

1 **H. B. 2164**

2  
3 (By Delegates M. Poling, Duke and Paxton)  
4 [Introduced January 12, 2011; referred to the  
5 Committee on Education then Finance.]  
6

**FISCAL  
NOTE**

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10 A BILL to repeal §11-1C-5b of the Code of West Virginia, 1931, as  
11 amended; to repeal §18-9A-2a of said code; and to amend and  
12 reenact §18-9A-2 and §18-9A-11 of said code, all relating to  
13 public school support computation of local share; removing  
14 provisions for using assumed assessed values for the purpose  
15 of computation; removing provisions for increasing counties'  
16 local share responsibility for funding basic foundation  
17 education formula when property assessments are not at least  
18 fifty-four percent of market value as indicated by assessment  
19 ratio study; revising definitions; and making legislative  
20 findings with respect to the effect of under assessed property  
21 values on school funding and the obligations of assessors and  
22 Tax Commissioner.

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

24 That §11-1C-5b of the Code of West Virginia, 1931, as amended,

1 be repealed; that §18-9A-2a of said code be repealed; and that §18-  
2 9A-2 and §18-9A-11 of said code be amended and reenacted, all to  
3 read as follows:

4 **ARTICLE 9A. PUBLIC SCHOOL SUPPORT.**

5 **§18-9A-2. Definitions.**

6 For the purpose of this article:

7 (a) "State board" means the West Virginia Board of Education.

8 (b) "County board" or "board" means a county board of  
9 education.

10 (c) "Professional salaries" means the state legally mandated  
11 salaries of the professional educators as provided in article four,  
12 chapter eighteen-a of this code.

13 (d) "Professional educator" shall be synonymous with and shall  
14 have the same meaning as "teacher" as defined in section one,  
15 article one of this chapter, and includes technology integration  
16 specialists.

17 (e) "Professional instructional personnel" means a  
18 professional educator whose regular duty is as that of a classroom  
19 teacher, librarian, attendance director or school psychologist. A  
20 professional educator having both instructional and administrative  
21 or other duties shall be included as professional instructional  
22 personnel for that ratio of the school day for which he or she is  
23 assigned and serves on a regular full-time basis in appropriate  
24 instruction, library, attendance, or psychologist duties.

1 (f) "Professional student support personnel" means a "teacher"  
2 as defined in section one, article one of this chapter who is  
3 assigned and serves on a regular full-time basis as a counselor or  
4 as a school nurse with a bachelor's degree and who is licensed by  
5 the West Virginia Board of Examiners for Registered Professional  
6 Nurses. For all purposes except for the determination of the  
7 allowance for professional educators pursuant to section four of  
8 this article, professional student support personnel are  
9 professional educators.

10 (g) "Service personnel salaries" means the state legally  
11 mandated salaries for service personnel as provided in section  
12 eight-a, article four, chapter eighteen-a of this code.

13 (h) "Service personnel" means all personnel as provided in  
14 section eight, article four, chapter eighteen-a of this code. For  
15 the purpose of computations under this article of ratios of service  
16 personnel to net enrollment, a service employee shall be counted as  
17 that number found by dividing his or her number of employment days  
18 in a fiscal year by two hundred: *Provided*, That the computation  
19 for any service person employed for three and one-half hours or  
20 less per day as provided in section eight-a, article four, chapter  
21 eighteen-a of this code shall be calculated as one-half an  
22 employment day.

