

1 **ENROLLED**

2 **Senate Bill No. 1009**

3 (BY SENATORS KESSLER (MR. PRESIDENT) AND M. HALL,

4 BY REQUEST OF THE EXECUTIVE)

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6 [Passed March 14, 2014; in effect from passage.]  
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10 AN ACT to repeal §11-1C-5b of the Code of West Virginia, 1931, as  
11 amended; to repeal §18-9A-2a of said code; to amend and  
12 reenact §11-3-1 of said code; and to amend and reenact  
13 §18-9A-2 and §18-9A-11 of said code, all relating to the  
14 computation of local share for public school support purposes;  
15 repealing, retrospectively to June 30, 2013, provisions  
16 requiring the use of assumed assessed real property values  
17 that are based upon an assessment ratio study instead of  
18 actual real property values for the purpose of the computation  
19 of local share for public school support purposes; repealing,  
20 retrospectively to June 30, 2013, provisions that require that  
21 the annual amount of local share for which a county board of  
22 education is responsible be increased where, during the prior

1 year, the real property assessments in that county were not at  
2 least fifty-four percent of market value as indicated by the  
3 assessment ratio study; requiring the Tax Commissioner to  
4 appoint special assessors to appraise and assess property in  
5 any county whenever property in that county is found to be  
6 assessed at less than sixty percent of its fair market value  
7 for two consecutive years; providing that appointment of  
8 special assessors is not required where a county meets certain  
9 criteria prescribed by rule; requiring Tax Commissioner to  
10 promulgate rules; providing that the county bear the expense  
11 of such special assessors; revising definitions; specifying  
12 that for fiscal years beginning after June 30, 2014, the State  
13 Board of Education shall use ninety-six percent of total  
14 assessed public utility valuation in the calculation of local  
15 share; specifying a four percent loss deduction in computation  
16 of local share for the fiscal year beginning on July 1, 2014,  
17 and for each fiscal year thereafter; expressing legislative  
18 intent to continue the computation of local share for public  
19 school support based upon actual real property values rather  
20 than assumed assessed real property values; expressing  
21 legislative intent that the annual amount of local share for  
22 which a county board of education is responsible continue to

1 be computed without reference to whether the real property  
2 assessments in that county were at least fifty-four percent of  
3 market value in the prior year; and removing provisions  
4 requiring county school boards to provide funding for public  
5 libraries from discretionary retainage.

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

7 That §11-1C-5b of the Code of West Virginia, 1931, as amended,  
8 be repealed; that §18-9A-2a of said code be repealed; that §11-3-1  
9 of said code be amended and reenacted; and that §18-9A-2 and  
10 §18-9A-11 of said code be amended and reenacted, all to read as  
11 follows:

12 **CHAPTER 11. TAXATION.**

13 **ARTICLE 3. PROPERTY TAX ASSESSMENTS GENERALLY.**

14 **§11-3-1. Time and basis of assessments; true and actual value;**  
15 **default; reassessment; special assessors; criminal**  
16 **penalty.**

17 (a) All property, except public service businesses assessed  
18 pursuant to article six of this chapter, shall be assessed annually  
19 as of July 1 at sixty percent of its true and actual value; that is  
20 to say, at the price for which the property would sell if  
21 voluntarily offered for sale by the owner thereof, upon the terms  
22 as the property, the value of which is sought to be ascertained, is

1 usually sold, and not the price which might be realized if the  
2 property were sold at a forced sale.

