

HB 4436

2010 MAR 19 PM 4:49

SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
SECOND REGULAR SESSION, 2010



**ENROLLED**

**COMMITTEE SUBSTITUTE  
FOR  
House Bill No. 4436**

(By Delegates Shaver, M. Poling, Perry, Williams,  
Ennis, Beach, Lawrence, Romine, Pethtel,  
Paxton and Cann)



Passed March 11, 2010

In Effect Ninety Days From Passage

# ENROLLED

2010 MAR 19 PM 4:49

COMMITTEE SUBSTITUTE

FOR

CLERK OF WEST VIRGINIA  
SECRETARY OF STATE

## H. B. 4436

(BY DELEGATES SHAVER, M. POLING, PERRY, WILLIAMS,  
ENNIS, BEACH, LAWRENCE, ROMINE, PETHEL,  
PAXTON AND CANN)

[Passed March 11, 2010; in effect ninety days from passage]

AN ACT to amend and reenact §18-2E-5 and §18-5A-6 of the Code of West Virginia, 1931, as amended, relating to promoting student achievement; revising accountability finding; clarifying optional usage of certain testing or assessment instruments; publishing and making such instruments available to curriculum teams and teacher collaborations; making exclusions from accreditation and evaluations for failure to use or exercise of discretion in using certain assessments, strategies and programs; adding circumstance to definition of low performing school; providing for state system of support for low performing schools and modifying process and time lines for improvement; requiring schools and school systems to work collaboratively with state system of support in certain circumstances; requiring school curriculum teams to review certain non required tests and assessments and providing it discretion to determine usage; authorizing team to request waiver of state and county requirements to use certain assessments, instructional strategies or programs; updating

waivers for instructional resources; providing for optional adoption by schools of process for teacher collaboration to replace or in addition to school curriculum team; and providing for membership, mission and structure.

*Be it enacted by the Legislature of West Virginia:*

That § 18-2E-5 and § 18-5A-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.**

**§18-2E-5. Process for improving education; education standards; statewide assessment program; accountability measures; Office of Education Performance Audits; school accreditation and school system approval; intervention to correct low performance.**

1 (a) *Legislative findings, purpose and intent.* -- The  
2 Legislature makes the following findings with respect to the  
3 process for improving education and its purpose and intent in  
4 the enactment of this section:

5 (1) The process for improving education includes four  
6 primary elements, these being:

7 (A) Standards which set forth the knowledge and skills  
8 that students should know and be able to do as the result of  
9 a thorough and efficient education that prepares them for the  
10 twenty-first century, including measurable criteria to evaluate  
11 student performance and progress;

12 (B) Assessments of student performance and progress  
13 toward meeting the standards;

14 (C) A system of accountability for continuous  
15 improvement defined by high quality standards for schools  
16 and school systems articulated by a rule promulgated by the  
17 state board and outlined in subsection (c) of this section that  
18 will build capacity in schools and districts to meet rigorous  
19 outcomes that assure student performance and progress  
20 toward obtaining the knowledge and skills intrinsic to a high  
21 quality education rather than monitoring for compliance with  
22 specific laws and regulations; and

23 (D) A method for building the capacity and improving  
24 the efficiency of schools and school systems to improve  
25 student performance and progress.

26 (2) As the Constitutional body charged with the general  
27 supervision of schools as provided by general law, the state  
28 board has the authority and the responsibility to establish the  
29 standards, assess the performance and progress of students  
30 against the standards, hold schools and school systems  
31 accountable and assist schools and school systems to build  
32 capacity and improve efficiency so that the standards are met,  
33 including, when necessary, seeking additional resources in  
34 consultation with the Legislature and the Governor.

35 (3) As the Constitutional body charged with providing for  
36 a thorough and efficient system of schools, the Legislature  
37 has the authority and the responsibility to establish and be  
38 engaged constructively in the determination of the knowledge  
39 and skills that students should know and be able to do as the  
40 result of a thorough and efficient education. This determination  
41 is made by using the process for improving education to  
42 determine when school improvement is needed, by evaluating  
43 the results and the efficiency of the system of schools, by  
44 ensuring accountability and by providing for the necessary  
45 capacity and its efficient use.

46 (4) In consideration of these findings, the purpose of this  
47 section is to establish a process for improving education that  
48 includes the four primary elements as set forth in subdivision  
49 (1) of this subsection to provide assurances that the high  
50 quality standards are, at a minimum, being met and that a  
51 thorough and efficient system of schools is being provided  
52 for all West Virginia public school students on an equal  
53 education opportunity basis.

54 (5) The intent of the Legislature in enacting this section  
55 and section five-c of this article is to establish a process  
56 through which the Legislature, the Governor and the state  
57 board can work in the spirit of cooperation and collaboration  
58 intended in the process for improving education to consult  
59 and examine the performance and progress of students,  
60 schools and school systems and, when necessary, to consider  
61 alternative measures to ensure that all students continue to  
62 receive the thorough and efficient education to which they  
63 are entitled. However, nothing in this section requires any  
64 specific level of funding by the Legislature.

65 (b) *Electronic county and school strategic improvement*  
66 *plans.* -- The state board shall promulgate a rule consistent  
67 with the provisions of this section and in accordance with  
68 article three-b, chapter twenty-nine-a of this code establishing  
69 an electronic county strategic improvement plan for each  
70 county board and an electronic school strategic improvement  
71 plan for each public school in this state. Each respective plan  
72 shall be a five-year plan that includes the mission and goals  
73 of the school or school system to improve student, school or  
74 school system performance and progress, as applicable. The  
75 strategic plan shall be revised annually in each area in which  
76 the school or system is below the standard on the annual  
77 performance measures. The revised annual plan also shall  
78 identify any deficiency which is reported on the check lists  
79 identified in paragraph (G), subdivision (5), subsection (I) of  
80 this section including any deficit more than a casual deficit

81 by the county board. The plan shall be revised when required  
82 pursuant to this section to include each annual performance  
83 measure upon which the school or school system fails to meet  
84 the standard for performance and progress, the action to be  
85 taken to meet each measure, a separate time line and a date  
86 certain for meeting each measure, a cost estimate and, when  
87 applicable, the assistance to be provided by the department  
88 and other education agencies to improve student, school or  
89 school system performance and progress to meet the annual  
90 performance measure.

