter do not apply to rules relating to, or contested cases involving public elections, the conduct of inmates or other persons admitted to public institutions, the conduct of students at public schools or public educational institutions, the open seasons and the bag, creel, size, age, weight and sex limits with respect to the wildlife in this state, the conduct of persons in military service or the receipt of public assistance. Such rules shall be filed in the state register in the form prescribed by this chapter and be effective upon filing.

(d) Nothing herein shall be construed to affect, limit or expand any express and specific exemption from this chapter contained in any other statute relating to a specific agency, but such exemptions shall be construed and applied in accordance with the provisions of this chapter to effectuate any limitations on such exemptions contained in any such other statute.

ARTICLE 3. RULE MAKING.

§29A-3-1. Rules to be promulgated only in accordance with this article.

In addition to other rule-making requirements imposed by law and except to the extent specifically exempted by the provisions of this chapter or other applicable law, and except as provided for in article three-a of this chapter, every rule and regulation (including any amendment of or rule to repeal any other rule) shall be promulgated by an agency only in accordance with this article and shall be and remain effective only to the extent that it has been or is promulgated in accordance with this article.

ARTICLE 3A. EDUCATION RULE MAKING.


As used in this article:
(a) "Commission" means the legislative oversight commission on education accountability;

(b) "Board" means the West Virginia board of education.

§29A-3A-2. Rules to be promulgated only in accordance with this article.

In addition to other rule-making requirements imposed by law and except to the extent specifically exempted by the provisions of this chapter or other applicable law, every rule and regulation (including any amendment of or rule to repeal any other rule) shall be promulgated by the board only in accordance with this article and shall be and remain effective only to the extent that it has been or is promulgated in accordance with this article.

§29A-3A-3. Limitations on authority to exercise rule-making power.

(a) Except when, and to the extent, that this chapter or any other provision of law now or hereafter made expressly exempts the board, or a particular grant of the rule-making power, from the provisions of this article, every grant of rule-making authority to the board heretofore provided, shall be construed and applied to be effective only:

(1) If heretofore lawfully exercised in accordance with the prior provisions of this chapter and the resulting rule has not been revoked or invalidated by the provisions hereof or by the board; or

(2) If exercised in accordance with the provisions hereof.

(b) The board shall not be deemed to have the power and authority to promulgate a legislative rule without compliance with this article unless: (1) The provision of this code, heretofore or hereafter enacted, granting such power and authority, expressly exempts its exercise from legislative rule-making review prior to promulgation or (2) the grant of such power and authority is exempted from the application of this chapter by the express provisions of this chapter. To the extent any such grant of power and authority, not so exempt, shall be deemed to exceed the limits and provisions of this article, such power and authority to promulgate legislative rules is hereby revoked.
§29A-3A-4. Rules of procedure required.

1 In addition to other rule-making requirements imposed
2 by law:
3 (a) The board shall adopt procedural rules governing
4 the formal and informal procedures prescribed or
5 authorized by this chapter. Procedural rules shall include
6 rules of practice before the board, together with forms and
7 instructions.
8 (b) To assist interested persons dealing with it, the
9 board, shall so far as deemed practicable, supplement its
10 rules or regulations with descriptive statements of its
11 procedures.

§29A-3A-5. Filing of proposed procedural rules and
interpretive rules.

1 (a) When the board proposes a procedural rule or an
2 interpretive rule, the agency shall file in the state register a
3 notice of its action, including the text of the rule as
4 proposed.
5 (b) All proposed rules filed under subsection (a) of this
6 section shall have a fiscal note attached itemizing the cost of
7 implementing the rules as they relate to this state and to
8 persons affected by the rules and regulations. Such fiscal
9 note shall include all information included in a fiscal note
10 for either house of the Legislature and a statement of the
11 economic impact of the rule on the state or its residents. The
12 objectives of the rules shall be clearly and separately stated
13 in the fiscal note by the agency issuing the proposed rules.
14 No procedural or interpretive rule shall be void or voidable
15 by virtue of noncompliance with this subsection.


