

No. 14

WEST VIRGINIA LEGISLATURE

3RD EXTRAORDINARY SESSION, 1988



ENROLLED

Committee Substitute for
SENATE BILL NO. 14

(By Senator Tonsovich, Mr. President, et al)



PASSED June 27, 19 88

In Effect from Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 14

(SENATORS TONKOVICH, MR. PRESIDENT (BY REQUEST) AND HARMAN,
original sponsors)

[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 therefor 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
2 federal adjusted gross income pursuant to subsection (c) of
3 section twelve of this article, any payment made under a
4 tuition prepayment contract or tuition trust account
5 contract, or both, as provided under section fourteen,
6 article thirty, chapter eighteen of this code, shall also be an
7 authorized modification reducing federal adjusted gross
8 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
2 or of any other law to the contrary, every school district, by
3 and through its board of education, shall levy and collect in
4 each year a direct annual tax on all taxable property in such
5 school district sufficient to pay the principle and interest
6 maturing in such year, together with any deficiencies for

7 prior years, within, and not exceeding thirty-four years, on
8 any bonded indebtedness of such school district, now or
9 hereafter contracted, not to exceed five percent of the value
10 of the taxable property therein to be ascertained in
11 accordance with section 8 of article X of the Constitution,
12 which levies shall be laid separate and apart and in addition
13 to the maximum rates provided for tax levies by school
14 districts on the several classes of property specified in
15 section 1, article X of the Constitution, but in the same
16 proportions as such maximum rates are levied on the
17 several classes of property, and which tax may be levied
18 outside the limits fixed by said section 1, article X of the
19 Constitution.

20 (b) The term "value" as used in this section and in
21 section 8, article X of the Constitution, is used in the same
22 context that the term "value" is used in section 1, article X
23 of the Constitution, and means the "worth in money" of a
24 piece of property — its market value for ad valorem
25 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.

1 The department shall not issue any license hereunder:
2 (1) To any person, as an operator, who is under the age of
3 eighteen years: *Provided*, That under rules and regulations
4 to be established by the commissioner and in accordance
5 with the provisions hereinafter set forth in this subdivision
6 (1), a junior or probationary operator's license may be
7 issued to any person between the ages of sixteen and
8 eighteen years, who complies with section eleven, article
9 eight, chapter eighteen of this code and is not otherwise
10 disqualified by law, upon application therefor on a form
11 prescribed by the commissioner and successful completion
12 of all examinations and driving tests required by law for the
13 issuance of an operator's license to a person eighteen years
14 of age or older. The commissioner may impose reasonable
15 conditions or restrictions on the operation of a motor
16 vehicle by a person holding such junior or probationary
17 operator's license, which conditions or restrictions shall be
18 printed on each such license. In addition to all other

19 provisions of this chapter for which a regular operator's or
20 chauffeur's license may be revoked, suspended or cancelled,
21 whenever a person holding such a junior or probationary
22 operator's license (i) does not comply with the provisions of
23 section eleven, article eight, chapter eighteen of this code,
24 (ii) operates a motor vehicle in violation of the conditions or
25 restrictions set forth on such license, or (iii) has a record of
26 two convictions for moving violations of the traffic
27 regulations and laws of the road, which convictions have
28 become final, the junior or probationary license of such
29 person shall be permanently revoked, with like effect as if
30 such person had never held a junior or probationary
31 operator's license: *Provided, however,* That a junior or
32 probationary operator's license shall be suspended for
33 noncompliance with the provisions of section eleven, article
34 eight, chapter eighteen of this code, and may be reinstated
35 upon compliance: *Provided further,* That such junior or
36 probationary operator's license shall be revoked upon one
37 final conviction for any offense specified in section five,
38 article three of this chapter. Under no circumstances shall
39 such a license be revoked for convictions of offenses in
40 violation of any regulation or law governing the standing or
41 parking of motor vehicles. A person whose junior or
42 probationary operator's license has been revoked shall not
43 thereafter receive a junior or probationary operator's
44 license, but such person, upon attaining the age of eighteen,
45 shall be eligible, unless otherwise disqualified by law, for
46 examination and driver testing for a regular operator's
47 license or chauffeur's license. No person shall receive a
48 junior or probationary operator's license unless the
49 application therefor is accompanied by a writing, duly
50 acknowledged, consenting to the issuance of such junior or
51 probationary operator's license and executed (a) by the
52 parents of the applicant, or (b) if only one parent is living,
53 then by such parent, or (c) if the parents be living separate
54 and apart, by the one to whom was awarded the custody of
55 the applicant, or (d) if there is a guardian entitled to the
56 custody of the applicant, then by such guardian. Upon
57 attaining the age of eighteen years, a person holding an
58 unrevoked junior or probationary operator's license shall,
59 upon payment of the prescribed fee, be entitled to receive a
60 regular operator's license or chauffeur's license without
61 further examination or driver testing. When a junior license

62 is revoked as a result of two convictions for moving
63 violations of the traffic regulations and laws of the road as
64 hereinabove stated, the provisions of section one, article
65 four, chapter seventeen-d shall not apply;

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

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

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

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

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

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

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

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

1 Any person who is at least sixteen years of age may apply
2 to the department for an instruction permit. The
3 department may, in its discretion, after the applicant has
4 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;

20 (7) Has committed an offense in another state which if
21 committed in this state would be a ground for suspension or
22 revocation;

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

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

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

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

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

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

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

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

63 production of relevant books and papers and may require a
64 reexamination of the licensee. Upon such hearing the
65 department shall either rescind its order of suspension or,
66 good cause appearing therefor, may extend the suspension
67 of such license or revoke such license.

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
2 that it proposes to promulgate, adopt, amend or repeal
3 under the authority of the constitution or of this chapter
4 with the legislative oversight commission on education
5 accountability created pursuant to section eleven, article
6 three-a, chapter twenty-nine-a. "Rule," as used herein,
7 means a regulation, standard, statement of policy, or
8 interpretation of general application and future effect.

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

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

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

17 (b) To give prospective teachers the teaching experience
18 needed to demonstrate competence, as a prerequisite to
19 licensure, the state board of education may enter into an
20 agreement with county boards of education for the use of
21 the public schools. Such agreement shall recognize student

22 teaching as a joint responsibility of the teacher preparation
23 institution and the cooperating public schools and shall
24 include (1) the minimum qualifications for the employment
25 of public school teachers selected as supervising teachers;
26 (2) the remuneration to be paid public school teachers by
27 the state board, in addition to their contractual salaries, for
28 supervising student teachers; and (3) minimum standards
29 to guarantee adequacy of facilities and program of the
30 public school selected for student teaching. The student
31 teacher, under the direction and supervision of the
32 supervising teacher, shall exercise the authority of a
33 substitute teacher.

34 Institutions of higher education approved for teacher
35 preparation may cooperate with each other and with one or
36 more county boards of education in the organization and
37 operation of centers to provide selected phases of the
38 teacher preparation program such as student teaching or
39 internship programs, instruction in methodology, seminar
40 programs for college students, first year teachers and
41 supervising teachers.

42 Such institutions of higher education and participating
43 county boards of education may budget and expend funds
44 for the operation of such centers through payments to the
45 appropriate fiscal office of the county designated by mutual
46 agreement of participating county school boards and higher
47 education institutions to serve as the administering agency
48 of the center.

49 The provisions of this section shall not be construed to
50 require the discontinuation of an existing student teacher
51 training center or school which meets the standards of the
52 state board of education.

53 (c) Notwithstanding any other provision of this article
54 to the contrary, the state board of education is authorized to
55 develop alternative training programs leading to licensure
56 in accordance with rules and regulations adopted by the
57 state board of education after consultation with the board
58 of regents: *Provided*, That no teacher shall be permanently
59 certified who has not completed a core curriculum, as
60 determined by the state board after consultation with the
61 board of regents, in an approved teacher preparation or
62 improvement program at an accredited institution of higher
63 education.

64 The state board shall also develop and implement a
65 beginning teacher internship program by the first day of
66 July, one thousand nine hundred ninety.

67 (d) The state board shall make rules for the
68 accreditation, classification and standardization of all
69 schools in the state, except institutions of higher education,
70 and shall determine the minimum standards for the
71 granting of diplomas and other certificates of proficiency,
72 except those conferred or granted by institutions of higher
73 education. No institution of less than collegiate or
74 university status may grant any diploma or other certificate
75 of proficiency on any basis of work or merit below the
76 minimum standards prescribed by the state board of
77 education. All institutions of higher education approved for
78 teacher preparation in the school year of one thousand nine
79 hundred sixty-two—sixty-three shall continue to hold that
80 distinction so long as they meet the minimum standards for
81 teacher preparation. Nothing contained herein shall
82 infringe upon the rights granted to any institution by
83 charter given according to law previous to the adoption of
84 this code.

85 No charter or other instrument containing the right to
86 issue diplomas or other certificates of proficiency shall be
87 granted by the state of West Virginia to any institution or
88 other associations or organizations of less than collegiate or
89 university status within the state until the condition of
90 granting or issuing such diplomas or other certificates of
91 proficiency has first been approved in writing by the state
92 board of education.

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

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

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

1 There shall be established at each elementary school in
2 the state a team composed of the school principal, the
3 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

14 which set out time requirements within the instructional
15 day for instruction in kindergarten through fourth grade.

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

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

25 (b) The state board of education shall cause to be taught
26 in all of the public schools of this state the subject of health
27 education, including instruction in any of the grades six
28 through twelve as deemed appropriate by the county board,
29 on (1) the prevention, transmission and spread of acquired
30 immune deficiency syndrome and other sexually
31 transmitted diseases and (2) substance abuse, including the
32 nature of alcoholic drinks and narcotics, tobacco products,
33 and other potentially harmful drugs, with special
34 instruction as to their effect upon the human system and
35 upon society in general. The course curriculum
36 requirements and materials for such instruction shall be
37 adopted by the state board by rule in consultation with the
38 department of health.

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

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

§18-2-11. Sabbatical leaves for teachers and certain aides.

1 The state board shall by the first day of December, one
2 thousand nine hundred eighty-eight, establish by policy a
3 sabbatical leave program. Such program participation
4 shall be considered optional for each county board.
5 Individuals employed as professional educators, as defined
6 in section one, article one, chapter eighteen-a of this code,
7 and aides shall be eligible for the sabbatical leave program:
8 *Provided*, That such aides have a cumulative grade point of
9 three and two tenths on a possible four point scale pursuant
10 to successful completion of at least sixty-four semester
11 hours of course work at an approved institution of higher
12 education. Such policy shall establish the educational
13 objectives, peer selection criteria and other guidelines the
14 board deems necessary. The sabbatical leave policy shall
15 provide that not less than ninety-five percent of sabbatical
16 leaves granted shall be for classroom teachers and such
17 policy shall not provide for the granting of sabbatical leave
18 to any employee who has fewer than ten years of West
19 Virginia public school service, nor shall compensation
20 during such leave be more than one half of the employee's
21 regular salary. While on sabbatical leave the employee shall
22 be deemed to be a full-time employee for purposes of years
23 of experience and participation in the teachers retirement

24 system and the public employee insurance program. Any
 25 employee receiving a sabbatical leave shall be required to
 26 return to employment by the board which granted the leave
 27 for a period of at least one year or repay the compensation
 28 and benefits received during that time and have deducted
 29 the retirement credit and years of service credit accrued
 30 during sabbatical leave: *Provided, however,* That
 31 sabbatical leaves for teachers and certain aides shall be
 32 optional by the respective boards of education.

§18-2-15a. Comprehensive study of education law.

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

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

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

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

1 (a) In order to consolidate and administer more
 2 effectively existing educational programs and services and
 3 in order to equalize and extend educational opportunities,
 4 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

48 method substantially improves the quality of an
49 instructional program. Such model shall incorporate an
50 interactive electronic classroom approach to instruction.
51 To the extent funds are appropriated or otherwise
52 available, county boards or regional educational service
53 agencies may adopt and utilize the model for the delivery of
54 such instruction.

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

§18-2-28. School advisory councils; election.

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

20 Following such petition, the principal shall arrange for
21 such elections to be held prior to the thirty-first day of
22 October of each school year and shall give notice of the
23 elections at least one week prior to the elections being held.
24 To the extent practical, all elections shall be held within the
25 same week. Persons elected to the council may only be
26 replaced upon death, resignation, change of employment
27 status, failure to appear at three consecutive meetings of the
28 committee for which reasonable notice was given or, in the
29 case of the parent members, discontinuance of their child's
30 enrollment at that school. In the case of replacement, an
31 election shall be held to elect another qualified person to

32 serve the unexpired term of the person so replaced.

33 Each member of the committee must be given written
34 notice two weeks in advance of any committee meeting.

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

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

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

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

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

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

72 (f) The state board shall further adopt policies to
73 involve parents in their child's educational process.

§18-2-29. Competitive grant program for selected schools and school districts.

1 The state board shall establish no later than the school
2 year one thousand nine hundred eighty-nine—ninety, a
3 competitive grant program whereby schools may be
4 awarded grants to implement exemplary and innovative
5 programs designed to improve instruction.

6 The priority for rewarding competitive grants to schools
7 shall be for schools having probationary accreditation
8 status, as defined in section five-c, article two-e, chapter
9 eighteen, and school districts having nonapproval
10 accreditation status as defined in section five-d, article
11 two-e, chapter eighteen. Approval of the competitive grants
12 shall be based on measurable performance and progress
13 towards achieving full accreditation for the school or school
14 district. Such measurable performance shall include
15 criteria such as: (a) student achievement gain; (b) student
16 attendance; (c) teacher attendance; (d) parent
17 participation; (e) reduction in the amount of paperwork
18 required of teachers; and (f) any other factor promoting the
19 attainment of full accreditation for the school or the school
20 district.

21 The state board shall promulgate rules which ensure that
22 the school or school district utilizes these funds
23 appropriately. The state board shall encourage the
24 donation of funds from private and other sources to
25 augment state funding for the program.

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-1. Legislative purpose.

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

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

1 (a) The state board of education shall establish a

2 program for the statewide testing of the educational
3 progress of public school students in attaining a high
4 quality education, hereinafter referred to as the WV-STEP
5 program.

6 The WV-STEP program shall provide information to:

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

11 (2) Assist the teacher in determining student
12 promotion;

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

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

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

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

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

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

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

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

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

44 (c) The state board shall implement the WV-STEP
45 program as follows:

46 (1) Beginning in the school year one thousand nine
47 hundred ninety—ninety-one, and continuing thereafter:

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

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

65 (2) Beginning in the school year one thousand nine
66 hundred ninety-one—ninety-two, and continuing
67 thereafter:

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

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

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

86 (d) The state board shall revise and update the learning
87 outcome statements as necessary and shall determine a
88 schedule for the annual administration of the WV-STEP

89 program tests. The state superintendent is responsible for
90 the overall development, implementation and monitoring
91 of the program. The state board may establish a pilot
92 program to implement the WV-STEP program prior to the
93 required implementation dates under subsection (c) of this
94 section.

95 (e) Any student who is unable to take any of the tests
96 prescribed in this section because of absence from school
97 and provides school authorities with a valid reason for such
98 absence shall be given the missed test as soon as possible
99 following the student's return to school. An exceptional
100 child is subject to testing under the WV-STEP program only
101 to the extent specified in that child's individualized
102 education program (IEP).

103 (f) The parent or guardian of each student tested under
104 the WV-STEP program shall be notified in writing of the
105 student's test score, along with the average test score of all
106 other students in the same grade at the school. The state
107 board shall promulgate rules for the compilation of
108 aggregate test scores by grade in such manner as to permit
109 the comparison of student performance at different schools
110 within and among the various school districts. The test
111 scores of all students taking the test at each school shall be
112 compiled by the district pursuant to such rules, shall be
113 made available for public inspection and shall be included
114 in the school and county report cards under section four of
115 this article. However, no individual student's WV-STEP
116 scores may be disclosed to the public.

117 (g) The department of education shall take necessary
118 administrative action under section five of this article to
119 monitor and evaluate the curriculum and instruction
120 methods in each school district to insure compliance with
121 the standards and purposes of this article.

**§18-2E-3. Compensatory and remedial instruction programs;
uniform promotion criteria.**

1 (a) The Legislature finds and declares that student
2 progress towards attainment of a high quality education is
3 enhanced when students are afforded the opportunity to
4 remediate their academic deficiencies when they occur, and
5 before moving on to higher level work. Therefore, the state
6 board shall develop and adopt rules in accordance with the
7 provisions of this section, and which complement and are

8 coordinated with federally funded compensatory education
9 programs, requiring school districts to provide
10 compensatory and remedial instruction programs for
11 students who fail to meet or exceed the statewide standards
12 for student progress in the subject matter and in the grades
13 in which the students are tested under the WV-STEP
14 program. Compensatory and remedial programs may
15 include special homework, tutorial sessions, extended
16 school day instruction, modified instructional materials,
17 other modifications in the instructional program, summer
18 school instruction, retention in grade and such other
19 programs as are appropriate for providing special
20 instruction inside or outside the regular classroom designed
21 to increase student knowledge in given subject areas. The
22 guidelines shall provide for notification to the parent or
23 guardian of the educational deficiency of a student subject
24 to remediation and shall encourage their involvement in the
25 remediation effort, including allowances for alternative
26 remediation plans to be implemented by the parent or
27 guardian with approval of the teacher. The guidelines shall
28 further provide for every student who receives a score on
29 the WV-STEP test below state standard to be re-tested
30 prior to promotion to the next higher grade, except that
31 students who are assigned to a compensatory or
32 remediation program may be re-tested at any time during
33 such program at the discretion of the teacher to determine
34 the student's continued need for the program and upon
35 receiving a score at or above state standard shall not again
36 be re-tested at that level.

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

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

48 (1) The implementation of compensatory and remedial
49 programs under the guidelines would cause an undue

50 financial hardship or the district has a low number of
51 students requiring such programs; and

52 (2) The district board implements an alternative plan of
53 remediation approved by the state board for those students
54 who would be required to attend such programs under this
55 section.

56 (b) Whenever a student who is tested under the WV-
57 STEP program receives a score below the state standard in a
58 particular subject area at that student's grade level and, in
59 the judgement of the teacher, the level of knowledge of the
60 student in the subject area will not sufficiently improve
61 through instruction in the regular classroom to enable the
62 student to obtain a score at or above state standard upon
63 re-testing and/or the student's level of knowledge in the
64 subject area would improve to a greater extent from
65 participation in programs which cannot be reasonably
66 accomplished in the regular classroom, the teacher shall
67 assign the student to complete a remediation program in
68 that subject.

69 (c) Instruction in remedial, compensatory and
70 enrichment programs shall be accomplished at such times
71 as will result in minimum disruption in the student's
72 instruction in the basic skills in the regular classroom and
73 to the extent possible shall use existing personnel.

74 (d) The state board shall establish uniform criteria
75 based on the learning outcome statements and the results of
76 the Statewide Testing of Educational Progress (WV-STEP)
77 program tests to assist the teacher in determining the
78 promotion of students to the next higher grade. The criteria
79 shall include a requirement that every student has taken the
80 WV-STEP test at least one time during the school year.
81 Whenever a student who is re-tested prior to promotion
82 under the WV-STEP program receives a total test score that
83 is below the state standard at that student's grade level, the
84 teacher shall (1) assign the student to a remediation
85 program that includes re-testing to be successfully
86 completed prior to promotion to the next higher grade, (2)
87 retain the student at the same grade level in the following
88 year, or (3) state in writing to the principal, to be forwarded
89 to the district superintendent, that (i) the performance of a
90 student on a re-test does not accurately reflect the student's
91 level of knowledge based on performance in the class during
92 the year and that the student should be promoted to the next

93 higher grade despite having received a total test score below
94 state standard, or (ii) the student has been previously
95 retained under this section, is achieving at his or her
96 potential despite the test score, and would not academically
97 benefit from being retained at the current grade level.

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

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

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

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

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

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

134 (i) Nothing in this section shall be construed to prevent
135 a teacher from exercising his or her judgement in the

136 assignment of remedial course work, the retention of
137 students at the same grade level or in the practice of other
138 academically sound principles to increase the classroom
139 performance of students despite a students WV-STEP test
140 score at or above the state standard.