91 The department shall make available to all public schools  
92 through its website or the West Virginia Education  
93 Information System an electronic school strategic improvement  
94 plan boilerplate designed for use by all schools to develop an  
95 electronic school strategic improvement plan which  
96 incorporates all required aspects and satisfies all improvement  
97 plan requirements of the No Child Left Behind Act.

98 (c) *High quality education standards and efficiency*  
99 *standards.* -- In accordance with the provisions of article  
100 three-b, chapter twenty-nine-a of this code, the state board  
101 shall adopt and periodically review and update high quality  
102 education standards for student, school and school system  
103 performance and processes in the following areas:

- 104 (1) Curriculum;
- 105 (2) Workplace readiness skills;
- 106 (3) Finance;
- 107 (4) Transportation;
- 108 (5) Special education;
- 109 (6) Facilities;

- 110 (7) Administrative practices;
- 111 (8) Training of county board members and administrators;
- 112 (9) Personnel qualifications;
- 113 (10) Professional development and evaluation;
- 114 (11) Student performance and progress;
- 115 (12) School and school system performance and progress;
- 116 (13) A code of conduct for students and employees;
- 117 (14) Indicators of efficiency; and
- 118 (15) Any other areas determined by the state board.

119 The standards, as applicable, shall incorporate the state's  
120 21st Century Skills Initiative and shall assure that graduates  
121 are prepared for continuing post-secondary education,  
122 training and work and that schools and school systems are  
123 making progress toward achieving the education goals of the  
124 state.

125 (d) *Comprehensive statewide student assessment*  
126 *program.* -- The state board shall promulgate a rule in  
127 accordance with the provisions of article three-b, chapter  
128 twenty-nine-a of this code establishing a comprehensive  
129 statewide student assessment program to assess student  
130 performance and progress in grades three through twelve.  
131 The state board may require that student proficiencies be  
132 measured through the ACT EXPLORE and the ACT PLAN  
133 assessments or other comparable assessments, which are  
134 approved by the state board and provided by future vendors.  
135 The state board may require that student proficiencies be

136 measured through the West Virginia writing assessment at  
137 any of the grade levels four, seven and ten determined by the  
138 state board to be appropriate: *Provided*, That, effective July  
139 1, 2008, the state board may require that student proficiencies  
140 be measured through the West Virginia writing assessment at  
141 any of the grade levels four, seven and eleven determined by  
142 the state board to be appropriate. The state board may  
143 provide through the statewide assessment program other  
144 optional testing or assessment instruments applicable to grade  
145 levels kindergarten through grade twelve which may be used  
146 by each school to promote student achievement upon  
147 approval by the school curriculum team or the process for  
148 teacher collaboration to improve instruction and learning  
149 established by the faculty senate as provided in section six,  
150 article five-a of this chapter. The state board shall annually  
151 publish and make available, electronically or otherwise, to  
152 school curriculum teams and teacher collaborative processes  
153 the optional testing and assessment instruments. The failure  
154 of a school to use any optional testing and assessment may  
155 not be cited as a deficiency in any accreditation review of the  
156 school; nor may the exercise of its discretion, as provided in  
157 section six, article five-a of this chapter, in using the  
158 assessments and implementing the instructional strategies and  
159 programs that it determines best to promote student  
160 achievement at the school be cited as a deficiency in any  
161 accreditation review of the school or in the personnel  
162 evaluation of the principal. The use of assessment results are  
163 subject to the following:

164 (1) The assessment results for grade levels three through  
165 eight and eleven are the only assessment results which may  
166 be used for determining whether any school or school system  
167 has made adequate yearly progress (AYP);

168 (2) Only the assessment results in the subject areas of  
169 reading/language arts and mathematics may be used for



170 determining whether a school or school system has made  
171 adequate yearly progress (AYP);

172 (3) The results of the West Virginia writing assessment,  
173 the ACT EXPLORE assessments and the ACT PLAN  
174 assessments may not be used for determining whether a  
175 school or school system has made adequate yearly progress  
176 (AYP);

177 (4) The results of testing or assessment instruments  
178 provided by the state board for optional use by schools and  
179 school systems to promote student achievement may not be  
180 used for determining whether a school or school system has  
181 made adequate yearly progress (AYP); and

182 (5) All assessment provisions of the comprehensive  
183 statewide student assessment program in effect for the school  
184 year 2006-2007 shall remain in effect until replaced by the  
185 state board rule.

186 (e) *Annual performance measures for Public Law 107-*  
187 *110, the Elementary and Secondary Education Act of 1965,*  
188 *as amended (No Child Left Behind Act of 2001).* -- The  
189 standards shall include annual measures of student, school  
190 and school system performance and progress for the grade  
191 levels and the content areas defined by the act. The  
192 following annual measures of student, school and school  
193 system performance and progress shall be the only measures  
194 for determining whether adequately yearly progress under the  
195 No Child Left Behind Act has been achieved:

196 (1) The acquisition of student proficiencies as indicated  
197 by student performance and progress on the required  
198 accountability assessments at the grade levels and content  
199 areas as required by the act subject to the limitations set forth  
200 in subsection (d) of this section.

201 (2) The student participation rate in the uniform statewide  
202 assessment must be at least ninety-five percent or the average  
203 of the participation rate for the current and the preceding two  
204 years is ninety-five percent for the school, county and state;

205 (3) Only for schools that do not include grade twelve, the  
206 school attendance rate which shall be no less than ninety  
207 percent in attendance for the school, county and state. The  
208 following absences are excluded:

209 (A) Student absences excused in accordance with the  
210 state board rule promulgated pursuant to section four, article  
211 eight of this chapter;

212 (B) Students not in attendance due to disciplinary  
213 measures; and

214 (C) Absent students for whom the attendance director has  
215 pursued judicial remedies compelling attendance to the extent  
216 of his or her authority; and

217 (4) The high school graduation rate which shall be no less  
218 than eighty percent for the school, county and state; or if the  
219 high school graduation rate is less than eighty percent, the  
220 high school graduation rate shall be higher than the high  
221 school graduation rate of the preceding year as determined  
222 from information on the West Virginia Education Information  
223 System on August 15.