1 When the board proposes to promulgate a rule other than
2 an emergency rule it shall file in the state register a notice of
3 its action, including a text of the rule proposed, a fiscal note
4 as defined in subsection (b) of section five, and any request
5 for the submission of evidence to be presented on any
6 factual determinations or inquiries required by law to
7 promulgate such rule. If the board is considering
8 alternative draft proposals it may include the text thereof.
9 The notice shall fix a date, time and place for the taking of
10 evidence for any findings and determinations which are a
condition precedent to promulgation of the proposed rule
and contain a general description of the issues to be
decided. If no findings and determinations are required as a
condition precedent to promulgation, the notice shall fix a
date, time and place for receipt of public comment on such
proposed rule.

If findings and determinations are a condition precedent
to the promulgation of such rule, then an opportunity for
public comment on the merits of the rule shall be afforded
after such findings and determinations are made. In such
event, notice of the hearing, or of the period for receiving
public comment on the proposed rule shall be attached to
and filed as a part of the findings and determinations of the
board when filed in the state register.

In any hearing for public comment on the merits of the
rule, the board may limit presentations to written material.
The time, date and place fixed in the notice shall constitute
the last opportunity to submit any written material relevant
to any hearing, all of which may be earlier submitted by
filing with the board.
The board may also, at its expense, cause to be published
as a Class I legal publication in every county of the state,
any notice required by this section.
Any citizen or other interested party may appear and be
heard at such hearings as are required by this section.

§29A-3A-7. Filing findings and determinations for rules in
state register; evidence deemed public record.

(a) Incident to fixing a date for public comment on a
proposed rule, the board shall promulgate the findings and
determinations required as a condition precedent thereto,
and state fully and succinctly the reasons therefor and file
such findings and determinations in the state register. If the
board amends the proposed rule as a result of the evidence
or comment presented pursuant to section five, such
amendment shall be filed with a description of any changes
and statement listed for the amendment.

(b) The statement of reasons and a transcript of all
evidence and public comment received pursuant to notice
are public records and shall be carefully preserved by the
board and be open for public inspection and copying for a
period of not less than five years from the date of the
hearing.

Notices of hearings required by sections six and seven of this article shall be filed in the state register not less than thirty nor more than sixty days before the date of such hearing or the last day specified therein for receiving written material. Any hearing may be continued from time to time and place to place by the board which shall have the effect of extending the last day for receipt of evidence or public comment. Notice of such continuance shall be promptly filed thereafter in the state register.


A procedural and interpretive rule, shall be considered by the board for adoption not later than six months after the close of public comment and a notice of withdrawal or adoption shall be filed in the state register within that period. Failure to file such notice shall constitute withdrawal and the secretary of state shall note such failure in the state register immediately upon the expiration of the six-month period.

A procedural or interpretive rule may be amended by the board prior to final adoption without further hearing or public comment. No such amendment may change the main purpose of the rule. If the fiscal implications have changed since the rule was proposed, a new fiscal note shall be attached to the notice of filing. Upon adoption of the rule (including any such amendment) the board shall file the text of the adopted procedural or interpretive rule with its notice of adoption in the state register and the same shall be effective on the date specified in the rule or thirty days after such filing, whichever is later.


When the board proposes a legislative rule, other than an emergency rule, it shall be deemed to be applying to the Legislature for permission, to be granted by law, to promulgate such rule as approved by the agency for submission to the Legislature or as amended and authorized by the Legislature by law.

When proposing a legislative rule, other than an emergency rule, the board shall first file in the state register a notice of its proposal, including the text of the legislative
rule and including all materials required in the case of a
procedural or interpretive rule. The board shall then
proceed as in the case of a procedural and interpretive rule
to the point of, but not including final adoption. In lieu of
final adoption, the agency shall approve the rule, including
any amendments, for submission to the Legislature and file
such notice of approval in the state register and with the
legislative oversight commission on education
accountability.

Such approval of the rule by the board for submission to
the Legislature shall be deemed to be approval for
Submission to the Legislature only and not deemed to give
full force and effect until authority to do so is granted by
law.

§29A-3A-11. Creation of a legislative oversight commission on
education accountability; termination.

