

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 371**

5 (BY SENATORS KESSLER (MR. PRESIDENT) AND HALL,

6 BY REQUEST OF THE EXECUTIVE)

7 _____
8 [Passed March 16, 2012; in effect from passage.]
9 _____

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11
12 AN ACT to amend the Code of West Virginia, 1931, as amended, by
13 adding thereto a new section, designated §18-5B-12, relating
14 to allowing flexibility within county school systems;
15 authorizing the State Board of Education to select a county
16 school system to serve as a school system collaborative
17 innovation zone; giving McDowell County first opportunity to
18 submit application; specifying effect of change in school
19 system approval status; requiring the State Board of Education
20 to promulgate rules and emergency rules; providing the
21 procedure and criteria for application and selection as a
22 school system collaborative innovation zone; requiring
23 development of school system collaborative innovation zone
24 plan; setting forth potential innovations; requiring public

1 town hall meetings; requiring meeting to review input from
2 town hall meetings and develop plan; requiring meeting to
3 educate employees about the plan and to allow examination and
4 discussion of plan; requiring vote to determine level of
5 school employee support; authorizing a designated school
6 system to submit requests for exceptions from county and state
7 board rules, policies and interpretations; permitting
8 exceptions from statutes subject to legislative approval;
9 prohibiting certain exceptions; allowing revision and
10 resubmission of approved plan; setting forth duration of
11 designation; requiring annual performance reviews and reports;
12 permitting the posting of certain teaching vacancies in
13 accordance with certain procedures and approval; and for a
14 school system collaborative innovation zone and to the extent
15 applicable, including any land and infrastructure needs in the
16 land use master plan, authorizing an area health association
17 to work with county board in addressing health, wellness and
18 fitness needs and authorizing an area institution of higher
19 education to work with the county board to address certain
20 challenges.

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

22 That the Code of West Virginia, 1931, as amended, be amended
23 by adding thereto a new section, designated §18-5B-12, to read as
24 follows:

1 **ARTICLE 5B. SCHOOL INNOVATION ZONES ACT.**

2 **§18-5B-12. School system collaborative innovation zone;**
3 **requirements to qualify; application for**
4 **designation; required plans for innovation zones;**
5 **plan approval; waiver of statutes, policies, rules**
6 **or interpretations; progress reviews and annual**
7 **reports; teacher vacancies, job postings and**
8 **approval.**

9 (a) The Legislature makes the following findings and
10 expressions of legislative intent:

11 (1) The Legislature created a performance-based accreditation
12 system in 1988 and has amended these provisions several times,
13 significantly in 1998 to set forth a process for improving
14 education consisting of four elements: (i) High quality education
15 standards; (ii) an assessment of the performance and progress of
16 schools and school systems in achieving these standards with a
17 primary focus on student learning; (iii) holding schools and school
18 systems accountable for performance and progress to provide
19 assurances that a thorough and efficient education is being
20 provided; and (iv) a process for targeting resources strategically
21 to improve teaching and learning. These provisions include a
22 process for the state board to declare a state of emergency and
23 intervene in the operation of a school system when its educational
24 program does not meet the standards and it fails to implement an

1 improvement plan or meet the plan's deadlines and improve within a
2 reasonable time. Since the inception of these provisions, the
3 state board has declared a state of emergency in nine county school
4 systems and intervened, including delegating decision-making
5 authority to the state superintendent or his or her designee for
6 system operations. Of these nine school systems, three improved
7 sufficiently over a period of time for the state of emergency to be
8 rescinded, the longest of which took ten years and six months. Of
9 the six systems remaining under state board intervention, although
10 most are fairly recent, one school system has been under state
11 intervention for more than ten years and its improvement is
12 progressing slowly;

13 (2) School systems do not exist in a vacuum and external
14 circumstances and events can have a significant impact on them and
15 the students they serve, as well as on the system's capacity to
16 deliver the thorough and efficient education to which those
17 students are entitled. For example, the McDowell County school
18 system which in the 1950's at its height of employment in coal
19 production had a total population of about 100,000 residents, faced
20 much different challenges than it does today with that county's
21 total population now at 22,113 based on the 2010 census. This
22 school system has lost nearly 70% of its enrollment in the past 30
23 years, declining from 11,715 students in 1981-82 to 3,535 in 2011-
24 12. Along with the steep decline in the historical bedrock of

