

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 3008

BY DELEGATE WALTERS (SOLE SPONSOR-
RESIGNED 3/7/18)

[Introduced March 14, 2017; Referred
to Committee on Education then Finance.]

1 A BILL to amend and reenact §1-5-2 of the Code of West Virginia, 1931, as amended; to amend
2 and reenact §3-1A-7 of said code; to amend and reenact §3-5-6, §3-5-8 and §3-5-13 of
3 said code; to amend and reenact §5-10-22c of said code; to amend and reenact §5-16-2
4 and §5-16-22 of said code; to amend and reenact §5A-3-10a of said code; to amend and
5 reenact §6-8-5, §6-8-7, §6-8-9 and §6-8-10 of said code; to amend and reenact §6-9-1a,
6 §6-9-7 and §6-9-11 of said code; to amend and reenact §6B-1-3 of said code; to amend
7 and reenact §6B-2-1, §6B-2-5 and §6B-2- 6 of said code; to amend and reenact §6B-3-3b
8 of said code; to amend and reenact §6C-2-2 of said code; to amend and reenact §7-4-1
9 of said code; to amend and reenact §7-6-4 of said code; to amend and reenact §7-11B-3
10 of said code; to amend and reenact §7-13-6, §7-13-6a, §7-13-8 and §7-13-9 of said code;
11 to amend and reenact §7-23-3 of said code; to amend and reenact §7-25-18 of said code;
12 to amend and reenact §8-9-14 of said code; to amend and reenact §8-23-3 of said code;
13 to amend and reenact §8A-6-2 of said code; to amend and reenact §9-9-16 of said code;
14 to amend and reenact §10-1-1 of said code; to amend and reenact §10-2-1 of said code;
15 to amend and reenact §10-2A-1, §10-2A-3, §10-2A-4, §10-2A-6, §10-2A-7, §10-2A-7,
16 §10-2A-10 of said code; to amend and reenact §11-1C-2, §11-1C-5 and §11-1C-8 of said
17 code; to amend and reenact §11-8-6b, §11-8-6c, §11-8-6g and §11-8-16 of said code; to
18 amend and reenact §11-10-14 of said code; to amend and reenact §11-13-2p of said code;
19 to amend and reenact §11-14-5, §11-14-5b and §11-14-11 of said code; to amend and
20 reenact §11-14C-9 of said code; to amend and reenact §11A-1-3 of said code; to amend
21 and reenact §11B-2-3 of said code; to amend and reenact §12-3-20 of said code; to amend
22 and reenact §12-4-15 of said code; to amend and reenact §12-6-2 and §12-6-9c of said
23 code; to amend and reenact §12-6C-3 of said code; to amend and reenact §13-1-3, §13-
24 1-4 and §13-1-19 of said code; to amend and reenact §15-11-2 of said code; to amend
25 and reenact §15-6-17 of said code; to amend and reenact §16-9A-4 of said code; to amend
26 and reenact §17B-2-3a of said code; to amend and reenact §17C-6-1 of said code; to

27 amend and reenact §17C-12-7 of said code; to amend and reenact §17C-15-26 of said
28 code; to amend and reenact §18-1-1 of said code; to amend and reenact §18-2-1, §18-2-
29 3, §18-2-4, §18-2-5, §18-2-5f, §18-2-5h, §18-2-6, §18-2-9, §18-2-11, §18-2-25, §18-2-26,
30 §18-2-26a, §18-2-34, §18-2-35, and §18-2-36 of said code; to amend and reenact §18-
31 2A-1, §18-2A-2, §18-2A-3, §18-2A-4, §18-2A-5, §18-2A-8 and §18-2A-9; to amend and
32 reenact §18-2C-3 and §18-2C-5 of said code; to amend and reenact §18-2D-4 of said
33 code; to amend and reenact §18-2E-3a, §18-2E-4, §18-2E-4a, §18-2E-5, §18-2E-5a, §18-
34 2E-5d, §18-2E-7, §18-2E-8, §18-2E-8d, §18-2E-8e, §18-2E-9 and §18-2E-10 of said
35 code; to amend and reenact §18-2K-2 and §18-2K-3 of said code; to amend and reenact
36 §18-3-9a and §18-3-12 of said code; to amend and reenact §18-4-1, §18-4-2, §18-4-6,
37 §18-4-10 and §18-4-11 of said code; to amend and reenact §18-5-1, §18-5-1a, §18-5-1b,
38 §18-5-1c, §18-5-4, §18-5-5, §18-5-6, §18-5-7, §18-5-7a, §18-5-9, §18-5-9a, §18-5-11,
39 §18-5-11a, §18-5-13, §18-5-13a, §18-5-14, §18-5-15, §18-5-15c, §18-5-16, §18-5-17,
40 §18-5-18, §18-5-18a, §18-5-18b, §18-5-19a, §18-5-19b, §18-5-21, §18-5-21a, §18-5-21b,
41 §18-5-21c, §18-5-21d, §18-5-21e, §18-5-22, §18-5-22a, §18-5-22b, §18-5-22c, §18-5-24,
42 §18-5-25, §18-5-26, §18-5-32, §18-5-36, §18-5-36a, §18-5-39, §18-5-41, §18-5-44, §18-
43 5-45 and §18-5-47 of said code; to amend and reenact §18-5A-1, §18-5A-2, §18-5A-3,
44 §18-5A-3a, §18-5A-5, §18-5A-6, of said code; to amend and reenact §18-5B-3, §18-5B-
45 4, §18-5B-5, §18-5B-6, §18-5B-8, §18-5B-9, §18-5B-10, §18-5B-11, §18-5B-12 and §18-
46 5B-13 of said code; to amend and reenact §18-5C-1, §18-5C-2 and §18-5C-3 of said code;
47 to amend and reenact §18-5D-3 and §18-5D-4 of said code; to amend and reenact §18-
48 5E-2, §18-5E-3, §18-5E-4, §18-5E-5 and §18-5E-6 of said code; to amend and reenact
49 §18-6-2 and §18-6-6 of said code; to amend and reenact §18-7A-3, §18-7A-13, §18-7A-
50 15, §18-7A-35 and §18-7A-35b of said code; to amend and reenact §18-7B-2 and §18-
51 7B-17 of said code; to amend and reenact §18-7D-4 of said code; to amend and reenact
52 §18-8-1, §18-8-1a, §18-8-2, §18-8-3, §18-8-4, §18-8-5a, §18-8-6, §18-8-6a, §18-8-8 and

53 §18-8-9 of said code; to amend and reenact §18-9-2a, §18-9-2c, §18-9-2d, §18-9-3, §18-
54 9-3a, §18-9-4, §18-9-6 and §18-9-6a of said code; to amend and reenact §18-9B-2, §18-
55 9B-4, §18-9B-5, §18-9B-6, §18-9B-6a, §18-9B-8, §18-9B-9, §18-9B-12, §18-9B-13, §18-
56 9B-14, §18-9B-15, §18-9B-17, §18-9B-18, §18-9B-19 and §18-9B-19a of said code; to
57 amend and reenact §18-9D-2, §18-9D-3, §18-9D-15, §18-9D-16 and §18-9D-19 of said
58 code; to amend and reenact §18-9E-3, §18-9B-4 and §18-9E-5 of said code; to amend
59 and reenact §18-9F-2, §18-9F-3, §18-9F-4, §18-9F-6, §18-9F-7 and §18-9F-9 of said
60 code; to amend and reenact §18-10-8 of said code; to amend and reenact §18-10A-2a of
61 said code; to amend and reenact §18-10F-2 of said code; to amend and reenact §18-10H-
62 6 of said code; to amend and reenact §18-17-1 of said code; to amend and reenact §18-
63 20-1, §18-20-1a, §18-20-1b, §18-20-2, §18-20-5 and §18-20-7 of said code; to amend and
64 reenact §18-21-2 and §18-21-4 of said code; to amend and reenact §18-25-1 of said code;
65 to amend and reenact §18-28-2 of said code; to amend and reenact §18A-1-1 of said
66 code; to amend and reenact §18A-2-1, §18A-2-1a, §18A-2-2, §18A-2-2a, §18A-2-3, §18A-
67 2-4, §18A-2-5, §18A-2-5a, §18A-2-6, §18A-2-7, §18A-2-7b, §18A-2-8, §18A-2-9, §18A-2-
68 11, §18A-2-12, §18A-2-12a and §18A-2-14 of said code; to amend and reenact §18A-3-
69 1, §18A-3-1f, §18A-3-2, §18A-3-2a, §18A-3-2d, §18A-3-3a, §18A-3-6, §18A-3-8, §18A-3-
70 9 and §18A-3-10 of said code; to amend and reenact §18A-4-1, §18A-4-1a, §18A-4-3,
71 §18A-4-4, §18A-4-5a, §18A-4-5b, §18A-4-7a, §18A-4-7b, §18A-4-7c, §18A-4-8, §18A-4-
72 8a, §18A-4-8b, §18A-4-8c, §18A-4-8e, §18A-4-8e, §18A-4-8f, §18A-4-8g, §18A-4-8i,
73 §18A-4-9, §18A-4-10, §18A-4-10a, §18A-4-10c, §18A-4-10d, §18A-4-10f, §18A-4-12,
74 §18A-4-15, §18A-4-16, §18A-4-17, §18A-4-18, §18A-4-19, §18A-4-20 and §18A-4-21 of
75 said code; to amend and reenact §18A-5-1, §18A-5-1a, §18A-5-1b, §18A-5-1d, §18A-5-
76 2, §18A-5-2, §18A-5-4, §18A-5-6 and §18A-5-8 of said code; to amend and reenact §18B-
77 3C-11 of said code; to amend and reenact §18C-4-3 of said code; to amend and reenact
78 §18C-4A-3 and §18C-4A-3 of said code; to amend and reenact §19-8-1, §19-8-2 and §19-

79 8-3 of said code; to amend and reenact §19-20-10 of said code; to amend and reenact
80 §19-25-1 of said code; to amend and reenact §20-1-10a of said code; to amend and
81 reenact §20-2-30a of said code; to amend and reenact §20-3-17 of said code; to amend
82 and reenact §21-5-3 of said code; to amend and reenact §21-5D-2 of said code; to amend
83 and reenact §23-2-1a of said code; to amend and reenact §24A-1-3 of said code; to amend
84 and reenact §29-12-5a of said code; to amend and reenact §29-22C-27 of said code; to
85 amend and reenact §30-12-12 of said code; to amend and reenact §30-21-2 of said code;
86 to amend and reenact §30-31-11 of said code; to amend and reenact §31-18E-11 of said
87 code; to amend and reenact §31-21-5 and §31-21-15 of said code; to amend and reenact
88 §33-2-21a of said code; to amend and reenact §33-14-29 of said code; to amend and
89 reenact §38-5B-1 of said code; to amend and reenact §49-1-206 of said code; to amend
90 and reenact §49-4-406, §49-4-407 and §49-4-704; to amend and reenact §53-8-1 and
91 §53-8-7 of said code; to amend and reenact §61-2-15 of said code; to amend and reenact
92 §61-5A-2 of said code; to amend and reenact §61-7-2, §61-7-11a and §61-7-14 of said
93 code; to amend and reenact §61-8-29 of said code; to amend and reenact §61-10-15 and
94 §61-10-15 of said code; all relating to eliminating county school systems and creating ten
95 school districts; eliminating county boards of education and establishing school district
96 boards of education; creating ten school districts throughout the state to carry on the
97 powers and duties of county school districts; modifying definitions; establishing
98 membership of school district boards of education; requiring state board of education to
99 create a transition plan; establishing terms of office for board members; modifying
100 references to county school boards and county school districts throughout the code.

Be it enacted by the Legislature of West Virginia:

1 That §1-5-2 of the Code of West Virginia, 1931 as amended, be amended and reenacted;
2 that §3-1A-7 of said code be amended and reenacted; that §3-5-6, §3-5-8 and §3-5-13 of said
3 code be amended and reenacted; that §5-10-22c of said code be amended and reenacted; that

4 §5-16-2 and §5-16-22 of said code be amended and reenacted; that §5A-3-10a of said code be
5 amended and reenacted; that §6-8-5, §6-8-7, §6-8-9 and §6-8-10 of said code be amended and
6 reenacted; that §6-9-1a, §6-9-7 and §6-9-11 of said code be amended and reenacted; that §6B-
7 1-3 of said code be amended and reenacted; that §6B-2-1, §6B-2-5 and §6B-2- 6 of said code be
8 amended and reenacted; that §6B-3-3b of said code be amended and reenacted; that §6C-2-2 of
9 said code be amended and reenacted; that §7-4-1 of said code be amended and reenacted; that
10 §7-6-4 of said code be amended and reenacted; that §7-11B-3 of said code be amended and
11 reenacted; that §7-13-6, §7-13-6a, §7-13-8 and §7-13-9 of said code be amended and reenacted;
12 that §7-23-3 of said code be amended and reenacted; that §7-25-18 of said code be amended
13 and reenacted; that §8-9-14 of said code be amended and reenacted; that §8-23-3 of said code
14 be amended and reenacted; that §8A-6-2 of said code be amended and reenacted; that §9-9-16
15 of said code be amended and reenacted; that §10-1-1 of said code be amended and reenacted;
16 that §10-2-1 of said code be amended and reenacted; that §10-2A-1, §10-2A-3, §10-2A-4, §10-
17 2A-6, §10-2A-7, §10-2A-7 and §10-2A-10 of said code be amended and reenacted; that §11-1C-
18 2, §11-1C-5 and §11-1C-8 of said code be amended and reenacted; that §11-8-6b, §11-8-6c,
19 §11-8-6c and §11-8-16 of said code be amended and reenacted; that §11-10-14 of said code be
20 amended and reenacted; that 11-13-2p be amended and reenacted; that §11-14-5, §11-14-5b
21 and §11-14-11 of said code be amended and reenacted; that §11-14C-9 of said code be amended
22 and reenacted; that §11A-1-3 of said code be amended and reenacted; that §11B-2-3 of said
23 code be amended and reenacted; that §12-3-20 of said code be amended and reenacted; that
24 §12-4-15 of said code be amended and reenacted; that §12-6-2 and §12-6-9c of said code be
25 amended and reenacted; that §12-6C-3 of said code be amended and reenacted; that §13-1-3,
26 §13-1-4 and §13-1-19 of said code be amended and reenacted; that §15-11-2 of said code be
27 amended and reenacted; that §15-6-17 of said code be amended and reenacted; that §16-9A-4
28 of said code be amended and reenacted; that §17B-2-3a of said code be amended and reenacted;
29 that §17C-6-1 of said code be amended and reenacted; that §17C-12-7 of said code be amended