(a) There is hereby created a joint commission of the
Legislature, known as the legislative oversight commission
on education accountability, to review all legislative rules
of the board and such other rules as the commission deems
appropriate. The commission shall be composed of three
members of the Senate, appointed by the president of the
Senate, and three members of the House of Delegates,
appointed by the speaker of the House of Delegates. In
addition, the president of the Senate and the speaker of the
House of Delegates shall be ex officio nonvoting members of
the commission and shall designate the cochairmen. Not
more than two of the voting members of the commission
from each house shall be members of the same political
party. At least one of the Senate members and one of the
House members shall be members of the committee on
education of the Senate and House, respectively, and at
least one of the Senate members and at least one of the
House members shall be a member of the committee on
finance of the Senate and House, respectively. The members
shall serve until their successors shall have been appointed
as heretofore provided. Members of the commission shall
receive such compensation and expenses as provided in
article two-a, chapter four of this code. Such expenses and
all other expenses, including those incurred in the
employment of legal, technical, investigative, clerical,
stenographic, advisory and other personnel shall be paid
from an appropriation to be made expressly for the legislative oversight commission on education accountability, but if no such appropriation be made, such expenses shall be paid from the appropriation under “Account No. 103 for Joint Expenses,” but no expense of any kind whatever payable under said Account No. 103 for joint expenses shall be incurred unless first approved by the joint committee on government and finance. The commission shall meet at any time, both during sessions of the Legislature and in the interim.

(b) The commission may adopt such rules of procedure as it considers necessary for the submission, presentation and consideration of rules.

(c) The legislative oversight commission on education accountability shall be terminated on the first day of July, one thousand nine hundred ninety-two, unless review of its functions shall be undertaken pursuant to the provisions of sections nine, ten and eleven, article ten, chapter four of this code. If such commission is terminated pursuant to this subsection, any report required to be submitted to them shall instead be submitted to the joint committee on education of the Legislature.

§29A-3A-11a. Additional powers and duties; subpoena powers.

(a) In addition to the powers and duties conferred upon the commission pursuant to the provisions of this article, the commission shall make a continuing investigation, study and review of the practices, policies and procedures of the board and of any and all matters related to education in the state and shall make annual reports to the Legislature of the results of such investigation, study and review.

(b) These reports shall describe and evaluate in a concise manner:

(1) The major activities of the board for the fiscal year immediately past, including important policy decisions reached on initiatives undertaken during that year, especially as such activities, decisions and initiatives relate to the implementation of (1) the constitutional requirement of providing a thorough and efficient education to the children of this state and (2) the objective of improving the quality of education at all levels in this state.
(2) Other information considered by the commission to be important, including recommendations for statutory, fiscal or other reform and reasons for such recommendations.

Further, these reports may specify in what manner said practices, policies and procedures may or should be modified to satisfy said constitutional requirement and to improve the quality of education at all levels in this state.

The commission may meet as often as may be necessary and employ such professional, clerical and technical personnel as it considers necessary to perform effectively the duties herein prescribed.

(c) The commission shall conduct a study to determine whether the bureaucracies of the state board of education and each county board of education are of such size and complexity that they do not best serve the educational needs of the children of the state. The commission may request assistance from the legislative auditor to conduct this study.

(d) For purposes of carrying out its duties, the commission is hereby empowered and authorized to examine witnesses and to subpoena such persons and books, records, documents, papers or any other tangible things as it believes should be examined to make a complete investigation. All witnesses appearing before the commission shall testify under oath or affirmation, and any member of the commission may administer oaths or affirmations to such witnesses. To compel the attendance of witnesses at such hearings or the production of any books, records, documents, papers or any other tangible thing, the commission is hereby empowered and authorized to issue subpoenas, signed by one of the cochairs, in accordance with section five, article one of this chapter. Such subpoenas shall be served by any person authorized by law to serve and execute legal process and service shall be made without charge. Witnesses subpoenaed to attend hearings shall be allowed the same mileage and per diem as is allowed witnesses before any petit jury in this state.

If any person subpoenaed to appear at any hearing shall refuse to appear or to answer inquiries there propounded, or shall fail or refuse to produce books, records, documents, papers or any other tangible thing within his control when the same are demanded, the commission shall report the
§29A-3A-12. Submission of legislative rules to the legislative oversight commission on education accountability.