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

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

15 (b) The school report cards shall include:

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

25 (2) The following indicators of school performance in
26 comparison with the aggregate of all other schools in the
27 county and the state, as applicable: average class size;
28 percent of enrollments in courses in high school
29 mathematics, science, English and social science; amount of
30 time per day devoted to mathematics, science, English and
31 social science at middle, junior high and high school grade
32 levels; percent of enrollments in college preparatory,
33 general education and vocational education programs;
34 pupil-teacher ratio; number of exceptions to pupil-teacher
35 ratio requested by the county board and the number of

36 exceptions granted; the number of split-grade classrooms;
37 pupil-administrator ratio; operating expenditure per
38 pupil; county expenditure by fund in graphic display; and
39 the average degree classification and years of experience of
40 the administrators and teachers at the school.

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

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

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

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

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

74 (e) In addition to the requirements of subsection (c) of
75 this section, the school district report card shall list (1) the
76 names of the members of the district school board, the dates
77 upon which their terms expire and whether they have

78 attended an orientation program for new members
79 approved by the state board and conducted by the West
80 Virginia school board association or other approved
81 organizations, and other school board member training
82 programs, and (2) the names of the district school
83 superintendent and every assistant and associate
84 superintendent and any training programs related to their
85 area of school administration which they have attended.
86 Such information shall also be reported by district in the
87 statewide school report card.

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

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

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

16 (b) On or before the first day of January, one thousand
17 nine hundred eighty-nine, the state board of education shall
18 establish and adopt high quality educational standards in
19 the areas of curriculum, finance, transportation, special
20 education, facilities, administrative practices, training of
21 school district board members and administrators,
22 personnel qualifications, professional development and
23 evaluation, student and school performance and other such
24 areas as determined by the state board of education. Each
25 school district shall submit an annual improvement plan

26 designed around locally identified needs showing how the
27 educational program of each school in the district will meet
28 or exceed the high quality standards.

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

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

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

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

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

65 (d) Whenever the state board of education determines
66 that the quality of education in a school is seriously
67 impaired, the state superintendent, with approval of the
68 state board, shall appoint a team of three improvement

69 consultants to make recommendations within sixty days of
70 appointment for correction of the impairment. Upon
71 approval of the recommendations by the state board, the
72 recommendations shall be made to the district board of
73 education. If progress in correcting the impairment is not
74 made within six months of receipt of the recommendations,
75 the state superintendent shall provide consultation and
76 assistance to the district board to (1) improve personnel
77 management, (2) establish more efficient financial
78 management practices, (3) improve instructional programs
79 and policies or (4) make such other improvements as may be
80 necessary to correct the impairment. If the impairment is
81 not corrected within one year of receipt of the
82 recommendations, the district shall be given probationary
83 approval status or nonapproval status.

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

90 (f) The state board of education shall issue one of the
91 following accreditation levels to each school district board
92 of education: (1) full approval, (2) probationary approval or
93 (3) nonapproval.

94 Full approval shall be given to a district board whose
95 educational system meets or exceeds all of the high quality
96 standards adopted by the state board and whose schools
97 have all been given full accreditation status. Full approval
98 shall be for a period not to exceed four years.

99 Probationary approval shall be given to a district board
100 of education whose educational program has not met the
101 high quality standards, or which has one or more schools in
102 the district given probationary status. Probationary
103 approval is a warning that the district board must make
104 specified improvements. If the high quality standards are
105 not met during the succeeding year, or the number of
106 schools in the district given probationary status is not
107 reduced to a number that would allow full accreditation to
108 be granted in the following year, the district board shall be
109 automatically given nonapproval. In addition, nonapproval
110 shall be given to a district board of education which fails to

111 submit an annual program plan or fails to demonstrate a
112 reasonable effort to meet the high quality standards.

113 (g) Whenever nonapproval status is given to a district,
114 the state board of education shall declare a state of
115 emergency in the district and may intervene in the
116 operation of the district to (1) limit the authority of the
117 district superintendent and district board of education as to
118 the expenditure of funds, the employment and dismissal of
119 personnel, the establishment and operation of the school
120 calendar, the establishment of instructional programs and
121 policies, and such other areas as may be designated by the
122 state board by rule, (2) take such direct action as may be
123 necessary to correct the impairment and (3) declare that the
124 office of the district superintendent is vacant.

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

137 The teams shall be composed of not more than ten
138 persons, not more than half of whom may be members of or
139 currently employed by the state board, who possess the
140 necessary knowledge, skills and experience to make an
141 accurate assessment of such educational programs. The
142 educational standards compliance team shall report the
143 findings of its on-site reviews to the state board of
144 education for inclusion in the determination of a school's or
145 district's accreditation or approval status as applicable.
146 The state board of education shall encourage the sharing of
147 information to improve school effectiveness among the
148 districts.

149 The state board shall make accreditation information
150 available to the Legislature, the governor, the general
151 public and to any individuals who request such
152 information.

153 (i) The state board shall fully implement the
154 accreditation system established under this article for all
155 schools on the first day of July, one thousand nine hundred
156 eighty-nine, and may pilot test the system prior to that date.
157 The state board shall adopt rules necessary to implement
158 the provisions of this article.

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

1 It shall be unlawful for any person knowingly and
2 intentionally to falsely report any information required
3 under this article.

4 Any person who violates the provisions of this section is
5 guilty of a misdemeanor, and, upon conviction thereof, shall
6 be imprisoned in the county jail for not more than one year,
7 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.**

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

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

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

1 The state board shall promulgate rules outlining
2 appropriate methods of recognizing and honoring teachers,
3 students attending schools of excellence, and parents or

4 members of the school community who have contributed to
5 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.

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

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-13. Authority of boards generally.

1 The boards, subject to the provisions of this chapter and
2 the rules and regulations of the state board, shall have
3 authority:
4 (1) To control and manage all of the schools and school
5 interests for all school activities and upon all school
6 property, whether owned or leased by the county, including
7 the authority to require that records be kept of all receipts
8 and disbursements of all funds collected or received by any
9 principal, teacher, student or other person in connection
10 therewith, any programs, activities or other endeavors of
11 any nature operated or carried on by or in the name of the
12 school, or any organization or body directly connected with
13 the school, to audit such records and to conserve such funds,
14 which shall be deemed quasi-public moneys, including
15 securing surety bonds by expenditure of board moneys;

16 (2) To establish schools, from preschool through high
17 school, inclusive of vocational schools; and to establish
18 schools and programs, or both, for post high school
19 instruction, subject to approval of the state board of
20 education;

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

29 (4) To consolidate schools;

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

36 (6) (a) To provide at public expense adequate means of
37 transportation, including transportation across county
38 lines, for all children of school age who live more than two
39 miles distance from school by the nearest available road; to
40 provide at public expense and according to such regulations
41 as the board may establish, adequate means of
42 transportation for school children participating in board-
43 approved curricular and extracurricular activities; and to
44 provide in addition thereto at public expense, by rules and
45 regulations and within the available revenues,
46 transportation for those within two miles distance; to
47 provide in addition thereto, at no cost to the board and
48 according to rules and regulations established by the board,
49 transportation for participants in projects operated,
50 financed, sponsored or approved by the commission on
51 aging: *Provided*, That all costs and expenses incident in any
52 way to transportation for projects connected with the
53 commission on aging shall be borne by such commission, or
54 the local or county chapter thereof: *Provided, however*,
55 That in all cases the school buses owned by the board of
56 education shall be driven or operated only by drivers
57 regularly employed by the board of education: *Provided*

58 *further*, That the county board may provide, under rules
59 established by the state board, for the certification of
60 professional employees as drivers of board-owned vehicles
61 with a seating capacity of less than ten passengers used for
62 the transportation of pupils for school-sponsored activities
63 other than transporting students between school and home:
64 *And provided further*, That the use of such vehicles shall be
65 limited to one for each school-sponsored activity: *And*
66 *provided further*, That buses shall be used for
67 extracurricular activities as herein provided only when the
68 insurance provided for by this section shall have been
69 effected;

70 (b) To enter into agreements with one another to
71 provide, on a cooperative basis, adequate means of
72 transportation across county lines for children of school age
73 subject to the conditions and restrictions of subdivisions (6)
74 and (8) of this section;

75 (7) To lease school buses operated only by drivers
76 regularly employed by the board to public and private
77 nonprofit organizations or private corporations to
78 transport school-age children to and from camps or
79 educational activities in accordance with rules and
80 regulations established by the board. All costs and expenses
81 incurred by or incidental to the transportation of such
82 children shall be borne by the lessee;

83 (8) To provide at public expense for insurance against
84 the negligence of the drivers of school buses, trucks or other
85 vehicles operated by the board; and if the transportation of
86 pupils be contracted, then the contract therefor shall
87 provide that the contractor shall carry insurance against
88 negligence in such an amount as the board shall specify;

89 (9) To provide solely from county funds for all regular
90 full-time employees of the board all or any part of the cost of
91 a group plan or plans of insurance coverage not provided or
92 available under the West Virginia public employees
93 insurance act;

94 (10) To employ teacher aides, to provide in-service
95 training for teacher aides, the training to be in accordance
96 with rules and regulations of the state board and, in the case
97 of service personnel assuming duties as teacher aides in
98 exceptional children programs, to provide a four-clock-
99 hour program of training prior to such assignment which

100 shall, in accordance with rules and regulations of the state
101 board, consist of training in areas specifically related to the
102 education of exceptional children;

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

107 (12) To employ legal counsel;

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

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

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

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

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

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

141 The county superintendents shall submit written reports

142 of the joint meetings to the state superintendent. These
 143 reports shall be submitted on or before the fifteenth day of
 144 December, one thousand nine hundred eighty-eight, and
 145 contain a discussion of the advantages and disadvantages of
 146 the joint establishment of county systems, together with
 147 recommendations for the implementation for joint
 148 establishment of county school systems.

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

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

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

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

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

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

16 Within the employment term there shall be an
 17 instructional term for pupils of not less than one hundred

18 eighty nor more than one hundred eighty-five instructional
19 days: *Provided*, That the minimum instructional term may
20 be decreased, by order of the state superintendent of
21 schools, in any West Virginia county declared to be a federal
22 disaster area by the Federal Emergency Management
23 Agency. Instructional and noninstructional activities may
24 be scheduled during the same employment day.
25 Noninstructional interruptions to the instructional day
26 shall be minimized to allow the classroom teacher to teach.
27 The instructional term shall commence no earlier than the
28 first day of September and shall terminate no later than the
29 eighth day of June.

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

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

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

57 The board may extend the instructional term beyond one
58 hundred eighty-five instructional days provided the
59 employment term is extended an equal number of days. If
60 the state revenues and regular levies, as provided by law,

61 are insufficient to enable the board of education to provide
62 for the school term, the board may at any general or special
63 election, if petitioned by at least five percent of the
64 qualified voters in the district, submit the question of
65 additional levies to the voters. If at the election a majority of
66 the qualified voters cast their ballots in favor of the
67 additional levy, the board shall fix the term and lay a levy
68 necessary to pay the cost of the additional term. The
69 additional levy fixed by the election shall not continue
70 longer than five years without submission to the voters. The
71 additional rate shall not exceed by more than one hundred
72 percent the maximum school rate prescribed by article
73 eight, chapter eleven of the code, as amended.

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

89 (c) The public schools shall be open for the full
90 instructional term to all persons who have attained the
91 entrance age as stated in section five, article two and section
92 eighteen, article five, chapter eighteen of this code:
93 *Provided*, That persons over the age of twenty-one may
94 enter only those programs or classes authorized by the state
95 board of education and deemed appropriate by the county
96 board of education conducting any such program or class:
97 *Provided, however*, That authorization for such programs
98 or classes shall in no way serve to affect or eliminate
99 programs or classes offered by county boards of education
100 at the adult level for which fees are charged to support such
101 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
2 education in consultation with the department of health,
3 training programs on the prevention, transmission, spread
4 and treatment of acquired immune deficiency syndrome
5 shall be provided by the county boards as in-service
6 training for all school personnel. The county boards shall
7 encourage the attendance of parents at these programs and
8 notify such parents to the fullest extent practicable,
9 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.

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

15 (b) County boards of education shall provide or contract
16 with appropriate health agencies to provide, upon the
17 request of a parent or guardian residing within the district,
18 developmental screening for their child or children under
19 compulsory school attendance age: *Provided*, That a county
20 board is not required to provide such screening to the same
21 child more than once in any one school year. Developmental
22 screening is the process of measuring the progress of
23 children to determine if there are problems or potential
24 problems or advanced abilities in the areas of

25 understanding language, perception through sight,
26 perception through hearing, motor development and hand-
27 eye coordination. health, and psycho-social or physical
28 development. The boards shall coordinate the provision of
29 developmental screening with other public agencies and the
30 interagency plan for exceptional children under section
31 eight, article twenty of this chapter to avoid the duplication
32 of services and to facilitate the referral of children and their
33 parents or guardians who need other services. The county
34 boards shall provide notice to the public of the availability
35 of these services.

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

§18-5-18a. Maximum teacher-pupil ratio.

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

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

20 Beginning with the school year one thousand nine
21 hundred eighty-six—eighty-seven, and thereafter, no
22 county shall maintain a greater number of classrooms
23 having two or more grades that include one or more of the
24 grade levels referred to in this section than were in
25 existence in said county as of the first day of January, one

26 thousand nine hundred eighty-three: *Provided*, That for
27 the prior school years, and only if there is insufficient
28 classroom space available in the school or county, a county
29 may maintain one hundred ten percent of such number of
30 classrooms.

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

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

49 The requirement for approval of an exception to exceed
50 the twenty pupils per kindergarten teacher per session limit
51 or the twenty-five pupils per teacher limit in grades one
52 through six is waived in schools where the schoolwide
53 pupil-teacher ratio is twenty-five or less in grades one
54 through six: *Provided*, That a teacher shall not have more
55 than three pupils above the teacher/pupil ratio as set forth
56 in this section. Any kindergarten teacher who has more
57 than twenty pupils per session and any classroom teacher of
58 grades one through six who has more than twenty-five
59 pupils shall be paid additional compensation based on the
60 affected classroom teacher's average daily salary divided
61 by twenty for kindergarten teachers or twenty-five for
62 teachers of grades one through six for every day the
63 additional pupils are enrolled in the teacher's classroom.
64 All such additional compensation shall be paid from county
65 funds exclusively.

66 No provision of this section is intended to limit the
67 number of pupils per teacher in a classroom for the purpose
68 of instruction in choral, band or orchestra music.

69 Each school principal shall assign students equitably
 70 among the classroom teachers, taking into consideration
 71 reasonable differences due to subject areas and/or grade
 72 levels.

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

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

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

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

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

22 The state board, with the advice of the state
 23 superintendent, shall establish and prescribe guidelines
 24 and criteria relating to the establishment, operation and
 25 successful completion of transitional or developmental
 26 kindergarten programs in accordance with the other
 27 provisions of this section and high quality educational
 28 programs.

29 Funding to implement the transitional or developmental
30 kindergarten program during the fiscal year one thousand
31 nine hundred eighty-nine and thereafter shall be
32 appropriated from the general revenues of the state to the
33 state board for distribution to the counties.

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

§18-5-26. School buildings as child care facilities.

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

19 The child care facility shall be operated in accordance
20 with guidelines to be adopted by a committee appointed by
21 the state superintendent which shall include
22 representatives of the legislature, the department of human
23 services, at least two individuals active in statewide
24 associations of school personnel, at least two individuals
25 active in parent-teacher associations, and at least two
26 county school administrators. Such guidelines may provide
27 that the child day care facility be funded by the parents, the
28 school personnel or parent-teacher associations, the county
29 board of education or any combination of funding,
30 including independent or federal funding sources. Within
31 such guidelines and dependent upon adequate facilities and

32 personnel, any county board of education may extend use of
33 the child day care facility to other than school personnel.

34 Upon decision by the county board and in accordance
35 with state law, any child care facility operated pursuant to
36 the provisions of this section may be deemed operated by
37 the county for purposes of liability and insurance.
38 Personnel hired therefor may be deemed county school
39 personnel or may be independent contractors pursuant to a
40 management contract entered into between the county
41 board and the child care providers. Any parent-teacher
42 association, school personnel association or other entity
43 involved in implementation of the program may also be
44 party to such contract.

45 Schools need not be open for any other purpose for such
46 day care centers to operate.

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

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

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

25 The county boards may employ as teachers for this
26 summer school program any certified teacher. Certified

27 teachers employed by the county board to teach in the
28 summer school program shall be paid an amount to be
29 determined by the county board and shall enter into a
30 contract of employment in such form as is prescribed by the
31 county board: *Provided*, That teachers who teach summer
32 courses of instruction which are offered for credit and
33 which are taught during the regular school year shall be
34 paid at the same daily rate such teacher would receive if
35 paid in accordance with the then current minimum monthly
36 salary in effect for teachers in that county.

37 Any funds accruing from such tuitions shall be credited to
38 and expended within the existing framework of the general
39 current expense fund of the county board.

40 Notwithstanding any other provision of this code to the
41 contrary, the board shall fill professional positions
42 established pursuant to the provisions of this section on the
43 basis of certification and length of time the professional has
44 been employed in the county's summer school program. In
45 the event that no employee who has been previously
46 employed in the summer school program holds a valid
47 certification or licensure, a board shall fill the position as a
48 classroom teaching position in accordance with section
49 eight-b, article four, chapter eighteen-a of this code.

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

1 (a) The state board shall establish guidelines prior to the
2 first day of January, one thousand nine hundred eighty-
3 nine, for the operation of public kindergarten and
4 elementary schools on a semester basis within the
5 applicable provisions of this article and chapter relating to
6 the school term. Notwithstanding any other provision of
7 this code to the contrary relating to compulsory school
8 attendance, any child required or allowed by proximity to
9 attend a school operated on a semester basis shall be
10 deemed to have reached compulsory school age and shall
11 enroll as follows: (1) For the fall semester, in such year when
12 the sixth birthday is reached on or between the first day of
13 July and the last day of December, and (2) for the spring
14 semester, when the sixth birthday is reached on or between
15 the first day of January and the last day of June of that year:
16 *Provided*, That the state board shall establish guidelines for
17 enrollment prior to a child's reaching compulsory school

18 age. Student progress within and between the various grade
19 levels shall be determined on a semester by semester basis,
20 and promotion or assignment to the middle or junior high
21 school grade levels is conditioned upon completion of either
22 of the last two semesters offered at the elementary school.

23 (b) By the school year one thousand nine hundred eighty-
24 nine—ninety, the state board shall select at least four
25 elementary schools with kindergarten programs which may
26 be operated on a semester basis upon applications
27 submitted, with preference being given in such selection to
28 schools in different regional education service agency areas
29 to the extent reasonable and practical based on the
30 applications. The operation of these schools on a semester
31 basis shall be phased in by grade level beginning with
32 kindergarten and progressing by one additional grade level
33 in each successive school year until all of the grade levels
34 offered at that school are operated on a semester basis.

ARTICLE 7A. 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.
7 The accumulated contributions of a member returned to
8 him upon his withdrawal, or paid to his estate or designated
9 beneficiary in the event of death, shall be paid from the
10 teachers accumulation fund. Any accumulated
11 contributions forfeited by failure to claim such
12 contributions shall be transferred from the teachers
13 accumulation fund to the reserve fund.

14 (b) Beginning on the first day of July, one thousand nine
15 hundred eighty-four, contributions of employers, equaling
16 annually the members' contributions, shall be deposited in
17 the employers accumulation fund through state
18 appropriations, and such amounts shall be included in the
19 budget bill submitted annually by the governor.

20 Beginning on the first day of July, one thousand nine
21 hundred eighty-nine, each county shall deposit in the
22 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

66 retirement board appropriations to pay the accrued
67 liabilities of the system, caused by the granting of prior
68 service, ad hoc increases granted prior to the first day of
69 July, one thousand nine hundred eighty, and disability
70 pensions. Costs associated with board investments, such as
71 premiums, accrued interest and commissions, shall be paid
72 from the reserve fund.

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

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

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

1 Any annuitant who is receiving a retirement annuity of
2 less than seven thousand five hundred dollars annually on
3 the effective date of this section shall receive a
4 supplemental benefit, prospectively, under this section:
5 *Provided*, That the effective date of retirement for such
6 annuitant was prior to the first day of July, one thousand
7 nine hundred seventy-nine, and he had ten years or more of
8 credited service at the time of such retirement. For the
9 purposes of this section, "effective date of retirement"
10 means the last day of actual employment, or the last day
11 carried on the payroll of the employer, whichever is later,
12 together with a meeting fully of all eligibility requirements
13 for retirement prior to the aforesaid effective date. Any
14 annuitant retired pursuant to the disability provisions of
15 this article shall be considered to have had ten years or more
16 credited service at the time of such retirement.