1 employment in the county in the coal industry and the large number
2 of middle class workers and services it supported, including
3 housing, utilities and medical care, the county's rugged
4 mountainous topography contributes to its vulnerability to natural
5 disasters such as the devastating floods in 2001 and 2002 that
6 swept away many homes and much of the infrastructure along the
7 creek beds throughout the county. This topography also
8 significantly limits the amount of land suitable for development
9 and transportation networks, and makes planning for future economic
10 development alternatives difficult. The social and economic
11 byproducts of these external circumstances and events leave a
12 school system with many atypical challenges for addressing the
13 needs of its students and making the improvements in performance
14 and progress needed to assure a thorough and efficient education;

15 (3) Among the findings, intent and purposes of this article
16 are that: (i) Allowing exceptions from certain statutes, policies,
17 rules and interpretations through the creation of innovation zones
18 will enable greater local control over the important educational
19 factors that impact student achievement and the delivery of
20 educational services to improve student learning; and (ii)
21 Innovation zones will provide greater flexibility and local control
22 to meet the needs of a diverse population of students. In
23 addition, among the findings of the Local Solution Dropout
24 Prevention and Recovery Innovation Zone Act as set forth in section

1 eleven of this article are findings that when educators, parents,
2 elected officials, business leaders, faith-based leaders, human
3 service personnel, judicial personnel and civic leaders
4 collectively work together they are often able to find innovative
5 solutions to address school and community problems. Since the
6 creation of this article, forty-five innovation zone projects have
7 been approved by the state board, nine of which were Dropout
8 Prevention and Recovery Innovation Zone projects. Twenty-seven
9 policy waivers and five statutory waivers have been granted to
10 enable implementation of these projects. In one county, an
11 innovation zone project was expanded to all of the remaining
12 schools in the county when the schools used the Local School
13 Improvement Council waiver process to request and receive a
14 statutory waiver to implement a comprehensive new teacher induction
15 process county-wide. Collectively, these projects illustrate how
16 local schools, and in some cases school systems, have increased
17 their capacity by using the innovation zone process to
18 collaboratively plan and implement a variety of changes to increase
19 student engagement, develop more flexible schedules, enhance
20 student and teacher ownership of the learning process and increase
21 student achievement;

22 (4) Choosing one county school system under a declared state
23 of emergency due to nonapproval status to designate as an
24 innovation zone would allow the testing of innovations that could

1 be replicated in other school systems facing similar circumstances
2 across the state, nation and world;

3 (5) Numerous studies have shown an association between a young
4 person's health status and his or her ability to succeed in
5 educational settings;

6 (6) McDowell County is unique and should be given the first
7 opportunity to use innovative solutions to improve its education
8 system when the totality of the circumstances set forth in this
9 subsection are considered. Other facts specifically applicable to
10 McDowell County include the following:

11 (A) The McDowell County school system has been under a
12 continuous declared state of emergency by the state board due to
13 nonapproval status longer than any other county that is currently
14 under a declared state of emergency;

15 (B) The McDowell County school system is engaged in a public-
16 private partnership to begin addressing challenges both within the
17 school system and in the community at large; and

18 (C) McDowell County has a chronic shortage of good roads,
19 public transportation, housing, Internet bandwidth, recreation
20 centers and health clinics;

21 (7) This section is intended as an additional tool for an
22 eligible school system in collaboration with community and business
23 partners to plan and implement new approaches to improve the
24 performance and progress of the students, schools and system to

1 achieve full approval at the earliest possible date. It is further
2 the intent of the Legislature that the process for an eligible
3 school system to apply for exceptions under this section should
4 allow multiple opportunities to apply for additional exceptions as
5 the system moves forward with its partners toward fulfillment of
6 its improvement goals; and

7 (8) In accordance with the intent of this section as an
8 additional tool for planning and implementing new approaches to
9 improve the performance and progress of the students, schools and
10 school system to achieve full approval at the earliest possible
11 date, the state board shall rescind the state of emergency and
12 nonapproval status of a school system designated as a school system
13 collaborative innovation zone as soon as the requisite conditions
14 are met as provided in section five, article two-e of this chapter,
15 notwithstanding the designation. If a school system that has been
16 designated as a school system collaborative innovation zone is
17 subsequently issued a school system approval status that would make
18 it ineligible for the designation, the designation shall remain in
19 effect as provided in this section.