30 and reenacted; that §17C-15-26 of said code be amended and reenacted; that §18-1-1 of said
31 code be amended and reenacted; that §18-2-1, §18-2-3, §18-2-4, §18-2-5, §18-2-5f, §18-2-5h,
32 §18-2-6, §18-2-9, §18-2-11, §18-2-25, §18-2-26, §18-2-26a, §18-2-34, §18-2-35 and §18-2-36 of
33 said code be amended and reenacted; that §18-2A-1, §18-2A-2, §18-2A-3, §18-2A-4, §18-2A-5,
34 §18-2A-8 and §18-2A-9 of said code be amended and reenacted; that §18-2C-3 and §18-2C-5 of
35 said code be amended and reenacted; that §18-2D-4 of said code be amended and reenacted;
36 that §18-2E-3a, §18-2E-4, §18-2E-4a, §18-2E-5, §18-2E-5a, §18-2E-5d, §18-2E-7, §18-2E-8,
37 §18-2E-8d, §18-2E-8e, §18-2E-9 and §18-2E-10 of said code be amended and reenacted; that
38 §18-2K-2 and §18-2K-3 of said code be amended and reenacted; that §18-3-9a and §18-3-12 of
39 said code be amended and reenacted; that §18-4-1, §18-4-2, §18-4-6, §18-4-10 and §18-4-11 of
40 said code be amended and reenacted; that §18-5-1, §18-5-1a, §18-5-1b, §18-5-1c, §18-5-4, §18-
41 5-5, §18-5-6, §18-5-7, §18-5-7a, §18-5-9, §18-5-9a, §18-5-11, §18-5-11a, §18-5-13, §18-5-13a,
42 §18-5-14, §18-5-15, §18-5-15c, §18-5-16, §18-5-17, §18-5-18, §18-5-18a, §18-5-18b, §18-5-19a,
43 §18-5-19b, §18-5-21, §18-5-21a, §18-5-21b, §18-5-21c, §18-5-21d, §18-5-21e, §18-5-22, §18-5-
44 22a, §18-5-22b, §18-5-22c, §18-5-24, §18-5-25, §18-5-26, §18-5-32, §18-5-36, §18-5-36a, §18-
45 5-39, §18-5-41, §18-5-44, §18-5-45 and §18-5-47 of said code be amended and reenacted; that
46 §18-5A-1, §18-5A-2, §18-5A-3, §18-5A-3a, §18-5A-5 and §18-5A-6 of said code be amended and
47 reenacted; that §18-5B-3, §18-5B-4, §18-5B-5, §18-5B-6, §18-5B-8, §18-5B-9, §18-5B-10, §18-
48 5B-11, §18-5B-12 and §18-5B-13 of said code be amended and reenacted; that §18-5C-1, §18-
49 5C-2 and §18-5C-3 of said code be amended and reenacted; that §18-5D-3 and §18-5D-4 of said
50 code be amended and reenacted; that §18-5E-2, §18-5E-3, §18-5E-4, §18-5E-5 and §18-5E-6 of
51 said code be amended and reenacted; that §18-6-2 and §18-6-6 of said code be amended and
52 reenacted; that §18-7A-3, §18-7A-13, §18-7A-15, §18-7A-35 and §18-7A-35b of said code be
53 amended and reenacted; that §18-7B-2 and §18-7B-17 of said code be amended and reenacted;
54 that §18-7D-4 of said code be amended and reenacted; that §18-8-1, §18-8-1a, §18-8-2, §18-8-
55 3, §18-8-4, §18-8-5a, §18-8-6, §18-8-6a, §18-8-8 and §18-8-9 of said code be amended and

56 reenacted; that §18-9-2a, §18-9-2c, §18-9-2d, §18-9-3, §18-9-3a, §18-9-4, §18-9-6 and §18-9-6a
57 of said code be amended and reenacted; that §18-9B-2, §18-9B-4, §18-9B-5, §18-9B-6, §18-9B-
58 6a, §18-9B-8, §18-9B-9, §18-9B-12, §18-9B-13, §18-9B-14, §18-9B-15, §18-9B-17, §18-9B-18,
59 §18-9B-19 and §18-9B-19a of said code be amended and reenacted; that §18-9D-2, §18-9D-3,
60 §18-9D-15, §18-9D-16 and §18-9D-19 of said code be amended and reenacted; that §18-9E-3,
61 §18-9B-4 and §18-9E-5 of said code be amended and reenacted; that §18-9F-2, §18-9F-3, §18-
62 9F-4, §18-9F-6, §18-9F-7 and §18-9F-9 of said code be amended and reenacted; that §18-10-8
63 of said code be amended and reenacted; that §18-10A-2a of said code be amended and
64 reenacted; that §18-10F-2 of said code be amended and reenacted; that §18-10H-6 of said code
65 be amended and reenacted; that §18-17-1 of said code be amended and reenacted; that §18-20-
66 1, §18-20-1a, §18-20-1b, §18-20-2, §18-20-5 and §18-20-7 of said code be amended and
67 reenacted; that §18-21-2 and §18-21-4 of said code be amended and reenacted; that §18-25-1
68 of said code be amended and reenacted; that §18-28-2 of said code be amended and reenacted;
69 that §18A-1-1 of said code be amended and reenacted; that §18A-2-1, §18A-2-1a, §18A-2-2,
70 §18A-2-2a, §18A-2-3, §18A-2-4, §18A-2-5, §18A-2-5a, §18A-2-6, §18A-2-7, §18A-2-7b, §18A-2-
71 8, §18A-2-9, §18A-2-11, §18A-2-12, §18A-2-12a and §18A-2-14 of said code be amended and
72 reenacted; that §18A-3-1, §18A-3-1f, §18A-3-2, §18A-3-2a, §18A-3-2d, §18A-3-3a, §18A-3-6,
73 §18A-3-8, §18A-3-9 and §18A-3-10 of said code be amended and reenacted; that §18A-4-1,
74 §18A-4-1a, §18A-4-3, §18A-4-4, §18A-4-5a, §18A-4-5b, §18A-4-7a, §18A-4-7b, §18A-4-7c,
75 §18A-4-8, §18A-4-8a, §18A-4-8b, §18A-4-8c, §18A-4-8e, §18A-4-8e, §18A-4-8f, §18A-4-8g,
76 §18A-4-8i, §18A-4-9, §18A-4-10, §18A-4-10a, §18A-4-10c, §18A-4-10d, §18A-4-10f, §18A-4-12,
77 §18A-4-15, §18A-4-16, §18A-4-17, §18A-4-18, §18A-4-19, §18A-4-20 and §18A-4-21 of said
78 code be amended and reenacted; that §18A-5-1, §18A-5-1a, §18A-5-1b, §18A-5-1d, §18A-5-2,
79 §18A-5-2, §18A-5-4, §18A-5-6 and §18A-5-8 of said code be amended and reenacted; that §18B-
80 3C-11 of said code be amended and reenacted; that §18C-4-3 of said code be amended and
81 reenacted; that §18C-4A-3 and §18C-4A-3 of said code be amended and reenacted; that §19-8-

82 1, §19-8-2 and §19-8-3 of said code be amended and reenacted; that §19-20-10 of said code be
83 amended and reenacted; that §19-25-1 of said code be amended and reenacted; that §20-1-10a
84 of said code be amended and reenacted; that §20-2-30a of said code be amended and reenacted;
85 that §20-3-17 of said code be amended and reenacted; that §21-5-3 of said code be amended
86 and reenacted; that §21-5D-2 of said code be amended and reenacted; that §23-2-1a of said
87 code be amended and reenacted; that §24A-1-3 of said code be amended and reenacted; that
88 §29-12-5a of said code be amended and reenacted; that §29-22C-27 of said code be amended
89 and reenacted; that §30-12-12 of said code be amended and reenacted; that §30-21-2 of said
90 code be amended and reenacted; that §30-31-11 of said code be amended and reenacted; that
91 §31-18E-11 of said code be amended and reenacted; that §31-21-5 and §31-21-15 of said code
92 be amended and reenacted; that §33-2-21a of said code be amended and reenacted; that §33-
93 14-29 of said code be amended and reenacted; that §38-5B-1 of said code be amended and
94 reenacted; that §49-1-206 of said code be amended and reenacted; that §49-4-406, §49-4-407
95 and §49-4-704 of said code be amended and reenacted; that §53-8-1 and §53-8-7 of said code
96 be amended and reenacted; that §61-2-15 of said code be amended and reenacted; that §61-5A-
97 2 of said code be amended and reenacted; that §61-7-2, §61-7-11a and §61-7-14 of said code
98 be amended and reenacted; that §61-8-29 of said code be amended and reenacted; that §61-10-
99 15 and §61-10-15 of said code be amended and reenacted; all relating to reconstituting the State
100 Board of Education and County Boards of Education by eliminating county school districts and
101 establishing ten school districts throughout the state; modifying definitions; establishing terms of
102 office; providing for number of members constituting a quorum; establishing state superintendent
103 as president of state board until member elected; creating duty of reconstituted board to consider
104 elimination of RESAs; modifying references to county school boards and county school districts
105 throughout the code.

CHAPTER 1. THE STATE AND ITS SUBDIVISIONS.

ARTICLE 5. ACQUISITION AND DISPOSITION OF REAL PROPERTY BY AND

BETWEEN PUBLIC BODIES.

§1-5-2. Scope of article; public body defined.

1 The provisions of this article shall apply to the State of West Virginia, its agencies,
2 departments, boards and commissions of whatever description, county courts or tribunals in lieu
3 thereof, ~~county~~ school district boards of education, incorporated municipalities or any other
4 political subdivisions.

5 For the purpose of this article, the term “public body” shall mean the State of West Virginia,
6 or any agency, department, board or commission thereof of whatever description, or any county
7 court or tribunal in lieu thereof, or any ~~county~~ school district board of education, or any
8 incorporated municipality, or any other political subdivision.

CHAPTER 3. ELECTIONS.

ARTICLE 1A. STATE ELECTION COMMISSION AND SECRETARY OF STATE.

§3-1A-7. Candidate's financial disclosure statement.

1 Candidates for election to any state, county or municipal office, ~~county school board,~~
2 ~~district school~~ district board, or to the position of ~~county or district school~~ district board
3 superintendent, shall file a financial disclosure statement with the Ethics Commission as may be
4 required under subsection (a), section six, article two, chapter six-b of this code.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-6. Election of ~~county~~ school district board of education members at primary elections.

1 (a) An election for the purpose of electing members of the ~~county~~ school district board of
2 education shall be held on the same date as the primary elections, as provided by law, but upon
3 a nonpartisan ballot printed for the purpose.

4 (b) No more than two members may be elected or serve from the same magisterial district.
5 The eligibility of candidates to be declared elected for full terms of four years and for unexpired

6 terms of two or more years based on this limitation shall be determined at the time of certification
7 of the election.

8 (1) Such eligibility shall be based on the magisterial district residence of incumbent
9 members of the board whose terms will continue beyond July 1, following the primary election.

10 (A) No person is eligible to be declared elected who resides in a district which has two
11 such incumbent members.

12 (B) No more than one candidate is eligible to be declared elected who resides in a district
13 which has one such incumbent member.

14 (C) A person with the highest number of votes may be declared elected to an unexpired
15 term notwithstanding the fact that the person's magisterial district has two representatives serving
16 on the board at the time of the election: *Provided*, That the number of representatives from that
17 magisterial district will be less than two as of July 1, following the primary.

18 (2) The person declared elected to an unexpired term shall assume the duties of a member
19 of the board of Education according to the provisions of section two, article five, chapter eighteen
20 of this code.

21 (c) In each nonpartisan election for Board of Education the board of canvassers shall:

22 (1) Declare and certify the election of the required number of eligible candidates receiving
23 the highest numbers of votes to fill any full terms;

24 (2) Declare and certify the election of the required number of eligible candidates receiving
25 the next highest numbers of votes, after all full terms are filled, to fill any unexpired terms.

26 (d) It is the intent of this statute that any person declared to be elected under the preceding
27 provisions of this section shall take office as a duly elected member or members, even though
28 the person may not have received a majority or plurality of all votes cast at such election.

29 (e) In case of a tie vote for a seat on a ~~county~~ school district board of education in any
30 primary election, the provisions of section twelve, article six of this chapter shall control in breaking
31 the tie.

§3-5-8. Filing fees and their disposition.

1 (a) Every person who becomes a candidate for nomination for or election to office in any
2 primary election shall, at the time of filing the certificate of announcement as required in this
3 article, pay a filing fee as follows:

4 (1) A candidate for president of the United States, for vice president of the United States,
5 for United States Senator, for member of the United States House of Representatives, for
6 Governor and for all other state elective offices shall pay a fee equivalent to one percent of the
7 annual salary of the office for which the candidate announces: *Provided*, That the filing fee for any
8 candidate for president or vice president of the United States shall not exceed \$2,500
9 commencing with the 2004 filing period;

10 (2) A candidate for the office of judge of a circuit court and judge of a family court shall
11 pay a fee equivalent to one percent of the total annual salary of the office for which the candidate
12 announces;

13 (3) A candidate for member of the House of Delegates shall pay a fee of one-half percent
14 of the total annual salary of the office and a candidate for state Senator shall pay a fee of one
15 percent of the total annual salary of the office;

16 (4) A candidate for sheriff, prosecuting attorney, circuit clerk, county clerk, assessor,
17 member of the county commission and magistrate shall pay a fee equivalent to one percent of
18 the annual salary, excluding any additional compensation or commission of the office for which
19 the candidate announces. A candidate for ~~county~~ school district board of education shall pay a
20 fee of \$25. A candidate for any other county office shall pay a fee of \$10;

21 (5) Delegates to the national convention of any political party shall pay the following filing
22 fees:

23 (A) A candidate for delegate-at-large shall pay a fee of \$20; and

24 (B) A candidate for delegate from a congressional district shall pay a fee of \$10;

25 (6) Candidates for members of political executive committees and other political

26 committees shall pay the following filing fees:

27 (A) A candidate for member of a state executive committee of any political party shall pay
28 a fee of \$20;

29 (B) A candidate for member of a county executive committee of any political party shall
30 pay a fee of \$10; and

31 (C) A candidate for member of a congressional, senatorial or delegate district committee
32 of any political party shall pay a fee of \$5.

33 (b) Candidates shall pay the filing fee to the election official with whom the certificate of
34 announcement is filed according to the provisions of section seven of this article at the time of
35 filing their certificates of announcement and no certificate of announcement shall be received until
36 the filing fee is paid.

37 (c) All moneys received by the clerk from the fees shall be credited to the general county
38 fund. Moneys received by the Secretary of State from fees paid by candidates for offices to be
39 filled by all the voters of the state shall be deposited in a special fund for that purpose and shall
40 be apportioned and paid by him or her to the several counties on the basis of population and that
41 received from candidates from a district or judicial circuit of more than one county shall be
42 apportioned to the counties comprising the district or judicial circuit in like manner. When such
43 moneys are received by sheriffs it shall be credited to the general county fund. Moneys received
44 by the Secretary of State from fees paid by candidates for judicial or legislative offices to be filled
45 by the voters of one county shall be apportioned to the county in which the boundaries of the
46 district lie.

§3-5-13. Form and contents of ballots.

1 The following provisions apply to the form and contents of election ballots:

2 (1) The face of every primary election ballot shall conform as nearly as practicable to that
3 used at the general election.

4 (2) The heading of every ballot is to be printed in display type. The heading is to contain

5 a ballot title, the name of the county, the state, the words "Primary Election" and the month, day
6 and year of the election. The ballot title of the political party ballots is to contain the words "Official
7 Ballot of the (Name) Party" and the official symbol of the political party may be included in the
8 heading.

9 (A) The ballot title of any separate paper ballot or portion of any electronic or voting
10 machine ballot for all judicial officer shall commence with the words "Nonpartisan Ballot of Election
11 of Judicial Officers" and each such office shall be listed in the following order:

12 (i) The ballot title of any separate paper ballot or portion of any electronic or voting machine
13 ballot for all justices of the Supreme Court of Appeals shall contain the words "Nonpartisan Ballot
14 of Election of Justice(s) of the Supreme Court of Appeals of West Virginia". The names of the
15 candidates for the Supreme Court of Appeals shall be printed by division without references to
16 political party affiliation or registration.