17 Each such annuitant shall receive as his supplemental
18 benefit an increased annual amount which is the product of
19 the sum of eighteen dollars multiplied by his years of
20 credited service: *Provided*, That the total annuity of any
21 annuitant affected by the provisions of this section,
22 together with any of the other provisions of this article,

23 shall not exceed seven thousand five hundred dollars
24 annually.

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

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

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

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

**§18-8-1a. Compulsory school attendance; public school
entrance requirements; exceptions thereto.**

1 Notwithstanding the provisions of section one of this
2 article, compulsory school attendance shall begin with the
3 school year in which the sixth birthday is reached prior to
4 September one of such year or upon enrolling in a publicly
5 supported kindergarten program and continue to the
6 sixteenth birthday or for as long as the student shall
7 continue to be enrolled in a school system after the
8 sixteenth birthday: *Provided*, That a child may be removed
9 from such kindergarten program when the principal,

10 teacher and parent or guardian concur that the best interest
 11 of the child would not be served by requiring further
 12 attendance: *Provided, however,* That the principal shall
 13 make the final determination with regard to compulsory
 14 school attendance in a publicly supported kindergarten
 15 program: *Provided further,* That the compulsory school
 16 attendance provision of this article shall be enforced
 17 against a person eighteen years of age or older for as long as
 18 the person continues to be enrolled in a school system, and
 19 shall not be enforced against the parent, guardian, or
 20 custodian of such person.

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

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

1 Any person who, after receiving due notice as hereinafter
 2 provided, shall fail to cause a child or children in that
 3 person's legal or actual charge to attend school as
 4 hereinbefore provided, shall be guilty of a misdemeanor,
 5 and shall, upon conviction thereof, be fined not less than
 6 fifty nor more than one hundred dollars together with the
 7 costs of prosecution, or confined in jail not less than five nor

8 more than twenty days. The magistrate or judge may
9 require the parent or parents to bring the child to school and
10 remain through the school day until such time as the
11 magistrate or judge may determine as appropriate. Every
12 day a child is out of school contrary to the provisions of this
13 article shall constitute a separate offense. Magistrates shall
14 have concurrent jurisdiction with circuit courts for the trial
15 of offenses arising under this section.

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

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

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

9 In the case of five consecutive or ten total unexcused
10 absences of a child during a single semester, the attendance
11 director or assistant shall serve written notice to the parent,
12 guardian or custodian of such child that the attendance of
13 such child at school is required and that within ten days of
14 receipt of such notice the parent, guardian or custodian,
15 accompanied by the child, if possible, shall report in person
16 to the school the child attends for a conference with the
17 principal or other designated representative of the school in
18 order to discuss and correct the circumstances causing the
19 inexcusable absences of the child; and if the parent,
20 guardian or custodian does not comply with the provisions
21 of this article, then the attendance director or assistant
22 shall make complaint against such parent, guardian or
23 custodian before a magistrate of the county. The attendance
24 director or assistant may serve such notice for other
25 absences from school found to be in violation of law. For
26 any similar subsequent offense in any school year no notice
27 shall be required. If it appears from the complaint that there
28 is probable cause to believe that an offense has been

29 committed and that the accused has committed it, a warrant
30 for the arrest of the accused shall issue to any officer
31 authorized by law to arrest persons charged with offenses
32 against the state. More than one warrant may be issued on
33 the same complaint. The warrant shall be executed within
34 ten days of its issuance.

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

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

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

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

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

72 (b) Confer with principals and teachers on the
73 comparison of school census and enrollment for the
74 detection of possible nonenrollees;

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

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

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

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

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

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

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

11 It shall also be the duty of each principal, administrative
12 head or other chief administrator of each public school to
13 ascertain and report promptly the name of any parent,
14 guardian or custodian of any child of compulsory school age
15 as defined in this article who was or should be enrolled in
16 the school reporting and who has not enrolled in any school
17 that year. By way of ascertaining the status of school
18 attendance, each principal, administrative head or other

19 chief administrator shall compare the school census with
 20 the school enrollment at the opening of the school term and
 21 each month thereafter, or as directed by the county
 22 superintendent of schools, and report the same to the
 23 county attendance director: *Provided*, That any child who
 24 was or should be enrolled in a particular school, but who is
 25 at the time enrolled in another school shall be considered as
 26 attending the school in which enrolled and shall be included
 27 only in the report of attendance from the school in which the
 28 child is enrolled at the time.

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

§18-8-5a. Home visitations.

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

9 Such home visitations shall be deemed the equivalent of
 10 one day of continuing education in accordance with rules
 11 and regulations of the state board requiring such education.

12 The county board may adopt rules and regulations
 13 regarding such home visitations and shall reimburse a
 14 teacher for the necessary traveling expenses upon
 15 presentation of an itemized, sworn statement.

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

1 (a) In accordance with the provisions of sections three
 2 and five, article two, chapter seventeen-b of this code, the
 3 department of motor vehicles shall deny a license or

4 instruction permit for the operation of a motor vehicle to
5 any person under the age of eighteen who does not at the
6 time of application present a diploma or other certificate of
7 graduation issued to the person from a secondary high
8 school of this state or any other state, or documentation that
9 the person (1) is enrolled and making satisfactory progress
10 in a course leading to a general educational development
11 certificate (GED) from a state approved institution or
12 organization, or has obtained such certificate, (2) is enrolled
13 in a secondary school of this state or any other state, or (3) is
14 excused from such requirement due to circumstances
15 beyond his or her control.

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

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

42 (d) Whenever the withdrawal from school of such
43 student, or such student's failure to enroll in a course
44 leading to or to obtain a GED or high school diploma, is
45 beyond the control of such student, or is for the purpose of
46 transfer to another school as confirmed in writing by the

47 students parent or guardian, no such notice shall be sent to
 48 the department of motor vehicles to suspend the student's
 49 motor vehicle operator's license, and if the student is
 50 applying for a license, the attendance director or chief
 51 administrator shall provide the student with
 52 documentation to present to the department of motor
 53 vehicles to excuse such student from the provisions of this
 54 section. The school district superintendent (or the
 55 appropriate school official of any private secondary school)
 56 with the assistance of the county attendance director and
 57 any other staff or school personnel, shall be the sole judge of
 58 whether such withdrawal is due to circumstances beyond
 59 the control of such person.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-2. Definitions.

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
 10 shall have the same meaning as "teacher" as defined in
 11 section one, article one, chapter eighteen of this code.
 12 "Professional instructional personnel" means a
 13 professional educator whose regular duty is as that of a
 14 classroom teacher, librarian or counselor. A professional
 15 educator having both instructional and administrative or
 16 other duties shall be included as professional instructional
 17 personnel for that ratio of the school day for which he is
 18 assigned and serves on a regular full-time basis in
 19 appropriate instruction, library or counseling duties.
 20 "Service personnel salaries" shall mean the state legally
 21 mandated salaries for service personnel as provided in
 22 section eight-a, article four, chapter eighteen-a of the code.
 23 "Service personnel" shall mean all personnel as provided
 24 for in section eight, article four, chapter eighteen-a of this
 25 code. For the purpose of computations under this article of
 26 ratios of service personnel to adjusted enrollment, a service

27 employee shall be counted as that number found by
28 dividing his number of employment days in a fiscal year by
29 two hundred: *Provided*, That the computation for any such
30 person employed for three and one-half hours or less per
31 day as provided in section eight-a, article four, chapter
32 eighteen-a of this code, shall be calculated as one half an
33 employment day.

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

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

59 “Levies for general current expense purposes” means on
60 each hundred dollars of valuation, twenty-two and five
61 tenths cents on Class I property, forty-five cents on Class II
62 property, and ninety cents on Classes III and IV property.

63 “Basic resources per pupil” for the state and the several
64 counties means the total of (a) property tax revenues
65 computed at the maximum regular levy rates as provided by
66 section six-c, article eight, chapter eleven of this code, at a
67 uniform rate of ninety-five percent, but excluding revenues
68 from increased levies as provided in section ten, article X of
69 the Constitution of West Virginia, and (b) basic state aid as

70 provided in sections twelve and thirteen of this article, but
 71 excluding the foundation allowance to improve
 72 instructional programs as provided in section ten of this
 73 article, and excluding any funds appropriated for the
 74 purpose of achieving salary equity among county board
 75 employees, this total divided by the number of students in
 76 adjusted enrollment: *Provided*, That any year's allocations
 77 to the counties of the eighty percent portion of the
 78 foundation allowance to improve instructional programs,
 79 as provided in section ten of this article, shall be determined
 80 on the basis of the immediately preceding school year's
 81 basic resources per pupil.

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

1 The basic foundation allowance to the county for
 2 professional educators shall be the amount of money
 3 required to pay the state minimum salaries, in accordance
 4 with provisions of article four, chapter eighteen-a of the
 5 code, to such personnel employed: *Provided*, That in
 6 making this computation no county shall receive an
 7 allowance for such personnel which number is in excess of
 8 fifty-five professional educators to each one thousand
 9 students in adjusted enrollment: *Provided, however*, That
 10 any county not qualifying under the provision of section
 11 fourteen of this article shall be eligible for a growth rate in
 12 professional personnel in any one year not to exceed twenty
 13 percent of its total potential increase under this provision,
 14 except that in no case shall such limit be fewer than five
 15 professionals: *Provided further*, That the number of and the
 16 allowance for personnel paid in part by state and county
 17 funds shall be prorated: *And provided further*, That where
 18 two or more counties join together in support of a
 19 vocational or comprehensive high school or any other
 20 program or service, the professional educators for such
 21 school or program may be prorated among the participating
 22 counties on the basis of each one's enrollment therein and
 23 that such personnel shall be considered within the above-
 24 stated limit: *And provided further*, That in the school year
 25 beginning the first day of July, one thousand nine hundred
 26 eighty-eight, and the succeeding school year, each county
 27 board shall establish and maintain a minimum ratio of fifty
 28 professional instructional personnel per one thousand
 29 students in adjusted enrollment, and in the school year

30 beginning the first day of July, one thousand nine hundred
31 ninety, and for each succeeding school year, each county
32 board shall establish and maintain a minimum ratio of
33 fifty-one professional instructional personnel per one
34 thousand students in adjusted enrollment. Any county
35 board which does not establish and maintain this minimum
36 ratio shall suffer a pro rata reduction in the allowance for
37 professional educators under this section, and, further, any
38 county board which does not establish and maintain this
39 minimum ratio shall utilize any and all allocations to it by
40 provision of section fourteen of this article solely to employ
41 professional instructional personnel until the minimum
42 ratio is attained: *And provided further*, That for the fiscal
43 year commencing on the first day of July, one thousand nine
44 hundred eighty-eight, only, the foundation allowance for
45 professional educators for a county board of education shall
46 be equal to the amount allowable based upon the actual
47 ratio of professional educators per one thousand students in
48 net enrollment for which the county board of education
49 received state reimbursement during the school year one
50 thousand nine hundred eighty-seven—eighty-eight, except
51 that this provision shall not apply to those counties whose
52 percent rate of special education enrollment to net
53 enrollment is less than sixteen and two tenths percent. No
54 person employed prior to the first day of July, one thousand
55 nine hundred eighty-eight, shall have their employment
56 terminated because of a reduction in force resulting from
57 the provisions of this section. Reductions in force will be
58 achieved only through attrition and early retirement.

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

1 The basic foundation allowance to the county for service
2 personnel shall be the amount of money required to pay the
3 annual state minimum salaries in accordance with the
4 provisions of article four, chapter eighteen-a of the code, to
5 such service personnel employed: *Provided*, That no county
6 shall receive an allowance for an amount in excess of thirty-
7 four service personnel per one thousand students in
8 adjusted enrollment: *Provided, however*, That the state
9 superintendent of schools is authorized in accordance with
10 rules and regulations established by the state board and
11 upon request of a county superintendent, to waive the
12 maximum ratio of thirty-four service personnel per one

13 thousand students in adjusted enrollment and the twenty
14 percent per year growth cap provided in this section in
15 those cases where the state superintendent determines that
16 student population density and miles of bus route driven
17 justify such waiver, except that no waiver shall be granted
18 to any county whose financial statement shows a net
19 balance in general current expense funds greater than three
20 percent at the end of the previous fiscal year: *Provided*
21 *further*, That on or before the first day of each regular
22 session of the Legislature, the state board, through the state
23 superintendent, shall make to the Legislature a full report
24 concerning the number of waivers granted and the fiscal
25 impact related thereto: *And provided further*, That for the
26 fiscal year commencing on the first day of July, one
27 thousand nine hundred eighty-eight, only, the foundation
28 allowance for service personnel for a county board of
29 education shall be equal to the amount allowable based
30 upon the actual ratio of service personnel per one thousand
31 net enrollment for which the county board of education
32 received state reimbursement during the school year one
33 thousand nine hundred eighty-seven—eighty-eight, except
34 that this provision shall not apply to those counties whose
35 percent rate of special education enrollment to net
36 enrollment is less than sixteen and two tenths percent.
37 Every county shall utilize methods other than reduction in
38 force, such as attrition and early retirement, before
39 implementing their reductions in force policy to comply
40 with the limitations of this section.

41 For any county which has in excess of thirty-four service
42 personnel per one thousand students in adjusted
43 enrollment, such allowance shall be computed based upon
44 the average state minimum pay scale salary of all service
45 personnel in such county: *Provided*, That for any county
46 having fewer than thirty-four service personnel per one
47 thousand students in adjusted enrollment, in any one year,
48 the number of service personnel used in making this
49 computation may be increased the succeeding years by no
50 more than twenty percent per year of its total potential
51 increase under this provision, except that in no case shall
52 such limit be fewer than two service personnel until the
53 county attains the maximum ratio set forth: *Provided*,
54 *however*, That where two or more counties join together in

55 support of a vocational or comprehensive high school or any
56 other program or service, the service personnel for such
57 school or program may be prorated among the participating
58 counties on the basis of each one's enrollment therein and
59 that such personnel shall be considered within the above-
60 stated limit.

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

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

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

20		Maximum Professional	Maximum service
21	For the	educators per 1000	personnel per 1000
22	school year	net enrollment the	net enrollment the
23		preceding year	preceding year
24	1989-90	76.5	45.5
25	1990-91	76.0	45.0
26	1991-92	75.5	44.5
27	1992-93	75.0	44.0
28	1993-94	74.5	43.75
29	1994-95 and	74.0	43.5
30	thereafter		

31 (c) No person employed prior to the first day of July, one

32 thousand nine hundred eighty-eight, will be laid off
33 because of a reduction in force resulting from the provisions
34 of this section. Reductions in force will be achieved only
35 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
2 the following:

3 (1) The sum of the foundation allowance for
4 professional educators and the foundation allowance for
5 other personnel, as determined in sections four and five
6 above, multiplied by the current social security rate of
7 contribution; plus

8 (2) The sum of the foundation allowance for
9 professional educators and the foundation allowance for
10 other personnel, as determined in sections four and five
11 above, multiplied by four hundredths of one percent as an
12 allowance for unemployment compensation contribution;
13 plus

14 (3) The sum of the foundation allowance for
15 professional educators and the foundation allowance for
16 other personnel, as determined in sections four and five
17 above, multiplied by the rate which is derived by dividing
18 the total contributions for workers' compensation for
19 professional educators and other personnel by the total of
20 the state minimum salaries. The computation of this rate
21 shall be determined by using data of the most recent year for
22 which available; plus

23 (4) The teachers retirement fund allowance as
24 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
2 sum of the basic foundation allowance for professional
3 educators and the basic foundation allowance for service
4 personnel, as provided in sections four and five of this
5 article; all salary equity appropriations authorized in
6 section five, article four of chapter eighteen-a; and such
7 amounts as are to be paid by the counties pursuant to
8 sections five-a and five-b of said article to the extent such
9 county salary supplements are equal to the amount
10 distributed for salary equity among the counties, multiplied
11 by the following factors for the following fiscal years:

	Fiscal year	Factor
12		
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%

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

§18-9A-8. Foundation allowance for administrative cost.

1 The allowance for administrative cost shall be equal to
2 one and two tenths percent of the allocation for professional
3 educators, as determined in section four of this article.

4 Distribution of the computed allowance shall be made as
5 follows:

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

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

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

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

3 (1) For current expense, for the year one thousand nine
4 hundred eighty-eight—eighty-nine only, seven and seven
5 tenths percent of the sum of the computed state allocation
6 for professional educators and service personnel as
7 determined in sections four and five of this article, and
8 thereafter the rate shall be eight and two tenths percent.

9 Distribution to the counties shall be made proportional to
 10 the average of each county's average daily attendance for
 11 the preceding year and the county's second month net
 12 enrollment; plus

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

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

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

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

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

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

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

21 Beginning with the county which has the lowest basic
 22 resources per pupil and progressing through the counties
 23 successively to and beyond the county with the highest
 24 basic resources per pupil, the funds available shall be

25 allocated in amounts necessary to increase moneys
26 available to the county or counties to the basic resources per
27 pupil level, as nearly as is possible, of the county having the
28 next higher basic resources per pupil: *Provided*, That to be
29 eligible for its allocation under this section, a county board
30 shall lay the maximum regular tax rates set out in section
31 six-c, article eight, chapter eleven of this code: *Provided*,
32 *however*, That moneys allocated by provision of this section
33 shall be used to improve instructional programs according
34 to a plan for instructional improvement which the affected
35 county board shall file with the state board by the first day
36 of August of each year, to be approved by the state board by
37 the first day of September of that year if such plan
38 substantially complies with standards to be adopted by the
39 state board: *Provided further*, That no part of this
40 allocation may be used to employ professional educators in
41 counties until and unless all applicable provisions of
42 sections four and fourteen of this article have been fully
43 utilized. Such instructional improvement plan shall be
44 made available for distribution to the public at the office of
45 each affected county board.

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

62 (d) There shall be appropriated seven million four
63 hundred ten thousand six hundred sixty-eight dollars for
64 aid to counties which may be expended by the county
65 boards for the initiation, and/or improvements of special
66 education programs including employment of new special
67 education professional personnel solely serving exceptional

68 children; instructional programs which utilize state of the
69 art technology; training of educational personnel to work
70 with exceptional children; and supportive costs such as
71 materials, transportation, contracted services, minor
72 renovations and other costs directly related to the special
73 education delivery process prescribed by the state board.
74 The appropriation may also be used for nonpersonnel costs
75 associated with the maintenance of special education
76 programs in accordance with such rules as established by
77 the state board. The appropriation includes out-of-state
78 instruction and may be expended to provide instruction,
79 care and maintenance for educable persons who are
80 severely handicapped and for whom the state provides no
81 facilities.

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

**§18-9A-11. Computation of local share; appraisal and
assessment of property.**

1 (a) On the basis of the most recent survey of property
2 valuations in the state, completed as to all classes of
3 property in all counties determined by the tax
4 commissioner under present or former provisions of this
5 article, the state board shall for each county compute by
6 application of the levies for general current expense
7 purposes, as defined in section two of this article, the
8 amount of revenue which such levies would produce if

9 levied upon one hundred percent of the appraised value of
10 each of the several classes of property contained in the
11 report or revised report of such value, made to it by the tax
12 commissioner as follows: (1) The state board shall first take
13 ninety-seven and one-half percent of the amount
14 ascertained by applying these rates to the total assessed
15 public utility valuation in each classification of property in
16 the county. (2) The state board shall then apply these rates
17 to the appraised value of other property in each
18 classification in the county as determined by the tax
19 commissioner and shall deduct therefrom five percent as an
20 allowance for the usual losses in collections due to
21 discounts, exonerations, delinquencies and the like. Fifty
22 percent of the amount so determined shall be added to the
23 ninety-seven and one-half percent of public utility taxes
24 computed as provided above and this total shall be the local
25 share of the particular county.

