

# **WEST VIRGINIA LEGISLATURE**

**2017 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 2561**

BY DELEGATES ESPINOSA, UPSON, BLAIR, WESTFALL,

R. ROMINE, ROWAN, COOPER, STATLER, KELLY,

DEAN AND ROHRBACH

[Passed April 8, 2017; in effect ninety days from passage.]



1 AN ACT to amend and reenact §18-9A-4, §18-9A-5, §18-9A-6a, §18-9A-7, §18-9A-9 and §18-  
2 9A-10 of the Code of West Virginia, 1931, as amended; and to amend said Code by  
3 inserting a new section, designated §18-9D-4d, all relating to public school support  
4 generally; determining allowance for fundable professional educators at set ratio, rather  
5 than the number employed subject to a limit; providing for determination of allowance for  
6 fundable professional educator positions in excess of number employed; determining  
7 allowance for professional educator positions that exceed the number employed; basing  
8 minimum professional instructional personnel required on percent of employed fundable  
9 professional educators; providing for prorating professional instructional personnel among  
10 participating counties in joint school or program or service; removing penalty for not  
11 meeting applicable instructional personnel ratio for 2017-18 school year; determining  
12 allowance for fundable service personnel at set ratio, rather than number employed  
13 subject to a limit; providing for determination of allowance for fundable service personnel  
14 positions in excess of number employed; providing for proration of number and allowance  
15 of personnel employed in part by state and county funds; adding professional student  
16 support personnel allowance to calculation of teachers retirement fund allowance;  
17 establishing that the teachers retirement fund allowance is factored on average retirement  
18 contribution rate of each county and establishing basis for determining the average  
19 retirement contribution rate; allowing limited portion of funds for bus purchases to be used  
20 for school facility and equipment repair, maintenance and improvement or replacement or  
21 other current expense priorities if requested and approved by state superintendent  
22 following verification; changing calculation of allowance for current expense from percent  
23 allowances for professional and service personnel to county's state average costs per  
24 square footage per student for operations and maintenance; providing for prorating  
25 allowance for current expense among participating counties in joint school or program or  
26 service; adding the improvement of instructional technology to the allowance to improve

27 instructional programs; removing authorization for use of instructional improvement funds  
28 for implementation and maintenance of regional computer information system; removing  
29 requirement for fully utilizing applicable provisions of allowances for professional and  
30 service personnel before using instructional improvement funds for employment; changing  
31 percentage of allocation allowed for employment; removing restriction limiting use of new  
32 instructional improvement funds for employment except for technology system specialists  
33 until certain determination made by state superintendent; authorizing use of instructional  
34 technology improvement funds for employment of technology system specialists and  
35 requiring amount used to be included and justified in strategic technology plan; specifying  
36 when certain debt service payments are to be made into school building capital  
37 improvement fund; authorizing use of percentages of allocations for improving  
38 instructional programs, for improving instructional technology for facility and equipment  
39 repair, maintenance and improvement, or replacement and other current expense  
40 priorities and for emergency purposes; requiring amounts used to be included and justified  
41 in respective strategic plans; authorizing School Building Authority to maintain a reserve  
42 fund in the amount of not less than \$600,000 for the purpose of making emergency grants  
43 to financially distressed county boards to assist them for certain purposes; directing grants  
44 to be made in accordance with guideline established by the authority and deleting expired  
45 provisions.

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

1 That §18-9A-4, §18-9A-5, §18-9A-6a, §18-9A-7, §18-9A-9 and §18-9A-10 of the Code of  
2 West Virginia, 1931, as amended, be amended and reenacted; and that said Code be amended  
3 by inserting a new section, designated §18-9D-4d, all to read as follows:

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

**§18-9A-4. Foundation allowance for professional educators.**

1           (a) The basic foundation allowance to the county for professional educators is the amount  
2 of money required to pay the state minimum salaries, in accordance with provisions of article four,  
3 chapter eighteen-a of this code, subject to the following:

4           (1) In making this computation a county shall receive an allowance for state aid eligible  
5 professional educator positions to each one thousand students in net enrollment as follows:

6           (A) For each high-density county, seventy-two and three tenths professional educators  
7 per each one thousand students in net enrollment;