224 (f) *State annual performance measures for school and*  
225 *school system accreditation.* -- The state board shall establish  
226 a system to assess and weigh annual performance measures  
227 for state accreditation of schools and school systems in a  
228 manner that gives credit or points such as an index to prevent  
229 any one measure alone from causing a school to achieve less  
230 than full accreditation status or a school system from

231 achieving less than full approval status: *Provided*, That a  
232 school or school system that achieves adequate yearly  
233 progress is eligible for no less than full accreditation or  
234 approval status, as applicable, and the system established  
235 pursuant to this subsection applies only to schools and school  
236 systems that do not achieve adequate yearly progress.

237 The following types of measures, as may be appropriate  
238 at the various programmatic levels, may be approved by the  
239 state board for the school and school system accreditation:

240 (1) The acquisition of student proficiencies as indicated  
241 by student performance and progress on the uniform  
242 statewide assessment program at the grade levels as provided  
243 in subsection (d) of this section. The state board may  
244 approve providing bonus points or credits for students  
245 scoring at or above mastery and distinguished levels;

246 (2) Writing assessment results in grades tested;

247 (3) School attendance rates;

248 (4) Percentage of courses taught by highly qualified  
249 teachers;

250 (5) Percentage of students scoring at benchmarks on the  
251 currently tested ACT EXPLORE and ACT PLAN assessments or  
252 other comparable assessments, which are approved by the  
253 state board and provided by future vendors;

254 (6) Graduation rates;

255 (7) Job placement rates for vocational programs;

256 (8) Percent of students passing end-of-course  
257 career/technical tests;

258 (9) Percent of students not requiring college remediation  
259 classes; and

260 (10) Bonus points or credits for subgroup improvement,  
261 advanced placement percentages, dual credit completers and  
262 international baccalaureate completers.

263 (g) *Indicators of exemplary performance and progress.* --  
264 The standards shall include indicators of exemplary student,  
265 school and school system performance and progress. The  
266 indicators of exemplary student, school and school system  
267 performance and progress shall be used only as indicators for  
268 determining whether accredited and approved schools and  
269 school systems should be granted exemplary status. These  
270 indicators shall include, but are not limited to, the following:

271 (1) The percentage of graduates who declare their intent  
272 to enroll in college and other post-secondary education and  
273 training following high school graduation;

274 (2) The percentage of graduates who receive additional  
275 certification of their skills, competence and readiness for  
276 college, other post-secondary education or employment  
277 above the level required for graduation; and

278 (3) The percentage of students who successfully complete  
279 advanced placement, dual credit and honors classes.

280 (h) *Indicators of efficiency.* -- In accordance with the  
281 provisions of article three-b, chapter twenty-nine-a of this  
282 code, the state board shall adopt by rule and periodically  
283 review and update indicators of efficiency for use by the  
284 appropriate divisions within the department to ensure  
285 efficient management and use of resources in the public  
286 schools in the following areas:

287 (1) Curriculum delivery including, but not limited to, the  
288 use of distance learning;

289 (2) Transportation;

290 (3) Facilities;

291 (4) Administrative practices;

292 (5) Personnel;

293 (6) Use of regional educational service agency programs  
294 and services, including programs and services that may be  
295 established by their assigned regional educational service  
296 agency or other regional services that may be initiated  
297 between and among participating county boards; and

298 (7) Any other indicators as determined by the state board.

299 (i) *Assessment and accountability of school and school*  
300 *system performance and processes.* -- In accordance with the  
301 provisions of article three-b, chapter twenty-nine-a of this  
302 code, the state board shall establish by rule a system of  
303 education performance audits which measures the quality of  
304 education and the preparation of students based on the annual  
305 measures of student, school and school system performance  
306 and progress. The system of education performance audits  
307 shall provide information to the state board, the Legislature  
308 and the Governor, individually and collectively as the  
309 Process for Improving Education Council, upon which they  
310 may determine whether a thorough and efficient system of  
311 schools is being provided. The system of education  
312 performance audits shall include:

313 (1) The assessment of student, school and school system  
314 performance and progress based on the annual measures set  
315 forth in subsection (d) of this section;

316 (2) The evaluation of records, reports and other  
317 information collected by the department upon which the  
318 quality of education and compliance with statutes, policies  
319 and standards may be determined;

320 (3) The review of school and school system electronic  
321 strategic improvement plans; and

322 (4) The on-site review of the processes in place in schools  
323 and school systems to enable school and school system  
324 performance and progress and compliance with the standards.

325 (j) *Uses of school and school system assessment*  
326 *information.* -- The state board and the Process for Improving  
327 Education Council established pursuant to section five-c of  
328 this article shall use information from the system of  
329 education performance audits to assist them in ensuring that  
330 a thorough and efficient system of schools is being provided  
331 and to improve student, school and school system  
332 performance and progress. Information from the system of  
333 education performance audits further shall be used by the  
334 state board for these purposes, including, but not limited to,  
335 the following:

336 (1) Determining school accreditation and school system  
337 approval status;

338 (2) Holding schools and school systems accountable for  
339 the efficient use of existing resources to meet or exceed the  
340 standards; and

341 (3) Targeting additional resources when necessary to  
342 improve performance and progress.

343 The state board shall make accreditation information  
344 available to the Legislature, the Governor, the general public

345 and to any individual who requests the information, subject  
346 to the provisions of any act or rule restricting the release of  
347 information.

348 (k) *Early detection and intervention programs.* -- Based  
349 on the assessment of student, school and school system  
350 performance and progress, the state board shall establish  
351 early detection and intervention programs using the available  
352 resources of the Department of Education, the regional  
353 educational service agencies, the Center for Professional  
354 Development and the Principals Academy, as appropriate, to  
355 assist underachieving schools and school systems to improve  
356 performance before conditions become so grave as to warrant  
357 more substantive state intervention. Assistance shall include,  
358 but is not limited to, providing additional technical assistance  
359 and programmatic, professional staff development, providing  
360 monetary, staffing and other resources where appropriate,  
361 and, if necessary, making appropriate recommendations to  
362 the Process for Improving Education Council.

363 (l) *Office of Education Performance Audits.* --

364 (1) To assist the state board and the Process for  
365 Improving Education Council in the operation of a system of  
366 education performance audits, the state board shall establish  
367 an Office of Education Performance Audits consistent with  
368 the provisions of this section. The Office of Education  
369 Performance Audits shall be operated under the direction of  
370 the state board independently of the functions and  
371 supervision of the State Department of Education and state  
372 superintendent. The Office of Education Performance Audits  
373 shall report directly to and be responsible to the state board  
374 and the Process for Improving Education Council created in  
375 section five-c of this article in carrying out its duties under  
376 the provisions of this section.