26 Effective the first day of July, one thousand nine hundred
27 eighty-two, fifty-five percent of the amount so determined
28 shall be added to the ninety-seven and one half percent of
29 public utility taxes computed as provided above and this
30 total shall be the local share of the particular county:
31 *Provided*, That for the fiscal year beginning on the first day
32 of July, one thousand nine hundred eighty-eight, the state
33 board shall apply these rates to the assessed taxable value
34 of other property in each classification in the county and
35 shall deduct therefrom five percent as an allowance for the
36 usual losses in collections due to discounts, exonerations,
37 delinquencies and the like. Ninety percent of the amount so
38 determined shall be added to the public utility taxes
39 computed as provided above: *Provided, however*, That for
40 the fiscal year beginning on the first day of July, one
41 thousand nine hundred eighty-nine, and thereafter, the
42 state board shall apply these rates to the assessed taxable
43 value of other property in each classification in the county
44 and shall deduct five percent as an allowance for the usual
45 losses in collections due to discounts, exonerations,
46 delinquencies and the like. All of the amount so determined
47 shall be added to the public utility taxes computed as
48 provided above.

49 (b) The tax commissioner shall make or cause to be
50 made an appraisal in the several counties of the state of all
51 nonutility real property and of all nonutility personal

52 property which shall be based upon true and actual value as
53 set forth in article three, chapter eleven of this code. In
54 determining the value of personal property — other than all
55 machinery, equipment, furniture and fixtures of any
56 industrial plant, mine, quarry or installation and of any
57 commercial, industrial or professional establishment — the
58 tax commissioner shall prescribe accepted methods of
59 determining such values. The tax commissioner shall in
60 accordance with such methods determine the value of such
61 property.

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

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

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

88 (d) The tax commissioner shall prescribe appropriate
89 methods for the appraisal of the various types of property
90 subject to taxation as public utilities and the types of
91 property which are to be included in the operating property
92 of a public utility and thereby not subject to taxation by the
93 county assessor. Only parcels or other property, or portions
94 thereof, which are an integral part of the public utility's
95 function as a utility shall be included as operating property.

96 (e) As information from such appraisal of property in a
97 county under the provisions of this section becomes
98 available for a district, municipality and county, the tax
99 commissioner shall notify the county commission and the
100 assessor of said county that such information is available
101 and shall make available to said county commission and
102 assessor all data, records and reports or other information
103 relating to said work, along with a list of any properties in
104 said district, municipality and county which are entered on
105 the assessment rolls but for which no appraisal has been
106 made, a list of any properties which were appraised but
107 which cannot be found on the assessment rolls and a list of
108 all properties carried on the assessment rolls which have
109 not been identified on the map. Said list shall set forth the
110 name of the owner and a description of the property and the
111 reason, if known, for its failure to have been entered on the
112 assessment rolls or to have been appraised or to have been
113 identified on the map, as the case may be.

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

132 (g) Whenever in any year a county assessor or a county
133 commission shall fail or refuse to comply with the
134 provisions of this section in setting the valuations of
135 property for assessment purposes in any class or classes of
136 property in the county, the state tax commissioner shall
137 review the valuations for assessment purposes made by the
138 county assessor and the county commission and shall direct

139 the county assessor and the county commission to make
140 such corrections in the valuations as may be necessary so
141 that they shall comply with the requirements of chapter
142 eleven of this code and this section, and the tax
143 commissioner shall enter the county and fix the assessments
144 at the required ratios. Refusal of the assessor or the county
145 commission to make such corrections shall constitute
146 grounds for removal from office.

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

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

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

179 (2) Property record cards arranged geographically
180 according to the location of property on the tax maps, which
181 cards shall set forth the location and description thereof,

182 the acreage or dimensions, description of improvements, if
183 any, the owner's name, address and date of acquisition, the
184 purchase price, if any, set forth in the deed of acquisition,
185 the amount of tax stamps, if any, on the deed, the assessed
186 valuation, and the identifying number or symbol and
187 number, shown on the tax map; and

188 (3) Property owner's index consisting of an alphabetical
189 listing of all property owners, setting forth brief
190 descriptions of each parcel or lot owned and cross-indexed
191 with the property record cards and the tax map.

192 (j) The tax commissioner is hereby authorized and
193 empowered to enter into such contracts as may be
194 necessary, and for which funds may be available, to
195 establish the permanent records system herein provided
196 for, or may through his staff and employees, prepare and
197 complete such system.

198 All microfilm photography and original copies of tax
199 maps created under the provisions of this section are the
200 property of the state of West Virginia and the reproduction,
201 copying, distribution or sale of such microfilm,
202 photography or tax maps or any copies thereof without the
203 written permission of the state tax commissioner is
204 prohibited. Any person who shall violate the provisions of
205 this paragraph shall be guilty of a misdemeanor, and, upon
206 conviction thereof, shall be fined not less than fifty dollars
207 nor more than three hundred dollars, or imprisoned in the
208 county jail not less than thirty days nor more than one year,
209 or both fined and imprisoned. Magistrates shall have
210 concurrent jurisdiction with other courts having
211 jurisdiction for the trial of all misdemeanors arising under
212 this paragraph.

213 The tax commissioner shall by uniform rules establish a
214 procedure for the sale of reproduction of microfilm,
215 photography and maps and may pay for having such
216 reproductions made from the appropriation for "property
217 appraisal." Any funds received as a result of the sale of such
218 reproductions shall be deposited to the appropriated
219 account from which the payment for reproduction is made.

220 (k) The cost of conducting the appraisal herein provided
221 for shall be borne jointly by the state and the several
222 counties in the following manner and terms: There shall be
223 appropriated from the general revenue fund annually an
224 amount sufficient to maintain the appraisal in all counties

225 of the state. Each county shall furnish, through its county
 226 commission, not more than ten percent of the cost of such
 227 appraisal or reappraisal and permanent records system for
 228 each county. Such county costs may be paid over a period of
 229 three years with the approval of the tax commissioner. In
 230 those instances where the cost of the appraisal, reappraisal
 231 or permanent records system required by this section has
 232 been paid by the tax commissioner from funds appropriated
 233 for these purposes, the share of such cost allocated to each
 234 county shall, upon receipt thereof by the tax commissioner,
 235 be deposited to the appropriated account from which such
 236 payments have been made. In those instances where a
 237 county has heretofore employed a professional appraisal
 238 firm to conduct an appraisal or reappraisal of all or part of
 239 nonutility property within the past seventeen years, and
 240 such appraisal has been accepted by the tax commissioner,
 241 with the county having borne in excess of ten percent of the
 242 cost of such appraisal, reappraisal, and permanent records
 243 system, monetary reimbursement of one third of such
 244 excess costs shall be made by the tax commissioner from
 245 funds appropriated for such purpose, to such county,
 246 yearly, for a period of three years, in order to establish the
 247 joint sharing of such costs as hereinbefore set forth.

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

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

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

1 For the fiscal years commencing on the first day of July,
 2 one thousand nine hundred eighty-eight and eighty-nine,
 3 only, the total state appropriation for the basic foundation
 4 program shall be no less than the state appropriation for the

5 fiscal year which began on the first day of July one thousand
6 nine hundred eighty-seven.

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

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

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

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

§18-9A-14. Incentive for staffing improvement.

1 (a) In order to encourage counties to move toward new
2 and improved programs and to reduce class size, counties
3 having ratios of adjusted enrollment to professional staff
4 higher than the state average will be granted, to the extent
5 appropriations are provided, advance funds to employ
6 sufficient additional staff to reach the state average:
7 *Provided*, That in any one fiscal year no more than one half
8 of such additional staff may be counted under this
9 provision. Such funds shall be granted to each eligible
10 county based on data at the end of the second month of
11 school but only on the basis of actual staff members
12 employed.

13 (b) Counties having ratios of adjusted enrollment to
14 service personnel higher than the state average will be
15 granted, to the extent appropriations are provided, funds to

16 employ service personnel to progress toward the state
17 average: *Provided*, That in any fiscal year the number of
18 service personnel for which funds are allocated shall not
19 exceed that number of service personnel by which the
20 counties' computations for allocations may be increased as
21 provided in section five of this article.

§18-9A-14a. Incentive for administrative efficiency.

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

15 (1) The county maintained the minimum instructional
16 personnel ratio set forth in section four of this article;

17 (2) The county reduced the number of maximum class
18 size exemptions, if any, as provided for in section eighteen-
19 a, article five of this chapter, by twenty-five percent over
20 the prior year; and

21 (3) The county reduced the number of split grade
22 exemptions, if any, as provided for in section eighteen-a,
23 article five of this chapter, by twenty-five percent over the
24 prior year.

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

36 exceed the sum of the numbers derived by multiplying (1)
37 the first two hundred or fewer professional educators and
38 service personnel for whom basic state aid is authorized by
39 this article by two and one half percent and (2) all
40 additional such personnel, if any, by one percent, such sum
41 to be rounded down to the nearest tenth.

42 (c) The provisions of this section shall commence with
43 the school year beginning on the first day of July, one
44 thousand nine hundred eighty-nine, and continue
45 thereafter.

§18-9A-22. Standards for educational quality.

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

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

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

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

29 The state department of education shall review the plans
30 annually and conduct an on-site review of each county's
31 educational program every fourth year. The state board of

32 education shall have authority to issue four types of
33 recognition status: (1) full approval, (2) substantial
34 approval, (3) probationary and (4) nonapproval.

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

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

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

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

63 (b) After the thirty-first day of December, one thousand
64 nine hundred eighty-eight, the approval of educational
65 programs based on high quality educational standards
66 established by the state board shall be in accordance with
67 the provisions of article two-e of this chapter and the
68 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
2 intentionally to falsify any enrollment or attendance

3 reports for the purpose of obtaining state funds allocated to
4 a county under the provisions of this article.

5 Any person who violates the provisions of this section is
6 guilty of a misdemeanor, and, upon conviction thereof, shall
7 be confined in the county jail for not more than six months,
8 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
2 constituted under the provisions of section one, article two
3 of this chapter, is the school building authority for the
4 purposes of this article and as such, may exercise all of the
5 powers and functions granted to it under the provisions of
6 this article.

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

§18-9D-2. Definitions.

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

4 (1) "Authority" means the school building authority of
5 West Virginia or if said authority shall be abolished, any
6 board or officer succeeding to the principal functions
7 thereof, or to whom the powers given to said authority shall
8 be given by law;

9 (2) "Bonds" means bonds issued by the authority
10 pursuant to this article;

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

21 (4) "Cost of project" means the cost of construction,

22 renovation, repair and safety upgrading of facilities,
 23 buildings and structures for school purposes; the cost of
 24 land, equipment, machinery, furnishings, installation of
 25 utilities and other similar items convenient in connection
 26 with placing the foregoing into operation; and the cost of
 27 financing, interest during construction, professional
 28 service fees and all other charges or expenses necessary,
 29 appurtenant or incidental to the foregoing, including the
 30 cost of administration of this article;

31 (5) "Revenue" or "revenues" mean moneys deposited in
 32 the school building capital improvements fund pursuant to
 33 the operation of subsection (b), section ten, article nine-a of
 34 this chapter; any moneys received, directly or indirectly,
 35 from any source for the use of all or any part of any project
 36 completed pursuant to this article; and any other moneys
 37 received by the authority for the purposes of this article.

§18-9D-3. Powers of authority.

1 The school building authority has power:

2 (1) To sue and be sued, plead and be pleaded;

3 (2) To have a seal and alter the same at pleasure;

4 (3) To contract to acquire and to acquire, in the name of
 5 the authority by purchase, lease-purchase, or otherwise,
 6 real property or rights or easements necessary or
 7 convenient for its corporate purposes and to exercise the
 8 power of eminent domain to accomplish such purposes;

9 (4) To acquire, hold and dispose of real and personal
 10 property for its corporate purposes;

11 (5) To make bylaws for the management and rule of its
 12 affairs;

13 (6) With the consent of the attorney general of the state
 14 of West Virginia, to use the facilities, office, assistants and
 15 employees of the attorney general in all legal matters
 16 relating to or pertaining to the authority;

17 (7) To appoint officers, agents and employees, and fix
 18 their compensation;

19 (8) To make contracts, and to execute all instruments
 20 necessary or convenient to effectuate the intent of, and to
 21 exercise the powers granted to it by, this article;

22 (9) To renegotiate all contracts entered into by it
 23 whenever, due to a change in situation, it appears to the
 24 authority that its interests will be best served;

25 (10) To acquire by purchase, eminent domain or
26 otherwise all real property or interests therein necessary or
27 convenient to accomplish the purposes of this article;

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

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

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

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

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

51 (16) To do all things necessary or convenient to carry out
52 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.**

1 The school building authority may, in accordance with
2 the provisions of this article, issue revenue bonds of the
3 authority from time to time, either to finance the cost of
4 school building capital improvement projects for public
5 schools in this state, as determined on the basis of need by
6 resolution of the authority, or to refund, at the discretion of
7 the authority, bonds issued and outstanding under and
8 pursuant to the provisions of this article. The principal of,
9 interest and redemption premium, if any, on such bonds

10 shall be payable solely from the special fund herein
11 provided for such payment.

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

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

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

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

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

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

18 (4) Students in elementary and secondary schools tend

19 to achieve a higher standard of performance when the
20 payment of tuition for their higher education is secured.

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

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

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

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

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

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

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

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

59 (d) *Construction.* — Other sections of this article which
60 apply generally to bonds issued under this article shall
61 apply to the revenue bonds issued under this section. If any

62 language in this section conflicts with language in another
63 section of this article, the language of this section shall
64 control unless such a construction would be unlawful, or
65 would not be in the public interest, or would be contrary to
66 the statements of finding and purpose in this section.

67 (e) *Tax treatment.*

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

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

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

97 (f) *Reports.* — The school building authority and the
98 trustee of an individual higher education savings plan
99 program shall make such reports regarding such bonds to
100 the tax commissioner and to the individuals of record who
101 own the bonds with respect to bond principal and interest
102 (and the years to which they relate) and such other matters

103 as the tax commissioner may require. The reports required
104 by this section shall be filed with the tax commissioner at
105 least annually, at such time and in such manner as the tax
106 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.**

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

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

24 Any balance remaining in the school building capital
25 improvements fund after the authority has issued bonds
26 authorized by this article, and after the requirements of all
27 funds including reserve funds established in connection
28 with the bonds issued pursuant to this article have been
29 satisfied, may be used for the redemption of any of the
30 outstanding bonds issued hereunder which by their terms
31 are then redeemable, or for the purchase of such bonds at
32 the market price, but at not exceeding the price, if any, at

33 which such bonds shall in the same year be redeemable, and
 34 all bonds redeemed or purchased shall forthwith be
 35 canceled and shall not again be issued.

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

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

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

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

1 The issuance of revenue bonds under the provisions of

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

40 Any pledge of revenues for such revenue bonds made by
41 the school building authority shall be valid and binding
42 between the parties from the time the pledge is made; and
43 the revenues so pledged shall immediately be subject to the
44 lien of such pledge without any further physical delivery

45 thereof or further act. The lien of such pledge shall be valid
46 and binding against all parties having claims of any kind in
47 tort, contract or otherwise, irrespective of whether such
48 parties have notice of the lien of such pledge, and such
49 pledge shall be a prior and superior charge over any other
50 use of such revenues so pledged.

51 The proceeds of such bonds shall be used solely for the
52 payment of the cost of those projects as generally and
53 specifically set forth in the resolution authorizing those
54 bonds, and shall be deposited in the state treasury in a
55 special fund to be disbursed as provided by law for the
56 disbursement of any other state funds. If the proceeds of
57 such bonds, by error in calculations or otherwise, shall be
58 less than the cost of such projects, additional bonds may in
59 like manner be issued to provide the amount of the
60 deficiency; and unless otherwise provided for in the
61 resolution or trust agreement hereinafter mentioned, such
62 additional bonds shall be deemed to be of the same issue,
63 and shall be entitled to payment from the same fund,
64 without preference or priority, as the bonds before issued
65 for such projects. If the proceeds of bonds issued for such
66 projects exceed the cost thereof, the surplus may be used for
67 such other projects as the school building authority may
68 determine or in such other manner as the resolution
69 authorizing such bonds may provide. Prior to the
70 preparation of definitive bonds, the authority may, under
71 like restrictions, issue temporary bonds with or without
72 coupons, exchangeable for definitive bonds upon the
73 issuance of such definitive bonds.

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

80 Such revenue bonds and the revenue refunding bonds,
81 and bonds issued for combined purposes shall, together
82 with the interest thereon, be exempt from all taxation by
83 the state of West Virginia, or by any county, school district,
84 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.

1 The issuance of revenue refunding bonds under the
2 provisions of this article shall be authorized by resolution of
3 the school building authority and shall otherwise be subject
4 to the limitations, conditions and provisions of other
5 revenue bonds under this article. Such revenue refunding
6 bonds may be issued in an amount at the option of the
7 authority sufficient to pay either in full or together with
8 interest earned on the investment of the proceeds thereof,
9 whether or not at the time of the issuance of the revenue
10 refunding bonds the hereafter mentioned bonds are payable
11 or callable for optional redemption; (1) the redemption
12 premium, if any, on such outstanding bonds or the prior
13 redemption thereof; (2) the interest due and payable on such
14 outstanding bonds to and including the first date upon
15 which said outstanding bonds are callable prior to
16 maturity, not exceeding, however, ten years from the date of
17 issuance of such revenue refunding bonds, or the dates upon
18 which the principal of said outstanding bonds mature
19 before such first date on which the same are callable prior to
20 maturity, including any interest theretofore accrued and
21 unpaid; and (3) all expenses of the issuance and sale of said
22 revenue refunding bonds, including all necessary financial
23 and legal expenses, and also including the creation of initial
24 debt service reserve funds. Any revenues pledged with
25 respect to the outstanding bonds may be used for any or all
26 of the purposes stated in (1), (2) and (3) above or may be
27 deposited in a sinking fund or reserve fund or other funds
28 for the issue of bonds which have been issued wholly or in
29 part for the purpose of such refunding. Such amount of the
30 proceeds of the revenue refunding bonds as shall be
31 sufficient for the payment of the principal of, interest and
32 redemption premium, if any, on such outstanding bonds
33 which will not be immediately due and payable shall be
34 deposited in trust, for the sole purpose of making such
35 payments, with the treasurer of the state of West Virginia.
36 Any of the moneys so deposited in trust may, prior to the
37 date on which such moneys will be needed for the payment
38 of principal of, interest and redemption premium, if any, on
39 such outstanding bonds, be invested and reinvested as

40 determined by the authority, in whole or in part: (a) In
41 direct obligations issued by the United States of America or
42 one of its agencies or in direct obligations of the state of
43 West Virginia, (b) in obligations unconditionally
44 guaranteed by the United States of America as to principal
45 and interest, or (c) in certificates of deposit of a banking
46 corporation or association which is a member of the federal
47 deposit insurance corporation, or successor; but any such
48 certificates of deposit must be fully secured as to both
49 principal and interest by pledged collateral consisting of
50 direct obligations of or obligations guaranteed by the
51 United States of America, or direct obligations of the state
52 of West Virginia, having a market value, excluding accrued
53 interest, at all times at least equal to the amount of the
54 principal of and accrued interest on such certificates of
55 deposit. Any such investments must mature, or be payable
56 in advance of maturity at the option of the holder, and must
57 bear interest in such manner as to provide funds which,
58 together with uninvested money, will be sufficient to pay
59 when due or called for redemption the bonds refunded,
60 together with interest accrued and to accrue thereon and
61 redemption premiums, if any, and such refunding bonds'
62 proceeds or obligations so purchased therewith shall be
63 deposited in escrow and held in trust for the payment and
64 redemption of the bonds refunded: *Provided*, That if
65 interest earned by any investment in such escrow is shown
66 to be in excess of the amounts required from time to time for
67 the payment of interest on and principal of the refunded
68 bonds, including applicable redemption premium, then
69 such excess may be withdrawn from escrow and disbursed
70 in such manner as the authority shall by resolution
71 determine, subject to the provisions of section five of this
72 article. Any moneys in the sinking or reserve funds or other
73 funds maintained for the outstanding bonds to be refunded
74 may be applied in the same manner and for the same
75 purpose as are the net proceeds of refunding bonds or may
76 be deposited in the special fund or any reserve funds
77 established for account of the refunding bonds.

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

81 The school building authority shall have power to enter

82 into such escrow agreements and to insert therein such
83 protective and other covenants and provisions as it may
84 consider necessary to permit the carrying out of the
85 provisions of this article and to insure the prompt payment
86 of the principal of and interest and redemption premiums
87 on the revenue bonds refunded.

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

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

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

§18-9D-11. Bonds shall be negotiable instruments.