8           (B) For each medium-density county, seventy-two and forty-five one hundredths  
9 professional educators per each one thousand students in net enrollment;

10          (C) For each low-density county, seventy-two and six tenths professional educators per  
11 each one thousand students in net enrollment;

12          (D) For each sparse-density county, seventy-two and seventy-five one hundredths  
13 professional educators per each one thousand students in net enrollment; and

14          (E) For any professional educator positions, or fraction thereof, determined for a county  
15 pursuant to paragraphs (A), (B), (C) and (D) of this subdivision that exceed the number employed,  
16 the county's allowance for these positions shall be determined using the average state funded  
17 salary of professional educators for the county;

18          (2) The number of and the allowance for personnel paid in part by state and county funds  
19 shall be prorated; and

20          (3) Where two or more counties join together in support of a vocational or comprehensive  
21 high school or any other program or service, the professional educators for the school or program  
22 may be prorated among the participating counties on the basis of each one's enrollment therein  
23 and the personnel shall be considered within the above-stated limit.

24          (b) Each county board shall establish and maintain a minimum ratio of professional  
25 instructional personnel per state aid funded professional educators as follows:

26 (1) For each high-density county, the minimum ratio of professional instructional personnel  
27 per state aid funded professional educators, or the number employed, whichever is less, is ninety-  
28 one and twenty-nine one hundredths percent;

29 (2) For each medium-density county, the minimum ratio of professional instructional  
30 personnel per state aid funded professional educators, or the number employed, whichever is  
31 less, is ninety-one and twenty-four one hundredths percent;

32 (3) For each low-density county, the minimum ratio of professional instructional personnel  
33 per state aid funded professional educators, or the number employed, whichever is less, is ninety-  
34 one and eighteen one hundredths percent;

35 (4) For each sparse-density county, the minimum ratio of professional instructional  
36 personnel per state aid funded professional educators, or the number employed, whichever is  
37 less, is ninety-one and seven one hundredths percent; and

38 (5) Where two or more counties join together in support of a vocational or comprehensive  
39 high school or any other program or service, the professional instructional personnel for the school  
40 or program may be prorated among the participating counties on the basis of each one's  
41 enrollment therein and the personnel shall be considered within the above-stated limit.

42 (c) Any county board which does not establish and maintain the applicable minimum ratio  
43 required in subsection (b) of this section shall suffer a pro rata reduction in the allowance for  
44 professional educators under this section: *Provided*, That a county may not be penalized if it has  
45 increases in enrollment during that school year. *Provided, however*, That for the school year 2017-  
46 2018, only, a county may not be penalized for not meeting the applicable minimum ratio required  
47 in subsection (b) of this section.

48 (d) A county may not increase the number of administrative personnel employed as either  
49 professional educators or pay grade "H" service personnel above the number which were  
50 employed, or for which positions were posted, on June 30, 1990, and, therefore, county boards

51 shall whenever possible utilize classroom teachers for curriculum administrative positions through  
52 the use of modified or extended contracts.

**§18-9A-5. Foundation allowance for service personnel.**

1 (a) The basic foundation allowance to the county for service personnel shall be the amount  
2 of money required to pay the annual state minimum salaries in accordance with the provisions of  
3 article four, chapter eighteen-a of this code, to such service personnel employed, subject to the  
4 following:

5 (1) A county shall receive an allowance for state aid eligible service personnel positions  
6 per one thousand students in net enrollment, as follows:

7 (A) For each high-density county, forty-three and ninety-seven one hundredths service  
8 personnel per one thousand students in net enrollment;

9 (B) For each medium-density county, forty-four and fifty-three one hundredths service  
10 personnel per one thousand students in net enrollment;

11 (C) For each low-density county, forty-five and one tenth service personnel per one  
12 thousand students in net enrollment;

13 (D) For each sparse-density county, forty-five and sixty-eight one hundredths service  
14 personnel per one thousand students in net enrollment; and

15 (E) For any service personnel positions, or fraction thereof, determined for a county  
16 pursuant to subdivision (1) of this subsection that exceed the number employed, the county's  
17 allowance for these positions shall be determined using the average state funded minimum salary  
18 of service personnel for the county;

19 (2) The number of and the allowance for personnel paid in part by state and county funds  
20 shall be prorated; and

21 (3) Where two or more counties join together in support of a vocational or comprehensive  
22 high school or any other program or service, the service personnel for the school or program may

23 be prorated among the participating counties on the basis of each one's enrollment therein and  
24 that the personnel shall be considered within the above-stated limit.