23 (i) "Net enrollment" means the number of pupils enrolled in  
24 special education programs, kindergarten programs and grades one to

1 twelve, inclusive, of the public schools of the county. Net  
2 enrollment further shall include:

3 (1) Adults enrolled in regular secondary vocational programs  
4 existing as of the effective date of this section, subject to the  
5 following:

6 (A) Net enrollment includes no more than one thousand of those  
7 adults counted on the basis of full-time equivalency and  
8 apportioned annually to each county in proportion to the adults  
9 participating in regular secondary vocational programs in the prior  
10 year counted on the basis of full-time equivalency; and

11 (B) Net enrollment does not include any adult charged tuition  
12 or special fees beyond that required of the regular secondary  
13 vocational student;

14 (2) Students enrolled in early childhood education programs as  
15 provided in section forty-four, article five of this chapter,  
16 counted on the basis of full-time equivalency;

17 (3) No pupil shall be counted more than once by reason of  
18 transfer within the county or from another county within the state,  
19 and no pupil shall be counted who attends school in this state from  
20 another state;

21 (4) The enrollment shall be modified to the equivalent of the  
22 instructional term and in accordance with the eligibility  
23 requirements and rules established by the state board; and

24 (5) For the purposes of determining the county's basic

1 foundation program, only, for any county whose net enrollment as  
2 determined under all other provisions of this definition is less  
3 than one thousand four hundred, the net enrollment of the county  
4 shall be increased by an amount to be determined in accordance with  
5 the following:

6 (A) Divide the state's lowest county student population  
7 density by the county's actual student population density;

8 (B) Multiply the amount derived from the calculation in  
9 paragraph (A) of this subdivision by the difference between one  
10 thousand four hundred and the county's actual net enrollment;

11 (C) If the increase in net enrollment as determined under this  
12 subdivision plus the county's net enrollment as determined under  
13 all other provisions of this subsection is greater than one  
14 thousand four hundred, the increase in net enrollment shall be  
15 reduced so that the total does not exceed one thousand four  
16 hundred; and

17 (D) During the 2008-2009 interim period and every three  
18 interim periods thereafter, the Legislative Oversight Commission on  
19 Education Accountability shall review the provisions of this  
20 subdivision to determine whether or not they properly address the  
21 needs of counties with low enrollment and a sparse population  
22 density.

23 (j) "Sparse-density county" means a county whose ratio of net  
24 enrollment, excluding any increase in the net enrollment of

1 counties pursuant to subdivision (5) of the definition of net  
2 enrollment, to the square miles of the county is less than five.

3 (k) "Low-density county" means a county whose ratio of net  
4 enrollment, excluding any increase in the net enrollment of  
5 counties pursuant to subdivision (5) of the definition of net  
6 enrollment, to the square miles of the county is equal to or  
7 greater than five but less than ten.

8 (l) "Medium-density county" means a county whose ratio of net  
9 enrollment, excluding any increase in the net enrollment of  
10 counties pursuant to subdivision (5) of the definition of net  
11 enrollment, to the square miles of the county is equal to or  
12 greater than ten but less than twenty.

13 (m) "High-density county" means a county whose ratio of net  
14 enrollment, excluding any increase in the net enrollment of  
15 counties pursuant to subdivision (5) of the definition of net  
16 enrollment, to the square miles of the county is equal to or  
17 greater than twenty.

18 (n) "Levies for general current expense purposes" means  
19 ~~ninety-four~~ ninety percent of the levy rate for county boards of  
20 education calculated or set by the Legislature pursuant to the  
21 provisions of section six-f, article eight, chapter eleven of this  
22 code. ~~Provided, That beginning July 1, 2008, "levies for general~~  
23 ~~current expense purposes" means ninety percent of the levy rate for~~  
24 ~~county boards of education calculated or set by the Legislature~~

1 ~~pursuant to the provisions of section six-f, article eight, chapter~~  
 2 ~~eleven of this code: *Provided, however, That effective July 1,*~~  
 3 ~~2010, the definitions set forth in this subsection are subject to~~  
 4 ~~the provisions of section two-a of this article.~~

5 (o) "Technology integration specialist" means a professional  
 6 educator who has expertise in the technology field and is assigned  
 7 as a resource teacher to provide information and guidance to  
 8 classroom teachers on the integration of technology into the  
 9 curriculum.