17 (ii) The ballot title of any separate paper ballot or portion of any electronic or voting
18 machine ballot for all circuit court judges in the respective circuits shall contain the words
19 "Nonpartisan Ballot of Election of Circuit Court Judge(s)". The names of the candidates for the
20 respective circuit court judge office shall be printed by division without references to political party
21 affiliation or registration.

22 (iii) The ballot title of any separate paper ballot or portion of any electronic or voting
23 machine ballot for all family court judges in the respective circuits shall contain the words
24 "Nonpartisan Ballot of Election of Family Court Judge(s)". The names of the candidates for the
25 respective family court judge office shall be printed by division without references to political party
26 affiliation or registration.

27 (iv) The ballot title of any separate paper ballot or portion of any electronic or voting
28 machine ballot for all magistrates in the respective circuits shall contain the words "Nonpartisan
29 Ballot of Election of Magistrate(s)". The names of the candidates for the respective magistrate
30 office shall be printed by division without references to political party affiliation or registration.

31 (B) The ballot title of any separate paper ballot or portion of any electronic or voting
32 machine ballot for the Board of Education is to contain the words "Nonpartisan Ballot of Election
33 of Members of the _____ ~~county~~ School District Board of Education". The districts for
34 which less than two candidates may be elected and the number of available seats are to be
35 specified and the names of the candidates are to be printed without reference to political party
36 affiliation and without designation as to a particular term of office.

37 (C) Any other ballot or portion of a ballot on a question is to have a heading which clearly
38 states the purpose of the election according to the statutory requirements for that question.

39 (3) (A) For paper ballots, the heading of the ballot is to be separated from the rest of the
40 ballot by heavy lines and the offices shall be arranged in columns with the following headings,
41 from left to right across the ballot: "National Ticket", "State Ticket", "County Ticket" and, in a
42 presidential election year, "National Convention" or, in a nonpresidential election year, "District
43 Ticket". The columns are to be separated by heavy lines. Within the columns, the offices are to
44 be arranged in the order prescribed in section thirteen-a of this article.

45 (B) For voting machines, electronic voting devices and any ballot tabulated by electronic
46 means, the offices are to appear in the same sequence as prescribed in section thirteen-a of this
47 article and under the same headings as prescribed in paragraph (A) of this subdivision. The
48 number of pages, columns or rows, where applicable, may be modified to meet the limitations of
49 ballot size and composition requirements subject to approval by the Secretary of State.

50 (C) The title of each office is to be separated from preceding offices or candidates by a
51 line and is to be printed in bold type no smaller than eight point. Below the office is to be printed
52 the number of the district, if any, the number of the division, if any, and the words "Vote for
53 _____" with the number to be nominated or elected or "Vote For Not More Than _____"
54 in multicandidate elections. For offices in which there are limitations relating to the number of
55 candidates which may be nominated, elected or appointed to or hold office at one time from a
56 political subdivision within the district or county in which they are elected, there is to be a clear

57 explanation of the limitation, as prescribed by the Secretary of State, printed in bold type
58 immediately preceding the names of the candidates for those offices on the ballot in every voting
59 system. For counties in which the number of county commissioners exceeds three and the total
60 number of members of the county commission is equal to the number of magisterial districts within
61 the county, the office of county commission is to be listed separately for each district to be filled
62 with the name of the magisterial district and the words "Vote for One" printed below the name of
63 the office: *Provided*, That the office title and applicable instructions may span the width of the
64 ballot so as it is centered among the respective columns.

65 (D) The location for indicating the voter's choices on the ballot is to be clearly shown. For
66 paper ballots, other than those tabulated electronically, the official primary ballot is to contain a
67 square formed in dark lines at the left of each name on the ballot, arranged in a perpendicular
68 column of squares before each column of names.

69 (4) (A) The name of every candidate certified by the Secretary of State or the board of
70 ballot commissioners is to be printed in capital letters in no smaller than eight point type on the
71 ballot for the appropriate precincts. Subject to the rules promulgated by the Secretary of State,
72 the name of each candidate is to appear in the form set out by the candidate on the certificate of
73 announcement, but in no case may the name misrepresent the identity of the candidate nor may
74 the name include any title, position, rank, degree or nickname implying or inferring any status as
75 a member of a class or group or affiliation with any system of belief.

76 (B) The city of residence of every candidate, the state of residence of every candidate
77 residing outside the state, the county of residence of every candidate for an office on the ballot in
78 more than one county and the magisterial district of residence of every candidate for an office
79 subject to magisterial district limitations are to be printed in lower case letters beneath the names
80 of the candidates.

81 (C) The arrangement of names within each office must be determined as prescribed in
82 section thirteen-a of this article.

83 (D) If the number of candidates for an office exceeds the space available on a column or
84 ballot page and requires that candidates for a single office be separated, to the extent possible,
85 the number of candidates for the office on separate columns or pages are to be nearly equal and
86 clear instructions given the voter that the candidates for the office are continued on the following
87 column or page.

88 (5) When an insufficient number of candidates has filed for a party to make the number of
89 nominations allowed for the office or for the voters to elect sufficient members to the Board of
90 Education or to executive committees, the vacant positions on the ballot shall be filled with the
91 words "No Candidate Filed": *Provided*, That in paper ballot systems which allow for write-ins to
92 be made directly on the ballot, a blank line shall be placed in any vacant position in the office of
93 Board of Education or for election to any party executive committee. A line shall separate each
94 candidate from every other candidate for the same office. Notwithstanding any other provision of
95 this code, if there are multiple vacant positions on a ballot for one office, the multiple vacant
96 positions which would otherwise be filled with the words "No Candidate Filed" may be replaced
97 with a brief detailed description, approved by the Secretary of State, indicating that there are no
98 candidates listed for the vacant positions.

99 (6) In presidential election years, the words "For election in accordance with the plan
100 adopted by the party and filed with the Secretary of State" is to be printed following the names of
101 all candidates for delegate to national convention.

102 (7) All paper ballots are to be printed in black ink on paper sufficiently thick so that the
103 printing or marking cannot be discernible from the back: *Provided*, That no paper ballot voted
104 pursuant to the provisions of 42 U. S. C. §1973, *et seq.*, the Uniformed and Overseas Citizens
105 Absentee Voting Act of 1986, or federal write-in absentee ballot may be rejected due to paper
106 type, envelope type, or notarization requirement. Ballot cards and paper for printing ballots using
107 electronically sensible ink are to meet minimum requirements of the tabulating systems and are
108 to conform in size and weight to ensure ease in tabulation.

109 (8) Ballots are to contain perforated tabs at the top of the ballots and are to be printed with
 110 unique sequential numbers from one to the highest number representing the total number of
 111 ballots printed. On paper ballots, the ballot is to be bordered by a solid line at least one sixteenth
 112 of an inch wide and the ballot is to be trimmed to within one-half inch of that border.

113 (9) On the back of every official ballot or ballot card the words "Official Ballot" with the
 114 name of the county and the date of the election are to be printed. Beneath the date of the election
 115 there are to be two blank lines followed by the words "Poll Clerks".

116 (10) The face of sample paper ballots and sample ballot labels are to be like other official
 117 ballots or ballot labels except that the word "sample" is to be prominently printed across the front
 118 of the ballot in a manner that ensures the names of candidates are not obscured and the word
 119 "sample" may be printed in red ink. No printing may be placed on the back of the sample.

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE
 GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL;
 BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES,
 COMMISSIONS, OFFICES, PROGRAMS, ETC.**

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-22c. Temporary early retirement incentives program; legislative declaration and finding of compelling state interest and public purpose; specifying eligible and ineligible members for incentives program; options, conditions, and exceptions; certain positions abolished; special rule of eighty; effective, termination, and notice dates.

1 The Legislature hereby finds and declares that a compelling state interest exists in
 2 providing a temporary early retirement incentives program for encouraging the early, voluntary
 3 retirement of those public employees who were current, active contributing members of this

4 retirement system on April 1, 1988, in the reduction of the number of such employees and in
5 reduction of governmental costs therefor; that such program constitutes a public purpose; and
6 that the special classifications and differentiations provided in respect of such program are
7 reasonable and equitable ones for the accomplishment of such purpose and program as enacted
8 in Enrolled Committee Substitute for H.B. No. 4672, regular session, 1988, and as clarified and
9 supplemented herein, retroactive to such beginning date, aforesaid. The Legislature further finds
10 that maintaining an actuarially sound retirement fund is a necessity and that the reemployment of
11 persons who retire under this section in any manner, including reemployment on a contract basis,
12 is contrary to the intent of the early retirement program and severely threatens the fiscal integrity
13 of the retirement fund.

14 (a) For the purposes of this section: (1) "Contract" means any personal service agreement,
15 not involving the sale of commodities, that cannot be performed within sixty days or that exceeds
16 \$2,500 in any twelve-month period. The term "contract" does not include any agreement obtained
17 by a retirant through a bidding process and which is for the furnishing of any commodity to a
18 government agency and that term does not include any person who retired under this section who
19 works as a contract employee for the Legislature when such employment commences after
20 December 31, 1999: *Provided*, That such employment may not exceed one hundred ten days; (2)
21 "governmental entity" means the State of West Virginia; a Constitutional branch or office of the
22 state government, or any subdivision thereof; a county, city or town in the state; a ~~county~~ school
23 district board of education; a separate corporation or instrumentality established pursuant to a
24 state statute; any other entity currently permitted to participate in any state public retirement
25 system or the Public Employees Insurance Agency; or any officer or official of any entity listed
26 above who is acting in his or her official capacity; (3) "part-time elected or appointed office" means
27 any elected or appointed office that pays annual compensation of less than \$2,500 or requires
28 less than sixty days of service in any twelve-month period; (4) "substitute teacher" means a
29 teacher, public school librarian, registered professional nurse employed by ~~the county~~ a school

30 district board of education or any other person employed for counseling or instructional purposes
31 in a public school in this state who is temporarily fulfilling the duties of an existing real person
32 employed in a specific position who is temporarily absent from that specified position.

33 (b) Beginning on April 1, 1988, and continuing through December 31, 1988 (or as
34 extended by eligibility qualification requirement, as hereinafter specified), eligible members, being
35 those active, contributing members actually and currently employed on such beginning date,
36 retiring pursuant to this section, and from any state, county or municipal position, covered under
37 the two divisions of this retirement system (the state division and the public employer, nonstate
38 division) including those so employed on said beginning date and leaving the system during the
39 incentive period and who are eligible for taking deferred retirement (but not disability retirees) may
40 elect to participate in this incentive program and may elect any one of the three following incentive
41 options:

42 (1) Retirement incentive option one:

43 For the purpose of computing the member's annuity, the normal final average salary shall
44 be computed and one-eighth thereof shall be added thereto in arriving at the true final average
45 salary for use in actual computation of retirement benefit.

46 (2) Retirement incentive option two:

47 A member may elect a lump sum payment, in addition to his or her regular retirement
48 annuity, equal to ten percent of his or her final average salary not to exceed \$5,000, and in the
49 case of a deferred retirement electing this option, such lump sum payment shall be receivable
50 and deferred to the time of receipt of such deferred retirement annuity.

51 (3) Retirement incentive option three:

52 A person shall be credited with an additional two years of contributing service and an
53 additional two years of age. The years credited under this option shall in no way add to a member's
54 final average salary factor of computation.

55 Active, contributing members who desire to retire under this section but who are unable

56 to retire by December 31, 1988, and make use of the incentive retirement program because an
57 element of eligibility for retirement, such as age or other element, will not be met until a date after
58 December 31, 1988, and before July 1, 1989, shall be permitted to postpone actual retirement
59 until the date of fulfilling such element of eligibility and shall retire on such date, before the
60 temporary retirement incentive program ends on June 30, 1989, with proper credit to be granted
61 for such extended period: *Provided*, That they shall have made application for retirement,
62 including choice of their respective option, and given notice to their respective employer by
63 December 31, 1988, although postponing actual retirement, as aforesaid.

64 (c) Any member participating in this retirement incentive program is not eligible to accept
65 further employment or accept, directly or indirectly, work on a contract basis from any
66 governmental entity: *Provided*, That nothing in this section shall affect any contract entered into
67 prior to the effective date of this section: *Provided, however*, That the executive director may
68 approve, upon written request and for good cause shown, an exception allowing a retirant to
69 perform work on a contract basis. The executive director shall report all approved exceptions to
70 the board of trustees: *Provided further*, That a person may retire under this section and thereafter
71 serve in an elective office: *And provided further*, That he or she shall not receive an incentive
72 option under this section during the term of service in said office, but shall receive his or her
73 annuity calculated on regular basis, as if originally taken not under this section but on such regular
74 basis. At the end of such term and cessation of service in such office during which the member
75 shall rejoin and reenter the retirement system and pay contributions therefor, such regular annuity
76 shall be recalculated and an increased annuity due to such additional employment shall be
77 granted and computed on regular basis and in similar manner as under section forty-eight of this
78 article. In respect of an appointive office, as distinguished from an elective office, any person
79 retiring under this section and thereafter serving in such appointive office shall not receive an
80 incentive option under this section during the term of service in said office, but the same shall be
81 suspended during such period: *And provided further*, That at the end of such term and cessation

82 of service in such appointive office the incentive option provided for under this section shall be
83 resumed: *And provided further*, That any person elected or appointed to office by the state or any
84 of its political subdivisions who waives whatever salary, wage or per diem compensation he or
85 she may be entitled to by virtue of service in such office and who does not receive any income
86 therefrom except such reimbursement of out-of-pocket costs and expenses as may be permitted
87 by the statutes governing such office shall continue to receive an incentive option under this
88 section. Such service shall not be counted as contributed or credited service for purposes of
89 computing retirement benefits.

90 If such elected or appointed office is a part-time elected or appointed office, a person
91 electing retirement under this section may serve in such elected or appointed office without a loss
92 of the benefits provided under this section.

93 Prior to the initiation or renewal of any contract entered into pursuant to the provisions of
94 this section or the acceptance of any elective or appointive office by a person who has elected to
95 retire under the early retirement provisions of this article, such person shall complete a disclosure
96 and waiver statement executed under oath and acknowledged by a notary public. The board shall
97 promulgate rules, pursuant to chapter twenty-nine-a, of this code regarding the form and contents
98 of the disclosure and waiver statement. The disclosure and waiver statement shall be forwarded
99 to the appropriate state public retirement system administrator who shall take action to ensure
100 that the early retirement incentive benefits are reduced in accordance with the provisions of this
101 section. The administrator shall then certify such action in writing to the appropriate governmental
102 entity.

103 In any event, an eligible member may retire under this section and thereafter continue to
104 receive his or her incentive annuity and be employed as a substitute teacher or as adjunct faculty.

105 Any such incentive retirants, under this section, may not thereafter receive such annuity
106 and enter or reenter any governmental retirement system established or authorized to be
107 established by the state, notwithstanding any provision of the code to the contrary, unless required

108 by Constitutional provision or as hereby specifically permitted to those retiring and thereafter
109 serving in elective office, as aforesaid.