**§18-9A-6a. Teachers retirement fund allowance; unfunded liability allowance.**

1 (a) The total teachers retirement fund allowance is the sum of the basic foundation  
2 allowance for professional educators, the basic foundation allowance for professional student  
3 support personnel and the basic foundation allowance for service personnel, as provided in  
4 sections four, five and eight of this article; all salary equity appropriations authorized in section  
5 five, article four of chapter eighteen-a; and such amounts as are to be paid by the counties  
6 pursuant to sections five-a and five-b of said article to the extent such county salary supplements  
7 are equal to the amount distributed for salary equity among the counties, multiplied by the average  
8 retirement contribution rate for each county board. The average contribution rate for each county  
9 board is based on the required employer contributions for state aide eligible employees  
10 participating in the retirement plans pursuant to articles seven-a and seven-b of this chapter.

11 (b) The teachers retirement fund allowance amounts provided for in subsection (a) of this  
12 section shall be accumulated in the employers accumulation fund of the State Teachers  
13 Retirement System pursuant to section eighteen, article seven-a of this chapter, and shall be in  
14 lieu of the contribution required of employers pursuant to subsection (b) of said section as to all  
15 personnel included in the allowance for state aid in accordance with sections four, five and eight  
16 of this article.

17 (c) In addition to the teachers retirement fund allowance provided for in subsection (a) of  
18 this section, there shall be an allowance for the reduction of any unfunded liability of the teachers  
19 retirement fund in accordance with the following provisions of this subsection. On or before  
20 December 31, of each year, the actuary or actuarial firm employed in accordance with the  
21 provisions of section four, article ten-d, chapter five of this code shall submit a report to the  
22 President of the Senate and the Speaker of the House of Delegates which sets forth an actuarial  
23 valuation of the teachers retirement fund as of the preceding thirtieth day of June. Each annual

24 report shall recommend the actuary's best estimate, at that time, of the funding necessary to both  
25 eliminate the unfunded liability over a forty-year period beginning on July 1, 1994, and to meet  
26 the cash flow requirements of the fund in fulfilling its future anticipated obligations to its members.  
27 In determining the amount of funding required, the actuary shall take into consideration all funding  
28 otherwise available to the fund for that year from any source: *Provided*, That the appropriation  
29 and allocation to the teachers' retirement fund made pursuant to the provisions of section six-b of  
30 this article shall be included in the determination of the requisite funding amount. In any year in  
31 which the actuary determines that the teachers retirement fund is not being funded in such a  
32 manner, the allowance made for the unfunded liability for the next fiscal year shall be not less  
33 than the amount of the actuary's best estimate of the amount necessary to conform to the funding  
34 requirements set forth in this subsection.

**§18-9A-7. Foundation allowance for transportation cost.**

1 (a) The allowance in the foundation school program for each county for transportation is  
2 the sum of the following computations:

3 (1) A percentage of the transportation costs incurred by the county for maintenance,  
4 operation and related costs exclusive of all salaries, including the costs incurred for contracted  
5 transportation services and public utility transportation, as follows:

6 (A) For each high-density county, eighty-seven and one-half percent;

7 (B) For each medium-density county, ninety percent;

8 (C) For each low-density county, ninety-two and one-half percent;

9 (D) For each sparse-density county, ninety-five percent;

10 (E) For any county for the transportation cost for maintenance, operation and related  
11 costs, exclusive of all salaries, for transporting students to and from classes at a multicounty  
12 vocational center, the percentage provided in paragraphs (A) through (D) of this subdivision as  
13 applicable for the county plus an additional ten percent; and

14 (F) For any county for that portion of its school bus system that uses as an alternative fuel  
15 compressed natural gas or propane, the percentage provided in paragraphs (A) through (D) of  
16 this subdivision as applicable for the county plus an additional ten percent: *Provided*, That for any  
17 county receiving an additional ten percent for that portion of their bus system using bio-diesel as  
18 an alternative fuel during the school year 2012-2013, bio-diesel shall continue to qualify as an  
19 alternative fuel under this paragraph to the extent that the additional percentage applicable to that  
20 portion of the bus system using bio-diesel shall be decreased by two and one-half percent per  
21 year for four consecutive school years beginning in school year 2014-2015: *Provided, however*,  
22 That any county using an alternative fuel and qualifying for the additional allowance under this  
23 subdivision shall submit a plan regarding the intended future use of alternatively fueled school  
24 buses;

