

**Senate Bill No. 189**

(By Senators Wells, D. Facemire, Williams, Yost, Sypolt, Jenkins,  
Unger, Foster, Hall, Laird and Klempa)

[Introduced January 18, 2011; referred to the Committee on  
Interstate Cooperation; and then to the Committee on Finance.]

**Interim  
Bill**

A BILL to amend the Code of West Virginia, 1931, as amended, by  
adding thereto a new article, designated §18-10F-1, §18-10F-2  
and §18-10F-3, all relating to the enactment of the Interstate  
Compact on Educational Opportunity for Military Children;  
establishing the West Virginia Council for Educational  
Opportunities for Military Children; membership; and powers  
and duties.

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

That the Code of West Virginia, 1931, as amended, be amended  
by adding thereto a new article, designated §18-10F-1, §18-10F-2  
and §18-10F-3, all to read as follows:

**ARTICLE 10F. INTERSTATE COMPACT ON EDUCATION OPPORTUNITY FOR  
MILITARY CHILDREN.**

**§18-10F-1. Title.**

This article may be cited as the "Interstate Compact on  
Education Opportunity for Military Children".

1 **§18-10F-2. Enactment of the Interstate Compact on Education**  
2 **Opportunity for Military Children.**

3 The Interstate Compact on Education Opportunity for Military  
4 Children is hereby enacted into law and entered into by the State  
5 of West Virginia with any and all states legally joining therein in  
6 accordance with its terms, in the form substantially as follows:

7  
8 INTERSTATE COMPACT ON EDUCATIONAL  
9 OPPORTUNITY FOR MILITARY CHILDREN

10 ARTICLE I. PURPOSE

11  
12 It is the purpose of this compact to remove barriers to  
13 educational success imposed on children of military families  
14 because of frequent moves and deployment of their parents by:

15 (a) Facilitating the timely enrollment of children of military  
16 families and ensuring that they are not placed at a disadvantage  
17 due to difficulty in the transfer of education records from the  
18 previous school district(s) or variations in entrance/age  
19 requirements.

20 (b) Facilitating the student placement process through which  
21 children of military families are not disadvantaged by variations  
22 in attendance requirements, scheduling, sequencing, grading, course  
23 content or assessment.

24 (c) Facilitating the qualification and eligibility for

1 enrollment, educational programs, and participation in  
2 extracurricular academic, athletic, and social activities.

3 (d) Facilitating the on-time graduation of children of  
4 military families.

5 (e) Providing for the promulgation and enforcement of  
6 administrative rules implementing the provisions of this compact.

7 (f) Providing for the uniform collection and sharing of  
8 information between and among member states, schools and military  
9 families under this compact.

10 (g) Promoting coordination between this compact and other  
11 compacts affecting military children.

12 (h) Promoting flexibility and cooperation between the  
13 educational system, parents and the student in order to achieve  
14 educational success for the student.

15

16 ARTICLE II. DEFINITIONS

17

18 As used in this compact, unless the context clearly requires  
19 a different construction:

20 (a) "Active duty" means full-time duty status in the active  
21 uniformed service of the United States, including members of the  
22 National Guard and Reserve on active duty orders pursuant to 10  
23 U.S.C. Section 1209 and 1211.

24 (b) "Children of military families" means a school-aged child

1 or children, enrolled in Kindergarten through Twelfth (12th) grade,  
2 in the household of an active duty member.

3 (c) "Compact commissioner" means the voting representative of  
4 each compacting state appointed pursuant to Article VIII of this  
5 compact.

6 (d) "Deployment" means the period one (1) month prior to the  
7 service members' departure from their home station on military  
8 orders though six (6) months after return to their home station.

9 (e) "Education(al) records" means those official records,  
10 files, and data directly related to a student and maintained by the  
11 school or local education agency, including but not limited to  
12 records encompassing all the material kept in the student's  
13 cumulative folder such as general identifying data, records of  
14 attendance and of academic work completed, records of achievement  
15 and results of evaluative tests, health data, disciplinary status,  
16 test protocols, and individualized education programs.

17 (f) "Extracurricular activities" means a voluntary activity  
18 sponsored by the school or local education agency or an  
19 organization sanctioned by the local education agency.  
20 Extracurricular activities include, but are not limited to,  
21 preparation for and involvement in public performances, contests,  
22 athletic competitions, demonstrations, displays, and club  
23 activities.

24 (g) "Interstate Commission on Educational Opportunity for

1 Military Children" means the commission that is created under  
2 Article IX of this compact, which is generally referred to as  
3 Interstate Commission.

4 (h) "Local education agency" means a public authority legally  
5 constituted by the state as an administrative agency to provide  
6 control of and direction for Kindergarten through Twelfth (12th)  
7 grade public educational institutions.

8 (i) "Member state" means a state that has enacted this  
9 compact.

10 (j) "Military installation" means a base, camp, post, station,  
11 yard, center, homeport facility for any ship, or other activity  
12 under the jurisdiction of the Department of Defense, including any  
13 leased facility, which is located within any of the several States,  
14 the District of Columbia, the Commonwealth of Puerto Rico, the U.S.  
15 Virgin Islands, Guam, American Samoa, the Northern Marianas Islands  
16 and any other U.S. Territory. Such term does not include any  
17 facility used primarily for civil works, rivers and harbors  
18 projects, or flood control projects.

19 (k) "Non-member state" means a state that has not enacted this  
20 compact.

21 (l) "Receiving state" means the state to which a child of a  
22 military family is sent, brought, or caused to be sent or brought.