(a) When the board finally approves a proposed legislative rule for submission to the Legislature, pursuant to the provisions of section ten of this article, the board shall submit to the legislative oversight commission on education accountability at its offices or at a regular meeting of such commission fifteen copies of (1) the full text of the legislative rule as finally approved by the board, with new language underlined and with language to be deleted from any existing rule stricken-through but clearly legible; (2) a brief summary of the content of the legislative rule and a description and a copy of any existing rule which the agency proposes to amend or repeal; (3) a statement of the circumstances which require the rule; (4) a fiscal note containing all information included in a fiscal note for either house of the Legislature and a statement of the economic impact of the rule on the state or its residents; and (5) any other information which the commission may request or which may be required by law.

(b) The commission shall review each proposed legislative rule and, in its discretion, may hold public hearings thereon. Such review shall include, but not be limited to, a determination of:

(1) Whether the board has exceeded the scope of its statutory authority in approving the proposed legislative rule;

(2) Whether the proposed legislative rule is in conformity with the legislative intent of the statute which the rule is intended to implement, extend, apply, interpret or make specific;

(3) Whether the proposed legislative rule conflicts with any other provision of this code or with any other rule adopted by the same or a different agency;

(4) Whether the proposed legislative rule is necessary to fully accomplish the objectives of the statute under which the proposed rule was promulgated;
(5) Whether the proposed legislative rule is reasonable, especially as it affects the convenience of the general public or of persons particularly affected by it;

(6) Whether the proposed legislative rule could be made less complex or more readily understandable by the general public; and

(7) Whether the proposed legislative rule was promulgated in compliance with the requirements of this article and with any requirements imposed by any other provision of this code.

(c) After reviewing the legislative rule, the commission shall recommend that the Legislature:

(1) Authorize the board to promulgate the legislative rule; or

(2) Authorize the board to promulgate part of the legislative rule; or

(3) Recommend that the rule be withdrawn.

The commission shall file notice of its action in the state register and with the board proposing the rule: Provided, That when the commission makes the recommendations of subdivision (2) or (3) of this subsection, the notice shall contain a statement of the reasons for such recommendation.

(d) When the commission recommends that a rule be authorized, in whole or in part, by the Legislature, the commission shall instruct its staff or the office of legislative services to draft a bill authorizing the board to promulgate all or part of the legislative rule. If the commission recommends that the rule not be authorized, it shall include in its report a draft of a bill authorizing promulgation of the rule together with a recommendation. Any draft bill prepared under this section shall contain a legislative finding that the rule is within the legislative intent of the statute which the rule is intended to implement, extend, apply or interpret and shall be available for any member of the Legislature to introduce to the Legislature.


