WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1997

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ENROLLED

HOUSE BILL No. 2204

Williams, Michael, Mezzatesta, Dempsey, Ennis, Manuel and Osborne
(By Delegate ________ ________)

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Passed ___________________ April 12, 1997

In Effect ___________________ July 1, 1997 Passage
AN ACT to repeal section six, article eight, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article five of said chapter by adding thereto a new section, designated section eighteen-d; to amend and reenact sections three, four, seven and eleven, article eight of said chapter; to amend sections six-a, six-b and fifteen, article nine-a of said chapter; and to amend article four, chapter eighteen-a of said code by adding thereto a new section, designated section eight-i, all relating to study on programs for children under the age of five; requiring preparation of attendance reports upon request of county superintendent; eliminating the board of educations' power of removal of the attendance director; providing that attendance director shall ascertain reasons for absences of students of sixteen years of age as well as those under sixteen years of age; authorizing service of summons; requiring attendance director to serve as liaison for homeless children and youth; prohibiting the inducement of a student to be absent from school of any age; reducing the appropriation determined by the actuarial evaluation for the teachers' retirement fund by the amount resulting from an increase in local share; allowance for increased enrollment; and seniority
rights for professional educators and school service personnel in cases of intercounty transfer arrangements.

Be it enacted by the Legislature of West Virginia:

That section six, article eight, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended be repealed; that article five of said code be amended by adding thereto a new section, designated section eighteen-d; that sections three, four, seven and eleven, article eight of said chapter be amended and reenacted; that sections six-a, six-b and fifteen, article nine-a of said chapter be amended and reenacted; and that article four, chapter eighteen-a be amended by adding thereto a new section, designated section eight-i, all to read as follows:

CHAPTER 18. EDUCATION.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-18d. Study on programs for children under the age of five.

1 The state department of education and the
department of health and human resources, in consultation
with the governor's cabinet on children and families, shall
conduct a comprehensive study on programs for children
under the age of five. Such study shall consider issues
including, but not limited to, curriculum, acquiring federal
dollars, welfare reform, relation to day care centers,
relation to kindergarten programs, involvement of the
private sector, involvement of the public sector and cost
effectiveness. The state department of education and the
department of health and human resources shall submit a
report to the legislative oversight commission on
education accountability by the first day of December,
one thousand nine hundred ninety-seven.

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-3. Employment of county director of school attendance
and assistants; qualifications; salary and traveling
expenses; removal.
(a) The county board of education of every county, not later than the first day of August of each year, shall employ the equivalent of a full-time county director of school attendance if such county has a net enrollment of more than four thousand pupils, at least a half-time director of school attendance if such county has a net enrollment equal to or less than four thousand pupils and such assistant attendance directors as deemed necessary. All persons to be employed as attendance directors shall have the written recommendation of the county superintendent.

(b) The county board of education may establish special and professional qualifications for attendance directors and assistants as are deemed expedient and proper and are consistent with regulations of the state board of education relating thereto.

(c) The attendance director or assistant director shall be paid a monthly salary as fixed by the county board. The attendance director or assistant director shall prepare attendance reports, and such other reports as the county superintendent may request.

(d) The county board of education shall reimburse the attendance directors or assistant directors for their necessary traveling expenses upon presentation of a monthly, itemized, sworn statement approved by the county superintendent.

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

The county attendance director and the assistants shall diligently promote regular school attendance. They shall ascertain reasons for inexcusable absences from school of pupils of compulsory school age and students who remain enrolled beyond the sixteenth birthday as defined under this article and shall take such steps as are, in their discretion, best calculated to correct attitudes of parents and pupils which results in absences from school even though not clearly in violation of law.
In the case of five consecutive or ten total unexcused absences of a child during a school year, the attendance director or assistant shall serve written notice to the parent, guardian or custodian of such child that the attendance of such child at school is required and that within ten days of receipt of the notice the parent, guardian or custodian, accompanied by the child, shall report in person to the school the child attends for a conference with the principal or other designated representative of the school in order to discuss and correct the circumstances causing the inexcusable absences of the child; and if the parent, guardian or custodian does not comply with the provisions of this article, then the attendance director or assistant shall make complaint against the parent, guardian or custodian before a magistrate of the county. If it appears from the complaint that there is probable cause to believe that an offense has been committed and that the accused has committed it, a summons or a warrant for the arrest of the accused shall issue to any officer authorized by law to serve the summons or to arrest persons charged with offenses against the state. More than one summons or warrant may be issued on the same complaint. The summons or warrant shall be executed within ten days of its issuance.