23 (m) "Rule" means a written statement by the Interstate  
24 Commission promulgated pursuant to Article XII of this compact that

1 is of general applicability, implements, interprets or prescribes  
2 a policy or provision of the Compact, or an organizational,  
3 procedural, or practice requirement of the Interstate Commission,  
4 and has the force and effect of statutory law in a member state,  
5 and includes the amendment, repeal, or suspension of an existing  
6 rule.

7 (n) "Sending state" means: the state from which a child of a  
8 military family is sent, brought, or caused to be sent or brought.

9 (o) "State" means a state of the United States, the District  
10 of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin  
11 Islands, Guam, American Samoa, the Northern Marianas Islands and  
12 any other U.S. Territory.

13 (p) "Student" means the child of a military family for whom  
14 the local education agency receives public funding and who is  
15 formally enrolled in Kindergarten through Twelfth (12th) grade.

16 (q) "Transition" means:

17 (1) the formal and physical process of transferring from  
18 school to school; or

19 (2) the period of time in which a student moves from one  
20 school in the sending state to another school in the receiving  
21 state.

22 (r) "Uniformed service(s)" means the Army, Navy, Air Force,  
23 Marine Corps, Coast Guard as well as the Commissioned Corps of the  
24 National Oceanic and Atmospheric Administration, and Public Health

1 Services.

2 (s) "Veteran" means a person who served in the uniformed  
3 services and who was discharged or released there from under  
4 conditions other than dishonorable.

5

6

ARTICLE III. APPLICABILITY

7

8 (a) Except as otherwise provided in subsection (b), this  
9 compact shall apply to the children of:

10 (1) Active duty members of the uniformed services as defined  
11 in this compact, including members of the National Guard and  
12 Reserve on active duty orders pursuant to 10 U.S.C. Section 1209  
13 and 1211;

14 (2) Members or veterans of the uniformed services who are  
15 severely injured and medically discharged or retired for a period  
16 of one (1) year after medical discharge or retirement; and

17 (3) Members of the uniformed services who die on active duty  
18 or as a result of injuries sustained on active duty for a period of  
19 one (1) year after death.

20 (b) The provisions of this interstate compact shall only apply  
21 to local education agencies as defined in this compact.

22 (c) The provisions of this compact shall not apply to the  
23 children of:

24 (1) Inactive members of the National Guard and military

1 reserves;

2 (2) Members of the uniformed services now retired, except as  
3 provided in subsection (a);

4 (3) Veterans of the uniformed services, except as provided in  
5 subsection (a); and

6 (4) Other U.S. Dept. of Defense personnel and other federal  
7 agency civilian and contract employees not defined as active duty  
8 members of the uniformed services.

9

10 ARTICLE IV. EDUCATIONAL RECORDS & ENROLLMENT

11

12 (a) Unofficial or "hand-carried" education records - In the  
13 event that official education records cannot be released to the  
14 parents for the purpose of transfer, the custodian of the records  
15 in the sending state shall prepare and furnish to the parent a  
16 complete set of unofficial educational records containing uniform  
17 information as determined by the Interstate Commission. Upon  
18 receipt of the unofficial education records by a school in the  
19 receiving state, the school shall enroll and appropriately place  
20 the student based on the information provided in the unofficial  
21 records pending validation by the official records, as quickly as  
22 possible.

23 (b) Official education records/transcripts - Simultaneous with  
24 the enrollment and conditional placement of the student, the school



1 in the receiving state shall request the student's official  
2 education record from the school in the sending state. Upon  
3 receipt of this request, the school in the sending state will  
4 process and furnish the official education records to the school in  
5 the receiving state within ten (10) days or within such time as is  
6 reasonably determined under the rules promulgated by the Interstate  
7 Commission.

8 (c) Immunizations - Compacting states shall give thirty (30)  
9 days from the date of enrollment or within such time as is  
10 reasonably determined under the rules promulgated by the Interstate  
11 Commission, for students to obtain any immunization(s) required by  
12 the receiving state. For a series of immunizations, initial  
13 vaccinations must be obtained within thirty (30) days or within  
14 such time as is reasonably determined under the rules promulgated  
15 by the Interstate Commission.

16 (d) Kindergarten and First grade entrance age - Students shall  
17 be allowed to continue their enrollment at grade level in the  
18 receiving state commensurate with their grade level (including  
19 Kindergarten) from a local education agency in the sending state at  
20 the time of transition, regardless of age. A student that has  
21 satisfactorily completed the prerequisite grade level in the local  
22 education agency in the sending state shall be eligible for  
23 enrollment in the next highest grade level in the receiving state,  
24 regardless of age. A student transferring after the start of the

1 school year in the receiving state shall enter the school in the  
2 receiving state on their validated level from an accredited school  
3 in the sending state.

4

5

ARTICLE V. PLACEMENT & ATTENDANCE

6

7 (a) Course placement - When the student transfers before or  
8 during the school year, the receiving state school shall initially  
9 honor placement of the student in educational courses based on the  
10 student's enrollment in the sending state school and/or educational  
11 assessments conducted at the school in the sending state if the  
12 courses are offered. Course placement includes, but is not limited  
13 to Honors, International Baccalaureate, Advanced Placement,  
14 vocational, technical and career pathways courses. Continuing the  
15 student's academic program from the previous school and promoting  
16 placement in academically and career challenging courses should be  
17 paramount when considering placement. This does not preclude the  
18 school in the receiving state from performing subsequent  
19 evaluations to ensure appropriate placement and continued  
20 enrollment of the student in the course(s).