10 (p) "State aid eligible personnel" means all professional  
 11 educators and service personnel employed by a county board in  
 12 positions that are eligible to be funded under this article and  
 13 whose salaries are not funded by a specific funding source such as  
 14 a federal or state grant, donation, contribution or other specific  
 15 funding source not listed.

16 **§18-9A-11. Computation of local share; appraisal and assessment of**  
 17 **property; modifications for tax increment financing**  
 18 **and growth county school facilities; public library**  
 19 **support.**

20 (a) On the basis of each county's certificates of valuation as  
 21 to all classes of property as determined and published by the  
 22 assessors pursuant to section six, article three, chapter eleven of  
 23 this code for the next ensuing fiscal year in reliance upon the

1 assessed values annually developed by each county assessor pursuant  
2 to the provisions of articles one-c and three of said chapter, the  
3 state board shall for each county compute by application of the  
4 levies for general current expense purposes, as defined in section  
5 two of this article, the amount of revenue which the levies would  
6 produce if levied upon one hundred percent of the assessed value of  
7 each of the several classes of property contained in the report or  
8 revised report of the value, made to it by the Tax Commissioner as  
9 follows:

10       (1) The state board shall first take ninety-five percent of  
11 the amount ascertained by applying these rates to the total  
12 assessed public utility valuation in each classification of  
13 property in the county; and

14       (2) The state board shall then apply these rates to the  
15 assessed taxable value of other property in each classification in  
16 the county as determined by the Tax Commissioner and shall deduct  
17 therefrom five percent as an allowance for the usual losses in  
18 collections due to discounts, exonerations, delinquencies and the  
19 like. All of the amount so determined shall be added to the  
20 ninety-five percent of public utility taxes computed as provided in  
21 subdivision (1) of this subsection and this total shall be further  
22 reduced by the amount due each county assessor's office pursuant to  
23 the provisions of section eight, article one-c, chapter eleven of  
24 this code and this amount shall be the local share of the



1 particular county.

2       As to any estimations or preliminary computations of local  
3 share required prior to the report to the Legislature by the Tax  
4 Commissioner, the state shall use the most recent projections or  
5 estimations that may be available from the Tax Department for that  
6 purpose.

7       ~~(b) Effective the first day of July, two thousand thirteen,~~  
8 ~~subsection (a) of this section is void and local share shall be~~  
9 ~~calculated in accordance with the following:~~

10       ~~(1) The state board shall for each county compute by~~  
11 ~~application of the levies for general current expense purposes, as~~  
12 ~~defined in sections two and two-a of this article, the amount of~~  
13 ~~revenue which the levies would produce if levied upon one hundred~~  
14 ~~percent of the assessed value calculated pursuant to section five-~~  
15 ~~b, article one-c, chapter eleven of this code;~~

16       ~~(2) Five percent shall be deducted from the revenue calculated~~  
17 ~~pursuant to subdivision (1) of this subsection as an allowance for~~  
18 ~~the usual losses in collections due to discounts, exonerations,~~  
19 ~~delinquencies and the like; and~~

20       ~~(3) The amount calculated in subdivision (2) of this~~  
21 ~~subsection shall further be reduced by the sum of money due each~~  
22 ~~assessor's office pursuant to the provisions of section eight,~~  
23 ~~article one-c, chapter eleven of this code and this reduced amount~~  
24 ~~shall be the local share of the particular county.~~

1        ~~(c)~~ (b) (1) The Legislature finds that when property taxes for  
2 public school purposes are under assessed in a county, the local  
3 share obligation of the county for funding its basic foundation  
4 program is undervalued, resulting in added cost to the state's  
5 general revenue to compensate for the under assessment and fully  
6 fund the county's basic foundation. The Legislature further finds  
7 that the amount of property tax revenues available for support of  
8 the county's school system above its basic foundation obligation  
9 are also less than would be the case if the property taxes of the  
10 county were assessed at the Constitutionally required uniform  
11 percentage. Therefore, the Legislature finds that it is the duty  
12 of county assessors to assess property taxes as required by law and  
13 it is the duty of the Tax Commissioner to oversee them to ensure  
14 that the obligations for providing a thorough and efficient  
15 education for the children of the county are not diminished by the  
16 under assessment of property taxes.