110 The additional annuity allowed for temporary early retirement under these options, in
111 respect of state division retirants of this system, is intended to be paid from the retirement
112 incentive account hereby created as a special account in the State Treasury and from the funds
113 therein established with moneys required to be transferred by heads of spending units from the
114 unused portion of salary and fringe benefits in their budgets accruing in respect of such positions
115 vacated and subsequently canceled under this temporary early retirement program. Salary and
116 fringe benefit moneys actually saved in a particular fiscal year shall constitute the fund source for
117 payment of such additional annuity, the funds of the retirement system to be used for payment of
118 the base annuity under the early retirement incentive program: *Provided*, That such additional
119 annuity shall be paid from the unused portion of both salary and fringe benefits and with any
120 remainder of any fringe benefit moneys, as such, to remain with the spending unit and any
121 remainder of salary, as such, to be directed as additional funding to the Teachers Retirement
122 System and as a part of the assets thereof. No such additional annuity shall be disallowed even
123 though initial receipts may not be sufficient, with funds of the system to be applied for such
124 purpose, as for the base annuity. With respect to public employer division retirants (nonstate
125 division retirants of the system), such incentive annuity shall be paid from the nonstate division
126 funds of the system.

127 (d) The executive secretary of the retirement system shall provide forms for applicants.
128 Such forms shall include a detailed description of the incentive plan options.

129 The executive secretary of the retirement system shall file a report to the Legislature no
130 later than February 15, 1989, and quarterly thereafter, detailing the number of retirees who have
131 elected to accept early retirement incentive options, the dollar cost to date by option selected, and
132 the projected annual cost through the year 2000.

133 Within every spending unit, department, board, corporation, commission, or any other

134 agency or entity wherein two or multiples of two members elect to retire either under the temporary
135 early retirement incentives set forth above, or under regular, voluntary retirement, and countable
136 on an agency-wide or entity-wide basis, no more than one of such vacated positions may be filled,
137 with the second position being abolished upon the effective day of the member's retirement. The
138 vacant position abolishment requirement shall not apply to elective positions or appointed public
139 officers whose positions are established by state Constitutional or statutory provision. The
140 retirant's employing entity shall decide as to which of the vacated positions made available
141 through special early retirement or through regular, voluntary retirement are to be abolished and
142 the head of such spending unit shall immediately notify the State Auditor, the Legislative Auditor,
143 and the commissioner of the department of finance and administration of the decisions and shall
144 then apply and/or transfer the remaining salary and fringe benefits as aforesaid: *Provided, That*
145 this vacant position abolishment provision shall not apply to any county or municipal position
146 except those under the authority of a ~~county~~ school district board of education, nor to any position
147 or positions, whether designated by spending unit, department, agency, commission, entity or
148 otherwise, which the Governor in respect of the executive branch, or the chief justice of the
149 Supreme Court of Appeals in respect of the judicial branch, or the President of the Senate or
150 Speaker of the House of Delegates, in respect of the legislative branch, may exempt or amend,
151 under such abolishment provision, upon his or her respective recommendation that such
152 exemption or amendment is necessary to provide for continuity of governmental operation or to
153 preserve the health, welfare or safety of the people of West Virginia, and with the prior
154 concurrence of the Joint Committee on Government and Finance in such recommendation, after
155 the chairmen thereof shall cause such committee to meet.

156 (f) *Special rule of eighty.* -- Any active, contributing member of the retirement system as
157 of April 1, 1988, who selects one of the incentive options in this section, may retire under the
158 special early retirement provisions with full pension rights, without reduction of benefits if the sum
159 of such member's age plus years of contributing service equals or exceeds eighty: *Provided, That*

160 such person has at least twenty years of contributing service; up to two years of which may be
 161 military service, or prior service, or any combination thereof not exceeding an aggregate of two
 162 years.

163 (g) *Termination of temporary retirement incentives program.* -- The right to elect, choose,
 164 select or use any of the options, special rule of eighty, or other benefits set forth in this section
 165 shall terminate on June 30, 1989.

166 (h) The board shall promulgate rules and regulations in accordance with the provisions of
 167 article three, chapter twenty-nine of this code regarding the calculation of the amount of incentive
 168 option that may be forfeited pursuant to the provisions of subsection (b) of this section.

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-2. Definitions.

1 The following words and phrases as used in this article, unless a different meaning is
 2 clearly indicated by the context, have the following meanings:

3 (1) "Agency" means the Public Employees Insurance Agency created by this article.

4 (2) "Director" means the Director of the Public Employees Insurance Agency created by
 5 this article.

6 (3) "Employee" means any person, including an elected officer, who works regularly full
 7 time in the service of the State of West Virginia and, for the purpose of this article only, the term
 8 "employee" also means any person, including an elected officer, who works regularly full time in
 9 the service of a ~~county~~ school district board of education; a county, city or town in the state; any
 10 separate corporation or instrumentality established by one or more counties, cities or towns, as
 11 permitted by law; any corporation or instrumentality supported in most part by counties, cities or
 12 towns; any public corporation charged by law with the performance of a governmental function
 13 and whose jurisdiction is coextensive with one or more counties, cities or towns; any
 14 comprehensive community mental health center or comprehensive mental retardation facility
 15 established, operated or licensed by the Secretary of Health and Human Resources pursuant to

16 section one, article two-a, chapter twenty-seven of this code and which is supported in part by
17 state, county or municipal funds; any person who works regularly full time in the service of the
18 Higher Education Policy Commission, the West Virginia Council for Community and Technical
19 College Education or a governing board, as defined in section two, article one, chapter eighteen-
20 b of this code; any person who works regularly full time in the service of a combined city-county
21 health department created pursuant to article two, chapter sixteen of this code; any person
22 designated as a 21st Century Learner Fellow pursuant to section eleven, article three, chapter
23 eighteen-a of this code; and any person who works as a long-term substitute as defined in section
24 one, article one, chapter eighteen-a of this code in the service of a ~~county~~ school district board of
25 education: *Provided*, That a long-term substitute who is continuously employed for at least one
26 hundred thirty-three instructional days during an instructional term, and until the end of that
27 instructional term, is eligible for the benefits provided in this article until September 1, following
28 that instructional term: *Provided, however*, That a long-term substitute employed fewer than one
29 hundred thirty-three instructional days during an instructional term is eligible for the benefits
30 provided in this article only during such time as he or she is actually employed as a long-term
31 substitute. On and after January 1, 1994, and upon election by a ~~county~~ school district board of
32 education to allow elected board members to participate in the Public Employees Insurance
33 Program pursuant to this article, any person elected to a ~~county~~ school district board of education
34 shall be considered to be an "employee" during the term of office of the elected member. Upon
35 election by the state Board of Education to allow appointed board members to participate in the
36 Public Employees Insurance Program pursuant to this article, any person appointed to the state
37 Board of Education is considered an "employee" during the term of office of the appointed
38 member: *Provided further*, That the elected member of a ~~county~~ school district board of education
39 and the appointed member of the state Board of Education shall pay the entire cost of the premium
40 if he or she elects to be covered under this article. Any matters of doubt as to who is an employee
41 within the meaning of this article shall be decided by the director.

42 On or after July 1, 1997, a person shall be considered an "employee" if that person meets
43 the following criteria:

44 (i) Participates in a job-sharing arrangement as defined in section one, article one, chapter
45 eighteen-a of this code;

46 (ii) Has been designated, in writing, by all other participants in that job-sharing
47 arrangement as the "employee" for purposes of this section; and

48 (iii) Works at least one third of the time required for a full-time employee.

49 (4) "Employer" means the State of West Virginia, its boards, agencies, commissions,
50 departments, institutions or spending units; a ~~county~~ school district board of education; a county,
51 city or town in the state; any separate corporation or instrumentality established by one or more
52 counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most
53 part by counties, cities or towns; any public corporation charged by law with the performance of
54 a governmental function and whose jurisdiction is coextensive with one or more counties, cities
55 or towns; any comprehensive community mental health center or comprehensive mental
56 retardation facility established, operated or licensed by the Secretary of Health and Human
57 Resources pursuant to section one, article two-a, chapter twenty-seven of this code and which is
58 supported in part by state, county or municipal funds; a combined city-county health department
59 created pursuant to article two, chapter sixteen of this code; and a corporation meeting the
60 description set forth in section three, article twelve, chapter eighteen-b of this code that is
61 employing a 21st Century Learner Fellow pursuant to section eleven, article three, chapter
62 eighteen of this code but the corporation is not considered an employer with respect to any
63 employee other than a 21st Century Learner Fellow. Any matters of doubt as to who is an
64 "employer" within the meaning of this article shall be decided by the director. The term "employer"
65 does not include within its meaning the National Guard.

66 (5) "Finance board" means the Public Employees Insurance Agency finance board created
67 by this article.

68 (6) "Person" means any individual, company, association, organization, corporation or
69 other legal entity, including, but not limited to, hospital, medical or dental service corporations;
70 health maintenance organizations or similar organization providing prepaid health benefits; or
71 individuals entitled to benefits under the provisions of this article.

72 (7) "Plan", unless the context indicates otherwise, means the medical indemnity plan, the
73 managed care plan option or the group life insurance plan offered by the agency.

74 (8) "Retired employee" means an employee of the state who retired after April 29, 1971,
75 and an employee of the Higher Education Policy Commission, the Council for Community and
76 Technical College Education, a state institution of higher education, ~~or~~ a county board of
77 education, or a school district board of education who retires on or after April 21, 1972, and all
78 additional eligible employees who retire on or after the effective date of this article, meet the
79 minimum eligibility requirements for their respective state retirement system and whose last
80 employer immediately prior to retirement under the state retirement system is a participating
81 employer in the state retirement system and in the Public Employees Insurance Agency:
82 *Provided*, That for the purposes of this article, the employees who are not covered by a state
83 retirement system, but who are covered by a state-approved or state-contracted retirement
84 program or a system approved by the director, shall, in the case of education employees, meet
85 the minimum eligibility requirements of the state Teachers Retirement System and in all other
86 cases, meet the minimum eligibility requirements of the Public Employees Retirement System
87 and may participate in the Public Employees Insurance Agency as retired employees upon terms
88 as the director sets by rule as authorized in this article. Employers with employees who are, or
89 who are eligible to become, retired employees under this article shall be mandatory participants
90 in the Retiree Health Benefit Trust Fund created pursuant to article sixteen-d of this chapter.
91 Nonstate employers may opt out of the West Virginia other post-employment benefits plan of the
92 Retiree Health Benefit Trust Fund and elect to not provide benefits under the Public Employees
93 Insurance Agency to retirees of the nonstate employer, but may do so only upon the written

94 certification, under oath, of an authorized officer of the employer that the employer has no
95 employees who are, or who are eligible to become, retired employees and that the employer will
96 defend and hold harmless the Public Employees Insurance Agency from any claim by one of the
97 employer's past, present or future employees for eligibility to participate in the Public Employees
98 Insurance Agency as a retired employee. As a matter of law, the Public Employees Insurance
99 Agency shall not be liable in any respect to provide plan benefits to a retired employee of a
100 nonstate employer which has opted out of the West Virginia other post-employment benefits plan
101 of the Retiree Health Benefit Trust Fund pursuant to this section.

§5-16-22. Permissive participation; exemptions.

1 The provisions of this article are not mandatory upon any employee or employer who is
2 not an employee of, or is not, the State of West Virginia, its boards, agencies, commissions,
3 departments, institutions or spending units or a ~~county~~ school district board of education and
4 nothing contained in this article compels any employee or employer to enroll in or subscribe to
5 any insurance plan authorized by the provisions of this article.

6 Those employees enrolled in the insurance program authorized under the provisions of
7 article two-b, chapter twenty-one-a of this code are not required to enroll in or subscribe to an
8 insurance plan or plans authorized by the provisions of this article, and the employees of any
9 department which has an existing insurance program for its employees to which the government
10 of the United States contributes any part or all of the premium or cost of the premium may be
11 exempted from the provisions of this article. Any employee or employer exempted under the
12 provisions of this paragraph may enroll in any insurance program authorized by the provisions of
13 this article at any time, to the same extent as any other qualified employee or employer, but
14 employee or employer may not remain enrolled in both programs.

15 Any plan established or administered by the Public Employees Insurance Agency
16 pursuant to this article is exempt from the provisions of chapter thirty-three of this code unless
17 explicitly stated. Notwithstanding any provision of this code to the contrary, the Public Employees

18 Insurance Agency is not an insurer or engaged in the business of insurance as defined in chapter
19 thirty-three of this code.

20 Employers, other than the State of West Virginia, its boards, agencies, commissions,
21 departments, institutions, spending units or a ~~county~~ school district board of education, are
22 exempt from participating in the insurance program provided for by the provisions of this article
23 unless participation by the employer has been approved by a majority vote of the employer's
24 governing body. It is the duty of the clerk or secretary of the governing body of an employer who
25 by majority vote becomes a participant in the insurance program to notify the director not later
26 than ten days after the vote.

27 Any employer, whether the employer participates in the Public Employees Insurance
28 Agency insurance program as a group or not, which has retired employees, their dependents or
29 surviving dependents of deceased retired employees who participate in the Public Employees
30 Insurance Agency insurance program as authorized by this article, shall pay to the agency the
31 same contribution toward the cost of coverage for its retired employees, their dependents or
32 surviving dependents of deceased retired employees as the State of West Virginia, its boards,
33 agencies, commissions, departments, institutions, spending units or a ~~county~~ school district board
34 of education pay for their retired employees, their dependents and surviving dependents of
35 deceased retired employees, as determined by the finance board: *Provided*, That after June 30,
36 1996, an employer not mandated to participate in the plan is only required to pay a contribution
37 toward the cost of coverage for its retired employees, their dependents or the surviving
38 dependents of deceased retired employees who elect coverage when the retired employee
39 participated in the plan as an active employee of the employer for at least five years: *Provided*,
40 *however*, That those retired employees of an employer not participating in the plan who retire on
41 or after July 1, 2010, who have participated in the plan as active employees of the employer for
42 less than five years are responsible for the entire premium cost for coverage and the Public
43 Employees Insurance Agency shall bill for and collect the entire premium from the retired

44 employees, unless the employer elects to pay the employer share of the premium. Each employer
45 is hereby authorized and required to budget for and make such payments as are required by this
46 section.

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 3. PURCHASING DIVISION.

§5A-3-10a. Prohibition for awarding contracts to vendors which owe a debt to the state or its political subdivisions.

1 (a) Unless the context clearly requires a different meaning, for the purposes of this section,
2 the terms:

3 (1) "Debt" means any assessment, premium, penalty, fine, tax or other amount of money
4 owed to the state or any of its political subdivisions because of a judgment, fine, permit violation,
5 license assessment, amounts owed to the Workers' Compensation Funds as defined in article
6 two-c, chapter twenty-three of this code, penalty or other assessment or surcharge presently
7 delinquent or due and required to be paid to the state or any of its political subdivisions, including
8 any interest or additional penalties accrued thereon.

9 (2) "Debtor" means any individual, corporation, partnership, association, limited liability
10 company or any other form or business association owing a debt to the state or any of its political
11 subdivisions, and includes any person or entity that is in employer default.

12 (3) "Employer default" means having an outstanding balance or liability to the old fund or
13 to the uninsured employers' fund or being in policy default, as defined in section two, article two-
14 c, chapter twenty-three, of this code, failure to maintain mandatory workers' compensation
15 coverage, or failure to fully meet its obligations as a workers' compensation self-insured employer.
16 An employer is not in employer default if it has entered into a repayment agreement with the
17 Insurance Commissioner and remains in compliance with the obligations under the repayment
18 agreement.