3 (b) Any conflicting provisions of subsection (a) of this  
4 section notwithstanding, the true and actual value of all property  
5 owned, used and occupied by the owner thereof exclusively for  
6 residential purposes shall be arrived at by also giving  
7 consideration to the fair and reasonable amount of income which the  
8 same might be expected to earn, under normal conditions in the  
9 locality wherein situated, if rented: *Provided*, That the true and  
10 actual value of all farms used, occupied and cultivated by their  
11 owners or bona fide tenants shall be arrived at according to the  
12 fair and reasonable value of the property for the purpose for which  
13 it is actually used regardless of what the value of the property  
14 would be if used for some other purpose; and that the true and  
15 actual value shall be arrived at by giving consideration to the  
16 fair and reasonable income which the same might be expected to earn  
17 under normal conditions in the locality wherein situated, if  
18 rented: *Provided, however*, That nothing herein shall alter the  
19 method of assessment of lands or minerals owned by domestic or  
20 foreign corporations.

21 (c) The taxes upon all property shall be paid by those who are  
22 the owners thereof on the assessment date whether it be assessed to

1 them or others.

2 (d) If at any time after the beginning of the assessment year  
3 it be ascertained by the Tax Commissioner that the assessor, or any  
4 of his or her deputies, is not complying with this provision or  
5 that they have failed, neglected or refused, or is failing,  
6 neglecting or refusing after five days' notice to list and assess  
7 all property therein at sixty percent of its true and actual value  
8 as determined under this chapter, the Tax Commissioner shall order  
9 and direct a reassessment of any or all of the property in any  
10 county, district or municipality where any assessor or deputy  
11 fails, neglects or refuses to assess the property in the manner  
12 herein provided. And, if the Tax Commissioner has determined that  
13 the assessor has not complied or has so failed, neglected or  
14 refused to list and assess property as aforesaid for two or more  
15 consecutive years, for the purpose of making assessment and  
16 correction of values, the Tax Commissioner shall appoint one or  
17 more special assessors, unless the Tax Commissioner determines that  
18 such appointment should be made earlier, as necessity may require,  
19 to make assessment in any county and any such special assessor or  
20 assessors, as the case may be, has the power and authority now  
21 vested by law in assessors, and the work of such special assessor  
22 or assessors shall be accepted and treated for all purposes by the

1 county boards of review and equalization and the levying bodies,  
2 subject to any revisions of value on appeal, as the true and lawful  
3 assessment of that year as to all property valued by him or her or  
4 them. The Tax Commissioner shall fix the compensation of all  
5 special assessors appointed, which, together with their actual  
6 expenses, shall be paid out of the county fund by the county  
7 commission of the county in which any such assessment is ordered,  
8 upon the receipt of a certificate of the Tax Commissioner filed  
9 with the clerk of the county commission showing the amounts due and  
10 to whom payable, after such expenses have been audited by the  
11 county commission. All of this subsection is subject to the  
12 following:

13 (1) Notwithstanding any other provision of this subsection to  
14 the contrary, if the Tax Commissioner has determined that the  
15 assessor has not complied or has so failed, neglected or refused to  
16 list and assess property as aforesaid for two consecutive years,  
17 but the assessor can show that the criteria established by rule  
18 pursuant to this subsection are met, the Tax Commissioner is not  
19 required to appoint one or more special assessors pursuant to this  
20 section, and in lieu of appointing one or more special assessors,  
21 may again order and direct a reassessment of any or all of the  
22 property pursuant to this subsection;

1           (2) For any third or succeeding consecutive year or years that  
2 the Tax Commissioner determines that the assessor has not complied  
3 or has so failed, neglected or refused to list and assess property  
4 as aforesaid, the Tax Commissioner shall appoint one or more  
5 special assessors pursuant to the provisions of this subsection  
6 regardless of whether or not the assessor can show that he or she  
7 will list and assess property as aforesaid the next year; and

8           (3) For the purposes of determining consecutive years pursuant  
9 to this subsection, only tax years beginning on and after the July  
10 1, 2013, assessment date may be considered a first year.