17        (2) Whenever in any year a county assessor or a county  
18 commission fails or refuses to comply with the provisions of this  
19 section in setting the valuations of property for assessment  
20 purposes in any class or classes of property in the county, the  
21 State Tax Commissioner shall review the valuations for assessment  
22 purposes made by the county assessor and the county commission and  
23 shall direct the county assessor and the county commission to make  
24 corrections in the valuations as necessary so that they comply with

1 the requirements of chapter eleven of this code and this section  
2 and the Tax Commissioner shall enter the county and fix the  
3 assessments at the required ratios. Refusal of the assessor or the  
4 county commission to make the corrections constitutes grounds for  
5 removal from office.

6 ~~(d)~~ (c) For the purposes of any computation made in accordance  
7 with the provisions of this section, in any taxing unit in which  
8 tax increment financing is in effect pursuant to the provisions of  
9 article eleven-b, chapter seven of this code, the assessed value of  
10 a related private project shall be the base-assessed value as  
11 defined in section two of said article.

12 ~~(e)~~ (d) For purposes of any computation made in accordance  
13 with the provisions of this section, in any county where the county  
14 board of education has adopted a resolution choosing to use the  
15 provisions of the Growth County School Facilities Act set forth in  
16 section six-f, article eight, chapter eleven of this code,  
17 estimated school board revenues generated from application of the  
18 regular school board levy rate to new property values, as that term  
19 is designated in said section, may not be considered local share  
20 funds and shall be subtracted before the computations in  
21 subdivisions (1) and (2), subsection (a) of this section ~~or in~~  
22 ~~subdivisions (2) and (3), subsection (b) of this section, as~~  
23 ~~applicable~~ are made.

24 ~~(f)~~ (e) The Legislature finds that public school systems

1 throughout the state provide support in varying degrees to public  
2 libraries through a variety of means including budgeted  
3 allocations, excess levy funds and portions of their regular school  
4 board levies as may be provided by special act. A number of public  
5 libraries are situated on the campuses of public schools and  
6 several are within public school buildings serving both the  
7 students and public patrons. To the extent that public schools  
8 recognize and choose to avail the resources of public libraries  
9 toward developing within their students such legally recognized  
10 elements of a thorough and efficient education as literacy,  
11 interests in literature, knowledge of government and the world  
12 around them and preparation for advanced academic training, work  
13 and citizenship, public libraries serve a legitimate school purpose  
14 and may do so economically. For the purposes of any computation  
15 made in accordance with the provisions of this section, the library  
16 funding obligation on the regular school board levies which is  
17 created by a special act and is due and payable from the levy  
18 revenues to a library shall be paid from the county school board's  
19 discretionary retainage, which is hereby defined as the amount by  
20 which the regular school board levies exceeds the local share as  
21 determined hereunder. If the library funding obligation which is  
22 created by a special act and is due and payable to a library is  
23 greater than the county school board's discretionary retainage, the  
24 library funding obligation created by the special act is amended

1 and is reduced to the amount of the discretionary retainage,  
2 notwithstanding any provisions of the special act to the contrary.  
3 Any excess of the discretionary retainage over the library funding  
4 obligation shall be available for expenditure by the county board  
5 in its discretion for its properly budgeted purposes.