21 (b) Educational program placement - The receiving state school  
22 shall initially honor placement of the student in educational  
23 programs based on current educational assessments conducted at the  
24 school in the sending state or participation/placement in like

1 programs in the sending state. Such programs include, but  
2 are not limited to:

3 (1) gifted and talented programs; and

4 (2) English as a second language (ESL). This does not  
5 preclude the school in the receiving state from performing  
6 subsequent evaluations to ensure appropriate placement of the  
7 student.

8 (c) Special education services -

9 (1) In compliance with the federal requirements of the  
10 Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A.  
11 Section 1400 et seq, the receiving state shall initially provide  
12 comparable services to a student with disabilities based on his or  
13 her current Individualized Education Program (IEP); and

14 (2) In compliance with the requirements of Section 504 of the  
15 Rehabilitation Act, 29 U.S.C.A. Section 794, and with Title II of  
16 the Americans with Disabilities Act, 42 U.S.C.A. Sections 12131-  
17 12165, the receiving state shall make reasonable accommodations and  
18 modifications to address the needs of incoming students with  
19 disabilities, subject to an existing 504 or Title II Plan, to  
20 provide the student with equal access to education. This does not  
21 preclude the school in the receiving state from performing  
22 subsequent evaluations to ensure appropriate placement of the  
23 student.

24 (d) Placement flexibility - Local education agency

1 administrative officials shall have flexibility in waiving  
2 course/program prerequisites, or other preconditions for placement  
3 in courses/programs offered under the jurisdiction of the local  
4 education agency.

5 (e) Absence as related to deployment activities - A student  
6 whose parent or legal guardian is an active duty member of the  
7 uniformed services, as defined by the compact, and has been called  
8 to duty for, is on leave from, or immediately returned from  
9 deployment to a combat zone or combat support posting, shall be  
10 granted additional excused absences at the discretion of the local  
11 education agency superintendent to visit with his or her parent or  
12 legal guardian relative to such leave or deployment of the parent  
13 or guardian.

14

15 ARTICLE VI. ELIGIBILITY

16

17 (a) Eligibility for enrollment:

18 (1) Special power of attorney, relative to the guardianship of  
19 a child of a military family and executed under applicable law  
20 shall be sufficient for the purposes of enrollment and all other  
21 actions requiring parental participation and consent.

22 (2) A local education agency shall be prohibited from charging  
23 local tuition to a transitioning military child placed in the care  
24 of a noncustodial parent or other person standing in loco parentis

1 who lives in a jurisdiction other than that of the custodial  
2 parent.

3 (3) A transitioning military child, placed in the care of a  
4 noncustodial parent or other person standing in loco parentis who  
5 lives in a jurisdiction other than that of the custodial parent,  
6 may continue to attend the school in which he or she was enrolled  
7 while residing with the custodial parent.

8 (b) Eligibility for extracurricular participation - State and  
9 local education agencies shall facilitate the opportunity for  
10 transitioning military children's inclusion in extracurricular  
11 activities, regardless of application deadlines, to the extent they  
12 are otherwise qualified.

13

14

ARTICLE VII. GRADUATION

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16 In order to facilitate the on-time graduation of children of  
17 military families states and local education agencies shall  
18 incorporate the following procedures:

19 (a) Waiver requirements - Local education agency  
20 administrative officials shall waive specific courses required for  
21 graduation if similar course work has been satisfactorily completed  
22 in another local education agency or shall provide reasonable  
23 justification for denial. Should a waiver not be granted to a  
24 student who would qualify to graduate from the sending school, the

1 local education agency shall provide an alternative means of  
2 acquiring required coursework so that graduation may occur on time.

3 (b) Exit exams - States shall accept:

4 (1) exit or end-of-course exams required for graduation from  
5 the sending state; or

6 (2) national norm-referenced achievement tests; or

7 (3) alternative testing, in lieu of testing requirements for  
8 graduation in the receiving state. In the event the above  
9 alternatives cannot be accommodated by the receiving state for a  
10 student transferring in his or her Senior year, then the provisions  
11 of Article VII, subsection (c) shall apply.

12 (c) Transfers during Senior year - Should a military student  
13 transferring at the beginning or during his or her Senior year be  
14 ineligible to graduate from the receiving local education agency  
15 after all alternatives have been considered, the sending and  
16 receiving local education agencies shall ensure the receipt of a  
17 diploma from the sending local education agency, if the student  
18 meets the graduation requirements of the sending local education  
19 agency. In the event that one of the states in question is not a  
20 member of this compact, the member state shall use best efforts to  
21 facilitate the on-time graduation of the student in accordance with  
22 subsections (a) and (b) of this Article.

23 ARTICLE VIII. STATE COORDINATION

24

1           (a) Each member state shall, through the creation of a State  
2 Council or use of an existing body or board, provide for the  
3 coordination among its agencies of government, local education  
4 agencies and military installations concerning the state's  
5 participation in, and compliance with, this compact and Interstate  
6 Commission activities. While each member state may determine the  
7 membership of its own State Council, its membership must include at  
8 least: the state superintendent of education, superintendent of a  
9 school district with a high concentration of military children,  
10 representative from a military installation, one representative  
11 each from the legislative and executive branches of government, and  
12 other offices and stakeholder groups the state council deems  
13 appropriate. A member state that does not have a school district  
14 deemed to contain a high concentration of military children may  
15 appoint a superintendent from another school district to represent  
16 local education agencies on the state council.

17           (b) The state council of each member state shall appoint or  
18 designate a military family education liaison to assist military  
19 families and the state in facilitating the implementation of this  
20 compact.

21           (c) The compact commissioner responsible for the  
22 administration and management of the state's participation in the  
23 compact shall be appointed by the Governor or as otherwise  
24 determined by each member state.