20 (b) The state board is authorized to choose one county school
21 system currently under a declared state of emergency by the state
22 board due to nonapproval status to participate in a program to test
23 the effectiveness of allowing such county school systems to be
24 considered school system collaborative innovation zones. Due to

1 the reasons set forth in subsection (a) of this section, the
2 McDowell County Board of Education shall be provided the first
3 opportunity to submit a school system collaborative innovation zone
4 application under this article. If the McDowell County Board of
5 Education has not submitted an application by April 1, 2013 or less
6 than fifty percent cast ballots in an election to approve a school
7 system collaborative innovation zone plan, the state board may
8 accept applications from other county boards under a declared state
9 of emergency by the state board due to nonapproval status.

10 (c) The Legislature finds that an emergency exists and,
11 therefore, no later than April 16, 2012, the state board shall
12 promulgate an emergency rule in accordance with section ten,
13 article three-b, chapter twenty-nine-a of this code, to implement
14 the provisions of this section. The state board also shall
15 promulgate a legislative rule, in accordance with article three-b,
16 chapter twenty-nine-a of this code, to implement this section.
17 Both rules shall include, but not be limited to, the following
18 provisions:

19 (1) The manner, time and process for the submission of a
20 school system collaborative innovation zone application;

21 (2) The contents of the application, which must include a
22 general description of the innovations the county school district
23 seeks to institute;

24 (3) Factors to be considered by the state board when

1 evaluating an application, which shall include, but are not limited
2 to, the following factors:

3 (A) Support from teachers, staff, parents, students, the
4 county board of education, the local school improvement council and
5 school business partners; and

6 (B) The potential for an applicant to be successful in raising
7 student achievement as a school system collaborative innovation
8 zone; and

9 (4) Standards for the state board to review applications for
10 designation as a school system collaborative innovation zone and to
11 make determinations on the designation of a school system
12 collaborative innovation zone.

13 (d) The state board shall review school system collaborative
14 innovation zone applications in accordance with the standards
15 adopted by the board and shall determine whether to designate the
16 applicant as a school system collaborative innovation zone. The
17 state board shall notify an applicant of the board's determination
18 within thirty days of receipt of the application.

19 (e) Prior to designation by the state board as a school system
20 collaborative innovation zone, county school systems submitting
21 applications shall develop school system collaborative innovation
22 zone plans. The school system collaborative innovation zone plan
23 may include, but is not limited to, the following proposals:

24 (1) Allowing increased collaborative site-based

1 decision-making powers over the budgeting for and spending on
2 programs and services for students;

3 (2) Allowing increased collaborative site-based
4 decision-making powers over teacher recruitment;

5 (3) Allowing a collaborative process which ensures
6 accountability and transparency to all stakeholders;

7 (4) Allowing a collaborative process which provides input and
8 demonstrative buy-in from education personnel regarding appropriate
9 professional development, supports, resources and working
10 conditions.

11 (5) Allowing a collaborative site-based process to reduce
12 certain requirements to allow staff to meet the school's mission;

13 (6) Allowing, through a collaborative site-based process,
14 flexibility to the alternative teacher certification provided in
15 section one-a, article three, chapter eighteen-a of this code;

16 (7) Utilizing virtual school courses aligned with the Southern
17 Regional Education Board's Standards for Quality Online Courses;
18 and

19 (8) Other innovation zone plans approved under the provisions
20 of this article and being implemented in other schools and school
21 systems throughout the state.

22 (f) Prior to submitting a school system collaborative
23 innovation zone plan to the state board:

24 (1) The school system in collaboration with its public-private

1 partnership shall conduct public town hall meetings in at least two
2 schools in the county for the purpose of soliciting input from
3 those in attendance on the challenges affecting the quality of
4 education in the county and the potential strategies and priorities
5 for addressing them. The two meetings shall occur within ten days
6 of each other;

7 (2) Within fifteen days after the last town hall meeting, the
8 county superintendent shall hold a meeting for the purpose of
9 reviewing the input gathered at the public town hall meetings and
10 developing the school system collaborative innovation zone plan.
11 The meeting shall include the principals employed within the
12 county, the chairs of the faculty senates of each school in the
13 county, employee organization representatives, a school service
14 person from each work-site, parents and other stakeholders;

15 (3) Within fifteen days after the meeting to develop the
16 school system collaborative innovation zone plan, the county
17 superintendent shall hold a meeting of all regularly employed
18 school employees for the purpose of educating those employees about
19 the plan and for the purpose of providing the employees an
20 opportunity to examine and discuss the school system collaborative
21 innovation zone plan; and

22 (4) At the meeting required by subdivision (3) of this
23 subsection, the county superintendent shall direct that a vote of
24 all regularly employed school employees in the county be conducted

1 to determine the level of school employee support for the school
2 system collaborative innovation zone plan. The vote shall be
3 completed within fifteen days after the meeting required by
4 subdivision (3) of this subsection. The vote shall be by secret
5 ballot administered by the panels created in subsection (c),
6 section six of this article for each school and shall be
7 administered in accordance with that subsection. For the vote to
8 be valid, ballots must be cast by at least fifty percent of all
9 regularly employed school employees in the county. The plan may
10 not be submitted to the state board and the state board may not
11 designate the school system as a school system collaborative
12 innovation zone unless at least two-thirds of the employees voting
13 vote to submit the plan.