377 (2) The office shall be headed by a director who shall be  
378 appointed by the state board and who shall serve at the will  
379 and pleasure of the state board. The annual salary of the  
380 director shall be set by the state board and may not exceed  
381 eighty percent of the salary cap of the State Superintendent  
382 of Schools.

383 (3) The state board shall organize and sufficiently staff  
384 the office to fulfill the duties assigned to it by law and by the  
385 state board. Employees of the State Department of Education  
386 who are transferred to the Office of Education Performance  
387 Audits shall retain their benefits and seniority status with the  
388 Department of Education.

389 (4) Under the direction of the state board, the Office of  
390 Education Performance Audits shall receive from the West  
391 Virginia education information system staff research and  
392 analysis data on the performance and progress of students,  
393 schools and school systems, and shall receive assistance, as  
394 determined by the state board, from staff at the State  
395 Department of Education, the regional education service  
396 agencies, the Center for Professional Development, the  
397 Principals Academy and the School Building Authority to  
398 carry out the duties assigned to the office.

399 (5) In addition to other duties which may be assigned to  
400 it by the state board or by statute, the Office of Education  
401 Performance Audits also shall:

402 (A) Assure that all statewide assessments of student  
403 performance used as annual performance measures are secure  
404 as required in section one-a of this article;

405 (B) Administer all accountability measures as assigned  
406 by the state board, including, but not limited to, the  
407 following:



408 (i) Processes for the accreditation of schools and the  
409 approval of school systems; and

410 (ii) Recommendations to the state board on appropriate  
411 action, including, but not limited to, accreditation and  
412 approval action;

413 (C) Determine, in conjunction with the assessment and  
414 accountability processes, what capacity may be needed by  
415 schools and school systems to meet the standards established  
416 by the state board and recommend to the state board and the  
417 Process for Improving Education Council plans to establish  
418 those needed capacities;

419 (D) Determine, in conjunction with the assessment and  
420 accountability processes, whether statewide system  
421 deficiencies exist in the capacity of schools and school  
422 systems to meet the standards established by the state board,  
423 including the identification of trends and the need for  
424 continuing improvements in education, and report those  
425 deficiencies and trends to the state board and the Process for  
426 Improving Education Council;

427 (E) Determine, in conjunction with the assessment and  
428 accountability processes, staff development needs of schools  
429 and school systems to meet the standards established by the  
430 state board and make recommendations to the state board, the  
431 Process for Improving Education Council, the Center for  
432 Professional Development, the regional educational service  
433 agencies, the Higher Education Policy Commission and the  
434 county boards;

435 (F) Identify, in conjunction with the assessment and  
436 accountability processes, exemplary schools and school  
437 systems and best practices that improve student, school and  
438 school system performance and make recommendations to

439 the state board and the Process for Improving Education  
440 Council for recognizing and rewarding exemplary schools  
441 and school systems and promoting the use of best practices.  
442 The state board shall provide information on best practices to  
443 county school systems and shall use information identified  
444 through the assessment and accountability processes to select  
445 schools of excellence; and

446 (G) Develop reporting formats, such as check lists, which  
447 shall be used by the appropriate administrative personnel in  
448 schools and school systems to document compliance with  
449 various of the applicable laws, policies and process standards  
450 as considered appropriate and approved by the state board,  
451 including, but not limited to, the following:

452 (i) The use of a policy for the evaluation of all school  
453 personnel that meets the requirements of sections twelve and  
454 twelve-a, article two, chapter eighteen-a of this code;

455 (ii) The participation of students in appropriate physical  
456 assessments as determined by the state board, which  
457 assessment may not be used as a part of the assessment and  
458 accountability system;

459 (iii) The appropriate licensure of school personnel; and

460 (iv) The school provides multicultural activities.

461 Information contained in the reporting formats is subject  
462 to examination during an on-site review to determine  
463 compliance with laws, policies and standards. Intentional  
464 and grossly negligent reporting of false information are  
465 grounds for dismissal.

466 (m) *On-site reviews.* --

467 (1) The system of education performance audits shall  
468 include on-site reviews of schools and school systems which  
469 shall be conducted only at the specific direction of the state  
470 board upon its determination that the performance and  
471 progress of the school or school system are persistently  
472 below standard or that other circumstances exist that warrant  
473 an on-site review. Any discussion by the state board of  
474 schools to be subject to an on-site review or dates for which  
475 on-site reviews will be conducted may be held in executive  
476 session and is not subject to the provisions of article nine-a,  
477 chapter six of this code relating to open governmental  
478 proceedings. An on-site review shall be conducted by the  
479 Office of Education Performance Audits of a school or  
480 school system for the purpose of investigating the reasons for  
481 performance and progress that are persistently below  
482 standard and making recommendations to the school and  
483 school system, as appropriate, and to the state board on such  
484 measures as it considers necessary to improve performance  
485 and progress to meet the standard. The investigation may  
486 include, but is not limited to, the following:

487 (A) Verifying data reported by the school or county  
488 board;

489 (B) Examining compliance with the laws and policies  
490 affecting student, school and school system performance and  
491 progress;

492 (C) Evaluating the effectiveness and implementation  
493 status of school and school system electronic strategic  
494 improvement plans;

495 (D) Investigating official complaints submitted to the  
496 state board that allege serious impairments in the quality of  
497 education in schools or school systems;

498 (E) Investigating official complaints submitted to the  
499 state board that allege that a school or county board is in  
500 violation of policies or laws under which schools and county  
501 boards operate; and

502 (F) Determining and reporting whether required reviews  
503 and inspections have been conducted by the appropriate  
504 agencies, including, but not limited to, the State Fire Marshal,  
505 the Health Department, the School Building Authority and  
506 the responsible divisions within the Department of Education,  
507 and whether noted deficiencies have been or are in the  
508 process of being corrected. The Office of Education  
509 Performance Audits may not conduct a duplicate review or  
510 inspection of any compliance reviews or inspections  
511 conducted by the department or its agents or other duly  
512 authorized agencies of the state, nor may it mandate more  
513 stringent compliance measures.

