

H. B. 3044

(By Delegates Hamrick, Butler, Householder, Overington, Westfall, Cooper and Cadle) [Introduced March 22, 2013; referred to the Committee on Education then Finance.]

FISCAL NOTE

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18-5D-1, §18-5D-2 and §18-5D-3, all relating to providing a procedure for local school boards to obtain authorization from the State Board of Education for innovation and flexibility in the local school system, and to provide a tuition and transportation tax credit for students who transfer from failing schools to nonfailing schools.

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 §18-5D-1, §18-5D-2 and §18-5D-3, all to read as follows:

ARTICLE 5D. INNOVATIVE SCHOOL SYSTEMS.

§18-5D-1. Failing school defined.

A failing school is defined as:

(1) A public K-12 school that is labeled as persistently low-

1 performing by the State Department of Education, in the most recent
2 United States Department of Education School Improvement Grant
3 application; or

4 (2) A school that is listed in the lowest ten percent of
5 public K-12 schools on the state standardized assessment in reading
6 and math.

7 **§18-5D-2. Flexibility and innovation in school systems.**

8 (a) The purpose of this article is to allow for greater
9 flexibility and innovation in local schools.

10 (b) Pursuant to the provisions of this section, to be
11 considered as an innovative school system, a local school system
12 shall successfully comply with the requirements and procedures of
13 this article regarding school flexibility contracts, which include,
14 but are not limited to:

15 (1) Submission to the State Department of Education of a
16 letter of intent to pursue a school flexibility contract.

17 (2) Submission to the State Department of Education of a
18 resolution adopted by the local board of education supporting the
19 intent of the local school system to pursue a school flexibility
20 contract.

21 (3) Submission to the State Department of Education of a
22 document of assurance stating that the local board of education
23 shall provide consistency in leadership and a commitment to state
24 standards, assessments, and academic rigor.

1 (4) Submission to the State Board of Education of a resolution
2 adopted by the local board of education supporting the flexibility
3 contract proposal and the anticipated timeline of the local school
4 system.

5 (c) Pursuant to State Board of Education rules, each local
6 school system shall provide an opportunity for full discussion and
7 public input, including a public hearing, before submitting a
8 school flexibility contract proposal to the State Board of
9 Education.

10 (d) A local school system shall ensure that its school
11 flexibility contract proposal and innovation plan is easily
12 accessible to the general public on the website of the local school
13 system.

14 (e) The innovation plan of a local school system shall
15 include, at a minimum, all of the following:

16 (1) The school year that the local school system expects the
17 school flexibility contract to begin;

18 (2) The list of state laws, regulations, and policies,
19 including rules, regulations, and policies promulgated by the State
20 Board of Education and the State Department of Education, that the
21 local school system is seeking to waive in its school flexibility
22 contract; and

23 (3) A list of schools included in the innovation plan of the
24 local school system.

1 (f) A local school system is accountable to the state for the
2 performance of all schools in its system, including innovative
3 schools, under state and federal accountability requirements.

4 (g) A local school system may not, pursuant to this article,
5 wave requirements imposed by federal law, requirements related to
6 the health and safety of students or employees, requirements
7 imposed by ethics laws, requirements imposed by open records or
8 open meetings laws, requirements related to financial or academic
9 reporting or transparency, requirements designed to protect the
10 civil rights of students or employees, or requirements related to
11 the state retirement system or state health insurance plan. This
12 article may not be construed to allow a local school system to
13 compensate an employee at an annual amount that is less than the
14 amount the employee would otherwise be afforded.

15 (h) No provision of this article may be construed or may be
16 used to authorize the formation of a charter school.

17 (i) Any provision of subsection (g) to the contrary
18 notwithstanding, nothing in this act prohibits the approval of a
19 flexibility contract that gives potential, current, or future
20 employees of a failing school within the local school system the
21 option to voluntarily waive any rights or privileges already
22 acquired or that could potentially be acquired as a result of
23 attaining tenure or nonprobationary status, Provided, That any
24 employee provided this option is also provided the option of

1 retaining or potentially obtaining any rights or privileges
2 provided under other provisions of this code.