25 (2) The total cost, within each county, of insurance premiums on buses, buildings and  
26 equipment used in transportation;

27 (3) An amount equal to eight and one-third percent of the current replacement value of the  
28 bus fleet within each county as determined by the state board. The amount shall only be used for  
29 the replacement of buses except as provided in subdivision (4) of this subsection. Buses  
30 purchased after July 1, 1999 that are driven one hundred eighty thousand miles, regardless of  
31 year model, are subject to the replacement value of eight and one-third percent as determined by  
32 the state board. In addition, in any school year in which its net enrollment increases when  
33 compared to the net enrollment the year immediately preceding, a school district may apply to the  
34 state superintendent for funding for an additional bus or buses. The state superintendent shall  
35 make a decision regarding each application based upon an analysis of the individual school  
36 district's net enrollment history and transportation needs: *Provided*, That the superintendent may  
37 not consider any application which fails to document that the county has applied for federal  
38 funding for additional buses. If the state superintendent finds that a need exists, a request for

39 funding shall be included in the budget request submitted by the state board for the upcoming  
40 fiscal year;

41 (4) Notwithstanding the restriction on the use of funds for the replacement of buses  
42 pursuant to subdivision (3) of this subsection, up to \$200,000 of these funds in any school year  
43 may be used by a county for school facility and equipment repair, maintenance and improvement  
44 or replacement or other current expense priorities if a request by the county superintendent listing  
45 the amount, the intended use of the funds and the serviceability of the bus fleet is approved by  
46 the state superintendent. Before approving the request, the state superintendent shall verify the  
47 serviceability of the county's bus fleet based upon the state school bus inspection defect rate of  
48 the county over the two prior years; and

49 (5) Aid in lieu of transportation equal to the state average amount per pupil for each pupil  
50 receiving the aid within each county.

51 (b) The total state share for this purpose is the sum of the county shares: *Provided, That*  
52 a county may not receive an allowance which is greater than one-third above the computed state  
53 average allowance per transportation mile multiplied by the total transportation mileage in the  
54 county exclusive of the allowance for the purchase of additional buses.

55 (c) One half of one percent of the transportation allowance distributed to each county is  
56 for the purpose of trips related to academic classroom curriculum and not related to any  
57 extracurricular activity. Any remaining funds credited to a county for the purpose of trips related  
58 to academic classroom curriculum during the fiscal year shall be carried over for use in the same  
59 manner the next fiscal year and shall be separate and apart from, and in addition to, the  
60 appropriation for the next fiscal year. The state board may request a county to document the use  
61 of funds for trips related to academic classroom curriculum if the board determines that it is  
62 necessary.

**§18-9A-9. Foundation allowance for other current expense and substitute employees and  
faculty senates.**

1           The total allowance for other current expense and substitute employees is the sum of the  
2 following:

3           (1) For current expense:

4           (A) The non-salary related expenditures for operations and maintenance, exclusive of  
5 expenditures reported in special revenue funds, for the latest available school year, in each  
6 county, divided by the total square footage of school buildings in each county is used to calculate  
7 a state average expenditure per square foot for operations and maintenance;

8           (B) The total square footage of school buildings in each county divided by each county's  
9 net enrollment for school aid purposes is used to calculate a state average square footage per  
10 student;

11           (C) Each county's net enrollment for school aid purposes multiplied by the state average  
12 expenditure per square foot for operations and maintenance as calculated in paragraph (A) of this  
13 subdivision and multiplied by the state average square footage per student as calculated in  
14 paragraph (B) of this subdivision is that county's state average costs per square footage per  
15 student for operations and maintenance;

16           (D) Where two or more counties join together in support of a vocational or comprehensive  
17 high school or any other program or service, the allowance for current expense may be prorated  
18 among the participating counties by adjusting the net enrollment for school aid purposes utilized  
19 in the calculation by the number of students enrolled therein for each county; and