19 (4) "Political subdivision" means any county commission; municipality; ~~county~~ school
20 district board of education; any instrumentality established by a county or municipality; any
21 separate corporation or instrumentality established by one or more counties or municipalities, as
22 permitted by law; or any public body charged by law with the performance of a government
23 function and whose jurisdiction is coextensive with one or more counties or municipalities.

24 (5) "Related party" means a party, whether an individual, corporation, partnership,
25 association, limited liability company or any other form or business association or other entity
26 whatsoever, related to any vendor by blood, marriage, ownership or contract through which the
27 party has a relationship of ownership or other interest with the vendor so that the party will actually
28 or by effect receive or control a portion of the benefit, profit or other consideration from
29 performance of a vendor contract with the party receiving an amount that meets or exceeds five
30 percent of the total contract amount.

31 (b) No contract or renewal of any contract may be awarded by the state or any of its
32 political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor
33 or a related party to the vendor or prospective vendor is a debtor and:

34 (1) The debt owed is an amount greater than \$1,000 in the aggregate; or

35 (2) The debtor is in employer default.

36 (c) The prohibition of this section does not apply where a vendor has contested any tax
37 administered pursuant to chapter eleven of this code, amount owed to the Workers'
38 Compensation Funds as defined in article two-c, chapter twenty-three of this code, permit fee or
39 environmental fee or assessment and the matter has not become final or where the vendor has
40 entered into a payment plan or agreement and the vendor is not in default of any of the provisions
41 of such plan or agreement.

42 (d) All bids, contract proposals or contracts with the state or any of its political subdivisions
43 submitted or approved under the provisions of this code shall include an affidavit that the vendor,
44 prospective vendor or a related party to the vendor or prospective vendor is not in employer

45 default and does not owe any debt in an amount in excess of \$1,000 or, if a debt is owed, that the
 46 provisions of subsection (c) of this section apply.

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 8. SETTLEMENTS BY OFFICERS.

§6-8-5. Sheriff as county treasurer; settlements; turning over money to successor.

1 The sheriff shall be ex officio treasurer of his or her county and of the several districts
 2 thereof, and the word or designation "sheriff" whenever used in this code shall, unless the context
 3 otherwise requires, be held to include the sheriff as ex officio treasurer of the county and of the
 4 several districts thereof. Between the fifteenth and thirty-first days of December of the year in
 5 which a sheriff's term of office expires, such sheriff shall make up a list of all uncollected taxes
 6 and shall make a complete settlement with the county court, or tribunal in lieu thereof, and the
 7 school district board of education in such county, in the manner provided by law for settlements
 8 required at the end of the fiscal year. The sheriff shall receive credit in such settlement for the
 9 amount of taxes, remaining unpaid, and such list of taxes remaining unpaid shall be turned over
 10 to his or her successor in office January first. It shall be the duty of such successor to collect such
 11 taxes and to make up a delinquent list as provided and required by law; also to make settlement
 12 at the end of the fiscal year with the county court, or tribunal in lieu thereof, and the ~~county~~ school
 13 district board of education, in the manner provided by law. Every sheriff shall, on the first of
 14 January immediately following the expiration of his or her term of office, turn over to his or her
 15 successor all public moneys. Every sheriff who is appointed to fill a vacancy shall make such
 16 settlement with the county court, or tribunal in lieu thereof, and the ~~county~~ school district board of
 17 education, immediately upon the qualification of his or her successor, and at such time turn over
 18 to such successor all public moneys.

§6-8-7. Settlements by sheriff for school funds.

1 The county court of each county shall appoint a time immediately following July 1, in each

2 year, and in any event within thirty days thereafter, and within thirty days following the expiration
 3 of the term of office of any sheriff, for the settlement of the school district funds ~~of the county~~. At
 4 the time so fixed, the school district board ~~of that county~~ and the treasurer of the ~~county~~ school
 5 district board of education, unless the sheriff has been designated treasurer of the ~~county~~ board
 6 pursuant to section six, article nine, chapter eighteen of this code, shall meet with the county
 7 court. The sheriff of the county shall attend such meeting and lay before the county court and
 8 such school district board of education his or her account of school district funds ~~for the county~~,
 9 which account shall be then and there settled. The county court shall give at least five days' notice
 10 of the time fixed for the settlement of the ~~county~~ school district funds to the ~~county~~ school district
 11 board of education, the treasurer of the ~~county~~ school district board of education and the sheriff.

§6-8-9. Same -- With what sheriff to be credited.

1 The sheriff shall be credited in such settlements with the amount of delinquent school tax
 2 in the ~~county~~ district that has been duly certified by the clerk of the county court to the ~~county~~
 3 school district board of education; and with all orders paid and produced by ~~him~~ the sheriff, if
 4 found to be correct by the board of education. ~~He~~ The sheriff shall receive no other credits.

§6-8-10. Same -- Method of settlement.

1 In making such settlement it shall be the duty of the sheriff to prepare and present to the
 2 ~~county~~ school district board of education, in duplicate, separate lists of all the credits claimed by
 3 ~~him~~ the sheriff against each of the several school funds collected by ~~him~~ the sheriff, showing the
 4 amount, date and number of each voucher or order, and to whom payable, together with
 5 statements of the proper debits to the several funds to which he or she is chargeable; which lists
 6 and statements, together with the vouchers claimed as credits by the sheriff, shall, if found correct
 7 by such board, be endorsed by the treasurer of the board on the back of each with the words,
 8 "Settled by the Board of Education," under which the treasurer shall sign his or her name and

9 enter the date of the settlement, and such statements and lists, after being corrected, if corrections
10 are necessary, shall be signed by the sheriff and by the president and treasurer of the board of
11 education in duplicate, one copy to be retained by such board, and the other, together with the
12 vouchers and orders, to be turned over to the county court. Exceptions may be taken to such
13 settlement as provided in section two of this article, which exceptions shall be heard and decided
14 by the county court. If the county court finds the settlement to be correct, or after it has corrected
15 the same, it shall be confirmed and made a matter of record by the clerk of the county court in a
16 book kept for that purpose.

ARTICLE 9. SUPERVISION OF LOCAL GOVERNMENT OFFICES.

§6-9-1a. Definitions.

1 As used in this article:

2 (a) "Audit" means a systematic examination and collection of sufficient, competent
3 evidential matter needed for an Auditor to attest to the fairness of management's assertions in the
4 financial statements and to evaluate whether management has sufficiently and effectively carried
5 out its responsibilities and complied with applicable laws and regulations. An audit shall be
6 conducted in accordance with generally accepted auditing standards, standards issued by the
7 chief inspector, and, as applicable, the single audit requirement of OMB Circular A-133 Audits of
8 States, Local Governments and Non-Profit Organizations as amended or revised from time to
9 time, or any successor circular.

10 (b) "Examination" includes an audit or review as defined in this section.

11 (c) "Federal awards" means federal financial assistance and federal cost-reimbursement
12 contracts that nonfederal entities receive directly from federal awarding agencies or indirectly from
13 pass-through entities.

14 (d) "Federal financial assistance" means assistance that nonfederal entities receive or

15 administer in the form of grants, loans, loan guarantees, property, cooperative agreements,
16 interest subsidies, insurance, food commodities, direct appropriations, or other assistance, but
17 does not include amounts received as reimbursement for services rendered to individuals in
18 accordance with guidance issued by the director of the federal office of management and budget.

19 (e) "Financial audit" includes financial statement audits and financial related audits, as
20 defined by government auditing standards.

21 (f) "Government auditing standards" means the government auditing standards issued by
22 the comptroller general of the United States, which are applicable to financial audits of
23 government organizations, programs and activities.

24 (g) "Local government" means any unit of local government within the state, including a
25 county, ~~county~~ school district board of education, municipality, and any other authority, board,
26 commission, district, office, public authority, public corporation, or other instrumentality of a
27 county, ~~county~~ school district board of education, or municipality or any combination of two or
28 more local governments.

29 (h) "Nonfederal entity" means a state, local government, or nonprofit organization.

30 (i) "Office of management and budget (OMB)" means the executive office of the president
31 of the United States, office of management and budget.

32 (j) "Review" means an inquiry or analytical procedures that provide the Auditor with a
33 reasonable basis for expressing limited assurance that there are no material modifications that
34 should be made to the financial statements in order for them to be in conformity with generally
35 accepted accounting principles or, if applicable, with another comprehensive basis of accounting.

36 (k) "Single audit" means a financial and compliance audit as defined in the federal Single
37 Audit Act of 1996, as amended, in section 7502(d), chapter 75, title 31 of the United States Code,
38 of a nonfederal entity that includes the entity's financial statements and federal awards. Each

39 single audit conducted for any fiscal year shall cover the operations of the entire nonfederal entity;
40 or at the option of the nonfederal entity, the audit shall include a series of audits that cover
41 departments, agencies, and other organizational units that expend or otherwise administer federal
42 awards during the fiscal year being audited except that each such audit shall encompass the
43 financial statements and schedule of expenditures of federal awards for each department,
44 agency, and organizational unit, which shall be considered to be a nonfederal entity.

§6-9-7. Examinations into affairs of local public offices; penalties.

1 (a) The chief inspector has the power by himself or herself, or by any person appointed,
2 designated or approved by the chief inspector to perform the service, to examine into all financial
3 affairs of every local governmental office or political subdivision and all boards, commissions,
4 authorities, agencies or other offices created under authority thereof. An examination shall be
5 made annually, if required, to comply with the Single Audit Act and when otherwise required by
6 law or contract. When that act does not apply, unless otherwise required by law or by contract,
7 the examination shall be made at least once a year, if practicable. Furthermore, the chief inspector
8 shall furnish annually to the Legislature a list of each local government office or political
9 subdivision and all boards, commissions, authorities, agencies or other offices created under
10 authority thereof and the year of its most recent completed audit.

11 (b) When required for compliance with regulations for federal funds received or expended
12 by ~~county~~ school district boards of education the chief inspector or his or her designee, including
13 any certified public accountant approved by the chief inspector shall conduct and issue an audit
14 report within the time specified in controlling federal regulations. Examinations of other local
15 governments shall be conducted and audit or review reports issued in accordance with uniform
16 procedures of the chief inspector.

17 (c) A ~~county~~ school district board of education may elect, by May 1 of the fiscal year to be

18 audited, to have its annual examination performed by a certified public accountant approved by
19 the chief inspector to perform the examinations. When this election is made, a copy of the order
20 of the ~~county~~ school district board making the election shall be filed with the chief inspector and
21 the State Board of School Finance. The ~~county~~ school district board of education is allowed to
22 contract with any certified public accountant on the chief inspector's then current list of approved
23 certified public accountants, unless the State Board of School Finance or ~~the~~ a prosecuting
24 attorney of the ~~county~~ school district in which the board is located timely submits to the chief
25 inspector a written request for the examination to be performed by the chief inspector or a person
26 appointed by the chief inspector, or the chief inspector determines that a special or unusual
27 situation exists. The ~~county~~ school district board shall follow the audit bid procurement procedures
28 established by the chief inspector in obtaining the audit.

29 (d) The chief inspector shall, at least annually, prepare a list of certified public accountants
30 approved by the chief inspector to perform examinations of local governments. Names shall be
31 added to or deleted from that list in accordance with uniform procedures of the chief inspector.
32 When each list or updated list is issued, the chief inspector shall promptly file a copy of the list in
33 the State Register and send a copy to the State Board of Education, the State Board of School
34 Finance and to local governments who request a copy.

35 (e) A ~~county~~ school district board of education, when procuring the services of a certified
36 public accountant on the chief inspector's list, shall follow the procurement standards prescribed
37 by the grants management common rule, OMB Circular A-102 "Grants and Cooperative
38 Agreements with State and Local Governments" in effect for the fiscal year being examined, or in
39 any replacement circular or regulation of the office of management and budget and in addition
40 shall follow those standards as determined by the office of chief inspector.

41 (f) The approved independent certified public accountant making examinations under this
42 section shall comply with requirements of this section applicable to examinations performed by
43 the chief inspector, including applicable requirements of the federal government and uniform

44 procedures of the chief inspector applicable to examinations of ~~county~~ school district boards of
45 education.

46 (1) Upon completion of the certified public accountant's examination and audit or review
47 report, the certified public accountant shall promptly send two copies of the certified report to the
48 ~~county~~ school district board of education who shall file one copy with the Federal Audit Clearing
49 House. The certified public accountant shall send one copy of the certified report to the State
50 Board of School Finance, and one copy to the chief inspector.

51 (2) If any examination discloses misfeasance, malfeasance or nonfeasance in office on
52 the part of any public officer or employee, the certified public accountant shall submit his or her
53 recommendation to the chief inspector regarding the legal action the approved certified public
54 accountant considers appropriate, including, but not limited to, whether criminal prosecution or
55 civil action to effect restitution is appropriate, and three additional copies of the certified audit
56 report. After review of the recommendations and the audit report, the chief inspector shall proceed
57 as provided in subsection (n) of this section. For purposes of this section and section thirteen,
58 article nine-b, chapter eighteen of this code, a certified audit report of an approved certified public
59 accountant shall be treated in the same manner as a report of the chief inspector.

60 (g) On every examination, inquiry shall be made as to the financial conditions and
61 resources of the agency having jurisdiction over the appropriations and levies disbursed by the
62 office and whether the requirements of the Constitution and statutory laws of the state and the
63 ordinances and orders of the agency have been properly complied with and also inquire into the
64 methods and accuracy of the accounts and such other matters of audit and accounting as the
65 chief inspector may prescribe.

66 (h) If a local government office is not subject to a single audit requirement under federal
67 regulations or if it is not otherwise required by law or contract to undergo an annual audit and its
68 expenditures from all sources are less than \$300,000 during the fiscal year the chief inspector
69 may choose to perform either a review or audit on the local government office and may in his or

70 her discretion determine the frequency of such review or audit.

71 (i) The chief inspector or any authorized assistant may issue subpoenas and compulsory
72 process, direct the service thereof by any sheriff, compel the attendance of witnesses and the
73 production of books and papers at any designated time and place, selected in their respective
74 county, and administer oaths.

75 (j) If any person refuses to appear before the chief inspector or his or her authorized
76 assistant when required to do so, refuses to testify on any matter or refuses to produce any books
77 or papers in his or her possession or under his or her control, he or she is guilty of a misdemeanor
78 and, upon conviction thereof, shall be fined not more than \$100 and imprisoned in jail not more
79 than six months.

80 (k) A person convicted of willful false swearing in an examination is guilty of a
81 misdemeanor and, upon conviction thereof, shall be fined not more than \$100 and imprisoned in
82 jail not more than six months.

83 (l) Except as otherwise provided in this section, a copy of the certified report of each
84 examination shall be filed in the office of the commissioner, chief inspector with the governing
85 body of the local government and with other offices as prescribed in uniform procedures of the
86 chief inspector.

87 (m) If any examination discloses misfeasance, malfeasance or nonfeasance in office on
88 the part of any public officer or employee, a certified copy of the report shall be published
89 electronically by the chief inspector with notice of the publishing sent in writing to the proper legal
90 authority of the agency, the prosecuting attorney of the county wherein the agency is located and
91 with the Attorney General for such legal action as is proper. At the time the certified audit report
92 is published, the chief inspector shall notify the proper legal authority of the agency, the
93 prosecuting attorney and the Attorney General in writing of his or her recommendation as to the
94 legal action that the chief inspector considers proper, whether criminal prosecution or civil action
95 to effect restitution, or both.