14 (g) Approval of a school system collaborative innovation zone
15 plan pursuant to this section is at the sole discretion of the
16 state board. Any approval requirement not contained within this
17 section does not apply.

18 (h) The plan is intended to serve as the basis for the
19 innovation zone activities of the school system and to provide a
20 vision for the school improvement goals it will work to accomplish
21 in collaboration with its school and community partners. The plan
22 is not intended as a limit on the normal school improvement
23 activities that all school systems are expected to pursue, nor is
24 the plan intended as a restriction on the ability of the school

1 system or its schools to pursue other innovative strategies in
2 accordance with the other provisions of this article, specifically
3 the designation as a Local Solution Dropout Prevention and Recovery
4 Innovation Zone in accordance with section eleven of this article.

5 (i) The designation as a school system collaborative
6 innovation zone authorizes the school system to submit requests as
7 provided in subsection (j) of this section to the state board for
8 exceptions to statutes, policies, rules and interpretations that
9 are required to permit implementation by the school system of the
10 innovative strategies contemplated in its school system
11 collaborative innovation zone plan. The designation shall be for
12 a period of five years, during which the school system may submit
13 multiple individual requests for exceptions to permit
14 implementation of different strategies contemplated in the plan as
15 the strategies are developed. Each request for an exception shall
16 be submitted and may be approved by the state board in accordance
17 with subsection (j) of this section.

18 (j) (1) A school system designated as a school system
19 collaborative innovation zone may request an exception to a
20 statute, policy, rule or interpretation by submitting an
21 application to the state board that contains the following
22 information:

23 (A) A description of the program or initiative the school
24 system intends to implement as an innovative strategy to improve

1 student achievement if the request is approved by the state board;

2 (B) An explanation of the specific exception to a statute,
3 policy, rule or interpretation, in the singular or plural, that the
4 school system has identified as prohibiting or constraining the
5 implementation of the program or initiative and why the exception
6 is necessary;

7 (C) An explanation of how the program or initiative furthers
8 the activities contemplated in the school system collaborative
9 innovation zone plan;

10 (D) A certification by the county superintendent that the
11 request for an exception was approved by a vote of the eligible
12 employees in accordance with the process for voting as set forth in
13 section six of this article, except that notwithstanding subsection
14 (d) of said section six, at least two-thirds of the eligible
15 employees voting must vote to request the exception for it to be
16 approved for submission to the state board: *Provided*, That for the
17 vote to be valid, ballots must be cast by at least fifty percent of
18 the eligible employees; and

19 (E) Any other information the state board requires as set
20 forth in its rule pursuant to subsection (c) of this section.

21 (2) The state board shall review the request in accordance
22 with the standards adopted by the board in its rule and shall
23 determine whether to approve or disapprove the request. The
24 approval or disapproval of a request is at the sole discretion of

1 the state board. Any approval requirement not contained within
2 this section does not apply.

3 (3) Except as provided in subdivision (5) of this subsection,
4 the state board shall approve or disapprove the request within
5 thirty days of receipt, subject to the following:

6 (A) No exceptions to state board policies, rules or
7 interpretations are granted unless the state board approves the
8 request at least conditionally pursuant to subdivisions (2) and (5)
9 of this subsection; and

10 (B) If the request is disapproved, the state board shall
11 communicate its reasons for the disapproval to the school system
12 and shall make recommendations for improving the request. The
13 school system may amend and resubmit the request.

14 (4) Upon approval of the request by the state board, all of
15 the exceptions to state board policies, rules and interpretations
16 that were requested are granted; and

17 (5) If a request, or a part thereof, may not be implemented
18 unless an exception to a statute is granted by an Act of the
19 Legislature, the state board may approve the request, or the part
20 thereof, only upon the condition that the Legislature acts to grant
21 the exception. If the state board approves a request on that
22 condition, the state board shall submit the request for an
23 exception to a statute, along with supporting reasons, to the
24 Legislative Oversight Commission of Education Accountability. The

1 commission shall review the request and make a recommendation to
2 the Legislature regarding the exception requested.