3 (j) The State Department of Education shall finalize all
4 school data and the local school system shall seek approval of the
5 local board of education before final submission to the State
6 Department of Education and the State Board of Education.

7 (k) The final innovation plan, as recommended by the local
8 superintendent of education and approved by the local board of
9 education, shall accompany the formal submission of the local
10 school system to the State Department of Education.

11 (l) Within 60 days of receiving the final submission, the
12 state Superintendent of Education shall decide whether or not the
13 school flexibility contract and the innovation plan should be
14 approved. If the State Superintendent of Education denies a school
15 flexibility contract and innovation plan, he or she shall provide
16 a written explanation for his or her decision to the local board of
17 education. Likewise, a written letter of approval by the State
18 Superintendent of Education shall be provided to the local board of
19 education that submitted the final school flexibility contract and
20 innovation plan.

21 (m) The State Board of Education shall promulgate any
22 necessary rules required to implement this article including, but
23 not limited to, all of the following:

24 (1) The specification of timelines for submission and approval

1 of the innovation plan and school flexibility contract of a local
2 school system.

3 (2) An authorization for the State Department of Education,
4 upon approval by the State Board of Education after periodic
5 review, to revoke a school flexibility contract for noncompliance
6 or nonperformance, or both, by a local school system.

7 (3) An outline of procedures and necessary steps that a local
8 school system shall follow, upon denial of an original submission,
9 to amend and resubmit an innovation plan and school flexibility
10 contract for approval.

11 (n) The State Board of Education and the State Department of
12 Education shall ensure equal opportunity for all school systems
13 that apply for programmatic flexibility or budgetary flexibility,
14 or both, as delineated in this article, and in no way shall one
15 local school system be favored over another local school system
16 based upon its size, location, student population, or any other
17 possible discriminatory measure.

18 **§18-5D-3. Educational flexibility and state accountability for**
19 **students in failing schools; Failing Schools Income**
20 **Tax Credit; Failing Schools Income Tax Credit**
21 **Account.**

22 (a) To provide educational flexibility and state
23 accountability for students in failing schools:

1 (1) For tax years beginning on and after January 1, 2013, an
2 income tax credit is made available to the parent of a student
3 enrolled in or assigned to attend a failing school to help offset
4 the cost of transferring the student to a nonfailing public school
5 or nonpublic school of the parent's choice. The income tax credit
6 shall be an amount equal to eighty percent of the average annual
7 state cost of attendance for a public K-12 student during the
8 applicable tax year or the actual cost of attending a nonfailing
9 public school or nonpublic school, whichever is less. A parent is
10 allowed a credit against income tax for each taxable year under the
11 terms established in this section. If income taxes owed by the
12 parent are less than the total credit allowed under this
13 subsection, the taxpayer shall be entitled to a refund or rebate,
14 as the case may be, equal to the balance of the unused credit with
15 respect to that taxable year.

16 (2) Any income tax credit due a parent under this section
17 shall be granted or issued to the parent only upon his or her
18 making application therefor, at such time and in such manner as may
19 be prescribed from time to time by the Department of Revenue. The
20 application process shall include, but not be limited to,
21 certification by the parent that the student was enrolled in or was
22 assigned to attend a failing school, certification by the parent
23 that the student was subsequently transferred to, and was enrolled
24 and attended, a nonfailing public school or nonpublic school of the

1 parent's choice, and proof, satisfactory to the Department of
2 Revenue, of the actual cost of attendance for the student at the
3 nonfailing public school or nonpublic school. The Department of
4 Revenue shall also prescribe the various methods by which income
5 tax credits are to be issued to taxpayers. Income tax credits
6 authorized by this section shall be paid out of sales tax
7 collections made to the Education Trust Fund, and set aside by the
8 Comptroller in the Failing School Tax Credit Account created in
9 subsection (c), in the same manner as refunds of income tax
10 otherwise provided by law, and there is hereby appropriated
11 therefrom, for the purpose, so much as may be necessary to annually
12 pay the income tax credits provided by this section.