96 (n) If the proper legal authority or prosecuting attorney, within nine months of receipt of
 97 the certified audit report and recommendations, refuses, neglects or fails to take efficient legal
 98 action by a civil suit to effect restitution or by prosecuting criminal proceedings to a final
 99 conclusion, in accordance with the recommendations, the chief inspector may institute the
 100 necessary proceedings or participate therein and prosecute the proceedings in any court of the
 101 state to a final conclusion.

102 (o) A local government that is not a ~~county~~ school district board of education may elect,
 103 by May 1 of the fiscal year to be audited, to have its annual examination performed by a certified
 104 public accountant approved by the chief inspector to perform the examinations. When this election
 105 is made, a copy of the order of the governing body making the election shall be filed with the chief
 106 inspector. An electing local government is allowed to contract with any certified public accountant
 107 on the chief inspector's then current list of approved certified public accountants, unless the
 108 prosecuting attorney of the county in which the local government is located timely submits to the
 109 chief inspector a written request for the examination to be performed by the chief inspector or a
 110 person appointed by the chief inspector, or the chief inspector determines that a special or
 111 unusual situation exists: *Provided*, That the audit of a local government may be performed by the
 112 chief inspector at his or her discretion. The local government shall follow the audit bid procurement
 113 procedures established by the chief inspector in obtaining the audit: *Provided, however*, That the
 114 chief inspector may elect to conduct the audit of a local unit of government with one or more
 115 members of his or her audit staff where, in the opinion of the chief inspector, a special or unusual
 116 situation exists.

**§6-9-11. Transfer of certain powers and duties of Tax Commissioner to State Auditor; rules;
 interagency agreement; report to Legislature.**

1 (a) Effective July 1, 1999, the State Auditor shall be the chief inspector and supervisor of
 2 local government offices. For the purposes of this section and any section of this code relating to
 3 the chief inspector, "local government office" means any unit of local government within the state,

4 including a county, ~~county~~ school district board of education, municipality, and any other authority,
5 board, commission, district, office, public authority, public corporation or other instrumentality of
6 a county, ~~county~~ school district board of education or municipality or any combination of two or
7 more local governments.

8 The State Auditor shall assume and perform those duties previously vested in the Tax
9 Commissioner under this section and any section of this code relating to the chief inspector, which
10 sections are identified in subsection (d) of this section, pertaining to:

11 (1) Making annual or special financial and compliance examinations or audits of local
12 government offices;

13 (2) Providing annual training to county officials pertaining to their work: *Provided*, That this
14 annual training may not include matters directly or indirectly pertaining to determining the
15 appraised or assessed value of property or equalization of assessed values of property for ad
16 valorem property tax purposes;

17 (3) Reviewing and approving annual budgets and changes in budgets during the fiscal
18 year; and

19 (4) Approving proposed levy rates, whether regular or special.

20 (b) Effective July 1, 1999, all records, property of whatever kind and character, including,
21 but not limited to, current office space occupied by the chief inspector division of the Tax Division,
22 all personnel in positions assigned to the chief inspector division and the fund established in
23 section eight of this article shall be transferred to the State Auditor.

24 (c) The State Auditor shall propose rules for legislative approval in accordance with the
25 provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this
26 section and any section of this code relating to the chief inspector.

27 (d) Notwithstanding any provision of this code to the contrary, after June 30, 1999,
28 whenever the words "Tax Commissioner" or "State Tax Commissioner" appear in the following
29 subsections, sections or articles of this code, these words shall mean the "State Auditor in his or

30 her capacity as the chief inspector and supervisor of local government offices": Article nine,
31 chapter six; section nine, article one, chapter seven; sections sixteen and eighteen, article five of
32 chapter seven; sections two, three, four and seventeen, article seven of chapter seven; section
33 twelve, article twelve of chapter seven; section nine, article thirteen of chapter seven; section
34 seventeen, article seventeen of chapter seven; section sixteen, article eight of chapter eight;
35 sections seven, eighteen, nineteen and twenty-three, article thirteen of chapter eight; section
36 seven, article sixteen of chapter eight; section four, article twenty-three of chapter eight; section
37 sixteen, article twenty-nine of chapter eight; section four, article twenty-nine-a of chapter eight;
38 section two, article thirty-two of chapter eight; section eight, article thirty-three of chapter eight;
39 section six, article one of chapter ten; sections six-b, six-c, seven, eight, ten, ten-a, eleven, twelve,
40 twelve-a, thirteen, fourteen, fourteen-a, fifteen, eighteen, twenty, twenty-one, twenty-three,
41 twenty-four, twenty-five-a, twenty-six-a and thirty, article eight of chapter eleven; subsections (i)
42 and (j), section five-a and subsections (i) and (j), section six, article thirteen-a of chapter eleven;
43 sections eight, twelve and thirteen, article one of chapter eleven-a; section eleven, article two of
44 chapter eleven-a; sections fourteen, thirty-two and sixty-four, article three of chapter eleven-a;
45 section twenty, article three of chapter twelve; section five, article four of chapter twelve; section
46 twenty, article one of chapter thirteen; section twenty-five, article two of chapter eighteen; section
47 three-a, article nine of chapter eighteen; sections one, three, six, nine, twelve and thirteen, article
48 nine-b of chapter eighteen; section five, article nine-d of chapter eighteen; section thirteen-b,
49 article twenty-one-a of chapter nineteen; section eight, article two of chapter twenty-four; section
50 nineteen, article twenty-one of chapter twenty-nine; section twenty, article one of chapter fifty-two;
51 and section thirty, article one of chapter fifty-nine, all of this code.

52 (e) On or before July 1, 1999, the State Auditor and the State Tax Commissioner shall file
53 with the Governor, the President of the Senate and the Speaker of the House of Delegates, an
54 interagency agreement clarifying transition procedures and respective powers of the Auditor and
55 Tax Commissioner. A copy of the interagency agreement shall be filed with the Secretary of State,

56 and shall be a public record.

57 (f) On or before December 1, 1999, the State Auditor and the State Tax Commissioner
58 shall jointly report to the Legislature as to any conflicts in this code created by the enactment of
59 this section for which legislation is recommended for enactment during the 2000 regular session.

CHAPTER 6B. PUBLIC OFFICERS AND EMPLOYEES; ETHICS;

CONFLICTS OF INTEREST; FINANCIAL DISCLOSURE.

ARTICLE 1. SHORT TITLE; LEGISLATIVE FINDINGS, PURPOSES AND INTENT;

CONSTRUCTION AND APPLICATION OF CHAPTER; SEVERABILITY.

§6B-1-3. Definitions.

1 As used in this chapter, unless the context in which used clearly requires otherwise:

2 (a) "Review Board" means the Probable Cause Review Board created by section two-a,
3 article two of this chapter.

4 (b) "Business" means any entity through which business for-profit is conducted including
5 a corporation, partnership, proprietorship, franchise, association, organization or self-employed
6 individual.

7 (c) "Compensation" means money, thing of value or financial benefit. The term
8 "compensation" does not include reimbursement for actual reasonable and necessary expenses
9 incurred in the performance of one's official duties.

10 (d) "Employee" means any person in the service of another under any contract of hire,
11 whether express or implied, oral or written, where the employer or an agent of the employer or a
12 public official has the right or power to control and direct such person in the material details of
13 how work is to be performed and who is not responsible for the making of policy nor for
14 recommending official action.

15 (e) "Ethics Commission" or "commission" means the West Virginia Ethics Commission.

16 (f) "Immediate family", with respect to an individual, means a spouse with whom the

17 individual is living as husband and wife and any dependent child or children, dependent grandchild
18 or grandchildren and dependent parent or parents.

19 (g) "Ministerial functions" means actions or functions performed by an individual under a
20 given state of facts in a prescribed manner in accordance with a mandate of legal authority,
21 without regard to, or without the exercise of, the individual's own judgment as to the propriety of
22 the action being taken.

23 (h) "Person" means an individual, corporation, business entity, labor union, association,
24 firm, partnership, limited partnership, committee, club or other organization or group of persons,
25 irrespective of the denomination given such organization or group.

26 (i) "Political contribution" means and has the same definition as is given that term under
27 the provisions of article eight, chapter three of this code.

28 (j) "Public employee" means any full-time or part-time employee of any state, county or
29 municipal governmental body or any political subdivision thereof, including ~~county~~ school district
30 boards.

31 (k) "Public official" means any person who is elected or appointed to any state, county or
32 municipal office or position and who is responsible for the making of policy or takes official action
33 which is either ministerial or nonministerial, or both, with respect to: (1) Contracting for, or
34 procurement of, goods or services; (2) administering or monitoring grants or subsidies; (3)
35 planning or zoning; (4) inspecting, licensing, regulating or auditing any person; or (5) any other
36 activity where the official action has an economic impact of greater than a de minimis nature on
37 the interest or interests of any person.

38 (l) "Relative" means spouse, mother, father, sister, brother, son, daughter, grandmother,
39 grandfather, grandchild, mother-in-law, father-in-law, sister-in-law, brother-in-law, son-in-law or
40 daughter-in-law.

41 (m) "Respondent" means a person who is the subject of an investigation by the
42 commission or against whom a complaint has been filed with the commission.

43 (n) "Thing of value", "other thing of value" or "anything of value" means and includes: (1)
44 Money, bank bills or notes, United States treasury notes and other bills, bonds or notes issued by
45 lawful authority and intended to pass and circulate as money; (2) goods and chattels; (3)
46 promissory notes, bills of exchange, orders, drafts, warrants, checks, bonds given for the payment
47 of money or the forbearance of money due or owing; (4) receipts given for the payment of money
48 or other property; (5) any right or chose in action; (6) chattels real or personal or things which
49 savor of realty and are, at the time taken, a part of a freehold, whether they are of the substance
50 or produce thereof or affixed thereto, although there may be no interval between the severing and
51 the taking away thereof; (7) any interest in realty, including, but not limited to, fee simple estates,
52 life estates, estates for a term or period of time, joint tenancies, cotenancies, tenancies in
53 common, partial interests, present or future interests, contingent or vested interests, beneficial
54 interests, leasehold interests or any other interest or interests in realty of whatsoever nature; (8)
55 any promise of employment, present or future; (9) donation or gift; (10) rendering of services or
56 the payment thereof; (11) any advance or pledge; (12) a promise of present or future interest in
57 any business or contract or other agreement; or (13) every other thing or item, whether tangible
58 or intangible, having economic worth. "Thing of value", "other thing of value" or "anything of value"
59 shall not include anything which is de minimis in nature nor a lawful political contribution reported
60 as required by law.

**ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND DUTIES;
DISCLOSURE OF FINANCIAL INTEREST BY PUBLIC OFFICIALS AND
EMPLOYEES; APPEARANCES BEFORE PUBLIC AGENCIES; CODE OF
CONDUCT FOR ADMINISTRATIVE LAW JUDGES.**

**§6B-2-1. West Virginia Ethics Commission created; members; appointment, term of office
and oath; compensation and reimbursement for expenses; meetings and quorum.**

1 (a) The West Virginia Ethics Commission is continued. The members of the commission

2 shall be appointed by the Governor with the advice and consent of the Senate.

3 (b) No person may be appointed to the commission or continue to serve as a member of
4 the commission who:

5 (1) Holds elected or appointed office under the government of the United States, the State
6 of West Virginia or any of its political subdivisions;

7 (2) Is a candidate for any political office;

8 (3) Is otherwise subject to the provisions of this chapter other than by reason of his or her
9 appointment to or service on the commission; or

10 (4) Holds any political party office or participates in a campaign relating to a referendum
11 or other ballot issue: *Provided*, That a member may contribute to a political campaign.

12 (c) Commencing July 1, 2014, the Ethics Commission shall consist of the following nine
13 members, appointed with staggered terms:

14 (1) One member who served as a member of the West Virginia Legislature;

15 (2) One member who served as an elected or appointed county official;

16 (3) One member who served as an elected or appointed municipal official;

17 (4) One member who served as an elected county school board member or school district
18 board member;

19 (5) One member from a rural area; and

20 (6) Four citizen members.

21 (d) Any Commission member in office on June 30, 2014, who meets one of the categories
22 for membership set out in subsection (c) of this section, may be reappointed. No more than five
23 members of the Commission shall be of the same political party and no more than four members
24 shall be from the same congressional district.

25 (e) After the initial staggered terms, the term of office for a Commission member is five
26 years. No member shall serve more than two consecutive full or partial terms. No person may be
27 reappointed to the commission until at least two years have elapsed after the completion of the

28 second consecutive term. A member may continue to serve until a successor has been appointed
29 and qualified.

30 (f) All appointments shall be made by the Governor in a timely manner so as not to create
31 a vacancy for longer than sixty days.

32 (g) Each member must be a resident of this state during the appointment term.

33 (h) Five members of the commission constitutes a quorum.

34 (i) Each member of the commission shall take and subscribe to the oath or affirmation
35 required pursuant to section five, article IV of the Constitution of West Virginia.

36 (j) A member may be removed by the Governor for substantial neglect of duty, gross
37 misconduct in office or a violation of this chapter, after written notice and opportunity for reply.

38 (k) The commission, as appointed on July 1, 2014, shall meet before August 1, 2014, at a
39 time and place to be determined by the Governor, who shall designate a member to preside at
40 that meeting until a chairperson is elected. At the first meeting, the commission shall elect a
41 chairperson and any other officers as are necessary. The commission shall within ninety days
42 after the first meeting adopt rules for its procedures. The commission may use the rules in place
43 on July 1, 2014, until those rules are amended or revoked.

44 (l) Members of the commission shall receive the same compensation and expense
45 reimbursement as is paid to members of the Legislature for their interim duties as recommended
46 by the Citizens Legislative Compensation Commission and authorized by law for each day or
47 portion thereof engaged in the discharge of official duties: *Provided*, That to be eligible for
48 compensation and expense reimbursement, the member must participate in a meeting or
49 adjudicatory session: *Provided, however*, That the member is not eligible for expense
50 reimbursement if he or she does not attend a meeting or adjudicatory session in person.

51 (m) The commission shall appoint an executive director to assist the commission in
52 carrying out its functions in accordance with commission rules and with applicable law. The
53 executive director shall be paid a salary fixed by the commission or as otherwise provided by law.

54 The commission shall appoint and discharge counsel and employees and shall fix the
55 compensation of employees and prescribe their duties. Counsel to the commission shall advise
56 the commission on all legal matters and on the instruction of the commission may commence
57 appropriate civil actions: *Provided*, That no counsel shall both advise the commission and act in
58 a representative capacity in any proceeding.

59 (n) The commission may delegate authority to the chairperson or the executive director to
60 act in the name of the commission between meetings of the commission, except that the
61 commission shall not delegate the power to hold hearings and determine violations to the
62 chairperson or the executive director.

63 (o) The principal office of the commission shall be in the seat of government, but it or its
64 designated subcommittees may meet and exercise its power at any other place in the state.
65 Meetings of the commission shall be public unless:

66 (1) They are required to be private by the provisions of this chapter relating to
67 confidentiality; or

68 (2) They involve discussions of commission personnel, planned or ongoing litigation, and
69 planned or ongoing investigations.