1 (d) The compact commissioner and the military family education  
2 liaison designated herein shall be ex-officio members of the state  
3 Council, unless either is already a full voting member of the state  
4 Council.

5

6 ARTICLE IX. INTERSTATE COMMISSION ON EDUCATIONAL  
7 OPPORTUNITY FOR MILITARY CHILDREN

8

9 The member states hereby create the "Interstate Commission on  
10 Educational Opportunity for Military Children." The activities of  
11 the Interstate Commission are the formation of public policy and  
12 are a discretionary state function. The Interstate Commission  
13 shall:

14 (a) Be a body corporate and joint agency of the member states  
15 and shall have all the responsibilities, powers and duties set  
16 forth herein, and such additional powers as may be conferred upon  
17 it by a subsequent concurrent action of the respective Legislatures  
18 of the member states in accordance with the terms of this compact;

19 (b) Consist of one Interstate Commission voting representative  
20 from each member state who shall be that state's compact  
21 commissioner.

22 (1) Each member state represented at a meeting of the  
23 Interstate Commission is entitled to one vote.

24 (2) A majority of the total member states shall constitute a



1 quorum for the transaction of business, unless a larger quorum is  
2 required by the bylaws of the Interstate Commission.

3       (3) A representative shall not delegate a vote to another  
4 member state. In the event the compact commissioner is unable to  
5 attend a meeting of the Interstate Commission, the Governor or  
6 State Council may delegate voting authority to another person from  
7 their state for a specified meeting.

8       (4) The bylaws may provide for meetings of the Interstate  
9 Commission to be conducted by telecommunication or electronic  
10 communication;

11       (c) Consist of ex-officio, nonvoting representatives who are  
12 members of interested organizations. Such ex-officio members, as  
13 defined in the bylaws, may include, but not be limited to, members  
14 of the representative organizations of military family advocates,  
15 local education agency officials, parent and teacher groups, the  
16 U.S. Department of Defense, the Education Commission of the states,  
17 the Interstate Agreement on the Qualification of Educational  
18 Personnel and other interstate compacts affecting the education of  
19 children of military members;

20       (d) Meet at least once each calendar year. The chairperson  
21 may call additional meetings and, upon the request of a simple  
22 majority of the member states, shall call additional meetings;

23       (e) Establish an executive committee, whose members shall  
24 include the officers of the Interstate Commission and such other

1 members of the Interstate Commission as determined by the bylaws.  
2 Members of the executive committee shall serve a one year term.  
3 Members of the executive committee shall be entitled to one vote  
4 each. The executive committee shall have the power to act on  
5 behalf of the Interstate Commission, with the exception of  
6 rulemaking, during periods when the Interstate Commission is not in  
7 session. The executive committee shall oversee the day-to-day  
8 activities of the administration of the compact including  
9 enforcement and compliance with the provisions of the compact, its  
10 bylaws and rules, and other such duties as deemed necessary. The  
11 U.S. Dept. of Defense, shall serve as an ex-officio, nonvoting  
12 member of the executive committee;

13 (f) Establish bylaws and rules that provide for conditions and  
14 procedures under which the Interstate Commission shall make its  
15 information and official records available to the public for  
16 inspection or copying. The Interstate Commission may exempt from  
17 disclosure information or official records to the extent they would  
18 adversely affect personal privacy rights or proprietary interests;

19 (g) Give public notice of all meetings and all meetings shall  
20 be open to the public, except as set forth in the rules or as  
21 otherwise provided in the compact. The Interstate Commission and  
22 its committees may close a meeting, or portion thereof, where it  
23 determines by two-thirds vote that an open meeting would be likely  
24 to:

1 (1) Relate solely to the Interstate Commission's internal  
2 personnel practices and procedures;

3 (2) Disclose matters specifically exempted from disclosure by  
4 federal and state statute;

5 (3) Disclose trade secrets or commercial or financial  
6 information which is privileged or confidential;

7 (4) Involve accusing a person of a crime, or formally  
8 censuring a person;

9 (5) Disclose information of a personal nature where disclosure  
10 would constitute a clearly unwarranted invasion of personal  
11 privacy;

12 (6) Disclose investigative records compiled for law  
13 enforcement purposes; or

14 (7) Specifically relate to the Interstate Commission's  
15 participation in a civil action or other legal proceeding;

16 (h) Cause its legal counsel or designee to certify that a  
17 meeting may be closed and shall reference each relevant exemptable  
18 provision for any meeting or portion of a meeting which is closed  
19 pursuant to this provision. The Interstate Commission shall keep  
20 minutes which shall fully and clearly describe all matters  
21 discussed in a meeting and shall provide a full and accurate  
22 summary of actions taken, and the reasons therefore, including a  
23 description of the views expressed and the record of a roll call  
24 vote. All documents considered in connection with an action shall

1 be identified in such minutes. All minutes and documents of a  
2 closed meeting shall remain under seal, subject to release by a  
3 majority vote of the Interstate Commission.

4 (i) Collect standardized data concerning the educational  
5 transition of the children of military families under this compact  
6 as directed through its rules which shall specify the data to be  
7 collected, the means of collection and data exchange and reporting  
8 requirements. Such methods of data collection, exchange and  
9 reporting shall, in so far as is reasonably possible, conform to  
10 current technology and coordinate its information functions with  
11 the appropriate custodian of records as identified in the bylaws  
12 and rules.

13 (j) Create a process that permits military officials,  
14 education officials and parents to inform the Interstate Commission  
15 if and when there are alleged violations of the compact or its  
16 rules or when issues subject to the jurisdiction of the compact or  
17 its rules are not addressed by the state or local education agency.  
18 This section shall not be construed to create a private right of  
19 action against the Interstate Commission or any member state.