3 (k) A school system collaborative innovation zone may not
4 request an exception nor may an exception be granted from any of
5 the following:

6 (A) A required statewide assessment program administered by
7 the West Virginia Department of Education;

8 (B) Any provision of law or policy required by the No Child
9 Left Behind Act of 2001, Public Law No. 107-110 or other federal
10 law; and

11 (C) Sections two and seven, article two, chapter eighteen-a of
12 this code and sections seven-a, seven-b, eight and eight-b, article
13 four, chapter eighteen-a of this code, except that a school system
14 collaborative innovation zone may make a job posting for a teacher
15 vacancy in accordance with the procedures and the approval by a
16 vote of the teachers as provided in section eight of this article.

17 (l) A county board designated as an school system
18 collaborative innovation zone pursuant to this section that has an
19 approved innovation zone plan may revise its plan and resubmit its
20 plan to the state board for approval after conducting the vote
21 pursuant to subdivision (4), subsection (f) of this section and
22 complying with all other applicable plan requirements set forth in
23 this section except for holding the public town hall meetings
24 required by subdivision (1), subsection (f) of this section.

1 (m) The designation of a county school system as a school
2 system collaborative innovation zone shall be for a period of five
3 years. The state board, upon request of the school system, may
4 extend the designation for an additional two years if the school
5 system has outstanding items in its school system collaborative
6 innovation zone plan that it still wants to pursue and only for the
7 purpose of pursuing those outstanding items. The expiration of the
8 designation does not negate any exceptions to statutes, policies,
9 rules or interpretations granted to the school system, unless and
10 until specifically revoked, repealed or modified by the state board
11 or by the Legislature, as applicable.

12 (n) The state board or its designated committee shall perform
13 annual performance reviews and provide annual reports in accordance
14 with section seven of this article.

15 (o) A county school system whose plan has been approved may
16 make a job posting for a teacher vacancy in accordance with the
17 procedures and approval provided by section eight of this article.

18 (p) For any county that is designated as a school system
19 collaborative innovation zone under the provisions of this section
20 and to the extent the following provisions are applicable:

21 (1) The county commission of the designated county shall
22 collaborate with the Office of Coalfield Community Development in
23 including any land and infrastructure needs in the land use master
24 plan provided for in section nine, article two-a, chapter five-b of

1 this code. These needs may include, but are not limited to,
2 advancement of public education, economic development, highway
3 development, recreational amenities and housing development;

4 (2) An area health organization, such as Tug River Health
5 Association, Inc., is authorized to work with the county board to
6 address the health, wellness and fitness needs of students,
7 parents, school personnel and all others in the county. Tug River
8 Health Association may partner with the Robert C. Byrd Center for
9 Rural Health and the Marshall University Medical School in
10 addressing these needs. In addressing the health, wellness and
11 fitness needs, the following should be considered:

12 (A) New evaluations of school-aged children are needed to
13 reassess their health status and direct further interventions;

14 (B) Prior to developing new assessment tools and initiating
15 programs, a comprehensive inventory of prior assessment tools and
16 programs is needed to determine their strengths and weaknesses.
17 This can direct further studies and interventions;

18 (C) New assessment tools should include objective markers of
19 disease as well as subjective opinions of individual health status
20 and barriers to health;

21 (D) Objective and subjective data should be linked at
22 individual and disease-specific levels;

23 (E) Disease-specific data may be used to address common
24 barriers to health as perceived by a specific population and tailor

1 interventions to these specific populations;

2 (F) The effectiveness of interventions should be assessed
3 using the same health status markers used to develop the
4 intervention;

5 (G) Interventions should use available technology that allows
6 individuals to track measures of health and provide assistance in
7 making informed decisions about their health;

8 (H) Assessments and interventions should be developed and
9 implemented using community-based participatory research models;
10 and

11 (I) Assessments and interventions should be multidisciplinary,
12 collaborative efforts with existing organizations and programs; and

13 (3) Area institutions of higher education, such as Concord
14 University and the June Harless Center at Marshall University, are
15 authorized to work with the county board on innovative strategies
16 to address challenges facing the school system and community,
17 including but not limited to, the areas of critical need and
18 shortage in the teaching force, educator professional development
19 and improving the college going rate. In addressing the areas of
20 critical need shortage in the teaching force, consideration should
21 be given to the implementation of an intensively supervised and
22 mentored teacher-in-residence program for prospective teachers
23 during their senior year in lieu of student teaching.