70 (p) Meetings of the commission shall be upon the call of the chairperson and may be
71 conducted by telephonic or other electronic conferencing means: *Provided*, That telephone or
72 other electronic conferencing, and voting are not permitted when the commission is acting as a
73 hearing board under this article, or when the Probable Cause Review Board meets to receive an
74 oral response as authorized by this article. Members shall be given notice of meetings held by
75 telephone or other electronic conferencing in the same manner as meetings at which the
76 members are required to attend in person. Telephone or other electronic conferences shall be
77 electronically recorded and the recordings shall be retained by the commission in accordance
78 with its record retention policy.

§6B-2-5. Ethical standards for elected and appointed officials and public employees.

1 (a) *Persons subject to section.* -- The provisions of this section apply to all elected and
2 appointed public officials and public employees, whether full or part time, in state, county,
3 municipal governments and their respective boards, agencies, departments and commissions
4 and in any other regional or local governmental agency, including ~~county~~ school district boards.

5 (b) *Use of public office for private gain.* -- (1) A public official or public employee may not
6 knowingly and intentionally use his or her office or the prestige of his or her office for his or her
7 own private gain or that of another person. Incidental use of equipment or resources available to
8 a public official or public employee by virtue of his or her position for personal or business
9 purposes resulting in de minimis private gain does not constitute use of public office for private
10 gain under this subsection. The performance of usual and customary duties associated with the
11 office or position or the advancement of public policy goals or constituent services, without
12 compensation, does not constitute the use of prestige of office for private gain.

13 (2) Notwithstanding the general prohibition against use of office for private gain, public
14 officials and public employees may use bonus points acquired through participation in frequent
15 traveler programs while traveling on official government business: *Provided*, That the official's or
16 employee's participation in such program, or acquisition of such points, does not result in
17 additional costs to the government.

18 (3) The Legislature, in enacting this subsection, recognizes that there may be certain
19 public officials or public employees who bring to their respective offices or employment their own
20 unique personal prestige which is based upon their intelligence, education, experience, skills and
21 abilities, or other personal gifts or traits. In many cases, these persons bring a personal prestige
22 to their office or employment which inures to the benefit of the state and its citizens. Those
23 persons may, in fact, be sought by the state to serve in their office or employment because,
24 through their unusual gifts or traits, they bring stature and recognition to their office or employment
25 and to the state itself. While the office or employment held or to be held by those persons may
26 have its own inherent prestige, it would be unfair to those individuals and against the best interests

27 of the citizens of this state to deny those persons the right to hold public office or to be publicly
28 employed on the grounds that they would, in addition to the emoluments of their office or
29 employment, be in a position to benefit financially from the personal prestige which otherwise
30 inheres to them. Accordingly, the commission is directed, by legislative rule, to establish
31 categories of public officials and public employees, identifying them generally by the office or
32 employment held, and offering persons who fit within those categories the opportunity to apply for
33 an exemption from the application of the provisions of this subsection. Exemptions may be
34 granted by the commission, on a case-by-case basis, when it is shown that: (A) The public office
35 held or the public employment engaged in is not such that it would ordinarily be available or
36 offered to a substantial number of the citizens of this state; (B) the office held or the employment
37 engaged in is such that it normally or specifically requires a person who possesses personal
38 prestige; and (C) the person's employment contract or letter of appointment provides or
39 anticipates that the person will gain financially from activities which are not a part of his or her
40 office or employment.

41 (c) *Gifts.* -- (1) A public official or public employee may not solicit any gift unless the
42 solicitation is for a charitable purpose with no resulting direct pecuniary benefit conferred upon
43 the official or employee or his or her immediate family: *Provided,* That no public official or public
44 employee may solicit for a charitable purpose any gift from any person who is also an official or
45 employee of the state and whose position is subordinate to the soliciting official or employee:
46 *Provided, however,* That nothing herein shall prohibit a candidate for public office from soliciting
47 a lawful political contribution. No official or employee may knowingly accept any gift, directly or
48 indirectly, from a lobbyist or from any person whom the official or employee knows or has reason
49 to know:

50 (A) Is doing or seeking to do business of any kind with his or her agency;

51 (B) Is engaged in activities which are regulated or controlled by his or her agency; or

52 (C) Has financial interests which may be substantially and materially affected, in a manner

53 distinguishable from the public generally, by the performance or nonperformance of his or her
54 official duties.

55 (2) Notwithstanding the provisions of subdivision (1) of this subsection, a person who is a
56 public official or public employee may accept a gift described in this subdivision, and there shall
57 be a presumption that the receipt of such gift does not impair the impartiality and independent
58 judgment of the person. This presumption may be rebutted only by direct objective evidence that
59 the gift did impair the impartiality and independent judgment of the person or that the person knew
60 or had reason to know that the gift was offered with the intent to impair his or her impartiality and
61 independent judgment. The provisions of subdivision (1) of this subsection do not apply to:

62 (A) Meals and beverages;

63 (B) Ceremonial gifts or awards which have insignificant monetary value;

64 (C) Unsolicited gifts of nominal value or trivial items of informational value;

65 (D) Reasonable expenses for food, travel and lodging of the official or employee for a
66 meeting at which the official or employee participates in a panel or has a speaking engagement;

67 (E) Gifts of tickets or free admission extended to a public official or public employee to
68 attend charitable, cultural or political events, if the purpose of such gift or admission is a courtesy
69 or ceremony customarily extended to the office;

70 (F) Gifts that are purely private and personal in nature; or

71 (G) Gifts from relatives by blood or marriage, or a member of the same household.

72 (3) The commission shall, through legislative rule promulgated pursuant to chapter twenty-
73 nine-a of this code, establish guidelines for the acceptance of a reasonable honorarium by public
74 officials and elected officials. The rule promulgated shall be consistent with this section. Any
75 elected public official may accept an honorarium only when:

76 (A) That official is a part-time elected public official;

77 (B) The fee is not related to the official's public position or duties;

78 (C) The fee is for services provided by the public official that are related to the public

79 official's regular, nonpublic trade, profession, occupation, hobby or avocation; and

80 (D) The honorarium is not provided in exchange for any promise or action on the part of
81 the public official.

82 (4) Nothing in this section shall be construed so as to prohibit the giving of a lawful political
83 contribution as defined by law.

84 (5) The Governor or his designee may, in the name of the State of West Virginia, accept
85 and receive gifts from any public or private source. Any gift so obtained shall become the property
86 of the state and shall, within thirty days of the receipt thereof, be registered with the commission
87 and the Division of Culture and History.

88 (6) Upon prior approval of the Joint Committee on Government and Finance, any member
89 of the Legislature may solicit donations for a regional or national legislative organization
90 conference or other legislative organization function to be held in the state for the purpose of
91 deferring costs to the state for hosting of the conference or function. Legislative organizations are
92 bipartisan regional or national organizations in which the Joint Committee on Government and
93 Finance authorizes payment of dues or other membership fees for the Legislature's participation
94 and which assist this and other State Legislatures and their staff through any of the following:

95 (A) Advancing the effectiveness, independence and integrity of Legislatures in the states
96 of the United States;

97 (B) Fostering interstate cooperation and facilitating information exchange among State
98 Legislatures;

99 (C) Representing the states and their Legislatures in the American federal system of
100 government;

101 (D) Improving the operations and management of State Legislatures and the effectiveness
102 of legislators and legislative staff, and to encourage the practice of high standards of conduct by
103 legislators and legislative staff;

104 (E) Promoting cooperation between State Legislatures in the United States and

105 Legislatures in other countries.

106 The solicitations may only be made in writing. The legislative organization may act as
107 fiscal agent for the conference and receive all donations. In the alternative, a bona fide banking
108 institution may act as the fiscal agent. The official letterhead of the Legislature may not be used
109 by the legislative member in conjunction with the fund raising or solicitation effort. The legislative
110 organization for which solicitations are being made shall file with the Joint Committee on
111 Government and Finance and with the Secretary of State for publication in the state Register as
112 provided in article two of chapter twenty-nine-a of the code, copies of letters, brochures and other
113 solicitation documents, along with a complete list of the names and last known addresses of all
114 donors and the amount of donations received. Any solicitation by a legislative member shall
115 contain the following disclaimer:

116 "This solicitation is endorsed by [name of member]. This endorsement does not imply
117 support of the soliciting organization, nor of the sponsors who may respond to the solicitation. A
118 copy of all solicitations are on file with the West Virginia Legislature's Joint Committee on
119 Government and Finance, and with the Secretary of State and are available for public review."

120 (7) Upon written notice to the commission, any member of the board of Public Works may
121 solicit donations for a regional or national organization conference or other function related to the
122 office of the member to be held in the state for the purpose of deferring costs to the state for
123 hosting of the conference or function. The solicitations may only be made in writing. The
124 organization may act as fiscal agent for the conference and receive all donations. In the
125 alternative, a bona fide banking institution may act as the fiscal agent. The official letterhead of
126 the office of the board of Public Works member may not be used in conjunction with the fund
127 raising or solicitation effort. The organization for which solicitations are being made shall file with
128 the Joint Committee on Government and Finance, with the Secretary of State for publication in
129 the state Register as provided in article two of chapter twenty-nine-a of the code and with the
130 commission, copies of letters, brochures and other solicitation documents, along with a complete

131 list of the names and last known addresses of all donors and the amount of donations received.
132 Any solicitation by a member of the board of Public Works shall contain the following disclaimer:
133 "This solicitation is endorsed by (name of member of Board of Public Works.) This endorsement
134 does not imply support of the soliciting organization, nor of the sponsors who may respond to the
135 solicitation. Copies of all solicitations are on file with the West Virginia Legislature's Joint
136 Committee on Government and Finance, with the West Virginia Secretary of State and with the
137 West Virginia Ethics Commission and are available for public review." Any moneys in excess of
138 those donations needed for the conference or function shall be deposited in the Capitol Dome
139 and Capitol Improvement Fund established in section two, article four of chapter five-a of this
140 code.

141 (d) *Interests in public contracts.* --

142 (1) In addition to the provisions of section fifteen, article ten, chapter sixty-one of this code,
143 no elected or appointed public official or public employee or member of his or her immediate
144 family or business with which he or she is associated may be a party to or have an interest in the
145 profits or benefits of a contract which the official or employee may have direct authority to enter
146 into, or over which he or she may have control: *Provided*, That nothing herein shall be construed
147 to prevent or make unlawful the employment of any person with any governmental body:
148 *Provided, however*, That nothing herein shall be construed to prohibit a member of the Legislature
149 from entering into a contract with any governmental body, or prohibit a part-time appointed public
150 official from entering into a contract which the part-time appointed public official may have direct
151 authority to enter into or over which he or she may have control when the official has not
152 participated in the review or evaluation thereof, has been recused from deciding or evaluating and
153 has been excused from voting on the contract and has fully disclosed the extent of his or her
154 interest in the contract.

155 (2) In the absence of bribery or a purpose to defraud, an elected or appointed public official
156 or public employee or a member of his or her immediate family or a business with which he or

157 she is associated shall not be considered as having a prohibited financial interest in a public
158 contract when such a person has a limited interest as an owner, shareholder or creditor of the
159 business which is awarded a public contract. A limited interest for the purposes of this subsection
160 is:

161 (A) An interest which does not exceed \$1,000 in the profits or benefits of the public contract
162 or contracts in a calendar year;

163 (B) An interest as a creditor of a public employee or official who exercises control over the
164 contract, or a member of his or her immediate family, if the amount is less than \$5,000.

165 (3) If a public official or employee has an interest in the profits or benefits of a contract,
166 then he or she may not make, participate in making, or in any way attempt to use his office or
167 employment to influence a government decision affecting his or her financial or limited financial
168 interest. Public officials shall also comply with the voting rules prescribed in subsection (j) of this
169 section.

170 (4) Where the provisions of subdivisions (1) and (2) of this subsection would result in the
171 loss of a quorum in a public body or agency, in excessive cost, undue hardship, or other
172 substantial interference with the operation of a state, county, municipality, ~~county~~-school district
173 board or other governmental agency, the affected governmental body or agency may make
174 written application to the Ethics Commission for an exemption from subdivisions (1) and (2) of
175 this subsection.

176 (e) *Confidential information.* -- No present or former public official or employee may
177 knowingly and improperly disclose any confidential information acquired by him or her in the
178 course of his or her official duties nor use such information to further his or her personal interests
179 or the interests of another person.

180 (f) *Prohibited representation.* -- No present or former elected or appointed public official or
181 public employee shall, during or after his or her public employment or service, represent a client
182 or act in a representative capacity with or without compensation on behalf of any person in a

183 contested case, rate-making proceeding, license or permit application, regulation filing or other
184 particular matter involving a specific party or parties which arose during his or her period of public
185 service or employment and in which he or she personally and substantially participated in a
186 decision-making, advisory or staff support capacity, unless the appropriate government agency,
187 after consultation, consents to such representation. A staff attorney, accountant or other
188 professional employee who has represented a government agency in a particular matter shall not
189 thereafter represent another client in the same or substantially related matter in which that client's
190 interests are materially adverse to the interests of the government agency, without the consent of
191 the government agency: *Provided*, That this prohibition on representation shall not apply when
192 the client was not directly involved in the particular matter in which the professional employee
193 represented the government agency, but was involved only as a member of a class. The
194 provisions of this subsection shall not apply to legislators who were in office and legislative staff
195 who were employed at the time it originally became effective on July 1, 1989, and those who have
196 since become legislators or legislative staff and those who shall serve hereafter as legislators or
197 legislative staff.

198 (g) *Limitation on practice before a board, agency, commission or department.* -- Except as
199 otherwise provided in section three, four or five, article two, chapter eight-a of this code: (1) No
200 elected or appointed public official and no full-time staff attorney or accountant shall, during his
201 or her public service or public employment or for a period of one year after the termination of his
202 or her public service or public employment with a governmental entity authorized to hear
203 contested cases or promulgate or propose rules, appear in a representative capacity before the
204 governmental entity in which he or she serves or served or is or was employed in the following
205 matters:

- 206 (A) A contested case involving an administrative sanction, action or refusal to act;
207 (B) To support or oppose a proposed rule;
208 (C) To support or contest the issuance or denial of a license or permit;

209 (D) A rate-making proceeding; and

210 (E) To influence the expenditure of public funds.

211 (2) As used in this subsection, "represent" includes any formal or informal appearance
212 before, or any written or oral communication with, any public agency on behalf of any person:
213 *Provided*, That nothing contained in this subsection shall prohibit, during any period, a former
214 public official or employee from being retained by or employed to represent, assist or act in a
215 representative capacity on behalf of the public agency by which he or she was employed or in
216 which he or she served. Nothing in this subsection shall be construed to prevent a former public
217 official or employee from representing another state, county, municipal or other governmental
218 entity before the governmental entity in which he or she served or was employed within one year
219 after the termination of his or her employment or service in the entity.

220 (3) A present or former public official or employee may appear at any time in a
221 representative capacity before the Legislature, a county commission, city or town council or
222 ~~county~~ school district board in relation to the consideration of a statute, budget, ordinance, rule,
223 resolution or enactment.

224 (4) Members and former members of the Legislature and professional employees and
225 former professional employees of the Legislature shall be permitted to appear in a representative
226 capacity on behalf of clients before any governmental agency of the state or of county or municipal
227 governments, including ~~county~~ school district school boards.