(a) No later than forty days before the sixtieth day of each regular session of the Legislature, the cochairmen of the legislative oversight commission on education accountability shall submit to the clerk of the respective houses of the Legislature copies of all proposed legislative
rules which have been submitted to and considered by the
commission pursuant to the provisions of section eleven of
this article and which have not been previously submitted
to the Legislature for study, together with the
recommendations of the commission with respect to such
rules, a statement of the reasons for any recommendation
that a rule be withdrawn, and a statement that a bill
authorizing the legislative rule has been drafted by the staff
of the commission or by legislative services pursuant to
section twelve of this article. The cochairman of the
commission may also submit such rules at the direction of
the commission at any time before or during a special
session in which consideration thereof may be appropriate.
The commission may withhold from its report any proposed
legislative rule which was submitted to the commission
fewer than two hundred ten days before the end of the
regular session. The clerk of each house shall submit the
report to his house at the commencement of the next
session.
All bills introduced authorizing the promulgation of a
rule may be referred by the speaker of the House of
Delegates and by the president of the Senate to appropriate
standing committees of the respective houses for further
consideration or the matters may be otherwise dealt with as
each house or its rules provide. The Legislature may by act
authorize the board to adopt a legislative rule incorporating
the entire rule. The clerk of the house originating such act
shall forthwith file a copy of any bill enacted in
contemplation of this section in the state register and with
the board and the clerk of each house may prepare and file a
synopsis of legislative action during any session on any
proposed rule submitted to the house during such session
for which authority to promulgate was not by law provided
during such session.
(b) If the Legislature fails during its regular session to
act upon all or part of any legislative rule which was
submitted to it by the legislative oversight commission on
education accountability during such session, the board
may not thereafter issue any rule or directive or take other
action to implement such rule or part thereof unless and
until otherwise authorized to do so.
(c) Nothing herein shall be construed to prevent the
Legislature by law from authorizing or authorizing and
directing the board to promulgate legislative rules not
proposed by the board or upon which some procedure
specified in this chapter is not yet complete.
(d) Whenever the Legislature is convened by
proclamation of the governor, upon his own initiative or
upon application of the members of the Legislature, or
whenever a regular session of the Legislature is extended or
convened by the vote or petition of its members, the
Legislature may by act enacted during such extraordinary
or extended session authorize, in whole or in part, any
legislative rule whether submitted to the legislative
oversight commission on education accountability, or not,
if legislative action on such rule during such session is a
lawful order of business.
(e) Whenever a date is required by this section to be
computed in relation to the end of a regular session of the
Legislature, such date shall be computed without regard to
any extensions of such session occasioned solely by the
proclamation of the governor.
(f) Whenever a date is required to be computed from or
is fixed by the first day of a regular session of the
Legislature, it shall be computed or fixed in the year one
thousand nine hundred eighty-four, and each fourth year
thereafter without regard to the second Wednesday of
January of such years.
§29A-3A-14. Adoption of legislative rules; effective date.
(a) Except as the Legislature may by law otherwise
provide, within sixty days after the effective date of an act
authorizing promulgation of a legislative rule, the board
shall promulgate the rule only in conformity with the
provisions of law authorizing and directing the
promulgation of such rule.
(b) A legislative rule authorized by the Legislature shall
become effective thirty days after such filing in the state
register, or on the effective date fixed by the authorizing act
or if none is fixed by law, such later date not to exceed
ninety days, as is fixed by the board.
(c) The secretary of state shall note in the state register
the effective date of an authorized and promulgated
legislative rule, and shall file such legislative rule in the
state register in lieu of the proposed legislative rule
previously filed pursuant to section seven of this article.
§29A-3A-15. Withdrawal or modification of proposed rules.

(a) Any legislative rule proposed by the board may be withdrawn any time before passage of a law authorizing or authorizing and directing its promulgation, but no such action shall be construed to affect the validity, force or effect of a law enacted authorizing or authorizing and directing the promulgation of an authorized legislative rule or exercising compliance with such law. The board shall file a notice of any such action in the state register.

(b) At any time before a proposed legislative rule has been submitted by the legislative oversight commission on education accountability to the Legislature pursuant to the provisions of section thirteen of this article, the board may modify the proposed rule to meet the objections of the commission. The board shall file in the state register a notice of its modifying action including a copy of the modified rule, but shall not be required to comply with any provisions of this article requiring opportunity for public comment or taking of evidence with respect to such modification. If a legislative rule has been withdrawn, modified and then resubmitted to such commission, the rule shall be considered to have been submitted to such commission on the date of such resubmission.


(a) The board may, without hearing, find that an emergency exists requiring that emergency rules be promulgated and promulgate the same in accordance with this section. Such emergency rules, together with a statement of the facts and circumstances constituting the emergency, shall be filed in the state register and shall become effective immediately upon such filing. Such emergency rules may adopt, amend or repeal any legislative rule, but the circumstances constituting the emergency requiring such adoption, amendment or repeal shall be stated with particularity and be subject to de novo review by any court having original jurisdiction of an action challenging their validity. Fifteen copies of the rules and of the required statement shall be filed forthwith with the legislative oversight commission on education accountability.
An emergency rule shall be effective for not more than fifteen months and shall expire earlier if any of the following occurs:

1. The secretary of state, acting under the authority provided for in section fifteen-a of this article, or the attorney general, acting under the authority provided for in section fifteen-b of this article, disapproves the emergency rule because (A) the board has exceeded the scope of its statutory authority in promulgating the emergency rule; (B) an emergency does not exist justifying the promulgation of such rule; or (C) the rule was not promulgated in compliance with the provisions of this section.

2. The board has not previously filed and fails to file a notice of public hearing on the proposed rule within sixty days of the date the proposed rule was filed as an emergency rule; in which case the emergency rule expires on the sixty-first day.

