

H. B. 2164

(BY DELEGATES M. POLING, DUKE AND PAXTON)

[Introduced January 12, 2011; referred to the
Committee on Education then Finance.]

A BILL to repeal §11-1C-5b of the Code of West Virginia, 1931, as amended; to repeal §18-9A-2a of said code; and to amend and reenact §18-9A-2 and §18-9A-11 of said code, all relating to public school support computation of local share; removing provisions for using assumed assessed values for the purpose of computation; removing 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; revising definitions; and making legislative

findings with respect to the effect of under assessed property values on school funding and the obligations of assessors and Tax Commissioner.

Be it enacted by the Legislature of West Virginia:

That §11-1C-5b of the Code of West Virginia, 1931, as amended, be repealed; that §18-9A-2a of said code be repealed; and that §18-9A-2 and §18-9A-11 of said code be amended and reenacted, all to read as follows:

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-2. Definitions.

1 For the purpose of this article:

2 (a) “State board” means the West Virginia Board of
3 Education.

4 (b) “County board” or “board” means a county board of
5 education.

6 (c) “Professional salaries” means the state legally
7 mandated salaries of the professional educators as provided
8 in article four, chapter eighteen-a of this code.

9 (d) “Professional educator” shall be synonymous with
10 and shall have the same meaning as “teacher” as defined in

1 section one, article one of this chapter, and includes
2 technology integration specialists.

3 (e) “Professional instructional personnel” means a
4 professional educator whose regular duty is as that of a
5 classroom teacher, librarian, attendance director or school
6 psychologist. A professional educator having both
7 instructional and administrative or other duties shall be
8 included as professional instructional personnel for that ratio
9 of the school day for which he or she is assigned and serves
10 on a regular full-time basis in appropriate instruction, library,
11 attendance, or psychologist duties.

12 (f) “Professional student support personnel” means a
13 “teacher” as defined in section one, article one of this chapter
14 who is assigned and serves on a regular full-time basis as a
15 counselor or as a school nurse with a bachelor’s degree and
16 who is licensed by the West Virginia Board of Examiners for
17 Registered Professional Nurses. For all purposes except for
18 the determination of the allowance for professional educators
19 pursuant to section four of this article, professional student
20 support personnel are professional educators.

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

4 (h) "Service personnel" means all personnel as provided
5 in section eight, article four, chapter eighteen-a of this code.

6 For the purpose of computations under this article of ratios of
7 service personnel to net enrollment, a service employee shall
8 be counted as that number found by dividing his or her
9 number of employment days in a fiscal year by two hundred:
10 *Provided*, That the computation for any service person
11 employed for three and one-half hours or less per day as
12 provided in section eight-a, article four, chapter eighteen-a of
13 this code shall be calculated as one-half an employment day.

14 (i) "Net enrollment" means the number of pupils enrolled
15 in special education programs, kindergarten programs and
16 grades one to twelve, inclusive, of the public schools of the
17 county. Net enrollment further shall include:

18 (1) Adults enrolled in regular secondary vocational
19 programs existing as of the effective date of this section,
20 subject to the following:

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

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

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

13 (3) No pupil shall be counted more than once by reason
14 of transfer within the county or from another county within
15 the state, and no pupil shall be counted who attends school in
16 this state from another state;

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

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

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

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

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

19 (D) During the 2008-2009 interim period and every three
20 interim periods thereafter, the Legislative Oversight

1 Commission on Education Accountability shall review the
2 provisions of this subdivision to determine whether or not
3 they properly address the needs of counties with low
4 enrollment and a sparse population density.

5 (j) “Sparse-density county” means a county whose ratio
6 of net enrollment, excluding any increase in the net
7 enrollment of counties pursuant to subdivision (5) of the
8 definition of net enrollment, to the square miles of the county
9 is less than five.

10 (k) “Low-density county” means a county whose ratio of
11 net enrollment, excluding any increase in the net enrollment
12 of counties pursuant to subdivision (5) of the definition of net
13 enrollment, to the square miles of the county is equal to or
14 greater than five but less than ten.