514 (2) The Director of the Office of Education Performance  
515 Audits shall notify the county superintendent of schools five  
516 school days prior to commencing an on-site review of the  
517 county school system and shall notify both the county  
518 superintendent and the principal five school days  
519 before commencing an on-site review of an individual  
520 school: *Provided*, That the state board may direct the Office  
521 of Education Performance Audits to conduct an unannounced  
522 on-site review of a school or school system if the state board  
523 believes circumstances warrant an unannounced on-site  
524 review.

525 (3) The Office of Education Performance Audits shall  
526 conduct on-site reviews which are limited in scope to specific  
527 areas in which performance and progress are persistently  
528 below standard as determined by the state board unless  
529 specifically directed by the state board to conduct a review  
530 which covers additional areas.

531 (4) An on-site review of a school or school system shall  
532 include a person or persons from the Department of  
533 Education or a public education agency in the state who has  
534 expert knowledge and experience in the area or areas to be  
535 reviewed and who has been trained and designated by the  
536 state board to perform such functions. If the size of the  
537 school or school system and issues being reviewed  
538 necessitate the use of an on-site review team or teams, the  
539 person or persons designated by the state board shall advise  
540 and assist the director to appoint the team or teams. The  
541 person or persons designated by the state board shall be the  
542 team leaders.

543 The persons designated by the state board shall be  
544 responsible for completing the report on the findings and  
545 recommendations of the on-site review in their area of  
546 expertise. It is the intent of the Legislature that the persons  
547 designated by the state board participate in all on-site reviews  
548 that involve their area of expertise, to the extent practicable,  
549 so that the on-site review process will evaluate compliance  
550 with the standards in a uniform, consistent and expert  
551 manner.

552 (5) The Office of Education Performance Audits shall  
553 reimburse a county board for the costs of substitutes required  
554 to replace county board employees while they are serving on  
555 a review team.

556 (6) At the conclusion of an on-site review of a school  
557 system, the director and team leaders shall hold an exit  
558 conference with the superintendent and shall provide an  
559 opportunity for principals to be present for at least the portion  
560 of the conference pertaining to their respective schools. In  
561 the case of an on-site review of a school, the exit conference  
562 shall be held with the principal and curriculum team of the  
563 school and the superintendent shall be provided the

564 opportunity to be present. The purpose of the exit conference  
565 is to review the initial findings of the on-site review, clarify  
566 and correct any inaccuracies and allow the opportunity for  
567 dialogue between the reviewers and the school or school  
568 system to promote a better understanding of the findings.

569 (7) The Office of Education Performance Audits shall  
570 report the findings of an on-site review to the county  
571 superintendent and the principals whose schools were  
572 reviewed within thirty days following the conclusion of the  
573 on-site review. The Office of Education Performance Audits  
574 shall report the findings of the on-site review to the state  
575 board within forty-five days after the conclusion of the on-  
576 site review. A copy of the report shall be provided to the  
577 Process for Improving Education Council at its request. A  
578 school or county that believes one or more findings of a  
579 review are clearly inaccurate, incomplete or misleading,  
580 misrepresent or fail to reflect the true quality of education in  
581 the school or county or address issues unrelated to the health,  
582 safety and welfare of students and the quality of education,  
583 may appeal to the state board for removal of the findings.  
584 The state board shall establish a process for it to receive,  
585 review and act upon the appeals. The state board shall report  
586 to the Legislative Oversight Commission on Education  
587 Accountability during its July interim meetings, or as soon  
588 thereafter as practical, on each appeal during the preceding  
589 school year.

590 (8) The Legislature finds that the accountability and  
591 oversight of the following activities and programmatic areas  
592 in the public schools is controlled through other mechanisms  
593 and that additional accountability and oversight are not only  
594 unnecessary but counterproductive in distracting necessary  
595 resources from teaching and learning. Therefore,  
596 notwithstanding any other provision of this section to the  
597 contrary, the following activities and programmatic areas are

598 not subject to review by the Office of Education Performance  
599 Audits:

600 (A) Work-based learning;

601 (B) Use of advisory councils;

602 (C) Program accreditation and student credentials;

603 (D) Student transition plans;

604 (E) Graduate assessment form;

605 (F) Casual deficit;

606 (G) Accounting practices;

607 (H) Transportation services;

608 (I) Special education services;

609 (J) Safe, healthy and accessible facilities;

610 (K) Health services;

611 (L) Attendance director;

612 (M) Business/community partnerships;

613 (N) Pupil-teacher ratio/split grade classes;

614 (O) Local school improvement council, faculty senate,  
615 student assistance team and curriculum team;

616 (P) Planning and lunch periods;

- 617 (Q) Skill improvement program;
- 618 (R) Certificate of proficiency;
- 619 (S) Training of county board members;
- 620 (T) Excellence in job performance;
- 621 (U) Staff development; and
- 622 (V) Preventive discipline, character education and student  
623 and parental involvement.

624 (n) *School accreditation.* -- The state board annually shall  
625 review the information from the system of education  
626 performance audits submitted for each school and shall issue  
627 to every school one of the following approval levels:  
628 Exemplary accreditation status, distinction accreditation  
629 status, full accreditation status, temporary accreditation  
630 status, conditional accreditation status or low performing  
631 accreditation status.

632 (1) Full accreditation status shall be given to a school  
633 when the school's performance and progress meet or exceed  
634 the standards adopted by the state board pursuant to  
635 subsection (e) or (f), as applicable, of this section and it does  
636 not have any deficiencies which would endanger student  
637 health or safety or other extraordinary circumstances as  
638 defined by the state board. A school that meets or exceeds  
639 the performance and progress standards but has the other  
640 deficiencies shall remain on full accreditation status for the  
641 remainder of the accreditation period and shall have an  
642 opportunity to correct those deficiencies, notwithstanding  
643 other provisions of this subsection.

644 (2) Temporary accreditation status shall be given to a  
645 school when the school's performance and progress are



646 below the level required for full accreditation status.  
647 Whenever a school is given temporary accreditation status,  
648 the county board shall ensure that the school's electronic  
649 strategic improvement plan is revised in accordance with  
650 subsection (b) of this section to increase the performance and  
651 progress of the school to a full accreditation status level. The  
652 revised plan shall be submitted to the state board for  
653 approval.

654 (3) Conditional accreditation status shall be given to a  
655 school when the school's performance and progress are  
656 below the level required for full accreditation, but the  
657 school's electronic strategic improvement plan meets the  
658 following criteria:

659 (A) The plan has been revised to improve performance  
660 and progress on the standard or standards by a date or dates  
661 certain;

662 (B) The plan has been approved by the state board; and

663 (C) The school is meeting the objectives and time line  
664 specified in the revised plan.