20

21 ARTICLE X. POWERS AND DUTIES OF THE INTERSTATE COMMISSION

22

23 The Interstate Commission shall have the following powers:

24 (a) To provide for dispute resolution among member states;

1           (b) To promulgate rules and take all necessary actions to  
2 effect the goals, purposes and obligations as enumerated in this  
3 compact. The rules shall have the force and effect of statutory  
4 law and shall be binding in the compact states to the extent and in  
5 the manner provided in this compact;

6           (c) To issue, upon request of a member state, advisory  
7 opinions concerning the meaning or interpretation of the interstate  
8 compact, its bylaws, rules and actions;

9           (d) To enforce compliance with the compact provisions, the  
10 rules promulgated by the Interstate Commission, and the bylaws,  
11 using all necessary and proper means, including but not limited to  
12 the use of judicial process;

13           (e) To establish and maintain offices which shall be located  
14 within one or more of the member states;

15           (f) To purchase and maintain insurance and bonds;

16           (g) To borrow, accept, hire or contract for services of  
17 personnel;

18           (h) To establish and appoint committees including, but not  
19 limited to, an executive committee as required by Article IX,  
20 subsection (e), which shall have the power to act on behalf of the  
21 Interstate Commission in carrying out its powers and duties  
22 hereunder;

23           (i) To elect or appoint such officers, attorneys, employees,  
24 agents, or consultants, and to fix their compensation, define their

1 duties and determine their qualifications; and to establish the  
2 Interstate Commission's personnel policies and programs relating to  
3 conflicts of interest, rates of compensation, and qualifications of  
4 personnel;

5 (j) To accept any and all donations and grants of money,  
6 equipment, supplies, materials, and services, and to receive,  
7 utilize, and dispose of it;

8 (k) To lease, purchase, accept contributions or donations of,  
9 or otherwise to own, hold, improve or use any property, real,  
10 personal, or mixed;

11 (l) To sell, convey, mortgage, pledge, lease, exchange,  
12 abandon, or otherwise dispose of any property, real, personal or  
13 mixed;

14 (m) To establish a budget and make expenditures;

15 (n) To adopt a seal and bylaws governing the management and  
16 operation of the Interstate Commission;

17 (o) To report annually to the Legislatures, Governors,  
18 judiciary, and state councils of the member states concerning the  
19 activities of the Interstate Commission during the preceding year.  
20 Such reports shall also include any recommendations that may have  
21 been adopted by the Interstate Commission;

22 (p) To coordinate education, training and public awareness  
23 regarding the compact, its implementation and operation for  
24 officials and parents involved in such activity;

1 (q) To establish uniform standards for the reporting,  
2 collecting and exchanging of data;

3 (r) To maintain corporate books and records in accordance with  
4 the bylaws;

5 (s) To perform such functions as may be necessary or  
6 appropriate to achieve the purposes of this compact; and

7 (t) To provide for the uniform collection and sharing of  
8 information between and among member states, schools and military  
9 families under this compact.

10

11 ARTICLE XI. ORGANIZATION AND OPERATION OF THE INTERSTATE  
12 COMMISSION

13

14 (a) The Interstate Commission shall, by a majority of the  
15 members present and voting, within twelve months after the first  
16 Interstate Commission meeting, adopt bylaws to govern its conduct  
17 as may be necessary or appropriate to carry out the purposes of the  
18 compact, including, but not limited to:

19 (1) Establishing the fiscal year of the Interstate Commission;

20 (2) Establishing an executive committee, and such other  
21 committees as may be necessary;

22 (3) Providing for the establishment of committees and for  
23 governing any general or specific delegation of authority or  
24 function of the Interstate Commission;

1           (4) Providing reasonable procedures for calling and conducting  
2 meetings of the Interstate Commission, and ensuring reasonable  
3 notice of each such meeting;

4           (5) Establishing the titles and responsibilities of the  
5 officers and staff of the Interstate Commission;

6           (6) Providing a mechanism for concluding the operations of the  
7 Interstate Commission and the return of surplus funds that may  
8 exist upon the termination of the compact after the payment and  
9 reserving of all of its debts and obligations; and

10          (7) Providing "start up" rules for initial administration of  
11 the compact.

12          (b) The Interstate Commission shall, by a majority of the  
13 members, elect annually from among its members a chairperson, a  
14 vice-chairperson, and a treasurer, each of whom shall have such  
15 authority and duties as may be specified in the bylaws. The  
16 chairperson or, in the chairperson's absence or disability, the  
17 vice-chairperson, shall preside at all meetings of the Interstate  
18 Commission. The officers so elected shall serve without  
19 compensation or remuneration from the Interstate Commission;  
20 provided that, subject to the availability of budgeted funds, the  
21 officers shall be reimbursed for ordinary and necessary costs and  
22 expenses incurred by them in the performance of their  
23 responsibilities as officers of the Interstate Commission.

24          (c) Executive Committee, Officers and Personnel:



1           (1) The executive committee shall have such authority and  
2 duties as may be set forth in the bylaws, including but not limited  
3 to:

4           (A) Managing the affairs of the Interstate Commission in a  
5 manner consistent with the bylaws and purposes of the Interstate  
6 Commission;

7           (B) Overseeing an organizational structure within, and  
8 appropriate procedures for the Interstate Commission to provide for  
9 the creation of rules, operating procedures, and administrative and  
10 technical support functions; and

11          (C) Planning, implementing, and coordinating communications  
12 and activities with other state, federal and local government  
13 organizations in order to advance the goals of the Interstate  
14 Commission.