15 (l) “Medium-density county” means a county whose ratio
16 of net enrollment, excluding any increase in the net
17 enrollment of counties pursuant to subdivision (5) of the
18 definition of net enrollment, to the square miles of the county
19 is equal to or greater than ten but less than twenty.

1 (m) “High-density county” means a county whose ratio
2 of net enrollment, excluding any increase in the net
3 enrollment of counties pursuant to subdivision (5) of the
4 definition of net enrollment, to the square miles of the county
5 is equal to or greater than twenty.

6 (n) “Levies for general current expense purposes” means
7 ~~ninety-four~~ ninety percent of the levy rate for county boards
8 of education calculated or set by the Legislature pursuant to
9 the provisions of section six-f, article eight, chapter eleven of
10 this code. ~~Provided, That beginning July 1, 2008, “levies for~~
11 ~~general current expense purposes” means ninety percent of~~
12 ~~the levy rate for county boards of education calculated or set~~
13 ~~by the Legislature pursuant to the provisions of section six-f,~~
14 ~~article eight, chapter eleven of this code: *Provided, however,*~~
15 ~~That effective July 1, 2010, the definitions set forth in this~~
16 ~~subsection are subject to the provisions of section two-a of~~
17 ~~this article.~~

18 (o) “Technology integration specialist” means a
19 professional educator who has expertise in the technology

1 field and is assigned as a resource teacher to provide
2 information and guidance to classroom teachers on the
3 integration of technology into the curriculum.

4 (p) “State aid eligible personnel” means all professional
5 educators and service personnel employed by a county board
6 in positions that are eligible to be funded under this article
7 and whose salaries are not funded by a specific funding
8 source such as a federal or state grant, donation, contribution
9 or other specific funding source not listed.

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

1 (a) On the basis of each county’s certificates of valuation
2 as to all classes of property as determined and published by
3 the assessors pursuant to section six, article three, chapter
4 eleven of this code for the next ensuing fiscal year in reliance
5 upon the assessed values annually developed by each county
6 assessor pursuant to the provisions of articles one-c and three
7 of said chapter, the state board shall for each county compute

1 by application of the levies for general current expense
2 purposes, as defined in section two of this article, the amount
3 of revenue which the levies would produce if levied upon one
4 hundred percent of the assessed value of each of the several
5 classes of property contained in the report or revised report
6 of the value, made to it by the Tax Commissioner as follows:

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

11 (2) The state board shall then apply these rates to the
12 assessed taxable value of other property in each classification
13 in the county as determined by the Tax Commissioner and
14 shall deduct therefrom five percent as an allowance for the
15 usual losses in collections due to discounts, exonerations,
16 delinquencies and the like. All of the amount so determined
17 shall be added to the ninety-five percent of public utility
18 taxes computed as provided in subdivision (1) of this
19 subsection and this total shall be further reduced by the

1 amount due each county assessor's office pursuant to the
2 provisions of section eight, article one-c, chapter eleven of
3 this code and this amount shall be the local share of the
4 particular county.

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

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

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

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

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

11 ~~(c) (b)(1) The Legislature finds that when property taxes~~
12 ~~for public school purposes are under assessed in a county, the~~
13 ~~local share obligation of the county for funding its basic~~
14 ~~foundation program is undervalued, resulting in added cost~~
15 ~~to the state's general revenue to compensate for the under~~
16 ~~assessment and fully fund the county's basic foundation. The~~
17 ~~Legislature further finds that the amount of property tax~~
18 ~~revenues available for support of the county's school system~~
19 ~~above its basic foundation obligation are also less than would~~

1 be the case if the property taxes of the county were assessed
2 at the Constitutionally required uniform percentage.
3 Therefore, the Legislature finds that it is the duty of county
4 assessors to assess property taxes as required by law and it is
5 the duty of the Tax Commissioner to oversee them to ensure
6 that the obligations for providing a thorough and efficient
7 education for the children of the county are not diminished by
8 the under assessment of property taxes.