1 The revenue bonds, revenue refunding bonds and bonds
2 issued for combined purposes under the provisions of this
3 article shall, independently of the requirements of any
4 other provision of law and solely by virtue of the provisions
5 of this section, be and have all the qualities and incidents of
6 negotiable instruments.

§18-9D-12. Trust agreements for holders of bonds.

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

§18-9D-13. Sinking fund for payment of bonds.

1 From the school building capital improvement fund the
2 school building authority shall make periodic payments to
3 the state treasurer in an amount sufficient to meet the
4 requirements of any issue of bonds sold under the
5 provisions of this article, as may be specified in the
6 resolution of the authority authorizing the issue thereof and
7 in any trust agreement entered into in connection
8 therewith. The payments so made shall be placed by the
9 treasurer in a special sinking fund which is hereby pledged

10 to and charged with the payment of the principal of the
11 bonds of such issue and the interest thereon, and to the
12 redemption or repurchase of such bonds, such sinking fund
13 to be a fund for all bonds of such issue without distinction or
14 priority of one over another, except as may be provided in
15 the resolution authorizing such issue of bonds. The moneys
16 in the special sinking fund, less such reserve for payment of
17 principal and interest and redemption premium, if any, as
18 may be required by the resolution of the school building
19 authority, authorizing the issue and any trust agreement
20 made in connection therewith, may be used for the
21 redemption of any of the outstanding bonds payable from
22 such fund which by their terms are then redeemable, or for
23 the purchase of bonds at the market price, but at not
24 exceeding the price if any, at which such bonds shall in the
25 same year be redeemable; and all bonds redeemed or
26 purchased shall forthwith be canceled and shall not again
27 be issued.

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

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

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

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

1 The state superintendent of schools shall organize,
2 promote, administer and be responsible for:
3 (1) Stimulating and assisting county boards of
4 education in establishing, organizing and maintaining
5 special schools, classes, regular class programs, home-
6 teaching and visiting-teacher services.
7 (2) Cooperating with all other public and private
8 agencies engaged in relieving, caring for, curing, educating
9 and rehabilitating exceptional children, and in helping
10 coordinate the services of such agencies.
11 (3) Preparing the necessary rules, regulations, formula
12 for distribution of available appropriated funds, reporting
13 forms and procedures necessary to define minimum

14 standards in providing suitable facilities for education of
 15 exceptional children and ensuring the employment,
 16 certification and approval of qualified teachers and
 17 therapists subject to approval by the state board of
 18 education.

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

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

33 (6) Performing such other duties and assuming such
 34 other responsibilities in connection with this program as
 35 may be needed.

36 (7) Nothing herein contained shall be construed to
 37 prevent any county board of education from establishing
 38 and maintaining special schools, classes, regular class
 39 programs, home-teaching or visiting-teacher services out of
 40 funds available from local revenue.

§18-20-7. Exceptional children program compliance review teams.

1 The state board shall establish exceptional children
 2 program compliance review teams to conduct random
 3 unannounced on-site reviews of such programs at least
 4 every four years in each county for the purpose of reviewing
 5 identification procedures, complying with any or all
 6 applicable laws and policies, delivering services, verifying
 7 enrollment and attendance reports, recommending
 8 changes, and fulfilling such other duties as may be
 9 established by the state board.

10 Each review team unit shall consist of five members
 11 including one member of an exceptional children advocacy
 12 group who is not an employee of any county or state
 13 government agency, one teacher of exceptional children in

14 the specific category or categories to be reviewed, one
15 person certified to interpret psycho-educational
16 assessments, one school finance official and one financial
17 auditor who shall not be an employee of any county board,
18 all appointed by the state superintendent.

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

1 (a) The state departments of health, human services and
2 education shall enter into a collaborative agreement for the
3 purpose of developing a statewide plan of coordinating
4 comprehensive, multi-disciplinary interagency programs
5 providing appropriate early intervention services to all
6 developmentally delayed and at-risk children, ages birth
7 through five years, and their families to be phased in by the
8 school year one thousand nine hundred ninety—ninety-one.

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

11 (1) Specification of the population to be served;

12 (2) The development of regulations and procedural
13 safeguards;

14 (3) The development of procedures for administration,
15 supervision and monitoring;

16 (4) The identification and coordination of all available
17 resources; and

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

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

32 The functions of the council shall include the following:

33 (1) Meet at least quarterly;

34 (2) Solicit information and opinions from concerned
35 agencies, groups and individuals;

36 (3) Advise and assist the departments of health, human
37 services and education in the development of the statewide
38 plan herein required; and

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

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

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

**ARTICLE 21. UNDERWOOD-SMITH TEACHER SCHOLARSHIP
PROGRAM.**

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

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

9 (b) For the purposes of this article, "board", means the
10 board of regents unless the context in which used clearly
11 indicates otherwise.

12 (c) There is hereby created in the state treasury a special
13 revolving fund to be known as the "Underwood-Smith
14 Teacher Scholarship Fund" to be administered by the board
15 of regents solely for granting scholarships to prospective
16 teachers in accordance with this article. Any moneys which
17 may be appropriated by the Legislature or received by the

18 board from other sources for the purposes of this article
19 shall be deposited in the fund, and any moneys remaining in
20 the fund at the close of a fiscal year shall be carried forward
21 for use in the next fiscal year. Any moneys repaid to the
22 board of regents by reason of default of a scholarship
23 agreement under this article shall also be deposited in the
24 fund. Fund balances shall be invested with the state's
25 consolidated investment fund, and any and all interest
26 earnings on these investments shall be used solely for the
27 purposes for which moneys invested were appropriated or
28 otherwise received.

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

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

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

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

10 (b) Selections of Underwood-Smith teacher scholarship
11 recipients shall be made from aides as defined in section
12 eight, article four of chapter eighteen-a of this code, who
13 have a cumulative grade point of three and two tenths on a
14 possible scale of four after successfully completing two
15 years of course work at an approved institution of higher
16 education or students who are West Virginia residents and

17 have graduated or who are graduating from high school,
18 and who rank in the top ten percent of their graduating
19 class or the top ten percent statewide of those West Virginia
20 students taking the American College Test, except that
21 selections of the teacher scholarship recipients at the
22 master's degree level shall be made from students who have
23 graduated or are graduating in the top ten percent of their
24 college graduating class. The board shall develop criteria
25 and procedures for the selection of recipients which may
26 include, but not be limited to, the applicant's grade point
27 average, involvement in extra-curricular activities,
28 financial need, current academic standing, and an
29 expression of interest in teaching as expressed in an essay
30 written by the applicant. The board may also require the
31 applicant to furnish letters of recommendation from
32 teachers and others. The selection criteria and procedures
33 shall also reflect the present and projected teacher needs of
34 the state, including the demand for and supply of early
35 childhood, elementary and secondary teachers and teachers
36 with training in specific academic disciplines.

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

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

§18-21-3. Scholarship agreement.

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

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

6 (2) Within a ten-year period after completing the
7 teacher education for which the scholarship was awarded,

8 teach full time under contract with a county board of
9 education (A) in a public education program in the state for
10 a period of not less than two years for each year for which a
11 scholarship was received, or (B) in this state in a teacher
12 shortage area as determined by the state board of
13 education, in an exceptional children program in this state,
14 or in a school in an economically disadvantaged area of this
15 state for not less than one year for each year for which a
16 scholarship was received; or

17 (3) Repay all or part of an Underwood-Smith teacher
18 scholarship received under this article plus interest and, if
19 applicable, reasonable collection fees, in compliance with
20 rules issued by the board under subsection (b), section four
21 of this article, except as provided in subsections (c) and (d)
22 of said section four.

23 (b) Scholarship agreements shall fully disclose the
24 terms and conditions under which assistance under this
25 article is provided and under which repayment may be
26 required, including:

27 (1) A description of the conditions and procedures to be
28 established under section four of this article; and

29 (2) A description of the appeals procedure required to
30 be established under section four of this article.

**§18-21-4. Renewal conditions; noncompliance; deferral;
excusal.**

1 (a) The recipient of an Underwood-Smith teacher
2 scholarship is eligible for scholarship renewal only during
3 such periods that the board finds the recipient is:

4 (1) Enrolled as a full-time student in an accredited
5 institution of higher education in this state;

6 (2) Pursuing a course of study leading to teacher
7 certification at the pre-school, elementary or secondary
8 level in this state; and

9 (3) Maintaining satisfactory progress as determined by
10 the institution of higher education the recipient is
11 attending; and

12 (4) Complying with such other standards as the board
13 may establish by rule.

14 (b) Recipients found by the board to be in
15 noncompliance with the agreement entered into under
16 section three of this article shall be required to repay the

17 amount of the scholarship awards received, plus interest
18 and, where applicable, reasonable collection fees, on a
19 schedule and at a rate of interest to be prescribed by the
20 board by rule. The board shall provide by rule for
21 procedures for proration of the amount to be repaid by a
22 recipient who teaches for part of the period required under
23 subsection (a), section three of this article and for appeal
24 procedures under which a recipient may appeal any
25 determination of noncompliance.

26 (c) A recipient shall not be considered in violation of the
27 agreement entered into under section three of this article
28 during any period in which the board finds that the
29 recipient is:

30 (1) Pursuing a full-time course of study at an accredited
31 institution of higher education;

32 (2) Serving, not in excess of three years, as a member of
33 the armed services of the United States;

34 (3) Seeking and unable to find full-time employment as
35 a teacher in a public education or exceptional children
36 program in the state; or

37 (4) Satisfying the provisions of additional repayment
38 exemptions that may be prescribed by the board by rule.

39 (d) A recipient shall be excused from repayment of a
40 teacher scholarship received under this article if the
41 recipient dies or becomes permanently and totally disabled
42 as established by sworn affidavit of a qualified physician.

**§18-21-5. Amount and duration of scholarship; relation to
other assistance.**

1 (a) Subject to subsection (b) of this section, each
2 recipient of an Underwood-Smith teacher scholarship is
3 eligible to receive assistance of up to five thousand dollars
4 for each academic year of higher education in preparation
5 for becoming a pre-school, elementary or secondary teacher
6 in the public schools of this state. No individual may receive
7 scholarship assistance for more than four academic years
8 for the completion of a bachelor's degree and two academic
9 years for completion of a master's degree.

10 (b) No individual shall receive a scholarship award
11 under this article which exceeds the cost of attendance at
12 the institution the individual is attending. The board shall
13 establish the cost of attendance by rule based on the actual
14 cost of tuition and fees, and reasonable allowances for

15 books, educational supplies, room and board and other
16 expenses necessitated by individual circumstances. For the
17 purposes of establishing an award amount, the board shall
18 take into account the amount of financial aid assistance the
19 recipient has or will receive from all other sources. If the
20 amount of the Underwood-Smith teacher scholarship
21 assistance award and the amount of assistance awards
22 which the recipient has received from all other sources
23 exceed the cost of attendance, the Underwood-Smith
24 teacher scholarship shall be reduced by the amount by
25 which such combined assistance exceeds the cost of
26 attendance, except that when other assistance to be
27 received by the recipient includes assistance from the West
28 Virginia higher education grant program, the amount to be
29 received from the higher education grant program shall
30 first be reduced.

**ARTICLE 30. WEST VIRGINIA HIGHER EDUCATION TUITION TRUST
ACT.**

§18-30-1. Title.

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

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

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

7 In light of these findings, the Legislature declares the
8 purpose of this article and the West Virginia higher
9 education tuition trust fund created by this article is to
10 encourage students and their parents to plan for attendance
11 at an institution of higher education, to enable them to
12 finance the cost of a higher education in this state by
13 providing economic protection against rising tuition costs
14 at state institutions of higher education and economic
15 assistance for attendance at other institutions of higher
16 education in this state, and to enhance access to all
17 institutions of higher education to benefit the state of West
18 Virginia and its people.

§18-30-3. Definitions.

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

3 (a) "Average tuition cost" means the weighted average
4 cost per semester for full-time, resident, undergraduate
5 attendance at any state institution of higher education,
6 such weighted average cost to be arrived at by adding the
7 products of the cost of tuition at each state institution of
8 higher education for full-time attendance per semester
9 times its total number of full-time-equivalent
10 undergraduate students during a fiscal year, and then
11 dividing that sum by the total number of full-time-
12 equivalent undergraduate students attending all state
13 institutions of higher education in that fiscal year;

14 (b) "Board" means the board of directors of the West
15 Virginia higher education tuition trust board provided for
16 in section five of this article;

17 (c) "Contract" means a tuition prepayment contract or a
18 tuition trust account contract, or both;

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

21 (e) "Institution of higher education" means any public
22 or private, nonprofit, accredited, degree-granting college or
23 university;

24 (f) "Purchaser" means a person who makes or is
25 obligated to make payments pursuant to a tuition
26 prepayment contract or tuition trust account contract, or
27 both;

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

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

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

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

41 (k) "Tuition" means the cost of tuition and all

42 mandatory fees required of resident, undergraduate
43 students per semester at state institutions of higher
44 education including, but not limited to, fees required
45 pursuant to sections one, one-a, one-b and four, article
46 twenty-four of this chapter;

47 (l) "Tuition prepayment contract" means a contract
48 entered into by the trust and a purchaser pursuant to
49 section eight of this article; and

50 (m) "Tuition trust account contract" means a contract
51 entered into by the trust and a purchaser pursuant to
52 section nine of this article.

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

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

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

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

1 (a) The board of directors shall consist of the chancellor
2 of the board of regents, who shall be the chairman of the
3 board, the state treasurer, and the state superintendent of
4 schools, who shall serve as ex officio voting members of the
5 board, and six other members with knowledge, skill and
6 experience in an academic, business or financial field, who
7 shall be residents of the state appointed by the governor, by
8 and with the advice and consent of the Senate. Of the six
9 appointed members, four shall be appointed from
10 nominations as follows: One shall be a private citizen not
11 employed by or an officer of the state or any political
12 subdivision thereof appointed from one or more nominees
13 of the speaker of the House of Delegates; one shall be a
14 private citizen not employed by or an officer of the state or
15 any political subdivision thereof appointed from one or
16 more nominees of the president of the Senate; one shall be a
17 president of a state institution of higher education who

18 shall be appointed from one or more nominees of the council
19 of presidents of state colleges and universities; and one
20 shall represent the interests of private institutions of higher
21 education located in this state who shall be appointed from
22 one or more nominees of the West Virginia association of
23 private colleges. Of these six members first appointed, two
24 shall be appointed for terms that expire on the thirty-first
25 day of December, one thousand nine hundred eighty-nine,
26 two shall be appointed for terms that expire on the thirty-
27 first day of December, one thousand nine hundred ninety,
28 and two shall be appointed for a term that expires on the
29 thirty-first day of December, one thousand nine hundred
30 ninety-one. Following the expiration of these fixed terms, a
31 member shall be appointed for a term of three years. A
32 member shall serve until a successor is appointed, and a
33 vacancy shall be filled for the balance of the unexpired term
34 in the same manner as the original appointment. The
35 chancellor, treasurer, state superintendent or president of a
36 state institution of higher education may appoint a designee
37 to serve as a voting member of the board in such person's
38 absence.

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

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

57 (d) The board is subject to the open governmental
58 proceedings and freedom of information provisions of
59 article nine-a, chapter six, and chapter twenty-nine-b,
60 respectively, of this code.

§18-30-6. Powers generally.

- 1 In addition to the powers granted by other provisions of
2 this article, the board has the powers necessary or
3 convenient to carry out and effectuate the purposes,
4 objectives and provisions of this article, the purposes and
5 objectives of the trust and the powers delegated by other
6 laws or executive orders, including, but not limited to, the
7 power to:
- 8 (1) Invest any money of the trust, at the board's
9 discretion, with the West Virginia state board of
10 investments, or in any instruments, obligations, securities
11 or property authorized under article six, chapter twelve of
12 this code for the investment of state moneys;
 - 13 (2) Name and use depositories for its money in such
14 manner as is prescribed for the deposit of state moneys;
 - 15 (3) Pay money to institutions of higher education on
16 account of a qualified beneficiary as provided in a contract
17 made with the trust and to enter into contractual or other
18 arrangements that are necessary or appropriate with
19 institutions of higher education in order to fulfill the trust's
20 obligations under tuition prepayment and tuition trust
21 account contracts;
 - 22 (4) Administer the higher education tuition trust fund
23 pursuant to section seven and other provisions of this
24 article;
 - 25 (5) To make, execute and deliver contracts in
26 accordance with the provisions of sections eight and nine of
27 this article, which contracts shall set forth terms and
28 conditions relating to payment, benefits, withdrawal and
29 any other provisions which clarify the rights and duties of
30 the parties to the contracts;
 - 31 (6) Employ and delegate to an executive secretary or
32 others such functions and authority as the board considers
33 necessary or appropriate, including, but not limited to, the
34 hiring, oversight and supervision of employees of the trust;
 - 35 (7) Utilize the services, personnel and equipment of the
36 treasurer's office for the provision of all or a portion of the
37 services necessary for the management and operation of the
38 trust;
 - 39 (8) Contract with others, public or private, for goods
40 and any services necessary for the management and
41 operation of the trust, including the office of the attorney

42 general and engage the services of private consultants,
43 actuaries, managers, legal counsel and auditors for
44 rendering professional, management and technical
45 assistance and advice, all payable out of any money of the
46 trust from management and administrative withholding
47 fees in excess of that needed to ensure actuarial soundness
48 of the trust funds;

49 (9) Solicit and accept gifts, grants, loans and other aids
50 from any person or the federal, state or a local government
51 or any agency of the federal, state or a local government,
52 and to participate in any other way in any federal, state or
53 local government program;

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

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

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

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

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

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

81 (16) Impose reasonable limits on the number of partici-
82 pants in the trust; and

83 (17) Make transfers of trust moneys to the Lincoln scho-
84 larship 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.

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

7 (b) Assets of the trust shall not be considered state
8 money. The assets of the trust shall be preserved, invested
9 and expended solely pursuant to and for the purposes set
10 forth in this act and shall not be loaned or otherwise transfer-
11 red or used by the state for any purpose other than the
12 purposes of this act: *Provided*, That this section shall not be
13 construed to prohibit the trust from investing in, by purchase
14 or otherwise, bonds, notes or other obligations of the state, an
15 agency of the state or an instrumentality of the state.

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

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

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

22 (3) To pay the costs of administration, management and
23 organization of the trust and the fund not to exceed three
24 fourths of the amount of any management and administra-
25 tive withholding fees per year collected by the trust;

26 (4) To make transfers of moneys in the fund from man-
27 agement and administrative withholding fees for tuition
28 trust account contracts, less any amounts used for the pur-
29 poses of subdivision (3) of this subsection, to the Lincoln
30 scholarship fund created in section fifteen of this article; and

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

38 (d) Assets of the trust may be invested in such manner as
39 is prescribed under article six, chapter twelve of this code for

40 the investment of state funds in any instrument, obligation,
 41 security or property considered appropriate by the trust and
 42 may be pooled for investment purposes with investments of
 43 the state, including, but not limited to, state pension funds.
 44 (e) The property of the trust and its income and operation
 45 shall be exempt from all taxation by this state or any of its
 46 political subdivisions.

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

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

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

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

22 (2) The amount of withholding fee not to exceed twenty
 23 percent of accrued earnings where a refund is made or where
 24 the benefits of a contract are transferred to an institution of
 25 higher education located outside this state, unless such in-
 26 stitution has a reciprocal agreement with the board of re-
 27 gents pursuant to section ten-b, article twenty-six of this
 28 chapter and the qualified beneficiary is enrolled in a prog-
 29 ram covered by the agreement;

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

33 (4) The terms and conditions for making the payment,
 34 including, but not limited to, the date or dates upon which

35 the payment, or portions of the payment, shall be due, and
36 provisions for making payments in lump sums, periodic
37 sums or payroll deductions;

38 (5) Provisions for late payment charges and for default;

39 (6) The name and age of the qualified beneficiary under
40 the contract. The purchaser, with the approval of and on
41 conditions determined by the trust, may subsequently sub-
42 stitute another person for the qualified beneficiary original-
43 ly named, but may not sell or otherwise transfer the contract
44 without the prior approval of the trust;

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

50 (8) The terms and conditions under which the contract
51 may be terminated or transferred out of state in accordance
52 with section ten of this article, and the amount of the refund
53 to which the person terminating the contract, or specifically
54 the purchaser or designated qualified beneficiary if the
55 contract so provides, shall be entitled upon termination. The
56 contract shall specifically state whether the trust shall re-
57 fund any investment income attributable to the payments;

58 (9) The period of time from the beginning to the end of
59 which the qualified beneficiary may receive the benefits
60 under the contract: *Provided*, That such time shall be ex-
61 tended for such amount of time as the qualified beneficiary is
62 on active duty in the military services of the United States at
63 a time within which a Federal Selective Service Act is in
64 effect;

65 (10) All other rights and obligations of the purchaser and
66 the trust; and

67 (11) Other terms, conditions and provisions as the trust
68 considers in its sole discretion to be necessary or
69 appropriate.