15          (2) The executive committee may, subject to the approval of  
16 the Interstate Commission, appoint or retain an executive director  
17 for such period, upon such terms and conditions and for such  
18 compensation, as the Interstate Commission may deem appropriate.  
19 The executive director shall serve as secretary to the Interstate  
20 Commission, but shall not be a Member of the Interstate Commission.  
21 The executive director shall hire and supervise such other persons  
22 as may be authorized by the Interstate Commission.

23          (d) The Interstate Commission's executive director and its  
24 employees shall be immune from suit and liability, either

1 personally or in their official capacity, for a claim for damage to  
2 or loss of property or personal injury or other civil liability  
3 caused or arising out of or relating to an actual or alleged act,  
4 error, or omission that occurred, or that such person had a  
5 reasonable basis for believing occurred, within the scope of  
6 Interstate Commission employment, duties, or responsibilities;  
7 provided, that such person shall not be protected from suit or  
8 liability for damage, loss, injury, or liability caused by the  
9 intentional or willful and wanton misconduct of such person.

10       (1) The liability of the Interstate Commission's executive  
11 director and employees or Interstate Commission representatives,  
12 acting within the scope of such person's employment or duties for  
13 acts, errors, or omissions occurring within such person's state may  
14 not exceed the limits of liability set forth under the Constitution  
15 and laws of that state for state officials, employees, and agents.  
16 The Interstate Commission is considered to be an instrumentality of  
17 the states for the purposes of any such action. Nothing in this  
18 subsection shall be construed to protect such person from suit or  
19 liability for damage, loss, injury, or liability caused by the  
20 intentional or willful and wanton misconduct of such person.

21       (2) The Interstate Commission shall defend the executive  
22 director and its employees and, subject to the approval of the  
23 Attorney General or other appropriate legal counsel of the member  
24 state represented by an Interstate Commission representative, shall

1 defend such Interstate Commission representative in any civil  
2 action seeking to impose liability arising out of an actual or  
3 alleged act, error or omission that occurred within the scope of  
4 Interstate Commission employment, duties or responsibilities, or  
5 that the defendant had a reasonable basis for believing occurred  
6 within the scope of Interstate Commission employment, duties, or  
7 responsibilities, provided that the actual or alleged act, error,  
8 or omission did not result from intentional or willful and wanton  
9 misconduct on the part of such person.

10 (3) To the extent not covered by the state involved, member  
11 state, or the Interstate Commission, the representatives or  
12 employees of the Interstate Commission shall be held harmless in  
13 the amount of a settlement or judgment, including attorney's fees  
14 and costs, obtained against such persons arising out of an actual  
15 or alleged act, error, or omission that occurred within the scope  
16 of Interstate Commission employment, duties, or responsibilities,  
17 or that such persons had a reasonable basis for believing occurred  
18 within the scope of Interstate Commission employment, duties, or  
19 responsibilities, provided that the actual or alleged act, error,  
20 or omission did not result from intentional or willful and wanton  
21 misconduct on the part of such persons.

22

23 ARTICLE XII. RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

24

1 (a) Rulemaking Authority - The Interstate Commission shall  
2 promulgate reasonable rules in order to effectively and efficiently  
3 achieve the purposes of this Compact. Notwithstanding the  
4 foregoing, in the event the Interstate Commission exercises its  
5 rulemaking authority in a manner that is beyond the scope of the  
6 purposes of this Act, or the powers granted hereunder, then such an  
7 action by the Interstate Commission shall be invalid and have no  
8 force or effect.

9 (b) Rulemaking Procedure - Rules shall be made pursuant to a  
10 rulemaking process that substantially conforms to the "Model State  
11 Administrative Procedure Act," of 1981 Act, Uniform Laws Annotated,  
12 Vol. 15, p.1 (2000) as amended, as may be appropriate to the  
13 operations of the Interstate Commission.

14 (c) Not later than thirty (30) days after a rule is  
15 promulgated, any person may file a petition for judicial review of  
16 the rule: *Provided*, That the filing of such a petition shall not  
17 stay or otherwise prevent the rule from becoming effective unless  
18 the court finds that the petitioner has a substantial likelihood of  
19 success. The court shall give deference to the actions of the  
20 Interstate Commission consistent with applicable law and shall not  
21 find the rule to be unlawful if the rule represents a reasonable  
22 exercise of the Interstate Commission's authority.

23 (d) If a majority of the Legislatures of the compacting states  
24 rejects a Rule by enactment of a statute or resolution in the same

1 manner used to adopt the compact, then such rule shall have no  
2 further force and effect in any compacting state.

3

4 ARTICLE XIII. OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION

5

6 (a) Oversight:

7 (1) The executive, legislative and judicial branches of state  
8 government in each member state shall enforce this compact and  
9 shall take all actions necessary and appropriate to effectuate the  
10 compact's purposes and intent. The provisions of this compact and  
11 the rules promulgated hereunder shall have standing as statutory  
12 law.

13 (2) All courts shall take judicial notice of the compact and  
14 the rules in any judicial or administrative proceeding in a member  
15 state pertaining to the subject matter of this compact which may  
16 affect the powers, responsibilities or actions of the Interstate  
17 Commission.

18 (3) The Interstate Commission shall be entitled to receive all  
19 service of process in any such proceeding, and shall have standing  
20 to intervene in the proceeding for all purposes. Failure to  
21 provide service of process to the Interstate Commission shall  
22 render a judgment or order void as to the Interstate Commission,  
23 this compact or promulgated rules.