9 (2) Whenever in any year a county assessor or a county
10 commission fails or refuses to comply with the provisions of
11 this section in setting the valuations of property for
12 assessment purposes in any class or classes of property in the
13 county, the State Tax Commissioner shall review the
14 valuations for assessment purposes made by the county
15 assessor and the county commission and shall direct the
16 county assessor and the county commission to make
17 corrections in the valuations as necessary so that they comply
18 with the requirements of chapter eleven of this code and this
19 section and the Tax Commissioner shall enter the county and

1 fix the assessments at the required ratios. Refusal of the
2 assessor or the county commission to make the corrections
3 constitutes grounds for removal from office.

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

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

1 (2), subsection (a) of this section ~~or in subdivisions (2) and~~
2 ~~(3), subsection (b) of this section, as applicable~~ are made.

3 (f) ~~(e)~~ The Legislature finds that public school systems
4 throughout the state provide support in varying degrees to
5 public libraries through a variety of means including
6 budgeted allocations, excess levy funds and portions of their
7 regular school board levies as may be provided by special
8 act. A number of public libraries are situated on the
9 campuses of public schools and several are within public
10 school buildings serving both the students and public patrons.
11 To the extent that public schools recognize and choose to
12 avail the resources of public libraries toward developing
13 within their students such legally recognized elements of a
14 thorough and efficient education as literacy, interests in
15 literature, knowledge of government and the world around
16 them and preparation for advanced academic training, work
17 and citizenship, public libraries serve a legitimate school
18 purpose and may do so economically. For the purposes of
19 any computation made in accordance with the provisions of

1 this section, the library funding obligation on the regular
2 school board levies which is created by a special act and is
3 due and payable from the levy revenues to a library shall be
4 paid from the county school board's discretionary retainage,
5 which is hereby defined as the amount by which the regular
6 school board levies exceeds the local share as determined
7 hereunder. If the library funding obligation which is created
8 by a special act and is due and payable to a library is greater
9 than the county school board's discretionary retainage, the
10 library funding obligation created by the special act is
11 amended and is reduced to the amount of the discretionary
12 retainage, notwithstanding any provisions of the special act
13 to the contrary. Any excess of the discretionary retainage
14 over the library funding obligation shall be available for
15 expenditure by the county board in its discretion for its
16 properly budgeted purposes.

17 ~~(g)~~ (f) It is the intent of the Legislature that whenever a
18 provision of subsection ~~(f)~~ (e) of this section is contrary to
19 any special act of the Legislature which has been or may in

1 the future be enacted by the Legislature that creates a library
2 funding obligation on the regular school board levy of a
3 county, subsection ~~(f)~~ (e) of this section controls over the
4 special act. Specifically, the special acts which are subject
5 to said subsection upon the enactment of this section during
6 the 2007 regular session of the Legislature include:

7 (1) Enrolled Senate Bill No. 11, passed on February 12,
8 1970, applicable to the Berkeley County Board of
9 Education;

10 (2) Enrolled House Bill No. 1352, passed on April 7,
11 1981, applicable to the Hardy County Board of Education;

12 (3) Enrolled Committee Substitute for House Bill No.
13 2833, passed on March 14, 1987, applicable to the Harrison
14 County Board of Education;

15 (4) Enrolled House Bill No. 161, passed on March 6,
16 1957, applicable to the Kanawha County Board of
17 Education;

18 (5) Enrolled Senate Bill No. 313, passed on March 12,
19 1937, as amended by Enrolled House Bill No. 1074, passed

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

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

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

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

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

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

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

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

1 submits to the voters the library funding obligation again
2 shall be included as one of the purposes of the subsequent
3 excess levy as a specifically described line item of the
4 excess levy;

5 (3) If a county board chooses to transfer the library
6 obligation pursuant to this subsection, regardless of whether
7 or not the excess levy passes, effective the fiscal year in
8 which the excess levy is effective or would have been
9 effective if it had been passed by the voters, a county's
10 library obligation on its regular levy revenues is void
11 notwithstanding any provision of the special acts set forth in
12 subsection ~~(g)~~ (f) of this section to the contrary; and

13 (4) Nothing in subdivision (3) of this subsection
14 prohibits a county board from funding its public library
15 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.