20           (E) Each county's allowance for current expense is 70.25% of the county's state average  
21 costs per square footage per student for operations and maintenance amount as calculated in  
22 paragraph (C) of this subdivision; plus

23           (2) For professional educator substitutes or current expense, two and five-tenths percent  
24 of the computed state allocation for professional educators and professional student support  
25 personnel as determined in sections four and eight of this article. Distribution to the counties is

26 made proportional to the number of professional educators and professional student support  
27 personnel authorized for the county in compliance with sections four and eight of this article; plus

28 (3) For service personnel substitutes or current expense, two and five-tenths percent of  
29 the computed state allocation for service personnel as determined in section five of this article.  
30 Distribution to the counties is made proportional to the number of service personnel authorized  
31 for the county in compliance with section five of this article; plus

32 (4) For academic materials, supplies and equipment for use in instructional programs,  
33 \$200 multiplied by the number of professional instructional personnel and professional student  
34 support personnel employed in the schools of the county. Distribution is made to each county for  
35 allocation to the faculty senate of each school in the county on the basis of \$200 per professional  
36 instructional personnel employed at the school. "Faculty Senate" means a faculty senate created  
37 pursuant to section five, article five-a of this chapter. Decisions for the expenditure of such funds  
38 are made at the school level by the faculty senate in accordance with the provisions of said section  
39 five, article five-a and may not be used to supplant the current expense expenditures of the  
40 county. Beginning on September 1, 1994, and every September thereafter, county boards shall  
41 forward to each school for the use by faculty senates the appropriation specified in this section.  
42 Each school shall be responsible for keeping accurate records of expenditures.

**§18-9A-10. Foundation allowance to improve instructional programs and instructional  
technology.**

1 (a) The total allowance to improve instructional programs and instructional technology is  
2 the sum of the following:

3 (1) For instructional improvement, in accordance with county and school electronic  
4 strategic improvement plans required by section five, article two-e of this chapter, an amount  
5 equal to ten percent of the increase in the local share amount for the next school year above any  
6 required allocation pursuant to section six-b of this article shall be added to the amount of the  
7 appropriation for this purpose for the immediately preceding school year. The sum of these  
8 amounts shall be allocated to the counties as follows:

9 (A) One hundred fifty thousand dollars shall be allocated to each county; and

10 (B) Allocation to the counties of the remainder of these funds shall be made proportional  
11 to the average of each county's average daily attendance for the preceding year and the county's  
12 second month net enrollment.

13 Moneys allocated by this subdivision shall be used to improve instructional programs  
14 according to the county and school strategic improvement plans required by section five, article  
15 two-e of this chapter and approved by the state board.

16 Up to fifty percent of this allocation for the improvement of instructional programs may be  
17 used to employ professional educators and service personnel in the county. Prior to the use of  
18 any funds from this subdivision for personnel costs, the county board must receive authorization  
19 from the state superintendent. The state superintendent shall require the county board to  
20 demonstrate: (1) The need for the allocation; (2) efficiency and fiscal responsibility in staffing; (3)  
21 sharing of services with adjoining counties and the regional educational service agency for that  
22 county in the use of the total local district board budget; and (4) employment of technology  
23 integration specialists to meet the needs for implementation of the West Virginia Strategic  
24 Technology Learning Plan. County boards shall make application for the use of funds for  
25 personnel for the next fiscal year by May 1 of each year. On or before June 1, the state  
26 superintendent shall review all applications and notify applying county boards of the approval or  
27 disapproval of the use of funds for personnel during the fiscal year appropriate. The state  
28 superintendent shall require the county board to demonstrate the need for an allocation for  
29 personnel based upon the county's inability to meet the requirements of state law or state board  
30 policy.

31 The funds available for personnel under this subdivision may not be used to increase the  
32 total number of professional noninstructional personnel in the central office beyond four.

33 The plan shall be made available for distribution to the public at the office of each affected  
34 county board; plus

35           (2) For the purposes of improving instructional technology, an amount equal to twenty  
36 percent of the increase in the local share amount for the next school year above any required  
37 allocation pursuant to section six-b of this article shall be added to the amount of the appropriation  
38 for this purpose for the immediately preceding school year. The sum of these amounts shall be  
39 allocated to the counties as follows:

40           (A) Thirty thousand dollars shall be allocated to each county; and

41           (B) Allocation to the counties of the remainder of these funds shall be made proportional  
42 to the average of each county's average daily attendance for the preceding year and the county's  
43 second month net enrollment.