665 (4) Exemplary accreditation status shall be given to a  
666 school when the school's performance and progress  
667 substantially exceed the standards adopted by the state board  
668 pursuant to subsections (f) and (g) of this section. The state  
669 board shall promulgate legislative rules in accordance with  
670 the provisions of article three-b, chapter twenty-nine-a of this  
671 code designated to establish standards of performance and  
672 progress to identify exemplary schools.

673 (5) Distinction accreditation status shall be given to a  
674 school when the school's performance and progress exceed  
675 the standards adopted by the state board. The state board

676 shall promulgate legislative rules in accordance with the  
677 provisions of article three-b, chapter twenty-nine-a of this  
678 code establishing standards of performance and progress to  
679 identify schools of distinction.

680 (6) Low-performing accreditation status shall be given to  
681 a school whenever extraordinary circumstances exist as  
682 defined by the state board.

683 (A) These circumstances shall include, but are not limited  
684 to, any one or more of the following:

685 (i) The failure of a school on temporary accreditation  
686 status to obtain approval of its revised electronic school  
687 strategic improvement plan within a reasonable time period  
688 as defined by the state board;

689 (ii) The failure of a school on conditional accreditation  
690 status to meet the objectives and time line of its revised  
691 electronic school strategic improvement plan;

692 (iii) The failure of a school to meet a standard by the date  
693 specified in the revised plan; and

694 (iv) The results of the most recent statewide assessment  
695 in reading and math or other multiple measures as determined  
696 by the state board that identify the school as low performing  
697 at its programmatic level in three of the last five years.

698 (B) Whenever the state board determines that the quality  
699 of education in a school is low performing, the state board  
700 shall appoint a team of improvement consultants from the  
701 West Virginia Department of Education State System of  
702 Support to make recommendations for correction of the low  
703 performance. These recommendations shall be communicated to  
704 the county board and a process shall be established in

705 conjunction with the State System of Support to correct the  
706 identified deficiencies. If progress in correcting the low  
707 performance as determined by the state board is not made  
708 within one year following the implementation of the  
709 measures adopted to correct the identified deficiencies or by  
710 a date certain established by the state board after at least one  
711 year of implementation, the state board shall place the county  
712 board on temporary approval status and provide consultation  
713 and assistance to the county board to assist it in the following  
714 areas:

715 (i) Improving personnel management;

716 (ii) Establishing more efficient financial management  
717 practices;

718 (iii) Improving instructional programs and rules; or

719 (iv) Making any other improvements that are necessary  
720 to correct the low performance.

721 (C) If the low performance is not corrected by a date  
722 certain as set by the state board:

723 (i) The state board shall appoint a monitor who shall be  
724 paid at county expense to cause improvements to be made at  
725 the school to bring it to full accreditation status within a  
726 reasonable time period as determined by the state board. The  
727 monitor's work location shall be at the school and the  
728 monitor shall work collaboratively with the principal. The  
729 monitor shall, at a minimum, report monthly to the state  
730 board on the measures being taken to improve the school's  
731 performance and the progress being made. The reports may  
732 include requests for additional assistance and  
733 recommendations required in the judgment of the monitor to  
734 improve the school's performance, including, but not limited

735 to, the need for targeting resources strategically to eliminate  
736 deficiencies;

737 (ii) The state board may make a determination, in its sole  
738 judgment, that the improvements necessary to provide a  
739 thorough and efficient education to the students at the school  
740 cannot be made without additional targeted resources, in  
741 which case it shall establish a plan in consultation with the  
742 county board that includes targeted resources from sources  
743 under the control of the state board and the county board to  
744 accomplish the needed improvements. Nothing in this  
745 subsection shall be construed to allow a change in personnel  
746 at the school to improve school performance and progress,  
747 except as provided by law;

748 (iii) If the low performance is not corrected within one  
749 year after the appointment of a monitor, the state board may  
750 make a determination, in its sole judgment, that continuing a  
751 monitor arrangement is not sufficient to correct the low  
752 performance and may intervene in the operation of the school  
753 to cause improvements to be made that will provide  
754 assurances that a thorough and efficient system of schools  
755 will be provided. This intervention may include, but is not  
756 limited to, establishing instructional programs, taking such  
757 direct action as may be necessary to correct the low  
758 performance, declaring the position of principal is vacant and  
759 assigning a principal for the school who shall serve at the will  
760 and pleasure of and, under the sole supervision of, the state  
761 board: *Provided*, That prior to declaring that the position of  
762 the principal is vacant, the state board must make a  
763 determination that all other resources needed to correct the  
764 low performance are present at the school. If the principal  
765 who was removed elects not to remain an employee of the  
766 county board, then the principal assigned by the state board  
767 shall be paid by the county board. If the principal who was  
768 removed elects to remain an employee of the county board,  
769 then the following procedure applies:

770 (I) The principal assigned by the state board shall be paid  
771 by the state board until the next school term, at which time  
772 the principal assigned by the state board shall be paid by the  
773 county board;

774 (II) The principal who was removed is eligible for all  
775 positions in the county, including teaching positions, for  
776 which the principal is certified, by either being placed on the  
777 transfer list in accordance with section seven, article two,  
778 chapter eighteen-a of this code, or by being placed on the  
779 preferred recall list in accordance with section seven-a, article  
780 four, chapter eighteen-a of this code; and

781 (III) The principal who was removed shall be paid by the  
782 county board and may be assigned to administrative duties,  
783 without the county board being required to post that position  
784 until the end of the school term.

785 (6) The county board shall take no action nor refuse any  
786 action if the effect would be to impair further the school in  
787 which the state board has intervened.

788 (7) The state board may appoint a monitor pursuant to the  
789 provisions of this subsection to assist the school principal  
790 after intervention in the operation of a school is completed.

791 (o) *Transfers from low-performing schools.* -- Whenever  
792 a school is determined to be low performing and fails to  
793 improve its status within one year, following state  
794 intervention in the operation of the school to correct the low  
795 performance, any student attending the school may transfer  
796 once to the nearest fully accredited school in the county,  
797 subject to approval of the fully accredited school and at the  
798 expense of the school from which the student transferred.