70 (c) The form of any tuition prepayment contract to be
71 entered into by the trust shall first be approved by the board.

72 (d) A tuition prepayment contract shall be exempt from
73 the Uniform Securities Act, chapter thirty-two of this code.

74 (e) A tuition prepayment contract may provide that, if
75 after a number of years specified in the contract the contract
76 has not been terminated or the qualified beneficiary's rights
77 under the contract have not been exercised and after the

78 trust has made a reasonable effort to locate the purchaser
79 and qualified beneficiary or the agent of either, the rights of
80 the qualified beneficiary, the purchaser or the agent of either
81 shall be considered terminated.

§18-30-9. Tuition trust account contract provisions.

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

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

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

13 (2) The amount of withholding fee not to exceed twenty
14 percent of accrued earnings where a refund is made or where
15 the benefits of a contract are transferred to an institution of
16 higher education located outside this state, unless such in-
17 stitution has a reciprocal agreement with the board of re-
18 gents pursuant to section ten-b, article twenty-six of this
19 chapter and the qualified beneficiary is enrolled in a prog-
20 ram covered by the agreement;

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

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

32 (5) The terms and conditions under which the contract
33 may be terminated or transferred out of state in accordance
34 with section ten of this article, and the amount of the refund
35 to which the person terminating the contract, or specifically
36 the purchaser or designated qualified beneficiary if the

37 contract so provides, shall be entitled upon termination.
38 The contract shall specifically state whether the trust shall
39 refund any investment income attributable to the
40 payments;

41 (6) All other rights and obligations of the purchaser and
42 the trust; and

43 (7) Other terms, conditions and provisions as the trust
44 considers in its sole discretion to be necessary or
45 appropriate.

46 (c) The form of any tuition trust account contract to be
47 entered into by the trust shall first be approved by the
48 board.

49 (d) A tuition trust account contract shall be exempt
50 from the Uniform Securities Act, chapter thirty-two of this
51 code.

52 (e) A tuition trust account contract may provide that, if
53 after a number of years specified in the contract the
54 contract has not been terminated or the qualified
55 beneficiary's rights under the contract have not been
56 exercised and after the trust has made a reasonable effort to
57 locate the purchaser and qualified beneficiary or the agent
58 of either, the rights of the qualified beneficiary, the
59 purchaser, or the agent of either shall be considered
60 terminated.

**§18-30-10. Contract termination; refund; transfer of benefits
to institutions outside this state; penalty;
exception.**

1 (a) A tuition prepayment contract and tuition trust
2 account contract shall authorize a termination of the
3 contract when any one of the following occurs:

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

10 (2) The qualified beneficiary is not admitted to an
11 institution of higher education after making proper
12 application or fails to meet the standards for continued
13 admission to an institution of higher education;

14 (3) The qualified beneficiary certifies to the trust, after
15 he or she has a high school diploma or has reached the age of

16 majority, that he or she has decided not to attend an
 17 institution of higher education and requests, in writing,
 18 before the fifteenth day of July of the year in which the
 19 qualified beneficiary receives a high school diploma or
 20 reaches the age of majority, that the contract be terminated;

21 (4) The qualified beneficiary offers proof of the
 22 completion of the requirements for a degree pursuant to a
 23 two-year program at an institution of higher education and
 24 chooses no further attendance at an institution of higher
 25 education;

26 (5) The qualified beneficiary is on active duty in the
 27 military services of the United States at a time within which
 28 a Federal Selective Service Act is in effect; or

29 (6) Other circumstances, determined by the trust and set
 30 forth in the contract, occur.

31 (b) Such refund shall be an amount equal to the sum of
 32 payments and, if the contract so provides, accrued interest,
 33 minus applicable management and withholding fees and
 34 any amounts transferred to an institution of higher
 35 education prior to termination of the contract.

36 (c) A tuition prepayment contract and tuition trust
 37 account contract shall authorize a person who is entitled
 38 under the contract to transfer the benefits of the contract
 39 and to direct the payment of such benefits, less any
 40 withholding fee stated in the contract, to an institution of
 41 higher education located outside this state: *Provided*, That
 42 such withholding fee shall not be applied to a qualified
 43 beneficiary enrolled in a program at an institution of higher
 44 education with which the board of regents has a reciprocal
 45 agreement pursuant to section ten-b, article twenty-six of
 46 this chapter and such program is covered by the agreement.

§18-30-11. Report of account; annual audit.

1 The board shall annually prepare or cause to be prepared
 2 an accounting of the trust, including all administrative
 3 costs and the actuarial soundness of the trust, and shall
 4 transmit a copy of the accounting to the governor, the
 5 president of the Senate, the speaker of the House of
 6 Delegates and the respective minority leaders of the Senate
 7 and House of Delegates. The board shall also make
 8 available the accounting of the trust to the purchasers of the
 9 trust. The accounts of the board shall be subject to annual

10 audits by the legislative auditor or a certified public
11 accountant appointed by the legislative auditor.

§18-30-12. Administration of trust.

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

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

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

1 (a) A tuition prepayment contract or tuition trust
2 account contract shall not be entered into by the trust until
3 the Internal Revenue Service has issued a ruling or opinion
4 regarding the federal tax consequences of any benefits or
5 refunds received from the trust under the applicable
6 contract. If a ruling or opinion is rendered by the Internal
7 Revenue Service that any benefits or refunds under either
8 contract are subject to federal taxation, the board shall
9 present a report to the Legislature outlining
10 recommendations for the modification and continuance of
11 the trust or of any provisions under which such ruling or
12 opinion was rendered, including a recommendation as to

13 whether the trust should proceed to enter into such
 14 contracts. If continuation is recommended, the report shall
 15 also include measures which may be taken to provide that
 16 any benefits or refunds, or certain benefits or refunds, shall
 17 not be considered actually or constructively to be income
 18 for purposes of taxation. An unfavorable ruling or opinion
 19 regarding the federal tax consequences of any benefits or
 20 refunds pertaining to one of these contracts shall not
 21 preclude the trust from entering into the other contracts.

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

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

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

§18-30-14. Income tax deduction for purchasers.

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

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

9 (2) The amount of payment made under a contract with
 10 a private sector investment manager, broker-dealer or
 11 agent approved by the securities division of the state
 12 auditor of this state or the federal Securities and Exchange
 13 Commission for the private placement of contracts under

14 this article, such contract to be certified and approved by
15 the board to provide equivalent benefits, rights and duties
16 to purchasers, beneficiaries, the trust and institutions of
17 higher education as a tuition prepayment contract or a
18 tuition trust account contract.

§18-30-15. Lincoln scholarship fund created.

1 There is created in the state treasury under the
2 jurisdiction and control of the board a Lincoln scholarship
3 fund for the purpose of providing scholarships for residents
4 of this state to attend any state institution of higher
5 education. This scholarship fund shall be administered
6 pursuant to rules promulgated by the board of regents:
7 *Provided*, That certain funds may be set aside to enable and
8 to help ensure that any group of people determined to be
9 underrepresented at state institutions of higher education
10 know about, apply and qualify for such scholarships. The
11 Lincoln scholarship fund account shall be separate from all
12 other accounts of the board.

§18-30-16. Liberal construction; severability.

1 (a) This article shall be construed liberally to effectuate
2 the legislative intent, the purposes of the article, and as
3 complete and independent authority for the performance of
4 each and every act and thing authorized in the article, and
5 all powers granted herein shall be broadly interpreted to
6 effectuate such intent and purposes and not as to limitation
7 of powers.

8 (b) If any section, subsection, paragraph, clause or
9 provision of this article shall be adjudged unconstitutional
10 or ineffective, no other section, subsection, paragraph,
11 clause or provision of this article shall on account thereof be
12 considered invalid or ineffective, and the applicability or
13 invalidity of any section, subsection, paragraph, clause or
14 provision of this article in any one or more instances or
15 under any one or more circumstances shall not be taken to
16 affect or prejudice its applicability or validity in any other
17 instance or under any other circumstance.

§18-30-17. Expiration of act.

1 This article is repealed effective the first day of January,
2 one thousand nine hundred ninety-two, if the trust has not
3 entered into a tuition prepayment contract or tuition trust
4 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
2 by the board only upon nomination and recommendation of
3 the superintendent. In case the board refuses to employ any
4 or all of the persons nominated, the superintendent shall
5 nominate others and submit the same to the board at such
6 time as the board may direct. All personnel so nominated
7 and recommended for employment and for subsequent
8 assignment shall meet the certification, licensing, training,
9 and other eligibility classifications as may be required by
10 provisions of this chapter and by state board regulation.
11 Professional personnel employed as deputy, associate or
12 assistant superintendents by the board in offices,
13 departments or divisions at locations other than a school
14 and who are directly answerable to the superintendent shall
15 serve at the will and pleasure of the superintendent and may
16 be removed by the superintendent upon approval of the
17 board. Such professional personnel shall retain seniority
18 rights only in the area or areas in which they hold valid
19 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
2 execute a contract with their boards of education, which
3 contract shall state the salary to be paid and shall be in the
4 form prescribed by the state superintendent of schools.
5 Every such contract shall be signed by the teacher and by
6 the president and secretary of the board of education, and
7 when so signed shall be filed, together with the certificate of
8 the teacher, by the secretary of the office of the board.

9 A teachers' contract, under this section, shall be for a
10 term of not less than one nor more than three years; and if,
11 after three years of such employment, the teacher who holds
12 a professional certificate, based on at least a bachelor's
13 degree, has met the qualifications for the same, and the
14 board of education enter into a new contract of

15 employment, it shall be a continuing contract: *Provided*,
16 That any teacher holding a valid certificate with less than a
17 bachelor's degree who is employed in a county beyond the
18 said three-year probationary period shall upon qualifying
19 for said professional certificate based upon a bachelor's
20 degree, if reemployed, be granted continuing contract
21 status: *Provided, however*, That a teacher holding
22 continuing contract status with one county shall be granted
23 continuing contract status with any other county upon
24 completion of one year of acceptable employment if such
25 employment is during the next succeeding school year or
26 immediately following an approved leave of absence
27 extending no more than one year.

28 The continuing contract of any teacher shall remain in
29 full force and effect except as modified by mutual consent
30 of the school board and the teacher, unless and until
31 terminated (1) by a majority vote of the full membership of
32 the board before April first of the then current year, after
33 written notice, served upon the teacher, return receipt
34 requested, stating cause or causes, and an opportunity to be
35 heard at a meeting of the board prior to the board's action
36 thereon, or (2) by written resignation of the teacher before
37 that date. Such termination shall take effect at the close of
38 the school year in which the contract is so terminated:
39 *Provided*, That the contract may be terminated at any time
40 by mutual consent of the school board and the teacher, and
41 that this section shall not affect the powers of the school
42 board to suspend or dismiss a principal or teacher pursuant
43 to section eight of this article: *Provided, however*, That a
44 continuing contract for any teacher holding a certificate
45 valid for more than one year and in full force and effect
46 during the school year one thousand nine hundred eighty-
47 four, and one thousand nine hundred eighty-five, shall
48 remain in full force and effect: *Provided further*, That a
49 continuing contract shall not operate to prevent a teacher's
50 dismissal based upon the lack of need for the teacher's
51 services pursuant to the provisions of law relating to the
52 allocation to teachers and pupil-teacher ratios. But in case
53 of such dismissal, the teachers so dismissed shall be placed
54 upon a preferred list in the order of their length of service
55 with that board, and no teacher shall be employed by the
56 board until each qualified teacher upon the preferred list, in
57 order, shall have been offered the opportunity for

58 reemployment: *And provided further*, That he has not
 59 accepted a teaching position elsewhere. Such
 60 reemployment shall be upon a teacher's preexisting
 61 continuing contract and shall have the same effect as
 62 though the contract had been suspended during the time the
 63 teacher was not employed.

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

71 Any teacher who fails to fulfill his contract with the
 72 board, unless prevented from so doing by personal illness or
 73 other just cause, or unless released from such contract by
 74 the board, or who violates any lawful provision thereof,
 75 shall be disqualified to teach in any other public school in
 76 the state for a period of the next ensuing school year, and
 77 the state department of education or board may hold all
 78 papers and credentials of such teacher on file for a period of
 79 one year for such violation: *Provided*, That marriage of a
 80 teacher shall not be considered a failure to fulfill, or
 81 violation of, the contract.

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

§18A-2-2a. Leaves of absence for teachers and service personnel.

- 1 (a) Any teacher who is returning from an approved
- 2 leave of absence that extended for a period of one year or
- 3 less shall be reemployed by the county board with the right
- 4 to be restored to the same assignment of position or duties

5 held prior to the approved leave of absence. Such teacher
6 shall retain all seniority, rights and privileges which had
7 accrued at the time of the approved leave of absence, and
8 shall have all rights and privileges generally accorded
9 teachers at the time of the reemployment.

10 (b) An employee shall notify the county board at least
11 ten working days prior to beginning a leave of absence. The
12 county board shall approve such leave of absence for any
13 teacher or service personnel who requests an extended
14 leave of absence without pay for any period of time not
15 exceeding one year for the purpose of pregnancy, childbirth
16 or adoptive or infant bonding. An employee shall not be
17 required to use accumulated annual leave or sick leave prior
18 to taking an extended leave of absence.

19 (c) Such employee who returns from an approved leave
20 of absence for the purpose of pregnancy, childbirth or
21 adoptive or infant bonding which lasted for a period of one
22 year or less than one year shall be reemployed with the right
23 to be restored to the same assignment of position or duties
24 and benefits held prior to the approved leave of absence.
25 Such employee shall retain all rights and privileges
26 generally accorded employees at the time of the
27 reemployment.

§18A-2-5. Employment of service personnel; limitation.

1 The board is authorized to employ such service personnel,
2 including substitutes, as is deemed necessary for meeting
3 the needs of the county school system: *Provided*, That the
4 board may not employ a number of such personnel whose
5 minimum monthly salary under section eight-a, article four
6 of this chapter is specified as pay grade "H", which number
7 exceeds the number employed by the board on the first day
8 of March, one thousand nine hundred eighty-eight.

9 Effective the first day of July, one thousand nine hundred
10 eighty-eight, a county board shall not employ for the first
11 time any person who has not obtained a high school diploma
12 or general educational development certificate (GED) or
13 who is not enrolled in an approved adult education course
14 by the date of employment in preparation for obtaining a
15 GED: *Provided, however*, That such employment is
16 contingent upon continued enrollment or successful
17 completion of the GED program.

18 Before entering upon their duties service personnel shall
 19 execute with the board a written contract which shall be in
 20 the following form:

21 "COUNTY BOARD OF EDUCATION
 22 SERVICE PERSONNEL CONTRACT OF EMPLOYMENT
 23 THIS (Probationary or Continuing) CONTRACT OF
 24 EMPLOYMENT, made and entered into this _____ day of
 25 _____, 19____, by and between THE BOARD OF
 26 EDUCATION OF THE COUNTY OF _____,
 27 a corporation, hereinafter called the 'Board,' and (Name of
 28 Employee), of (Mailing Address), hereinafter called the
 29 'Employee.'

30 WITNESSETH, that whereas, at a lawful meeting of the
 31 Board of Education of the County of _____ held at the
 32 offices of said Board, in the City of _____,
 33 _____ County, West Virginia, on the _____
 34 day of _____, 19____, the Employee was duly hired and
 35 appointed for employment as a (Job Classification) at (Place
 36 of Assignment) for the school year commencing _____ for
 37 the employment term and at the salary and upon the terms
 38 hereinafter set out.

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

41 (1) The Employee is employed by the Board as a (Job
 42 Classification) at (Place of Assignment) for the school year
 43 or remaining part thereof commencing _____, 19____.
 44 The period of employment is _____ days at an annual
 45 salary of \$_____ at the rate of \$_____ per month.

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

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

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

59 (5) The Superintendent of the _____ County Board of
 60 Education, subject to the approval of the Board, may

61 transfer and assign the Employee in the manner provided
62 by Section 7, Article 2, Chapter 18A of the Code of West
63 Virginia, as amended.

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

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

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

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

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

76 _____, (President, _____ County Board
77 of Education) _____, (Secretary, _____ County
78 Board of Education) _____, (Employee)''

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

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

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

**§18A-2-9. Duties and responsibilities of school principals;
assistant principals.**

1 Upon the recommendation of the county superintendent
2 of schools, the county board of education shall employ and
3 assign, through written contract, public school principals
4 who shall supervise the management and the operation of
5 the school or schools to which they are assigned. Such

6 principals shall hold valid administrative certificates
7 appropriate for their assignments.

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

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

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

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

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

45 Nothing herein shall prohibit a county board from
46 assigning a nonteaching principal to a school with fewer
47 than one hundred seventy students.

48 Nothing contained in this section shall be construed to
49 reduce or limit the rights and privileges of principals and
50 assistant principals as teachers under the provisions of
51 section one, article one, chapter eighteen of the code of West
52 Virginia as amended; section one, article one, chapter
53 eighteen-a; and other provisions of this code.

ARTICLE 3. TRAINING, CERTIFICATION, LICENSING.

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

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

§18A-3-8. Staff development programs.

1 The Legislature finds the professional expertise and
2 insight of the classroom teacher shall allow educators peer
3 control of staff development programs.
4 Upon petition of ten percent of professional educators
5 and an affirmative majority vote of all county professional
6 educators voting, a professional staff development council

7 shall be established. The professional educators may openly
 8 nominate and elect a nine to fifteen member council
 9 comprised of proportional representation from the major
 10 school levels and from vocational, special education and
 11 other specialties in proportion to their employment
 12 numbers in said county. Such councils shall have final
 13 authority to propose staff development programs for their
 14 peers based upon rules established by statute and/or the
 15 state board of education, and the council on professional
 16 education.

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

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

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

1 To assist the state in meeting its objective of salary equity
 2 among the counties, on and after the first day of July, one
 3 thousand nine hundred eighty-four, subject to available
 4 state appropriations and the conditions set forth herein,
 5 each teacher and school service personnel shall receive a
 6 supplemental amount in addition to the amount from the
 7 state minimum salary schedules provided for in this article.

8 State funds for this purpose shall be paid within the West
 9 Virginia public school support plan in accordance with
 10 article nine-a, chapter eighteen of this code. The amount
 11 allocated for salary equity shall be apportioned between
 12 teachers and school service personnel in direct proportion
 13 to that amount necessary to support the professional
 14 salaries and service personnel salaries statewide under
 15 sections four and five, article nine-a, chapter eighteen of
 16 this code: *Provided*, That in making such division an
 17 adequate amount of state equity funds shall be reserved to
 18 finance the appropriate foundation allowances and staffing
 19 incentives provided for in said article nine-a.

20 Pursuant to this section, each teacher and school service
 21 personnel shall receive the amount that is the difference

22 between their authorized state minimum salary and ninety-
23 five percent of the maximum salary schedules prescribed in
24 sections five-a and five-b of this article, reduced by any
25 amount provided by the county as a salary supplement for
26 teachers and school service personnel on the first day of
27 January of the fiscal year immediately preceding that in
28 which the salary equity appropriation is distributed:
29 *Provided*, That no amount received pursuant to this section
30 shall be decreased as a result of any county supplement
31 increase instituted after the first day of January, one
32 thousand nine hundred eighty-four, unless and until the
33 objective of salary equity is reached: *Provided, however*,
34 That any amount received pursuant to this section may be
35 reduced proportionately based upon the amount of funds
36 appropriated for this purpose.

37 No county may reduce any salary supplement that was in
38 effect on the first day of January, one thousand nine
39 hundred eighty-four, except as permitted by sections five-a
40 and five-b of this article.

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

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

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

1 The purpose of this section is to establish an employment
2 term and class titles for service personnel. The employment
3 term for service personnel shall be no less than ten months,
4 a month being defined as twenty employment days:
5 *Provided*, That the county board of education may contract
6 with all or part of these personnel for a longer term. The
7 beginning and closing dates of the ten-month employment

8 term shall not exceed forty-three weeks. Service personnel
9 employed on a yearly or twelve-month basis may be
10 employed by calendar months. Whenever there is a change
11 in job assignment during the school year, the minimum pay
12 scale and any county supplement shall be applicable.