13 (3) An application for an income tax credit authorized by this
14 section shall be filed with the Department of Revenue within the
15 time prescribed for filing petitions for refund under this code.

16 (4) The Department of Revenue shall promulgate reasonable
17 rules to effectuate the intent of this section.

18 (b) (1) The parent of a public school student may request and
19 receive an income tax credit pursuant to this section to reimburse
20 the parent for costs associated with transferring the student from
21 a failing school to a nonfailing public school or nonpublic school
22 of the parent's choice, in any of the following circumstances:

23 (A) By assigned school attendance area, if the student spent
24 the prior school year in attendance at a failing school and the

1 attendance of the student occurred during a school year in which
2 the designation was in effect.

3 (B) The student was in attendance elsewhere in a West Virginia
4 public school system and was assigned to a failing school for the
5 next school year.

6 (C) The student was notified that he or she was assigned to a
7 failing school for the next school year.

8 (2) For the purposes of continuity of educational choice, the
9 tax credit shall be available to parents for those grade levels of
10 the failing school from which the student transferred. The parent
11 of a student who transfers from a failing school may receive income
12 tax credits for those grade levels enrolled in and attended in the
13 nonfailing public school or nonpublic school of the parent's choice
14 transferred to that were included in the failing school from which
15 the student transferred, whether or not the failing school becomes
16 a nonfailing school during those years. The student shall return to
17 his or her original local school system of attendance when he or
18 she completes the highest grade level of the failing school
19 transferred from in the nonfailing public school or nonpublic
20 school of the parent's choice. If the public school the student
21 returns to is a failing school, the parent may again transfer the
22 student to a nonfailing public school or nonpublic school of the
23 parent's choice and request and receive an income tax credit as
24 provided in this section.

1 (3) A local school system, for each student enrolled in or
2 assigned to a failing school, shall do all of the following:

3 (A) Timely notify the parent of the student of all options
4 available under this section as soon as the school of attendance is
5 designated as a failing school; and

6 (B) Offer the parent of the student an opportunity to enroll
7 the student in another public school within the local school system
8 that is not a failing school or a failing school to which the
9 student has been assigned.

10 (4) The parent of a student enrolled in or assigned to a
11 school that has been designated as a failing school, as an
12 alternative to paragraph (B) of subdivision (3), may choose to
13 enroll the student in and transport the student to a nonfailing
14 public school that has available space in any other local school
15 system in the state, and that local school system is willing to
16 accept the student on whatever terms and conditions the system
17 establishes and report the student for purposes of the local school
18 system's funding.

19 (5) For students in the local school system who are
20 participating in the tax credit program, the local school system
21 shall provide locations and times to take all statewide assessments
22 required by law.

23 (6) Students with disabilities who are eligible to receive
24 services from the local school system under federal or state law,

1 and who participate in the tax credit program, remain eligible to
2 receive services from the local school system as provided by
3 federal or state law.

4 (7) If a parent requests that the student be enrolled in a
5 nonfailing public school within the same local school system,
6 transportation costs to the nonfailing public school shall be the
7 responsibility of the requesting parent.

8 (8) The State Department of Education shall promulgate
9 reasonable rules to effectuate the intent of this section. Rules
10 shall include penalties for noncompliance.

11 (c) There is created within the Education Trust Fund a
12 separate account named the Failing Schools Income Tax Credit
13 Account. The Commissioner of Revenue shall annually certify to the
14 Comptroller the amount of income tax credits due to parents under
15 this section and the Comptroller shall transfer into the Failing
16 Schools Income Tax Credit Account only the amount from sales tax
17 revenues within the Education Trust Fund that is sufficient for the
18 Department of Revenue to use to cover the income tax credits for
19 the applicable tax year. The Commissioner of Revenue shall annually
20 distribute the funds in the Failing Schools Income Tax Credit
21 Account to parents pursuant to this section.

NOTE: The purpose of this bill is to provide more flexibility to county school boards in managing schools, and to provide an income tax credit for tuition and transportation expenses incurred

by students who transfer from a failing school to a nonfailing school.

This article is new; therefore it has been completely underscored.