24 (b) Default, Technical Assistance, Suspension and Termination

1 - If the Interstate Commission determines that a member state has  
2 defaulted in the performance of its obligations or responsibilities  
3 under this compact, or the bylaws or promulgated rules, the  
4 Interstate Commission shall:

5       (1) Provide written notice to the defaulting state and other  
6 member states, of the nature of the default, the means of curing  
7 the default and any action taken by the Interstate Commission. The  
8 Interstate Commission shall specify the conditions by which the  
9 defaulting state must cure its default.

10       (2) Provide remedial training and specific technical  
11 assistance regarding the default.

12       (3) If the defaulting state fails to cure the default, the  
13 defaulting state shall be terminated from the compact upon an  
14 affirmative vote of a majority of the member states and all rights,  
15 privileges and benefits conferred by this compact shall be  
16 terminated from the effective date of termination. A cure of the  
17 default does not relieve the offending state of obligations or  
18 liabilities incurred during the period of the default.

19       (4) Suspension or termination of membership in the compact  
20 shall be imposed only after all other means of securing compliance  
21 have been exhausted. Notice of intent to suspend or terminate  
22 shall be given by the Interstate Commission to the Governor, the  
23 majority and minority leaders of the defaulting state's  
24 Legislature, and each of the member states.

1           (5) The state which has been suspended or terminated is  
2 responsible for all assessments, obligations and liabilities  
3 incurred through the effective date of suspension or termination  
4 including obligations, the performance of which extends beyond the  
5 effective date of suspension or termination.

6           (6) The Interstate Commission shall not bear any costs  
7 relating to any state that has been found to be in default or which  
8 has been suspended or terminated from the compact, unless otherwise  
9 mutually agreed upon in writing between the Interstate Commission  
10 and the defaulting state.

11           (7) The defaulting state may appeal the action of the  
12 Interstate Commission by petitioning the U.S. District Court for  
13 the District of Columbia or the federal district where the  
14 Interstate Commission has its principal offices. The prevailing  
15 party shall be awarded all costs of such litigation including  
16 reasonable attorney's fees.

17           (c) Dispute Resolution:

18           (1) The Interstate Commission shall attempt, upon the request  
19 of a member state, to resolve disputes which are subject to the  
20 compact and which may arise among member states and between member  
21 and nonmember states.

22           (2) The Interstate Commission shall promulgate a rule  
23 providing for both mediation and binding dispute resolution for  
24 disputes as appropriate.

1 (d) Enforcement:

2 (1) The Interstate Commission, in the reasonable exercise of  
3 its discretion, shall enforce the provisions and rules of this  
4 compact.

5 (2) The Interstate Commission, may by majority vote of the  
6 members, initiate legal action in the United State District Court  
7 for the District of Columbia or, at the discretion of the  
8 Interstate Commission, in the federal district where the Interstate  
9 Commission has its principal offices, to enforce compliance with  
10 the provisions of the compact, its promulgated rules and bylaws,  
11 against a member state in default. The relief sought may include  
12 both injunctive relief and damages. In the event judicial  
13 enforcement is necessary the prevailing party shall be awarded all  
14 costs of such litigation including reasonable attorney's fees.

15 (3) The remedies herein shall not be the exclusive remedies of  
16 the Interstate Commission. The Interstate Commission may avail  
17 itself of any other remedies available under state law or the  
18 regulation of a profession.

19

20 ARTICLE XIV. FINANCING OF THE INTERSTATE COMMISSION

21

22 (a) The Interstate Commission shall pay, or provide for the  
23 payment of the reasonable expenses of its establishment,  
24 organization and ongoing activities.



1           (b) The Interstate Commission may levy on and collect an  
2 annual assessment from each member state to cover the cost of the  
3 operations and activities of the Interstate Commission and its  
4 staff which must be in a total amount sufficient to cover the  
5 Interstate Commission's annual budget as approved each year. The  
6 aggregate annual assessment amount shall be allocated based upon a  
7 formula to be determined by the Interstate Commission, which shall  
8 promulgate a rule binding upon all member states.

9           (c) The Interstate Commission shall not incur obligations of  
10 any kind prior to securing the funds adequate to meet the same; nor  
11 shall the Interstate Commission pledge the credit of any of the  
12 member states, except by and with the authority of the member  
13 state.

14           (d) The Interstate Commission shall keep accurate accounts of  
15 all receipts and disbursements. The receipts and disbursements of  
16 the Interstate Commission shall be subject to the audit and  
17 accounting procedures established under its bylaws. However, all  
18 receipts and disbursements of funds handled by the Interstate  
19 Commission shall be audited yearly by a certified or licensed  
20 public accountant and the report of the audit shall be included in  
21 and become part of the annual report of the Interstate Commission.

22

23           ARTICLE XV. MEMBER STATES, EFFECTIVE DATE AND AMENDMENT

24

1 (a) Any state is eligible to become a member state.

2 (b) The compact shall become effective and binding upon  
3 legislative enactment of the compact into law by no less than ten  
4 (10) of the states. The effective date shall be no earlier than  
5 December 1, 2007. Thereafter it shall become effective and binding  
6 as to any other member state upon enactment of the compact into law  
7 by that state. The Governors of nonmember states or their  
8 designees shall be invited to participate in the activities of the  
9 Interstate Commission on a nonvoting basis prior to adoption of the  
10 compact by all states.

11 (c) The Interstate Commission may propose amendments to the  
12 compact for enactment by the member states. No amendment shall  
13 become effective and binding upon the Interstate Commission and the  
14 member states unless and until it is enacted into law by unanimous  
15 consent of the member states.