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

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

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

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

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

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

49 The column heads of the state minimum pay scale and

50 class titles, set forth in section eight-a of this article, are
51 defined as follows:

52 "Pay grade" means the monthly salary applicable to class
53 titles of service personnel.

54 "Years of employment" means the number of years which
55 an employee classified as service personnel has been
56 employed by a board of education in any position prior to or
57 subsequent to the effective date of this section and
58 including service in the armed forces of the United States if
59 the employee were employed at the time of his induction.
60 For the purpose of section eight-a of this article, years of
61 employment shall be limited to the number of years shown
62 and allowed under the state minimum pay scale as set forth
63 in section eight-a of this article.

64 "Class title" means the name of the position or job held by
65 service personnel.

66 "Accountant I" means personnel employed to maintain
67 payroll records and reports and perform one or more
68 operations relating to a phase of the total payroll.

69 "Accountant II" means personnel employed to maintain
70 accounting records and to be responsible for the accounting
71 process associated with billing, budgets, purchasing and
72 related operations.

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

76 "Aide I" means those personnel selected and trained for
77 teacher-aide classifications such as monitor aide, clerical
78 aide, classroom aide or general aide.

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

86 "Aide III" means those personnel referred to in the "Aide
87 I" classification who hold a high school diploma or a
88 general educational development certificate, and have
89 completed six semester hours of college credit at an
90 institution of higher education or are employed as an aide in
91 a special education program and have one year's experience
92 as an aide in special education.

93 “Aide IV” means personnel referred to in the “Aide I”
94 classification who hold a high school diploma or a general
95 education development certificate and who have completed
96 eighteen hours of state board-approved college credit at a
97 regionally accredited institution of higher education, or
98 who have completed fifteen hours of state board-approved
99 college credit at a regionally accredited institution of
100 higher education and successfully completed an in-service
101 training program determined by the state board to be the
102 equivalent of three hours of college credit.

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

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

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

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

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

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

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

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

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

133 “Chief mechanic” means personnel employed to be
134 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.

178 “Electrician II” means personnel employed as an
179 electrician journeyman or who holds a journeyman
180 electrician license issued by the state fire marshal.

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

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

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

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

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

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

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

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

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

217 “Handyman” means personnel employed to perform
218 routine manual tasks in any operation of the county school
219 system.

220 "Heating and air conditioning mechanic I" means
221 personnel employed at the apprentice level to install, repair
222 and maintain heating and air conditioning plants and
223 related electrical equipment.

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

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

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

233 "Key punch operator" means qualified personnel
234 employed to operate key punch machines or verifying
235 machines.

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

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

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

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

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

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

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

261 "Mechanic assistant" means personnel employed as a
262 mechanic apprentice and helper.

263 "Multi-classification" means personnel employed to
264 perform tasks that involve the combination of two or more
265 class titles in this section or as created by the West Virginia
266 board of education. In such instances the minimum salary
267 scale shall be the higher pay grade of the class titles
268 involved.

269 "Office equipment repairman I" means personnel
270 employed as an office equipment repairman apprentice or
271 helper.

272 "Office equipment repairman II" means personnel
273 responsible for servicing and repairing all office machines
274 and equipment. Personnel shall be responsible for parts
275 being purchased necessary for the proper operation of a
276 program of continuous maintenance and repair.

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

281 "Plumber I" means personnel employed as an apprentice
282 plumber and helper.

283 "Plumber II" means personnel employed as a journeyman
284 plumber.

285 "Printing operator" means personnel employed to
286 operate duplication equipment, and as required, to cut,
287 collate, staple, bind and shelve materials.

288 "Printing supervisor" means personnel employed to
289 supervise the operation of a print shop.

290 "Programmer" means personnel employed to design and
291 prepare programs for computer operation.

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

295 "Sanitation plant operator" means personnel employed
296 to operate and maintain a water or sewage treatment plant
297 to ensure the safety of the plant's effluent for human
298 consumption or environmental protection.

299 "School bus supervisor" means qualified personnel
300 employed to assist in selecting school bus operators and
301 routing and scheduling of school buses, operate a bus when
302 needed, relay instructions to bus operators, plan emergency
303 routing of buses and promoting good relationships with
304 parents, pupils, bus operators and other employees.

305 "Secretary I" means personnel employed to transcribe
306 from notes or mechanical equipment, receive callers,
307 perform clerical tasks, prepare reports and operate office
308 machines.

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

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

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

336 "Supervisor of transportation" means qualified
337 personnel employed to direct school transportation
338 activities, properly and safely, and to supervise the
339 maintenance and repair of vehicles, buses, and other
340 mechanical and mobile equipment used by the county
341 school system.

342 "Switchboard operator-receptionist" means personnel
343 employed to refer incoming calls, to assume contact with
344 the public, to direct and to give instructions as necessary, to
345 operate switchboard equipment and to provide clerical
346 assistance.

347 "Truck driver" means personnel employed to operate
348 light or heavy duty gasoline and diesel-powered vehicles.

349 "Warehouse clerk" means personnel employed to be
350 responsible for receiving, storing, packing and shipping
351 goods.

352 "Watchman" means personnel employed to protect
353 school property against damage or theft. Additional
354 assignments may include operation of a small heating plant
355 and routine cleaning duties.

356 "Welder" means personnel employed to provide
357 acetylene or electric welding services for a school system.

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

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

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

383 The state board of education is authorized to establish
384 other class titles of service personnel positions and jobs not
385 listed in this section. The state board of education is further
386 authorized to provide appropriate pay grades for such
387 positions and jobs but pay shall be established within the
388 minimum salary scale in section eight-a of this article.

389 No service employee, without his written consent, may be
 390 reclassified by class title, nor may a service employee,
 391 without his written consent, be relegated to any condition
 392 of employment which would result in a reduction of his
 393 salary, rate of pay, compensation or benefits earned during
 394 the current fiscal year or which would result in a reduction
 395 of his salary, rate of pay, compensation or benefits for
 396 which he would qualify by continuing in the same job
 397 position and classification held during said fiscal year and
 398 subsequent years.

399 Any board failing to comply with the provisions of this
 400 article may be compelled to do so by mandamus, and shall
 401 be liable to any party prevailing against the board for court
 402 costs and his reasonable attorney fee, as determined and
 403 established by the court.

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

1	STATE MINIMUM PAY SCALE PAY GRADE								
2	Years of								
3	Employ-								
4	ment								
5	A	B	C	D	E	F	G	H	
6	0	822	842	882	932	982	1,042	1,072	1,142
7	1	842	862	902	952	1,002	1,062	1,092	1,162
8	2	862	882	922	972	1,022	1,082	1,112	1,182
9	3	882	902	942	992	1,042	1,102	1,132	1,202
10	4	902	922	962	1,012	1,062	1,122	1,152	1,222
11	5	922	942	982	1,032	1,082	1,142	1,172	1,242
12	6	942	962	1,002	1,052	1,102	1,162	1,192	1,262
13	7	962	982	1,022	1,072	1,122	1,182	1,212	1,282
14	8	982	1,002	1,042	1,092	1,142	1,202	1,232	1,302
15	9	1,002	1,022	1,062	1,112	1,162	1,222	1,252	1,322
16	10	1,022	1,042	1,082	1,132	1,182	1,242	1,272	1,342
17	11	1,042	1,062	1,102	1,152	1,202	1,262	1,292	1,362
18	12	1,062	1,082	1,122	1,172	1,222	1,282	1,312	1,382
19	13	1,082	1,102	1,142	1,192	1,242	1,302	1,332	1,402
20	14	1,102	1,122	1,162	1,212	1,262	1,322	1,352	1,422
21	15	1,122	1,142	1,182	1,232	1,282	1,342	1,372	1,442
22	16	1,142	1,162	1,202	1,252	1,302	1,362	1,392	1,462
23	17	1,162	1,182	1,222	1,272	1,322	1,382	1,412	1,482
24	18	1,182	1,202	1,242	1,292	1,342	1,402	1,432	1,502
25	19	1,202	1,222	1,262	1,312	1,362	1,422	1,452	1,522
26	20	1,222	1,242	1,282	1,332	1,382	1,442	1,472	1,542

27	21	1,242	1,262	1,302	1,352	1,402	1,462	1,492	1,562
28	22	1,262	1,282	1,322	1,372	1,422	1,482	1,512	1,582
29	23	1,282	1,302	1,342	1,392	1,442	1,502	1,532	1,602
30	24	1,302	1,322	1,362	1,412	1,462	1,522	1,552	1,622
31	25	1,322	1,342	1,382	1,432	1,482	1,542	1,572	1,642

32	CLASS TITLE	PAY GRADE
33	Accountant I	D
34	Accountant II	E
35	Accountant III	F
36	Aide I	A
37	Aide II	B
38	Aide III	C
39	Aide IV	D
40	Audiovisual Technician	C
41	Auditor	G
42	Braille or Sign Language Specialist	E
43	Bus Operator	D
44	Buyer	F
45	Cabinet Maker	G
46	Cafeteria Manager	D
47	Carpenter I	E
48	Carpenter II	F
49	Chief Mechanic	G
50	Clerk I	B
51	Clerk II	C
52	Computer Operator	E
53	Cook I	A
54	Cook II	B
55	Cook III	C
56	Crew Leader	F
57	Custodian I	A
58	Custodian II	B
59	Custodian III	C
60	Custodian IV	D
61	Director or Coordinator of Services	H
62	Draftsman	D
63	Electrician I	F
64	Electrician II	G
65	Electronic Technician I	F
66	Electronic Technician II	G
67	Executive Secretary	G
68	Food Services Supervisor	G
69	Foreman	G

70	General Maintenance	C
71	Glazier	D
72	Graphic Artist	D
73	Groundsman	B
74	Handyman	B
75	Heating and Air Conditioning Mechanic I	E
76	Heating and Air Conditioning Mechanic II	G
77	Heavy Equipment Operator	E
78	Inventory Supervisor	D
79	Key Punch Operator	B
80	Locksmith	G
81	Lubrication Man	C
82	Machinist	F
83	Mail Clerk	D
84	Maintenance Clerk	C
85	Mason	G
86	Mechanic	F
87	Mechanic Assistant	E
88	Office Equipment Repairman I	F
89	Office Equipment Repairman II	G
90	Painter	E
91	Plumber I	E
92	Plumber II	G
93	Printing Operator	B
94	Printing Supervisor	D
95	Programmer	H
96	Roofing/Sheet Metal Mechanic	F
97	Sanitation Plant Operator	F
98	School Bus Supervisor	E
99	Secretary I	D
100	Secretary II	E
101	Secretary III	F
102	Supervisor of Maintenance	H
103	Supervisor of Transportation	H
104	Switchboard Operator-Receptionist	D
105	Truck Driver	D
106	Warehouse Clerk	C
107	Watchman	B
108	Welder	F
109	On and after the first day of July, one thousand nine	
110	hundred eighty-six, the minimum monthly pay for each	
111	service employee whose employment is for a period of more	

112 than three and one-half hours a day shall be at least the
 113 amounts indicated in the "state minimum pay scale" as set
 114 forth in this section, and the minimum monthly pay for each
 115 service employee whose employment is for a period of three
 116 and one-half hours or less a day shall be at least one half the
 117 amount indicated in the "state minimum pay scale" set
 118 forth in this section.

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

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

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

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

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

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

8 employment term shall equal one year of seniority, but no
9 employee may accrue more than one year of seniority
10 during any given fiscal year. Employment for less than the
11 full employment term shall be prorated. A random selection
12 system established by the employees and approved by the
13 board shall be used to determine the priority if two or more
14 employees accumulate identical seniority.

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

22 Whenever a county board is required to reduce the
23 number of professional personnel in its employment, the
24 employee with the least amount of seniority shall be
25 properly notified and released from employment pursuant
26 to the provisions of section two, article two of this chapter:
27 *Provided*, That such employee shall be employed in any
28 other professional position where he had previously been
29 employed or to any lateral area for which he is certified
30 and/or licensed if his seniority is greater than the seniority
31 of any other employee in that area of certification and/or
32 licensure.

33 All professional personnel whose seniority with the
34 county board is insufficient to allow their retention by the
35 county board during a reduction in work force shall be
36 placed upon a preferred recall list. As to any professional
37 position opening within the area where they had previously
38 been employed or to any lateral area for which they have
39 certification and/or licensure, such employee shall be
40 recalled on the basis of seniority if no regular full-time
41 professional personnel, or those returning from leaves of
42 absence with greater seniority, are qualified, apply for and
43 accept such position. Before position openings that are
44 known or expected to extend for twenty consecutive
45 employment days or longer for professional personnel may
46 be filled by the board, the board shall be required to notify
47 all qualified professional personnel on the preferred list
48 and give them an opportunity to apply, but failure to apply
49 shall not cause such employee to forfeit any right to recall.
50 The notice shall be sent by certified mail to the last known

51 address of the employee, and it shall be the duty of each
52 professional personnel to notify the board of continued
53 availability annually, of any change in address or of any
54 change in certification and/or licensure.

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

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

80 (b) A county board of education shall make decisions
81 affecting promotion and filling of any service personnel
82 positions of employment or jobs occurring throughout the
83 school year that are to be performed by service personnel as
84 provided in section eight, article four of this chapter, on the
85 basis of seniority, qualifications and evaluation of past
86 service.

87 Qualifications shall mean that the applicant holds a
88 classification title in his category of employment as
89 provided in this section and must be given first opportunity
90 for promotion and filling vacancies. Other employees then
91 must be considered and shall qualify by meeting the
92 definition of the job title as defined in section eight, article
93 four of this section, that relates to the promotion or

94 vacancy. If the employee so requests, the board must show
95 valid cause why an employee with the most seniority is not
96 promoted or employed in the position for which he applies.
97 Applicants shall be considered in the following order:

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

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

111 A promotion shall be defined as any change in his
112 employment that the employee deems to improve his
113 working circumstance within his classification category of
114 employment and shall include a transfer to another
115 classification category or place of employment if the
116 position is not filled by an employee who holds a title within
117 that classification category of employment. Each class title
118 listed in section eight, article four of this chapter shall be
119 considered a separate classification category of
120 employment for service personnel, except for those class
121 titles having Roman numeral designations, which shall be
122 considered a single classification of employment. The
123 cafeteria manager class title shall be included in the same
124 classification category as cooks. The executive secretary
125 class title shall be included in the same classification
126 category as secretaries.

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

130 Notwithstanding any other provisions of this chapter to
131 the contrary, decisions affecting such personnel with
132 respect to extra-duty assignments, shall be made in the
133 following manner: An employee with the greatest length of
134 service time in a particular category of employment shall be
135 given priority in accepting such assignments, followed by

136 other fellow employees on a rotating basis according to the
137 length of their service time until all such employees have
138 had an opportunity to perform similar assignments. The
139 cycle then shall be repeated: *Provided*, That an alternative
140 procedure for making extra-duty assignments within a
141 particular classification category of employment may be
142 utilized if the alternative procedure is approved both by the
143 county board of education and by an affirmative vote of two
144 thirds of the employees within that classification category
145 of employment. For the purpose of this section, extra-duty
146 assignments are defined as irregular jobs that occur
147 periodically or occasionally such as, but not limited to, field
148 trips, athletic events, proms, banquets and band festival
149 trips.

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

162 All decisions by county boards of education concerning
163 reduction in work force of service personnel shall be made
164 on the basis of seniority, as hereinafter provided.

165 The seniority of any such service personnel shall be
166 determined on the basis of the length of time the employee
167 has been employed by the county board of education within
168 a particular job classification. For the purpose of
169 establishing seniority for a preferred recall list as
170 hereinafter provided, when an employee has been employed
171 in one or more classifications, the seniority accrued in each
172 previous classification shall be retained by the employee.

173 Should a county board of education be required to reduce
174 the number of employees within a particular job
175 classification, the employee with the least amount of
176 seniority within that classification or grades of
177 classification shall be properly released and employed in a
178 different grade of that classification if there is a job

179 vacancy: *Provided*, That if there is no job vacancy for
180 employment within such classification or grades of
181 classification, he shall be employed in any other job
182 classification which he previously held with the county
183 board if there is a vacancy and shall retain any seniority
184 accrued in such job classification or grade of classification.

185 If two or more employees accumulate identical seniority,
186 the priority shall be determined by a random selection
187 system established by the employees and approved by the
188 county board.

189 All employees whose seniority with the county board is
190 insufficient to allow their retention by the county board
191 during a reduction in work force shall be placed upon a
192 preferred recall list and shall be recalled to employment by
193 the county board on the basis of seniority.

194 Employees placed upon the preferred list shall be recalled
195 to any position openings by the county board within the
196 classification(s), where they had previously been employed,
197 or to any lateral position for which the employee is qualified
198 or to a lateral area for which an employee has certification
199 and/or licensure.

200 Employees on the preferred recall list shall not forfeit
201 their right to recall by the county board if compelling
202 reasons require an employee to refuse an offer of
203 reemployment by the county board.

204 The county board shall be required to notify all
205 employees on the preferred recall list of all position
206 openings that from time to time exist. Such notice shall be
207 sent by certified mail to the last known address of the
208 employee; it shall be the duty of each such employee to
209 notify the county board of any change in the address of such
210 employee.

211 No position openings may be filled by the county board,
212 whether temporary or permanent, until all employees on
213 the preferred recall list have been properly notified of
214 existing vacancies and have been given an opportunity to
215 accept reemployment.

216 Any board failing to comply with the provisions of this
217 article may be compelled to do so by mandamus and shall be
218 liable to any party prevailing against the board for court
219 costs and his reasonable attorney fee, as determined and
220 established by the court. Further, employees denied
221 promotion or employment in violation of this section shall

222 be awarded the job, pay and any applicable benefits
 223 retroactively to the date of the violation and payable
 224 entirely from local funds. Further, the board shall be liable
 225 to any party prevailing against the board for any court
 226 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
 2 employee of a county board of education shall be entitled
 3 annually to at least one and one-half days personal leave for
 4 each employment month or major fraction thereof in the
 5 employee's employment term. Unused leave shall be
 6 accumulative without limitation and shall be transferable
 7 within the state. A change in job assignment during the
 8 school year shall in no way affect the employee's rights or
 9 benefits.

10 A regular full-time employee who is absent from assigned
 11 duties due to accident, sickness, death in the immediate
 12 family, or other cause authorized or approved by the board,
 13 shall be paid the full salary from his regular budgeted
 14 salary appropriation during the period which such
 15 employee is absent, but not to exceed the total amount of
 16 leave to which such employee is entitled: *Provided*, That
 17 each such employee shall be permitted three days of such
 18 leave annually, which may be taken without regard to the
 19 cause for the absence, except that personal leave without
 20 cause may not be taken on consecutive work days unless
 21 authorized or approved by the employee's principal or
 22 immediate supervisor, as the case may be: *Provided*,
 23 *however*, That notice of such leave day shall be given to the
 24 employee's principal or immediate supervisor, as the case
 25 may be, at least twenty-four hours in advance, except that
 26 in the case of sudden and unexpected circumstances, such
 27 notice shall be given as soon as reasonably practicable;
 28 however, the use of such day may be denied if, at the time
 29 notice is given, either fifteen percent of the employees or
 30 three employees, whichever is greater, under the
 31 supervision of the principal or immediate supervisor, as the
 32 case may be, have previously notified the principal or
 33 immediate supervisor of their intention to use that day for
 34 such leave: *Provided further*, That such leave shall not be
 35 used in connection with a concerted work stoppage or

36 strike. Where the cause for leave had its origin prior to the
37 beginning of the employment term, the employee shall be
38 paid for time lost after the start of the employment term. If
39 an employee should use personal leave which the employee
40 has not yet accumulated on a monthly basis and
41 subsequently leave the employment, the employee shall be
42 required to reimburse the board for the salary or wages paid
43 to him for such unaccumulated leave.