799 (p) *School system approval.* -- The state board annually  
800 shall review the information submitted for each school

801 system from the system of education performance audits and  
802 issue one of the following approval levels to each county  
803 board: Full approval, temporary approval, conditional  
804 approval or nonapproval.

805 (1) Full approval shall be given to a county board whose  
806 schools have all been given full, temporary or conditional  
807 accreditation status and which does not have any deficiencies  
808 which would endanger student health or safety or other  
809 extraordinary circumstances as defined by the state board. A  
810 fully approved school system in which other deficiencies are  
811 discovered shall remain on full accreditation status for the  
812 remainder of the approval period and shall have an  
813 opportunity to correct those deficiencies, notwithstanding  
814 other provisions of this subsection.

815 (2) Temporary approval shall be given to a county board  
816 whose education system is below the level required for full  
817 approval. Whenever a county board is given temporary  
818 approval status, the county board shall revise its electronic  
819 county strategic improvement plan in accordance with  
820 subsection (b) of this section to increase the performance and  
821 progress of the school system to a full approval status level.  
822 The revised plan shall be submitted to the state board for  
823 approval.

824 (3) Conditional approval shall be given to a county board  
825 whose education system is below the level required for full  
826 approval, but whose electronic county strategic improvement  
827 plan meets the following criteria:

828 (i) The plan has been revised in accordance with  
829 subsection (b) of this section;

830 (ii) The plan has been approved by the state board; and

831 (iii) The county board is meeting the objectives and time  
832 line specified in the revised plan.

833 (4) Nonapproval status shall be given to a county board  
834 which fails to submit and gain approval for its electronic  
835 county strategic improvement plan or revised electronic  
836 county strategic improvement plan within a reasonable time  
837 period as defined by the state board or which fails to meet the  
838 objectives and time line of its revised electronic county  
839 strategic improvement plan or fails to achieve full approval  
840 by the date specified in the revised plan.

841 (A) The state board shall establish and adopt additional  
842 standards to identify school systems in which the program  
843 may be nonapproved and the state board may issue  
844 nonapproval status whenever extraordinary circumstances  
845 exist as defined by the state board.

846 (B) Whenever a county board has more than a casual  
847 deficit, as defined in section one, article one of this chapter,  
848 the county board shall submit a plan to the state board  
849 specifying the county board's strategy for eliminating the  
850 casual deficit. The state board either shall approve or reject  
851 the plan. If the plan is rejected, the state board shall  
852 communicate to the county board the reason or reasons for  
853 the rejection of the plan. The county board may resubmit the  
854 plan any number of times. However, any county board that  
855 fails to submit a plan and gain approval for the plan from the  
856 state board before the end of the fiscal year after a deficit  
857 greater than a casual deficit occurred or any county board  
858 which, in the opinion of the state board, fails to comply with  
859 an approved plan may be designated as having nonapproval  
860 status.

861 (C) Whenever nonapproval status is given to a school  
862 system, the state board shall declare a state of emergency in

863 the school system and shall appoint a team of improvement  
864 consultants to make recommendations within sixty days of  
865 appointment for correcting the emergency. When the state  
866 board approves the recommendations, they shall be  
867 communicated to the county board. If progress in correcting  
868 the emergency, as determined by the state board, is not made  
869 within six months from the time the county board receives  
870 the recommendations, the state board shall intervene in the  
871 operation of the school system to cause improvements to be  
872 made that will provide assurances that a thorough and  
873 efficient system of schools will be provided. This  
874 intervention may include, but is not limited to, the following:

875 (i) Limiting the authority of the county superintendent  
876 and county board as to the expenditure of funds, the  
877 employment and dismissal of personnel, the establishment  
878 and operation of the school calendar, the establishment of  
879 instructional programs and rules and any other areas  
880 designated by the state board by rule, which may include  
881 delegating decision-making authority regarding these matters  
882 to the state superintendent;

883 (ii) Declaring that the office of the county superintendent  
884 is vacant;

885 (iii) Delegating to the state superintendent both the  
886 authority to conduct hearings on personnel matters and  
887 school closure or consolidation matters and, subsequently, to  
888 render the resulting decisions and the authority to appoint a  
889 designee for the limited purpose of conducting hearings while  
890 reserving to the state superintendent the authority to render  
891 the resulting decisions;

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



895 (v) Taking any direct action necessary to correct the  
896 emergency including, but not limited to, the following:

897 (I) Delegating to the state superintendent the authority to  
898 replace administrators and principals in low performing  
899 schools and to transfer them into alternate professional  
900 positions within the county at his or her discretion; and

901 (II) Delegating to the state superintendent the authority to  
902 fill positions of administrators and principals with individuals  
903 determined by the state superintendent to be the most  
904 qualified for the positions. Any authority related to  
905 intervention in the operation of a county board granted under  
906 this paragraph is not subject to the provisions of article four,  
907 chapter eighteen-a of this code;

908 (q) Notwithstanding any other provision of this section,  
909 the state board may intervene immediately in the operation of  
910 the county school system with all the powers, duties and  
911 responsibilities contained in subsection (p) of this section, if  
912 the state board finds the following:

913 (1) That the conditions precedent to intervention exist as  
914 provided in this section; and that delaying intervention for  
915 any period of time would not be in the best interests of the  
916 students of the county school system; or

917 (2) That the conditions precedent to intervention exist as  
918 provided in this section and that the state board had  
919 previously intervened in the operation of the same school  
920 system and had concluded that intervention within the  
921 preceding five years.

922 (r) *Capacity*. -- The process for improving education  
923 includes a process for targeting resources strategically to  
924 improve the teaching and learning process. Development of

925 electronic school and school system strategic improvement  
926 plans, pursuant to subsection (b) of this section, is intended,  
927 in part, to provide mechanisms to target resources  
928 strategically to the teaching and learning process to improve  
929 student, school and school system performance. When  
930 deficiencies are detected through the assessment and  
931 accountability processes, the revision and approval of school  
932 and school system electronic strategic improvement plans  
933 shall ensure that schools and school systems are efficiently  
934 using existing resources to correct the deficiencies. When the  
935 state board determines that schools and school systems do not  
936 have the capacity to correct deficiencies, the state board shall  
937 work with the county board to develop or secure the  
938 resources necessary to increase the capacity of schools and  
939 school systems to meet the standards and, when necessary,  
940 seek additional resources in consultation with the Legislature  
941 and the Governor.