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

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

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

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

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

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

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

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

(e) Promote attendance in the county by the compilation of data for schools and by furnishing suggestions and recommendations for publication through school bulletins and the press, or in such manner as the county superintendent may direct;
(f) Participate in school teachers’ conferences with parents and students;

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

(h) Make home visits of students who have excessive unexcused absences, as provided above, or if requested by the chief administrator, principal or assistant principal.

(i) The attendance director shall serve as the liaison for homeless children and youth.

§18-8-7. Aiding or abetting violations of compulsory attendance; penalty.

Any person who induces or attempts to induce any child or student unlawfully to absent himself or herself from school, or who harbors or employs any child or student of compulsory school age or any student over sixteen years of age who is enrolled in a school while the school to which he or she belongs and which he or she is required to attend is in session, or who employs such child or student within the term of such school on any day such school is in session without the written permission of the county superintendent of schools, or for a longer period than such work permit may specify shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than twenty-five nor more than fifty dollars and may be confined in jail not less than ten nor more than thirty days.

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

(a) In accordance with the provisions of sections three and five, article two, chapter seventeen-b of this code, the division of motor vehicles shall deny a license or instruction permit for the operation of a motor vehicle to any person under the age of eighteen who does not at the time of application present a diploma or other certificate of graduation issued to the person from a secondary high school of this state or any other state or documentation that the person: (1) Is enrolled and making satisfactory
progress in a course leading to a general educational development certificate (GED) from a state approved institution or organization, or has obtained such certificate; (2) is enrolled in a secondary school of this state or any other state; (3) is excused from such requirement due to circumstances beyond his or her control; or (4) is enrolled in an institution of higher education as a full-time student in this state or any other state.

(b) The attendance director or chief administrator shall provide documentation of enrollment status on a form approved by the department of education to any student fifteen years of age but less than eighteen years of age or older upon request who is properly enrolled in a school under the jurisdiction of the official for presentation to the division of motor vehicles on application for or reinstatement of an instruction permit or license to operate a motor vehicle. Whenever a student fifteen years of age but less than eighteen years of age withdraws from school, except as provided in subsection (d) of this section, the attendance director or chief administrator shall notify the division of motor vehicles of the withdrawal not later than five days from the withdrawal date. Within five days of receipt of the notice, the division of motor vehicles shall send notice to the licensee that the license will be suspended under the provisions of section three, article two, chapter seventeen-b of this code on the thirtieth day following the date the notice was sent unless documentation of compliance with the provisions of this section is received by the division of motor vehicles before such time.

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

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

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-6a. Teachers retirement fund allowance; unfunded liability allowance.

(a) The total teachers retirement fund allowance shall be the sum of the basic foundation allowance for professional educators and the basic foundation allowance for service personnel, as provided in sections four and five of this article; all salary equity appropriations authorized in section five, article four of chapter eighteen-a; and such amounts as are to be paid by the counties pursuant to sections five-a and five-b of said article to the extent such county salary supplements are equal to the amount distributed for salary equity among the counties, multiplied by fifteen percent.

(b) The teachers retirement fund allowance amounts provided for in subsection (a) of this section shall be accumulated in the employers accumulation fund of the state teachers retirement system pursuant to section eighteen, article seven-a of this chapter, and shall be in lieu of the contribution required of employers pursuant to subsection (b) of said section as to all personnel included in the allowance for state aid in accordance with sections four and five of this article.
(c) In addition to the teachers retirement fund allowance provided for in subsection (a) of this section, there shall be an allowance for the reduction of any unfunded liability of the teachers retirement fund in accordance with the following provisions of this subsection. On or before the thirty-first day of December of each year, the actuary or actuarial firm employed in accordance with the provisions of section four, article ten-d, chapter five of this code shall submit a report to the president of the Senate and the speaker of the House of Delegates which sets forth an actuarial valuation of the teachers retirement fund as of the preceding thirtieth day of June. Each annual report shall recommend the actuary’s best estimate, at that time, of the funding necessary to both eliminate the unfunded liability over a forty-year period beginning on the first day of July, one thousand nine hundred ninety-four, and to meet the cash flow requirements of the fund in fulfilling its future anticipated obligations to its members. In determining the amount of funding required, the actuary shall take into consideration all funding otherwise available to the fund for that year from any source: Provided, That the appropriation and allocation to the teachers' retirement fund made pursuant to the provisions of sections six-b of this article shall be included in the determination of the requisite funding amount. In any year in which the actuary determines that the teachers retirement fund is not being funded in such a manner, the allowance made for the unfunded liability for the next fiscal year shall be not less than the amount of the actuary’s best estimate of the amount necessary to conform to the funding requirements set forth in this subsection.

§18-9A-6b. Allocation of growth of local share.