44 Prior to the first day of January, one thousand nine
45 hundred eighty-nine, the state board shall establish rules,
46 effective on said date, to restrict the payment of personal
47 leave benefits and the charging of personal leave time used
48 to an employee receiving a workers' compensation benefit
49 from a claim filed against and billed to the employee's
50 board. If an employee is awarded such benefit, such
51 employee shall receive personal leave compensation only to
52 the extent such compensation is required, when added to
53 the workers' compensation benefit, to equal the amount of
54 compensation regularly paid such employee. If personal
55 leave compensation equal to the employee's regular pay is
56 paid prior to the award of the workers' compensation
57 benefit, such amount which, when added to the benefit, is in
58 excess of the employee's regular pay shall be deducted from
59 the employee's subsequent pay. The employee's accrued
60 personal leave days shall be charged only for such days as
61 equal the amount of personal leave compensation required
62 to compensate the employee at the employee's regular rate
63 of pay.

64 The board may establish reasonable rules for reporting
65 and verification of absences for cause; and if any error in
66 reporting absences should occur it shall have authority to
67 make necessary salary adjustments in the next pay after the
68 employee has returned to duty or in the final pay if the
69 absence should occur during the last month of the
70 employment term.

71 A county board of education may establish a personal
72 leave bank or banks to which employees may contribute no
73 more than two days of personal leave per school year:
74 *Provided*, That such bank or banks be established either
75 jointly or separately for both professional personnel and
76 school service personnel and that a bank be available to all
77 school personnel. Such personal leave bank shall be

78 established and operated pursuant to rules adopted by the
79 county board: *Provided, however,* That such rules may
80 limit the maximum number of days used by an employee,
81 shall require that leave bank days be used only by an active
82 employee with less than five days accumulated personal
83 leave who is absent from work due to accident or illness of
84 such employee, and shall prohibit the use of such days with
85 the extension of insurance coverage pursuant to section
86 twelve, article sixteen, chapter five of this code. Such rules
87 shall require that contributions shall reduce, to the extent
88 of such contribution, the number of personal leave days to
89 which an employee is entitled by this section: *Provided*
90 *further,* That such contribution shall not reduce personal
91 leave days without cause to which an employee is entitled.
92 No employee may be compelled to contribute to such
93 personal leave bank.

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

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

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

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

1 The Legislature recognizes that the nature of teaching
2 restricts the interaction of teachers in the classroom and
3 their opportunity to observe exemplary instructional
4 techniques of their colleagues. To facilitate a process for
5 sharing successful pedagogy, the state board, through
6 regional educational service agencies, shall develop a
7 process to record and distribute exemplary teaching
8 techniques by any electronic means available.

9 The teachers at any school within a regional educational
10 service agency may nominate by consensus one teacher per
11 year from that school whose teaching techniques they
12 believe to be exemplary. Such nomination shall be
13 completed no later than the first day of January in any
14 school year. Upon such nomination, the principal shall
15 arrange through the regional educational service agency for
16 the recording of that teacher's exemplary teaching
17 techniques. Following completion of such recording, the
18 regional educational service agency shall make
19 arrangements and schedule a date and location for those
20 teachers whose teaching techniques were recorded to
21 review the teaching techniques recorded in the region and
22 determine which best demonstrate exemplary teaching
23 techniques in different subject areas. Teachers whose
24 recorded teaching techniques are selected shall receive a
25 bonus equal to the highest average two-day pay for a
26 teacher in the region.

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

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

1 Personnel employed by the state department of education
2 who are required to hold a teaching certificate shall receive
3 a salary that is at least equal to the salary paid to
4 comparable professional personnel employed by the county
5 board wherein their office is located, minus the six hundred
6 dollars authorized pursuant to section two of this article for
7 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.

1 (a) Within the limitations provided herein, any aide who
2 agrees to do so shall stand in the place of the parent or
3 guardian and shall exercise such authority and control over
4 pupils as is required of a teacher as defined and provided in
5 section one of this article. The principal shall designate
6 such aides in the school who agree to exercise such
7 authority on the basis of seniority as an aide and shall
8 enumerate the instances in which such authority shall be

9 exercised by an aide when requested by the principal,
10 assistant principal or professional employee to whom the
11 aide is assigned: *Provided*, That such authority does not
12 extend to suspending or expelling any pupil, participating
13 in the administration of corporal punishment or performing
14 instructional duties as a teacher or substitute teacher.

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

21 (b) An aide shall not be required by the operation of this
22 section to perform noninstructional duties for an amount of
23 time which exceeds that required under the aide's contract
24 of employment or that required of other aides in the same
25 school, unless the assignment of such duties is mutually
26 agreed upon by the aide and the county superintendent, or
27 the superintendent's designated representative, subject to
28 board approval. The terms and conditions of such
29 agreement shall be in writing, signed by both parties, and
30 may include additional benefits. Such agreement shall be
31 uniform as to aides assigned similar duties for similar
32 amounts of time within the same school. Aides shall have
33 the option of agreeing to supervise students and of renewing
34 related assignments annually: *Provided*, That should an
35 aide elect not to renew the previous agreement to supervise
36 students, the minimum salary of such aide shall revert to the
37 pay grade specified in section eight-a of this article for the
38 classification title held by the aide and any county salary
39 schedule in excess of the minimum requirements of this
40 article.

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

45 (d) Notwithstanding the provisions of section eight-b,
46 article four of this chapter, an aide shall be employed on the
47 basis of (1) qualifications, including but not limited to
48 education, training and experience, and (2) seniority.
49 Qualifications shall not include additional college credits
50 beyond that currently required. With regard to such
51 qualifications, the county board shall establish and make

52 available to service personnel a written policy to be used
53 when regular service personnel who are employed in a
54 different category of employment other than an aide are to
55 be employed in an aide position. An aide may transfer to
56 another position of employment one time only during any
57 half of a school term, unless otherwise mutually agreed
58 upon by the aide and the county superintendent, or the
59 superintendent's designee, subject to board approval:
60 *Provided*, That during the first year of employment as an
61 aide, an aide shall not transfer to another position of
62 employment during the first one-half school term of
63 employment, unless mutually agreed upon by the aide and
64 county superintendent, subject to board approval.

65 (e) Regular service personnel employed in a category of
66 employment other than aide who seek employment as an
67 aide shall be required to hold a high school diploma or have
68 received a general educational development certificate and
69 shall have opportunity to receive appropriate training
70 pursuant to subsection (10), section thirteen, article five,
71 chapter eighteen of this code and section two, article twenty
72 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
2 respect whatever to executive orders of the governor, which
3 orders to the extent otherwise lawful, shall be effective
4 according to their terms: *Provided*, That the executive
5 orders shall be admitted to record in the state register when
6 and to the extent the governor deems suitable and shall be
7 included therein by the secretary of state when tendered by
8 the governor.

9 (b) Except as to requirements for filing in the state
10 register, and with the Legislature or its rule-making review
11 committee, provided in this chapter or other law, the
12 provisions of this chapter do not apply in any respect
13 whatever to the West Virginia board of probation and
14 parole, the public service commission, the board of public
15 works sitting as such and the West Virginia board of
16 regents: *Provided*, That rules of such agencies shall be filed
17 in the state register in the form prescribed by this chapter

18 and be effective no sooner than sixty consecutive days after
 19 being so filed: *Provided, however*, That the rules
 20 promulgated by the state colleges and universities shall
 21 only be filed with the West Virginia board of regents:
 22 *Provided further*, That such agencies may promulgate
 23 emergency rules in conformity with section fifteen, article
 24 three of this chapter.

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

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

ARTICLE 3. RULE MAKING.

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

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

ARTICLE 3A. EDUCATION RULE MAKING.

§29A-3A-1. Definitions.

1 As used in this article:

- 2 (a) "Commission" means the legislative oversight
3 commission on education accountability;
4 (b) "Board" means the West Virginia board of
5 education.

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

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

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

- 1 (a) Except when, and to the extent, that this chapter or
2 any other provision of law now or hereafter made expressly
3 exempts the board, or a particular grant of the rule-making
4 power, from the provisions of this article, every grant of
5 rule-making authority to the board heretofore provided,
6 shall be construed and applied to be effective only:
7 (1) If heretofore lawfully exercised in accordance with
8 the prior provisions of this chapter and the resulting rule
9 has not been revoked or invalidated by the provisions
10 hereof or by the board; or
11 (2) If exercised in accordance with the provisions
12 hereof.
13 (b) The board shall not be deemed to have the power and
14 authority to promulgate a legislative rule without
15 compliance with this article unless: (1) The provision of this
16 code, heretofore or hereafter enacted, granting such power
17 and authority, expressly exempts its exercise from
18 legislative rule-making review prior to promulgation or (2)
19 the grant of such power and authority is exempted from the
20 application of this chapter by the express provisions of this
21 chapter. To the extent any such grant of power and
22 authority, not so exempt, shall be deemed to exceed the
23 limits and provisions of this article, such power and
24 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.

§29A-3A-6. Notice of proposed rule making.

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

11 condition precedent to promulgation of the proposed rule
12 and contain a general description of the issues to be
13 decided. If no findings and determinations are required as a
14 condition precedent to promulgation, the notice shall fix a
15 date, time and place for receipt of public comment on such
16 proposed rule.

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

25 In any hearing for public comment on the merits of the
26 rule, the board may limit presentations to written material.
27 The time, date and place fixed in the notice shall constitute
28 the last opportunity to submit any written material relevant
29 to any hearing, all of which may be earlier submitted by
30 filing with the board.

31 The board may also, at its expense, cause to be published
32 as a Class I legal publication in every county of the state,
33 any notice required by this section.

34 Any citizen or other interested party may appear and be
35 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.**

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

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

§29A-3A-8. Notice of hearings.

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

§29A-3A-9. Adoption of procedural and interpretive rules.

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

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

§29A-3A-10. Proposal of legislative rules.

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

7 When proposing a legislative rule, other than an
 8 emergency rule, the board shall first file in the state register
 9 a notice of its proposal, including the text of the legislative

10 rule and including all materials required in the case of a
11 procedural or interpretive rule. The board shall then
12 proceed as in the case of a procedural and interpretive rule
13 to the point of, but not including final adoption. In lieu of
14 final adoption, the agency shall approve the rule, including
15 any amendments, for submission to the Legislature and file
16 such notice of approval in the state register and with the
17 legislative oversight commission on education
18 accountability.

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

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

1 (a) There is hereby created a joint commission of the
2 Legislature, known as the legislative oversight commission
3 on education accountability, to review all legislative rules
4 of the board and such other rules as the commission deems
5 appropriate. The commission shall be composed of three
6 members of the Senate, appointed by the president of the
7 Senate, and three members of the House of Delegates,
8 appointed by the speaker of the House of Delegates. In
9 addition, the president of the Senate and the speaker of the
10 House of Delegates shall be ex officio nonvoting members of
11 the commission and shall designate the cochairmen. Not
12 more than two of the voting members of the commission
13 from each house shall be members of the same political
14 party. At least one of the Senate members and one of the
15 House members shall be members of the committee on
16 education of the Senate and House, respectively, and at
17 least one of the Senate members and at least one of the
18 House members shall be a member of the committee on
19 finance of the Senate and House, respectively. The members
20 shall serve until their successors shall have been appointed
21 as heretofore provided. Members of the commission shall
22 receive such compensation and expenses as provided in
23 article two-a, chapter four of this code. Such expenses and
24 all other expenses, including those incurred in the
25 employment of legal, technical, investigative, clerical,
26 stenographic, advisory and other personnel shall be paid

27 from an appropriation to be made expressly for the
28 legislative oversight commission on education
29 accountability, but if no such appropriation be made, such
30 expenses shall be paid from the appropriation under
31 "Account No. 103 for Joint Expenses," but no expense of
32 any kind whatever payable under said Account No. 103 for
33 joint expenses shall be incurred unless first approved by the
34 joint committee on government and finance. The
35 commission shall meet at any time, both during sessions of
36 the Legislature and in the interim.

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

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

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

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

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

10 (1) The major activities of the board for the fiscal year
11 immediately past, including important policy decisions
12 reached on initiatives undertaken during that year,
13 especially as such activities, decisions and initiatives relate
14 to the implementation of (1) the constitutional requirement
15 of providing a thorough and efficient education to the
16 children of this state and (2) the objective of improving the
17 quality of education at all levels in this state.

18 (2) Other information considered by the commission to
19 be important, including recommendations for statutory,
20 fiscal or other reform and reasons for such
21 recommendations.

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

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

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

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

56 If any person subpoenaed to appear at any hearing shall
57 refuse to appear or to answer inquiries there propounded,
58 or shall fail or refuse to produce books, records, documents,
59 papers or any other tangible thing within his control when
60 the same are demanded, the commission shall report the

61 facts to the circuit court of Kanawha County or any other
 62 court of competent jurisdiction and such court may compel
 63 obedience to the subpoena as though such subpoena had
 64 been issued by such court in the first instance.

**§29A-3A-12. Submission of legislative rules to the legislative
 oversight commission on education
 accountability.**

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

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

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

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

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

33 (4) Whether the proposed legislative rule is necessary to
 34 fully accomplish the objectives of the statute under which
 35 the proposed rule was promulgated;

36 (5) Whether the proposed legislative rule is reasonable,
37 especially as it affects the convenience of the general public
38 or of persons particularly affected by it;

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

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

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

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

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

52 (3) Recommend that the rule be withdrawn.

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

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

§29A-3A-13. Submission of legislative rules to Legislature.

1 (a) No later than forty days before the sixtieth day of
2 each regular session of the Legislature, the cochairmen of
3 the legislative oversight commission on education
4 accountability shall submit to the clerk of the respective
5 houses of the Legislature copies of all proposed legislative

6 rules which have been submitted to and considered by the
7 commission pursuant to the provisions of section eleven of
8 this article and which have not been previously submitted
9 to the Legislature for study, together with the
10 recommendations of the commission with respect to such
11 rules, a statement of the reasons for any recommendation
12 that a rule be withdrawn, and a statement that a bill
13 authorizing the legislative rule has been drafted by the staff
14 of the commission or by legislative services pursuant to
15 section twelve of this article. The cochairman of the
16 commission may also submit such rules at the direction of
17 the commission at any time before or during a special
18 session in which consideration thereof may be appropriate.
19 The commission may withhold from its report any proposed
20 legislative rule which was submitted to the commission
21 fewer than two hundred ten days before the end of the
22 regular session. The clerk of each house shall submit the
23 report to his house at the commencement of the next
24 session.

25 All bills introduced authorizing the promulgation of a
26 rule may be referred by the speaker of the House of
27 Delegates and by the president of the Senate to appropriate
28 standing committees of the respective houses for further
29 consideration or the matters may be otherwise dealt with as
30 each house or its rules provide. The Legislature may by act
31 authorize the board to adopt a legislative rule incorporating
32 the entire rule. The clerk of the house originating such act
33 shall forthwith file a copy of any bill enacted in
34 contemplation of this section in the state register and with
35 the board and the clerk of each house may prepare and file a
36 synopsis of legislative action during any session on any
37 proposed rule submitted to the house during such session
38 for which authority to promulgate was not by law provided
39 during such session.

40 (b) If the Legislature fails during its regular session to
41 act upon all or part of any legislative rule which was
42 submitted to it by the legislative oversight commission on
43 education accountability during such session, the board
44 may not thereafter issue any rule or directive or take other
45 action to implement such rule or part thereof unless and
46 until otherwise authorized to do so.

47 (c) Nothing herein shall be construed to prevent the
48 Legislature by law from authorizing or authorizing and

49 directing the board to promulgate legislative rules not
50 proposed by the board or upon which some procedure
51 specified in this chapter is not yet complete.

52 (d) Whenever the Legislature is convened by
53 proclamation of the governor, upon his own initiative or
54 upon application of the members of the Legislature, or
55 whenever a regular session of the Legislature is extended or
56 convened by the vote or petition of its members, the
57 Legislature may by act enacted during such extraordinary
58 or extended session authorize, in whole or in part, any
59 legislative rule whether submitted to the legislative
60 oversight commission on education accountability, or not,
61 if legislative action on such rule during such session is a
62 lawful order of business.

63 (e) Whenever a date is required by this section to be
64 computed in relation to the end of a regular session of the
65 Legislature, such date shall be computed without regard to
66 any extensions of such session occasioned solely by the
67 proclamation of the governor.

68 (f) Whenever a date is required to be computed from or
69 is fixed by the first day of a regular session of the
70 Legislature, it shall be computed or fixed in the year one
71 thousand nine hundred eighty-four, and each fourth year
72 thereafter without regard to the second Wednesday of
73 January of such years.

§29A-3A-14. Adoption of legislative rules; effective date.

1 (a) Except as the Legislature may by law otherwise
2 provide, within sixty days after the effective date of an act
3 authorizing promulgation of a legislative rule, the board
4 shall promulgate the rule only in conformity with the
5 provisions of law authorizing and directing the
6 promulgation of such rule.

7 (b) A legislative rule authorized by the Legislature shall
8 become effective thirty days after such filing in the state
9 register, or on the effective date fixed by the authorizing act
10 or if none is fixed by law, such later date not to exceed
11 ninety days, as is fixed by the board.

12 (c) The secretary of state shall note in the state register
13 the effective date of an authorized and promulgated
14 legislative rule, and shall file such legislative rule in the
15 state register in lieu of the proposed legislative rule
16 previously filed pursuant to section seven of this article.

§29A-3A-15. Withdrawal or modification of proposed rules.

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

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

§29A-3A-16. Emergency legislative rules; procedure for promulgation; definition.

1 (a) The board may, without hearing, find that an
2 emergency exists requiring that emergency rules be
3 promulgated and promulgate the same in accordance with
4 this section. Such emergency rules, together with a
5 statement of the facts and circumstances constituting the
6 emergency, shall be filed in the state register and shall
7 become effective immediately upon such filing. Such
8 emergency rules may adopt, amend or repeal any legislative
9 rule, but the circumstances constituting the emergency
10 requiring such adoption, amendment or repeal shall be
11 stated with particularity and be subject to de novo review
12 by any court having original jurisdiction of an action
13 challenging their validity. Fifteen copies of the rules and of
14 the required statement shall be filed forthwith with the
15 legislative oversight commission on education
16 accountability.

17 An emergency rule shall be effective for not more than
18 fifteen months and shall expire earlier if any of the
19 following occurs:

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

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

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

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

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

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

54 (c) Once an emergency rule expires due to the
55 conclusion of fifteen months or due to the effect of
56 subdivision (1), (2), (3) or (4), subsection (a) of this section,
57 the board may not refile the same or similar rule as an
58 emergency rule.

59 (d) Emergency legislative rules currently in effect under
60 the prior provisions of this section may be refiled under the
61 provisions of this section.

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

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

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

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

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

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

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

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

12 (3) That the rule was not promulgated in compliance
13 with the provisions of section fifteen of this article.

14 (c) If the secretary of state determines, based upon the
15 contents of the rule or the supporting information filed by
16 the board, that the emergency rule should be disapproved,
17 he may disapprove such rule without further investigation,
18 notice or hearing. If, however, the secretary of state
19 concludes that the information submitted by the board is
20 insufficient to allow a proper determination to be made as
21 to whether the emergency rule should be disapproved, he
22 may make further investigation, including, but not limited
23 to, requiring the board or other interested parties to submit
24 additional information or comment or fixing a date, time
25 and place for the taking of evidence on the issues involved in
26 making a determination under the provisions of this
27 section.

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

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

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

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

§29A-3A-18. Prior rules.

1 Any rule lawfully promulgated prior to the effective date
2 of this chapter shall remain in full force and effect until:
3 (1) Such rule is expressly made ineffective by the
4 provisions of this chapter; or
5 (2) Such rule should expire by reason of failure to refile
6 the same as provided in section five of article two, or expires
7 pursuant to its own terms and provisions lawfully made
8 before the effective date of this section; or

- 9 (3) Such rule is repealed by the lawful act of the board,
10 in conformity with this chapter; or
11 (4) Such rule is invalidated by an act of the Legislature
12 or the force and effect of another law.

Attest
My hand and seal
of the
Legislature

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Bruce O. Williams
.....
Chairman Senate Committee

Bernard V. Kelly
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Jedd C. Willis
.....
Clerk of the Senate

Donald L. Kopp
.....
Clerk of the House of Delegates

Sam Tomlin
.....
President of the Senate

Robert H. Taylor
.....
Speaker House of Delegates

The within *approved* this the *14th*
day of *July* 1988.

Arthur A. Shreve Jr.
.....
Governor



PRESENTED TO THE

GOVERNOR

Date 6/30/88

Time 4:18 p.m.

RECEIVED

1990 JUL 19 PM 4:01

OFFICE OF JUSTICE
REGISTRATION DIVISION