942 The state board shall recommend to the appropriate body  
943 including, but not limited to, the Process for Improving  
944 Education Council, the Legislature, county boards, schools  
945 and communities methods for targeting resources  
946 strategically to eliminate deficiencies identified in the  
947 assessment and accountability processes. When making  
948 determinations on recommendations, the state board shall  
949 include, but is not limited to, the following methods:

950 (1) Examining reports and electronic strategic  
951 improvement plans regarding the performance and progress  
952 of students, schools and school systems relative to the  
953 standards and identifying the areas in which improvement is  
954 needed;

955 (2) Determining the areas of weakness and of  
956 ineffectiveness that appear to have contributed to the  
957 substandard performance and progress of students or the

958 deficiencies of the school or school system and requiring the  
959 school or school system to work collaboratively with the  
960 West Virginia Department of Education State System of  
961 Support to correct the deficiencies;

962 (3) Determining the areas of strength that appear to have  
963 contributed to exceptional student, school and school system  
964 performance and progress and promoting their emulation  
965 throughout the system;

966 (4) Requesting technical assistance from the School  
967 Building Authority in assessing or designing comprehensive  
968 educational facilities plans;

969 (5) Recommending priority funding from the School  
970 Building Authority based on identified needs;

971 (6) Requesting special staff development programs from  
972 the Center for Professional Development, the Principals  
973 Academy, higher education, regional educational service  
974 agencies and county boards based on identified needs;

975 (7) Submitting requests to the Legislature for  
976 appropriations to meet the identified needs for improving  
977 education;

978 (8) Directing county boards to target their funds  
979 strategically toward alleviating deficiencies;

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

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

985 (11) Ensuring that the needed capacity is available from  
986 the state and local level to assist the school or school system  
987 in achieving the standards and alleviating the deficiencies.

## ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.

### §18-5A-6. Establishment of school curriculum teams; process for teacher collaboration to improve learning.

1 (a) There shall be established at each school in the state  
2 a school curriculum team composed of the school principal,  
3 the counselor designated to serve that school and no fewer  
4 than three teachers representative of the grades taught at the  
5 school and chosen by the faculty senate: *Provided*, That for  
6 a school curriculum team established at an elementary school  
7 or a combination elementary and middle school, when the  
8 counselor is not assigned to the school on at least a one-half  
9 time basis, the curriculum team may meet on days when the  
10 counselor is not at the school and the principal shall consult  
11 with the counselor on the issues relevant to the meeting  
12 agenda.

13 The school curriculum team shall establish the programs  
14 and methods for implementing a curriculum based on state-  
15 approved content standards based on the needs of the  
16 individual school with a focus on reading, composition,  
17 mathematics, science and technology. The curriculum thus  
18 established shall be submitted to the county board for  
19 approval or for return to the school for reconsideration.

20 The school curriculum team shall review the list of other  
21 non required testing and assessment instruments provided by  
22 the state board through the statewide assessment program as  
23 provided in section five, article two-e of this chapter and may  
24 select one or more of them that are applicable to the grade  
25 levels at the school for use at the school to improve student

26 learning. The school has the discretion to use the  
27 assessments and implement the instructional strategies and  
28 programs, upon approval by the school curriculum team, that  
29 it determines best to promote student achievement at the  
30 school. The school curriculum team may apply for a waiver  
31 of any state or county policy requiring it to assess students  
32 using any specific assessment except the WESTEST2, the  
33 Alternative Performance Task Assessment, the Online  
34 Writing Assessment, and the National Assessment of  
35 Educational Progress (NAEP), or to employ any specific  
36 instructional strategy or program to achieve content standards  
37 for courses required by the state board. Attainment by the  
38 school of at least full accreditation status for the previous  
39 year shall be the factor considered for granting the waiver  
40 request.

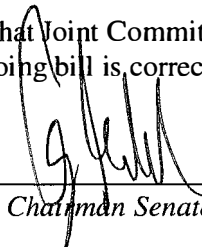
41 The school curriculum team also may apply for a waiver  
42 for instructional resources approved and adopted pursuant to  
43 article two-a of this chapter if, in the judgment of the team,  
44 the instructional resources necessary for the implementation  
45 of the instructional strategies and programs best suited to  
46 teach the school's curriculum are not available through the  
47 normal adoption process.

48 School curriculum teams may request waivers of non-  
49 state mandated tests listed in their county board policies. The  
50 determination of whether to grant the request shall be based  
51 on the school's accreditation status. Waivers are in effect for  
52 one year only. School curriculum teams may resubmit the  
53 same or additional waiver requests the following year.

54 The school team may apply for a grant from the state  
55 board for the development or implementation, or both, of  
56 remedial and accelerated programs to meet the needs of the  
57 students at the individual school.

58 (b) Each faculty senate with approval of the principal  
59 may, in addition to or as an alternative to the school  
60 curriculum team provided for in subsection (a) of this section,  
61 establish a process for teacher collaboration to improve  
62 instruction and learning. The mission of the collaboration  
63 process is to review student academic performance based on  
64 multiple measures, to identify strategies to improve student  
65 performance and make recommendations for improvement to  
66 be implemented subject to approval of the principal. The  
67 collaborative process shall include such members as  
68 determined necessary by the faculty senate to address the  
69 needed improvements in the academic performance of  
70 students at the school and, if applicable, may consist of  
71 multiple subject area subcommittees which may meet  
72 independently.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

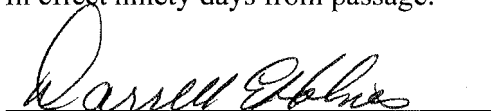


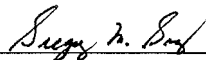
Chairman Senate Committee

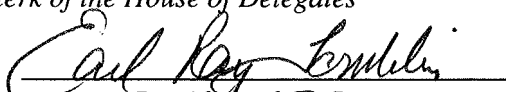
  
Chairman House Committee


Originating in the House.

In effect ninety days from passage.

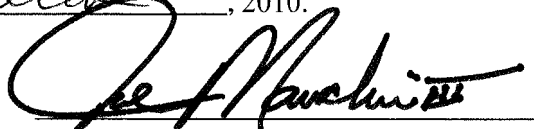
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within is approved this the 10<sup>th</sup>  
day of March, 2010.

  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 19 2010

Time 10:40am