Beginning with the first day of July, one thousand nine hundred ninety-five, and thereafter, an appropriation and allocation due to the increase in local share not to exceed seven million dollars above that computed for the previous year, which increase may be attributable to any increase in the tax rate as enacted by the Legislature in accordance with the provisions of subsection (b), section six-f, article eight, chapter eleven of this code, shall be
allocated to the state teachers' retirement system, which
appropriation and allocation shall be used to reduce the
amounts required by section six-a of this article or any
other retirement contributions as may be required to the
state teachers retirement system set forth in article seven-a
of this chapter and which shall be accumulated in the
employers accumulation fund created in section eighteen
of said article seven-a.


To provide for the support of increased net
enrollments in the counties in a school year over the net
enrollments used in the computation of total state aid for
that year, there shall be appropriated for that purpose
from the general revenue fund an amount equal to the
average total state aid per net pupil multiplied by the total
of all of the increases in the net enrollments of the
counties made by comparing the most recent reports of
net enrollment for the second school month to the
immediately previous year's reports for the same school
month.

Upon determination of the several increases in the
respective counties' net enrollments, as of the close of the
second school month, each county showing such increase
shall be allocated an amount equal to that county's
average per net pupil total state aid multiplied by the
increase in that county's net enrollment determined as
provided heretofore. Such allocations shall be distributed
not later than the thirty-first day of December of each
year to the counties having increases in net enrollment as
heretofore provided. If the amount appropriated for this
purpose shall not be sufficient to provide payment in full
for the total of these several allocations, each county
allocation shall be reduced to an amount which is
proportionate to the appropriation compared to the total
of the several allocations, and the allocations as thus
adjusted shall be distributed to the counties as provided in
this section: Provided, That the governor shall request a
supplemental appropriation at the next legislative session
for the reduced amount.
No provision of this section shall be construed to in any way affect the allocation of moneys for educational purposes to a county under other provisions of law.

Except for those students who are enrolled in special education programs, students who have not attained the age of five prior to the first day of September shall not be included for any purpose of this section.

Nothing in this section shall be construed to require any specific level of funding by the Legislature.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-8i. Seniority rights for professional educators and school service personnel in cases of intercounty transfer arrangements.

Notwithstanding any other provisions of this code to the contrary, if students are required to attend school in a county other than the county of their residence as a result of an intercounty transfer arrangement, then the following terms, rules and procedures shall apply:

(a) For the purposes of this section, the following terms have the following meanings:

(1) "Intercounty transfer arrangement" means those cases in which students are required to attend school in a county other than the county of their residence;

(2) "Receiving county" means the county, other than the county of residence, where students are required to attend school; and

(3) "Sending county" means the county of residence of students involved in intercounty transfer arrangements.

(b) The state board shall determine the number of professional educator and school service personnel positions to be created in facilities receiving students or in any facility affected by an intercounty transfer arrangement. The state board shall prepare a certified list
of positions and shall provide the list to both the sending and receiving counties involved in the intercounty transfer arrangement.

(c) The state board shall prepare a certified list containing the names and seniority of the professional educators and service personnel in the sending county whose employment has been terminated as a result of an intercounty transfer arrangement. Those eligible to appear on the certified list shall be limited to the following classifications of employees:

(1) Those persons whose positions were eliminated as a direct result of an intercounty transfer arrangement and:
   (i) Who choose not to exercise their right to displace another employee with lesser seniority; or (ii) whose seniority is insufficient to allow them to displace other employees; and

(2) Those persons, as determined by the state board, who would have retained a position with the sending county if the intercounty transfer arrangement had not occurred.

(d) The receiving county may not fill any position on the list of positions created pursuant to the provisions of subsection (b) of this section until the receiving county has received the list of employees created pursuant to the provisions of subsection (c) of this section. When the receiving county has been provided copies of both the certified list of positions and the certified list of employees, the receiving county shall begin filling the vacancies by selecting employees from the certified list. In filling these positions, the receiving county shall comply with all provisions of law relevant to the filling of professional educator or service personnel vacancies.

(e) For the remainder of the school year immediately following the effective date of an intercounty transfer arrangement, but in no case less than six months, the receiving county may fill positions on the certified list of positions only by selecting employees from the certified list of employees.
(f) For the purposes of this section only, professional educators and service personnel whose names appear on the certified list of employees created pursuant to the provisions of subsection (c) of this section and who are hired by the county board of the receiving county shall accrue seniority in both the sending and the receiving counties during the time in which they continue to be employed by the county board of the receiving county.

(g) The state board shall promulgate legislative rules to implement the provisions of this section pursuant to the provisions of article three-b, chapter twenty-nine-a of this code. The rules shall be filed with the office of the secretary of state no later than the first day of October, one thousand nine hundred ninety-seven.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect July 1, 1997.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 6th day of May, 1997.

Governor