3. The board has not previously filed and fails to file the proposed rule with the legislative oversight commission on education accountability within one hundred eighty days of the date the proposed rule was filed as an emergency rule; in which case the emergency rule expires on the one hundred eighty-first day.

4. The Legislature has authorized or directed promulgation of an authorized legislative rule dealing with substantially the same subject matter since such emergency rule was first promulgated, and in which case the emergency rule expires on the date the authorized rule is made effective.

5. The Legislature has, by law, disapproved of such emergency rule; in which case the emergency rule expires on the date the law become effective.

(b) Any amendment to an emergency rule made by the board shall be filed in the state register and does not constitute a new emergency rule for the purpose of acquiring additional time or avoiding the expiration dates in subdivision (1), (2), (3) or (4), subsection (a) of this section.

(c) Once an emergency rule expires due to the conclusion of fifteen months or due to the effect of subdivision (1), (2), (3) or (4), subsection (a) of this section, the board may not refile the same or similar rule as an emergency rule.
(d) Emergency legislative rules currently in effect under the prior provisions of this section may be refiled under the provisions of this section.

(e) The provision of this section shall not be used to avoid or evade any provision of this article or any other provisions of this code, including any provisions for legislative review and approval of proposed rules. Any emergency rule promulgated for any such purpose may be contested in a judicial proceeding before a court of competent jurisdiction.

(f) The legislative oversight commission on education accountability may review any emergency rule to determine (1) whether the board has exceeded the scope of its statutory authority in promulgating the emergency rule; (2) whether there exists an emergency justifying the promulgation of such rule; and (3) whether the rule was promulgated in compliance with the requirements and prohibitions contained in this section. The commission may recommend to the board, the Legislature, or the secretary of state such action as it may deem proper.

(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

§29A-3A-16a. Disapproval of emergency rules by the secretary of state; judicial review.

(a) Upon the filing of an emergency rule by the board, under the provisions of section sixteen of this article, the secretary of state shall review such rule and, within forty-two days of such filing, shall issue a decision as to whether or not such emergency rule should be disapproved.

(b) The secretary of state shall disapprove an emergency rule if he determines:

(1) That the board has exceeded the scope of its statutory authority in promulgating the emergency rule;

(2) That an emergency does not exist justifying the promulgation of the rule; or

(3) That the rule was not promulgated in compliance with the provisions of section fifteen of this article.
(c) If the secretary of state determines, based upon the contents of the rule or the supporting information filed by the board, that the emergency rule should be disapproved, he may disapprove such rule without further investigation, notice or hearing. If, however, the secretary of state concludes that the information submitted by the board is insufficient to allow a proper determination to be made as to whether the emergency rule should be disapproved, he may make further investigation, including, but not limited to, requiring the board or other interested parties to submit additional information or comment or fixing a date, time and place for the taking of evidence on the issues involved in making a determination under the provisions of this section.

(d) The determination of the secretary of state shall be reviewable by the supreme court of appeals under its original jurisdiction, based upon a petition for a writ of mandamus, prohibition of certiorari, as appropriate. Such proceeding may be instituted by:

(1) The board which promulgated the emergency rule;
(2) A member of the Legislature; or
(3) Any person whose personal property interests will be significantly affected by the approval or disapproval of the emergency rule by the secretary of state.

§29A-3A-17. Legislative review of procedural rules, interpretive rules and existing legislative rules.

The legislative oversight commission on education accountability may review any procedural rules, interpretive rules or existing legislative rules and may make recommendations concerning such rules to the Legislature, or to the board, or to both the Legislature and the board.


Any rule lawfully promulgated prior to the effective date of this chapter shall remain in full force and effect until:

(1) Such rule is expressly made ineffective by the provisions of this chapter; or
(2) Such rule should expire by reason of failure to refile the same as provided in section five of article two, or expires pursuant to its own terms and provisions lawfully made before the effective date of this section; or
9 (3) Such rule is repealed by the lawful act of the board, in conformity with this chapter; or
10 (4) Such rule is invalidated by an act of the Legislature or the force and effect of another law.
The Joint Committee on Enrolled Bills hereby certifies that the
foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within bill was     approved at this the 14th

Governor