11          (4) For purposes of subdivision (1) of this subsection,  
12 criteria for determining whether the assessor has made a  
13 satisfactory showing that he or she will list and assess property  
14 as aforesaid for the year next succeeding the two assessment years  
15 specified in subdivision (1) of this subsection, the Tax  
16 Commissioner shall apply criteria based on: (A) Sales validity; (B)  
17 appraisal uniformity; (C) appraisal evaluation; and (D) such other  
18 criteria as the Tax Commissioner may prescribe. The Tax  
19 Commissioner shall promulgate a legislative rule to specify  
20 criteria for the treatment authorized herein for any such third  
21 year or succeeding consecutive year or years, and such  
22 administrative and procedural requirements and criteria as the Tax

1 Commissioner may prescribe.

2 (e) Any assessor who knowingly fails, neglects or refuses to  
3 assess all the property of his or her county, as herein provided,  
4 shall be guilty of malfeasance in office and, upon conviction  
5 thereof, shall be fined not less than \$100 nor more than \$500, or  
6 imprisoned not less than three nor more than six months, or both,  
7 in the discretion of the court, and upon conviction, shall be  
8 removed from office.

9 (f) For purposes of this chapter and chapter eleven-a of this  
10 code, the following terms have the meanings ascribed to them in  
11 this section unless the context in which the term is used clearly  
12 indicates that a different meaning is intended by the Legislature:

13 (1) "Assessment date" means July 1 of the year preceding the  
14 tax year.

15 (2) "Assessment year" means the twelve-month period that  
16 begins on the assessment date.

17 (3) "Tax year" or "property tax year" means the next calendar  
18 year that begins after the assessment date.

19 (4) "Taxpayer" means the owner and any other person in whose  
20 name the taxes on the subject property are lawfully assessed.

21 **CHAPTER 18. EDUCATION.**

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



1 **§18-9A-2. Definitions.**

2 For the purpose of this article:

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

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

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

9 (d) "Professional educator" shall be synonymous with and shall  
10 have the same meaning as "teacher" as defined in section one,  
11 article one of this chapter, and includes technology integration  
12 specialists.

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

21 (f) "Professional student support personnel" means a "teacher"  
22 as defined in section one, article one of this chapter who is

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

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

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

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

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

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

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

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

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

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

21 (4) The enrollment shall be modified to the equivalent of the  
22 instructional term and in accordance with the eligibility

1 requirements and rules established by the state board; and

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

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

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

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

19       (D) During the 2008-2009 interim period and every three  
20 interim periods thereafter, the Legislative Oversight Commission on  
21 Education Accountability shall review this subdivision to determine  
22 whether or not these provisions properly address the needs of

1 counties with low enrollment and a sparse population density.

2 (j) "Sparse-density county" means a county whose ratio of net  
3 enrollment, excluding any increase in the net enrollment of  
4 counties, pursuant to subdivision (5), subsection (i) of this  
5 section, of the definition of "net enrollment", to the square miles  
6 of the county is less than five.

7 (k) "Low-density county" means a county whose ratio of net  
8 enrollment, excluding any increase in the net enrollment of  
9 counties, pursuant to subdivision (5), subsection (i) of this  
10 section, of the definition of "net enrollment", to the square miles  
11 of the county is equal to or greater than five but less than ten.

12 (l) "Medium-density county" means a county whose ratio of net  
13 enrollment, excluding any increase in the net enrollment of  
14 counties, pursuant to subdivision (5), subsection (i) of this  
15 section, of the definition of "net enrollment", to the square miles  
16 of the county is equal to or greater than ten but less than twenty.

17 (m) "High-density county" means a county whose ratio of net  
18 enrollment, excluding any increase in the net enrollment of  
19 counties, pursuant to subdivision (5), subsection (i) of this  
20 section, of the definition of "net enrollment", to the square miles  
21 of the county is equal to or greater than twenty.

22 (n) "Levies for general current expense purposes" means ninety

1 percent of the levy rate for county boards of education calculated  
2 or set by the Legislature pursuant to section six-f, article eight,  
3 chapter eleven of this code.