6 ~~(g)~~ (f) It is the intent of the Legislature that whenever a  
7 provision of subsection ~~(f)~~ (e) of this section is contrary to any  
8 special act of the Legislature which has been or may in the future  
9 be enacted by the Legislature that creates a library funding  
10 obligation on the regular school board levy of a county, subsection  
11 ~~(f)~~ (e) of this section controls over the special act.  
12 Specifically, the special acts which are subject to said subsection  
13 upon the enactment of this section during the 2007 regular session  
14 of the Legislature include:

15 (1) Enrolled Senate Bill No. 11, passed on February 12, 1970,  
16 applicable to the Berkeley County Board of Education;

17 (2) Enrolled House Bill No. 1352, passed on April 7, 1981,  
18 applicable to the Hardy County Board of Education;

19 (3) Enrolled Committee Substitute for House Bill No. 2833,  
20 passed on March 14, 1987, applicable to the Harrison County Board  
21 of Education;

22 (4) Enrolled House Bill No. 161, passed on March 6, 1957,  
23 applicable to the Kanawha County Board of Education;

24 (5) Enrolled Senate Bill No. 313, passed on March 12, 1937, as

1 amended by Enrolled House Bill No. 1074, passed on March 8, 1967,  
2 and as amended by Enrolled House Bill No. 1195, passed on January  
3 18, 1982, applicable to the Ohio County Board of Education;

4 (6) Enrolled House Bill No. 938, passed on February 28, 1969,  
5 applicable to the Raleigh County Board of Education;

6 (7) Enrolled House Bill No. 398, passed on March 1, 1935,  
7 applicable to the Tyler County Board of Education;

8 (8) Enrolled Committee Substitute for Senate Bill No. 450,  
9 passed on March 11, 1994, applicable to the Upshur County Board of  
10 Education; and

11 (9) Enrolled House Bill No. 2994, passed on March 13, 1987,  
12 applicable to the Wood County Board of Education.

13 ~~(h)~~ (g) Notwithstanding any provision of any special act set  
14 forth in subsection ~~(g)~~ (f) of this section to the contrary, the  
15 county board of any county with a special act creating a library  
16 obligation out of the county's regular school levy revenues may  
17 transfer that library obligation so that it becomes a continuing  
18 obligation of its excess levy revenues instead of an obligation of  
19 its regular school levy revenues, subject to the following:

20 (1) If a county board chooses to transfer the library  
21 obligation pursuant to this subsection, the library funding  
22 obligation shall remain an obligation of the regular school levy  
23 revenues until the fiscal year in which the excess levy is effective  
24 or would have been effective if it had been passed by the voters;

1           (2) If a county board chooses to transfer the library  
2 obligation pursuant to this subsection, the county board shall  
3 include the funding of the public library obligation in the same  
4 amount as its library funding obligation which exists or had existed  
5 on its regular levy revenues as one of the purposes for the excess  
6 levy to be voted on as a specifically described line item of the  
7 excess levy: *Provided*, That if the county board has transferred the  
8 library obligation to the excess levy and the excess levy fails to  
9 be passed by the voters or the excess levy passes and thereafter  
10 expires upon the time limit for continuation as set forth in section  
11 sixteen, article eight, chapter eleven of this code, then in any  
12 subsequent excess levy which the county board thereafter submits to  
13 the voters the library funding obligation again shall be included  
14 as one of the purposes of the subsequent excess levy as a  
15 specifically described line item of the excess levy;

16           (3) If a county board chooses to transfer the library  
17 obligation pursuant to this subsection, regardless of whether or not  
18 the excess levy passes, effective the fiscal year in which the  
19 excess levy is effective or would have been effective if it had been  
20 passed by the voters, a county's library obligation on its regular  
21 levy revenues is void notwithstanding any provision of the special  
22 acts set forth in subsection ~~(g)~~ (f) of this section to the  
23 contrary; and

24           (4) Nothing in subdivision (3) of this subsection prohibits a

1 county board from funding its public library obligation voluntarily.

NOTE: The purpose of this bill is to remove provisions for using assumed assessed values for the purpose of computation of local share public school support. The bill removes provisions for increasing counties' local share responsibility for funding basic foundation education formula when property assessments are not at least fifty-four percent of market value as indicated by assessment ratio study; it revises definitions; and makes legislative findings with respect to the effect of under assessed property values on school funding and the obligations of assessors and Tax Commissioner.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

The bill repeals §11-1C-5b and §18-9A-2a.