44           Moneys allocated by this subdivision shall be used to improve instructional technology  
45 programs according to the county board's strategic technology learning plan.

46           This allocation for the improvement of instructional technology programs may also be used  
47 for the employment of technology system specialists essential for the technology systems of the  
48 schools of the county to be fully functional and readily available when needed by classroom  
49 teachers. The amount of this allocation used for the employment of technology system specialists  
50 shall be included and justified in the county board's strategic technology learning plan; plus

51           (3) One percent of the state average per pupil state aid multiplied by the number of  
52 students enrolled in dual credit, advanced placement and international baccalaureate courses, as  
53 defined by the state board, distributed to the counties proportionate to enrollment in these courses  
54 in each county; plus

55           (4) An amount not less than the amount required to meet debt service requirements on  
56 any revenue bonds issued prior to January 1, 1994, and the debt service requirements on any  
57 revenue bonds issued for the purpose of refunding revenue bonds issued prior to January 1,  
58 1994, shall be paid by the Department of Education in accordance with the expenditure schedule  
59 approved by the state budget office into the School Building Capital Improvements Fund created  
60 by section six, article nine-d of this chapter and shall be used solely for the purposes of that article.

61 The School Building Capital Improvements Fund shall not be utilized to meet the debt services  
62 requirement on any revenue bonds or revenue refunding bonds for which moneys contained  
63 within the School Building Debt Service Fund have been pledged for repayment pursuant to that  
64 section.

65 (b) Notwithstanding the restrictions on the use of funds pursuant to subdivisions (1) and  
66 (2), subsection (a) of this section, a county board may:

67 (1) Utilize up to twenty-five percent of the allocation for the improvement of instructional  
68 programs in any school year for school facility and equipment repair, maintenance and  
69 improvement or replacement and other current expense priorities and for emergency purposes.  
70 The amount of this allocation used for any of these purposes shall be included and justified in the  
71 county and school strategic improvement plans or amendments thereto; and

72 (2) Utilize up to fifty percent of the allocation for improving instructional technology in any  
73 school year for school facility and equipment repair, maintenance and improvement or  
74 replacement and other current expense priorities and for emergency purposes. The amount of  
75 this allocation used for any of these purposes shall be included and justified in the county board's  
76 strategic technology learning plan or amendments thereto.

77 (c) When the school improvement bonds secured by funds from the School Building  
78 Capital Improvements Fund mature, the State Board of Education shall annually deposit an  
79 amount equal to \$24,000,000 from the funds allocated in this section into the School Construction  
80 Fund created pursuant to the provisions of section six, article nine-d of this chapter to continue  
81 funding school facility construction and improvements.

82 (d) Any project funded by the School Building Authority shall be in accordance with a  
83 comprehensive educational facility plan which must be approved by the state board and the  
84 School Building Authority.

**ARTICLE 9D. SCHOOL BUILDING AUTHORITY.**

**§18-9D-4d. Emergency facility and equipment repair or replacement fund for financially distressed counties.**

1           From the funds available to it the School Building Authority shall maintain a reserve fund  
2 in the amount of not less than \$600,000 for the purpose of making emergency grants to financially  
3 distressed county boards to assist them in making repairs or performing urgent maintenance to  
4 facilities or facility related equipment or facility related equipment replacement necessary to  
5 maintain the serviceability or structural integrity of school facilities currently in use or necessary  
6 for educating the students of the county. The grants shall be made in accordance with guideline  
7 established by the school building authority. For the purposes of this section, “financially  
8 distressed county” means a county either in deficit or on the most recently established watch list  
9 established by the Department of Education of those counties at-risk of becoming in deficit.



The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....  
*Chairman, House Committee*

.....  
*Chairman, Senate Committee*

Originating in the House.

In effect ninety days from passage.

.....  
*Clerk of the House of Delegates*

.....  
*Clerk of the Senate*

.....  
*Speaker of the House of Delegates*

.....  
*President of the Senate*

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The within ..... this the.....  
day of ....., 2017.

.....  
*Governor*