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

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

15 **§18-9A-11. Computation of local share; appraisal and assessment of**  
16 **property; valuations for tax increment financing**  
17 **purposes; computations in growth counties; public**  
18 **library support.**

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

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

9       (1) For each fiscal year beginning before July 1, 2014, the  
10 state board shall first take ninety-five percent of the amount  
11 ascertained by applying these rates to the total assessed public  
12 utility valuation in each classification of property in the county.  
13 For each fiscal year beginning after June 30, 2014, the state board  
14 shall first take ninety-six percent of the amount ascertained by  
15 applying these rates to the total assessed public utility valuation  
16 in each classification of property in the county; and

17       (2) For each fiscal year beginning before July 1, 2014, the  
18 state board shall then apply these rates to the assessed taxable  
19 value of other property in each classification in the county as  
20 determined by the Tax Commissioner and shall deduct therefrom five  
21 percent as an allowance for the usual losses in collections due to  
22 discounts, exonerations, delinquencies and the like. For each

1 fiscal year beginning after June 30, 2014, the state board shall  
2 then apply these rates to the assessed taxable value of other  
3 property in each classification in the county as determined by the  
4 Tax Commissioner and shall deduct therefrom four percent as an  
5 allowance for the usual losses in collections due to discounts,  
6 exonerations, delinquencies and the like. All of the amount so  
7 determined shall be added to the ninety-five or ninety-six percent,  
8 as applicable, of public utility taxes computed as provided in  
9 subdivision (1) of this subsection and this total shall be further  
10 reduced by the amount due each county assessor's office pursuant to  
11 section eight, article one-c, chapter eleven of this code and this  
12 amount shall be the local share of the particular county.

13       As to any estimations or preliminary computations of local  
14 share required prior to the report to the Legislature by the Tax  
15 Commissioner, the state shall use the most recent projections or  
16 estimations that may be available from the Tax Department for that  
17 purpose.

18       (b) It is the intent of the Legislature that the computation  
19 of local share for public school support continue to be based upon  
20 actual real property values rather than assumed assessed real  
21 property values that are based upon an assessment ratio study, and  
22 that the annual amount of local share for which a county board of



1 education is responsible continue to be computed without reference  
2 to whether the real property assessments in that county were at  
3 least fifty-four percent of market value in the prior year as  
4 indicated by the assessment ratio study. Accordingly, the  
5 effective date of the operation of this section as amended and  
6 reenacted during 2014, and the effective date of the operation of  
7 the repeal of section two-a of this article and the operation of  
8 the repeal of section five-b, article one-c, chapter eleven of this  
9 code, all as provided under this enactment, are expressly made  
10 retrospective to June 30, 2013.

11 (c) Whenever in any year a county assessor or a county  
12 commission fails or refuses to comply with this section in setting  
13 the valuations of property for assessment purposes in any class or  
14 classes of property in the county, the State Tax Commissioner shall  
15 review the valuations for assessment purposes made by the county  
16 assessor and the county commission and shall direct the county  
17 assessor and the county commission to make corrections in the  
18 valuations as necessary so that they comply with the requirements  
19 of chapter eleven of this code and this section and the Tax  
20 Commissioner may enter the county and fix the assessments at the  
21 required ratios. Refusal of the assessor or the county commission  
22 to make the corrections constitutes grounds for removal from

1 office.

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

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

18 (f) The Legislature finds that public school systems  
19 throughout the state provide support in varying degrees to public  
20 libraries through a variety of means including budgeted  
21 allocations, excess levy funds and portions of their regular school  
22 board levies. A number of public libraries are situated on the

1 campuses of public schools and several are within public school  
2 buildings serving both the students and public patrons. To the  
3 extent that public schools recognize and choose to avail the  
4 resources of public libraries toward developing within their  
5 students such legally recognized elements of a thorough and  
6 efficient education as literacy, interests in literature, knowledge  
7 of government and the world around them and preparation for  
8 advanced academic training, work and citizenship, public libraries  
9 serve a legitimate school purpose and may do so economically.  
10 Therefore, county boards are encouraged to support public libraries  
11 within their counties.