16

17 ARTICLE XVI. WITHDRAWAL AND DISSOLUTION

18

19 (a) Withdrawal:

20 (1) Once effective, the compact shall continue in force and  
21 remain binding upon each and every member state: *Provided*, That a  
22 member state may withdraw from the compact specifically repealing  
23 the statute, which enacted the compact into law.

24 (2) Withdrawal from this compact shall be by the enactment of

1 a statute repealing the same, but shall not take effect until one  
2 (1) year after the effective date of such statute and until written  
3 notice of the withdrawal has been given by the withdrawing state to  
4 the Governor of each other member jurisdiction.

5 (3) The withdrawing state shall immediately notify the  
6 chairperson of the Interstate Commission in writing upon the  
7 introduction of legislation repealing this compact in the  
8 withdrawing state. The Interstate Commission shall notify the  
9 other member states of the withdrawing state's intent to withdraw  
10 within sixty (60) days of its receipt thereof.

11 (4) The withdrawing state is responsible for all assessments,  
12 obligations and liabilities incurred through the effective date of  
13 withdrawal, including obligations, the performance of which extend  
14 beyond the effective date of withdrawal.

15 (5) Reinstatement following withdrawal of a member state shall  
16 occur upon the withdrawing state reenacting the compact or upon  
17 such later date as determined by the Interstate Commission.

18 (b) Dissolution of Compact:

19 (1) This compact shall dissolve effective upon the date of the  
20 withdrawal or default of the member state which reduces the  
21 membership in the compact to one (1) member state.

22 (2) Upon the dissolution of this compact, the compact becomes  
23 null and void and shall be of no further force or effect, and the  
24 business and affairs of the Interstate Commission shall be

1 concluded and surplus funds shall be distributed in accordance with  
2 the bylaws.

3

4 ARTICLE XVII. SEVERABILITY AND CONSTRUCTION

5

6 (a) The provisions of this compact shall be severable, and if  
7 any phrase, clause, sentence or provision is deemed unenforceable,  
8 the remaining provisions of the compact shall be enforceable.

9 (b) The provisions of this compact shall be liberally  
10 construed to effectuate its purposes.

11 (c) Nothing in this compact shall be construed to prohibit the  
12 applicability of other interstate compacts to which the states are  
13 members.

14

15 ARTICLE XVIII. BINDING EFFECT OF COMPACT AND OTHER LAWS

16

17 (a) Other Laws:

18 (1) Nothing herein prevents the enforcement of any other law  
19 of a member state that is not inconsistent with this compact.

20 (2) All member states' laws conflicting with this compact are  
21 superseded to the extent of the conflict.

22 (b) Binding Effect of the Compact:

23 (1) All lawful actions of the Interstate Commission, including  
24 all rules and bylaws promulgated by the Interstate Commission, are

1 binding upon the member states.

2 (2) All agreements between the Interstate Commission and the  
3 member states are binding in accordance with their terms.

4 (3) In the event any provision of this compact exceeds the  
5 Constitutional limits imposed on the Legislature of any member  
6 state, such provision shall be ineffective to the extent of the  
7 conflict with the Constitutional provision in question in that  
8 member state.

9 **§18-10F-3. West Virginia Council for Educational Opportunities for**  
10 **military children; membership; powers and duties.**

11 (a) Pursuant to the provisions of Article VIII of the  
12 Interstate Compact on Educational Opportunity for Military Children  
13 set forth in §18-10F-2, the West Virginia Council for Educational  
14 Opportunities for Military Children is hereby established. The  
15 membership of the council shall consist of five members as follows:

16 (1) The state superintendent of secondary schools;

17 (2) The superintendent of a school district in the state with  
18 a high concentration of military children which shall be appointed  
19 by the Governor: *Provided*, That in the event there is no school  
20 district deemed to contain a high concentration of military  
21 children, the Governor may appoint a superintendent from another  
22 school district to represent local education agencies on the state  
23 council;

24 (3) A person appointed by the Governor with the advice and

1 consent of the Senate who is a representative from a military  
2 installation in this state. The term of this member shall be for  
3 a term of four years, beginning July 1, 2011, and ending June 30,  
4 2015. Each subsequent appointment shall be for a term of June 30 of  
5 the fourth year following the year the preceding term expired;

6 (4) One member of the West Virginia Senate, appointed by the  
7 President of the West Virginia Senate; and

8 (5) One member of the West Virginia House of Delegates,  
9 appointed by the Speaker of the West Virginia House of Delegates.  
10 Members so appointed shall have the qualifications specified in  
11 said Article VIII of the compact.

12 (b) The council has and may exercise all powers necessary or  
13 appropriate to carry out and effectuate the purpose and intent of  
14 the compact set forth in §18-10F-1, including, but not limited to  
15 the following:

16 (1) All of the powers and duties of a state council set forth  
17 in Article VIII of the compact;

18 (2) Provide for the coordination among agencies of West  
19 Virginia, including local education agencies and military  
20 installations concerning the state's participation in, and  
21 compliance with, the compact and Interstate Commission activities;

22 (3) Appoint or designate a military family education liaison  
23 to assist military families and the state in facilitating the  
24 implementation of the compact.

NOTE: The purpose of this bill is to provide for the adoption and enactment of the Interstate Compact on Educational Opportunity for Military Children. The bill also establishes the West Virginia Council for Educational Opportunities for Military Children as mandated by the compact; establishes the membership, powers and duties of the council.

This article is new; therefore, strike-throughs and underscoring have been omitted.

This bill was recommended for introduction and passage during the 2011 Regular Session of the Legislature by the Select Committee on Veterans' Affairs - Interim.