228 (5) An elected or appointed public official, full-time staff attorney or accountant who would
229 be adversely affected by the provisions of this subsection may apply to the Ethics Commission
230 for an exemption from the one year prohibition against appearing in a representative capacity,
231 when the person's education and experience is such that the prohibition would, for all practical
232 purposes, deprive the person of the ability to earn a livelihood in this state outside of the
233 governmental agency. The Ethics Commission shall by legislative rule establish general
234 guidelines or standards for granting an exemption or reducing the time period, but shall decide

235 each application on a case-by-case basis.

236 (h) *Employment by regulated persons and vendors.* -- (1) No full-time official or full-time
237 public employee may seek employment with, be employed by, or seek to purchase, sell or lease
238 real or personal property to or from any person who:

239 (A) Had a matter on which he or she took, or a subordinate is known to have taken,
240 regulatory action within the preceding twelve months; or

241 (B) Has a matter before the agency on which he or she is working or a subordinate is
242 known by him or her to be working.

243 (C) Is a vendor to the agency where the official serves or public employee is employed
244 and the official or public employee, or a subordinate of the official or public employee, exercises
245 authority or control over a public contract with such vendor, including, but not limited to:

246 (i) Drafting bid specifications or requests for proposals;

247 (ii) Recommending selection of the vendor;

248 (iii) Conducting inspections or investigations;

249 (iv) Approving the method or manner of payment to the vendor;

250 (v) Providing legal or technical guidance on the formation, implementation or execution of
251 the contract; or

252 (vi) Taking other nonministerial action which may affect the financial interests of the
253 vendor.

254 (2) Within the meaning of this section, the term "employment" includes professional
255 services and other services rendered by the public official or public employee, whether rendered
256 as employee or as an independent contractor; "seek employment" includes responding to
257 unsolicited offers of employment as well as any direct or indirect contact with a potential employer
258 relating to the availability or conditions of employment in furtherance of obtaining employment;
259 and "subordinate" includes only those agency personnel over whom the public official or public
260 employee has supervisory responsibility.

261 (3) A full-time public official or full-time public employee who would be adversely affected
262 by the provisions of this subsection may apply to the Ethics Commission for an exemption from
263 the prohibition contained in subdivision (1) of this subsection.

264 (A) The Ethics Commission shall by legislative rule establish general guidelines or
265 standards for granting an exemption, but shall decide each application on a case-by-case basis;

266 (B) A person adversely affected by the restriction on the purchase of personal property
267 may make such purchase after seeking and obtaining approval from the commission or in good
268 faith reliance upon an official guideline promulgated by the commission, written advisory opinions
269 issued by the commission, or a legislative rule.

270 (C) The commission may establish exceptions to the personal property purchase
271 restrictions through the adoption of guidelines, advisory opinions or legislative rule.

272 (4) A full-time public official or full-time public employee may not take personal regulatory
273 action on a matter affecting a person by whom he or she is employed or with whom he or she is
274 seeking employment or has an agreement concerning future employment.

275 (5) A full-time public official or full-time public employee may not personally participate in
276 a decision, approval, disapproval, recommendation, rendering advice, investigation, inspection or
277 other substantial exercise of nonministerial administrative discretion involving a vendor with whom
278 he or she is seeking employment or has an agreement concerning future employment.

279 (6) A full-time public official or full-time public employee may not receive private
280 compensation for providing information or services that he or she is required to provide in carrying
281 out his or her public job responsibilities.

282 (i) *Members of the Legislature required to vote.* -- Members of the Legislature who have
283 asked to be excused from voting or who have made inquiry as to whether they should be excused
284 from voting on a particular matter and who are required by the presiding officer of the House of
285 Delegates or Senate of West Virginia to vote under the rules of the particular house shall not be
286 guilty of any violation of ethics under the provisions of this section for a vote so cast.

287 (j) *Limitations on voting.* --

288 (1) Public officials, excluding members of the Legislature who are governed by subsection

289 (i) of this section, may not vote on a matter:

290 (A) In which they, an immediate family member, or a business with which they or an
291 immediate family member is associated have a financial interest. Business with which they are
292 associated means a business of which the person or an immediate family member is a director,
293 officer, owner, employee, compensated agent, or holder of stock which constitutes five percent
294 or more of the total outstanding stocks of any class.

295 (B) If a public official is employed by a financial institution and his or her primary
296 responsibilities include consumer and commercial lending, the public official may not vote on a
297 matter which directly affects the financial interests of a customer of the financial institution if the
298 public official is directly involved in approving a loan request from the person or business
299 appearing before the governmental body or if the public official has been directly involved in
300 approving a loan for that person or business within the past 12 months: *Provided*, That this
301 limitation only applies if the total amount of the loan or loans exceeds \$15,000.

302 (C) A personnel matter involving the public official's spouse or relative;

303 (D) The appropriations of public moneys or the awarding of a contract to a nonprofit
304 corporation if the public official or an immediate family member is employed by the nonprofit.

305 (II) A public official may vote:

306 (A) If the public official, his or her spouse, immediate family members or relatives or
307 business with which they are associated are affected as a member of, and to no greater extent
308 than any other member of a profession, occupation, class of persons or class of businesses. A
309 class shall consist of not fewer than five similarly situated persons or businesses; or

310 (B) If the matter affects a publicly traded company when:

311 (i) The public official, or dependent family members individually or jointly own less than
312 five percent of the issued stock in the publicly traded company and the value of the stocks

313 individually or jointly owned is less than \$10,000; and

314 (ii) Prior to casting a vote the public official discloses his or her interest in the publicly
315 traded company.

316 (3) For a public official's recusal to be effective, it is necessary to excuse him or herself
317 from participating in the discussion and decision-making process by physically removing him or
318 herself from the room during the period, fully disclosing his or her interests, and recusing him or
319 herself from voting on the issue.

320 (k) *Limitations on participation in licensing and rate-making proceedings.* -- No public
321 official or employee may participate within the scope of his or her duties as a public official or
322 employee, except through ministerial functions as defined in section three, article one of this
323 chapter, in any license or rate-making proceeding that directly affects the license or rates of any
324 person, partnership, trust, business trust, corporation or association in which the public official or
325 employee or his or her immediate family owns or controls more than ten percent. No public official
326 or public employee may participate within the scope of his or her duties as a public official or
327 public employee, except through ministerial functions as defined in section three, article one of
328 this chapter, in any license or rate-making proceeding that directly affects the license or rates of
329 any person to whom the public official or public employee or his or her immediate family, or a
330 partnership, trust, business trust, corporation or association of which the public official or
331 employee, or his or her immediate family, owns or controls more than ten percent, has sold goods
332 or services totaling more than \$1,000 during the preceding year, unless the public official or public
333 employee has filed a written statement acknowledging such sale with the public agency and the
334 statement is entered in any public record of the agency's proceedings. This subsection shall not
335 be construed to require the disclosure of clients of attorneys or of patients or clients of persons
336 licensed pursuant to article three, eight, fourteen, fourteen-a, fifteen, sixteen, twenty, twenty-one
337 or thirty-one, chapter thirty of this code.

338 (l) *Certain compensation prohibited.* -- (1) A public employee may not receive additional

339 compensation from another publicly-funded state, county or municipal office or employment for
340 working the same hours, unless:

341 (A) The public employee's compensation from one public employer is reduced by the
342 amount of compensation received from the other public employer;

343 (B) The public employee's compensation from one public employer is reduced on a pro
344 rata basis for any work time missed to perform duties for the other public employer;

345 (C) The public employee uses earned paid vacation, personal or compensatory time or
346 takes unpaid leave from his or her public employment to perform the duties of another public office
347 or employment; or

348 (D) A part-time public employee who does not have regularly scheduled work hours or a
349 public employee who is authorized by one public employer to make up, outside of regularly
350 scheduled work hours, time missed to perform the duties of another public office or employment
351 maintains time records, verified by the public employee and his or her immediate supervisor at
352 least once every pay period, showing the hours that the public employee did, in fact, work for
353 each public employer. The public employer shall submit these time records to the Ethics
354 Commission on a quarterly basis.

355 (2) This section does not prohibit a retired public official or public employee from receiving
356 compensation from a publicly-funded office or employment in addition to any retirement benefits
357 to which the retired public official or public employee is entitled.

358 (m) *Certain expenses prohibited.* -- No public official or public employee shall knowingly
359 request or accept from any governmental entity compensation or reimbursement for any
360 expenses actually paid by a lobbyist and required by the provisions of this chapter to be reported,
361 or actually paid by any other person.

362 (n) Any person who is employed as a member of the faculty or staff of a public institution
363 of higher education and who is engaged in teaching, research, consulting or publication activities
364 in his or her field of expertise with public or private entities and thereby derives private benefits

365 from such activities shall be exempt from the prohibitions contained in subsections (b), (c) and (d)
366 of this section when the activity is approved as a part of an employment contract with the
367 governing board of the institution or has been approved by the employee's department supervisor
368 or the president of the institution by which the faculty or staff member is employed.

369 (o) Except as provided in this section, a person who is a public official or public employee
370 may not solicit private business from a subordinate public official or public employee whom he or
371 she has the authority to direct, supervise or control. A person who is a public official or public
372 employee may solicit private business from a subordinate public official or public employee whom
373 he or she has the authority to direct, supervise or control when:

374 (A) The solicitation is a general solicitation directed to the public at large through the
375 mailing or other means of distribution of a letter, pamphlet, handbill, circular or other written or
376 printed media; or

377 (B) The solicitation is limited to the posting of a notice in a communal work area; or

378 (C) The solicitation is for the sale of property of a kind that the person is not regularly
379 engaged in selling; or

380 (D) The solicitation is made at the location of a private business owned or operated by the
381 person to which the subordinate public official or public employee has come on his or her own
382 initiative.

383 (p) The commission may, by legislative rule promulgated in accordance with chapter
384 twenty-nine-a of this code, define further exemptions from this section as necessary or
385 appropriate.

§6B-2-6. Financial disclosure statement; filing requirements.

1 (a) The financial disclosure statement shall be filed on the first day of February of each
2 calendar year to cover the period of the preceding calendar year, except insofar as may be
3 otherwise provided herein. The following persons must file the financial disclosure statement
4 required by this section with the Ethics Commission:

5 (1) All elected officials in this state, including, but not limited to, all persons elected
6 statewide, all county elected officials, municipal elected officials in municipalities which have, by
7 ordinance, opted to be covered by the disclosure provisions of this section, all members of the
8 several ~~county or~~ school district boards of education and all ~~county or district~~ school district board
9 superintendents;

10 (2) All members of state boards, commissions and agencies appointed by the governor;
11 and

12 (3) Secretaries of departments, commissioners, deputy commissioners, assistant
13 commissioners, directors, deputy directors, assistant directors, department heads, deputy
14 department heads and assistant department heads.

15 A person who is required to file a financial disclosure statement under this section by virtue
16 of becoming an elected or appointed public official whose office is described in subdivision (1),
17 (2) or (3) of this subsection, and who assumes the office less than ten days before a filing date
18 established herein or who assumes the office after the filing date, shall file a financial disclosure
19 statement for the previous twelve months no later than thirty days after the date on which the
20 person assumes the duties of the office, unless the person has filed a financial disclosure
21 statement with the commission during the twelve-month period before he or she assumed office.

22 (b) A candidate for public office shall file a financial disclosure statement for the previous
23 calendar year with the state Ethics Commission no later than ten days after he or she files a
24 certificate of candidacy, but in all circumstances, not later than ten days prior to the election,
25 unless he or she has filed a financial disclosure statement with the state Ethics Commission during
26 the previous calendar year.

27 The Ethics Commission shall file a duplicate copy of the financial disclosure statement
28 required in this section in the following offices within ten days of the receipt of the candidate's
29 statement of disclosure:

30 (1) Municipal candidates in municipalities which have opted, by ordinance, to be covered

31 by the disclosure provisions of this section, in the office of the clerk of the municipality in which
32 the candidate is seeking office;

33 (2) Legislative candidates in single county districts and candidates for a county office or
34 ~~county~~ school district board in the office of the clerk of the county commission of the county in
35 which the candidate is seeking office;

36 (3) Legislative candidates from multi-county districts and congressional candidates in the
37 office of the clerk of the county commission of the county of the candidate' residence.

38 After a ninety-day period following any election, the clerks who receive the financial
39 disclosure statements of candidates may destroy or dispose of those statements filed by
40 candidates who were unsuccessful in the election.

41 (c) No candidate for public office may maintain his or her place on a ballot and no public
42 official may take the oath of office or enter or continue upon his or her duties or receive
43 compensation from public funds unless he or she has filed a financial disclosure statement with
44 the state Ethics Commission as required by the provisions of this section.

45 (d) The Ethics Commission may, upon request of any person required to file a financial
46 disclosure statement, and for good cause shown, extend the deadline for filing such statement for
47 a reasonable period of time: *Provided*, That no extension of time shall be granted to a candidate
48 who has not filed a financial disclosure statement for the preceding filing period.

49 (e) No person shall fail to file a statement required by this section.

50 (f) No person shall knowingly file a materially false statement that is required to be filed
51 under this section.

52 (g) The Ethics Commission shall publish either on the internet or by printed document
53 made available to the public, a list of all persons who have violated any ethics commission's
54 financial disclosure statement filing deadline.

55 (h) The Ethics Commission shall, in addition to making all financial disclosure statements
56 available for inspection upon request:

57 (1) Publish on the internet all financial disclosure statements filed by members of the
 58 legislature and candidates for legislative office, elected members of the executive department and
 59 candidates for the offices that constitute the executive department, and members of the Supreme
 60 Court of Appeals and candidates for the Supreme Court of Appeals, commencing with those
 61 reports filed on or after January 1, 2012; and

62 (2) Publish on the internet all financial disclosure statements filed by any other person
 63 required to file such financial disclosure statements, as the commission determines resources are
 64 available to permit the Ethics Commission to make such publication on the internet. The
 65 commission shall redact financial disclosure statements published on the internet to exclude from
 66 publication personal information such as signatures, home addresses and mobile and home
 67 telephone numbers.

ARTICLE 3. LOBBYISTS.

§6B-3-3b. Conflict of interest.

1 A lobbyist or a lobbyist's immediate family member may not participate in any decision as
 2 a member of a state or ~~county~~ school district board, council, commission or public service district
 3 if the lobbyist may receive direct, personal economic or pecuniary benefit from a decision of that
 4 state or ~~county~~ school district board, council, commission or public service district. The lobbyist's
 5 economic or pecuniary benefit must affect him or her directly and not merely as a member of a
 6 class.

CHAPTER 6C. PUBLIC EMPLOYEES.

ARTICLE 2. WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE PROCEDURE.

§6C-2-2. Definitions.

1 For the purpose of this article and article three of this chapter:

2 (a) "Board" means the West Virginia Public Employees Grievance Board created in article
 3 three of this chapter.

4 (b) "Chief administrator" means, in the appropriate context, the commissioner, chancellor,
5 director, president, secretary or head of any state department, board, commission, agency, state
6 institution of higher education, commission or council, the state superintendent, the ~~county~~ school
7 district superintendent, the executive director of a regional educational service agency or the
8 director of a multicounty vocational center who is vested with the authority to resolve a grievance.
9 A "chief administrator" includes a designee, with the authority delegated by the chief
10 administrator, appointed to handle any aspect of the grievance procedure as established by this
11 article.

12 (c) "Days" means working days exclusive of Saturday, Sunday, official holidays and any
13 day in which the employee's workplace is legally closed under the authority of the chief
14 administrator due to weather or other cause provided for by statute, rule, policy or practice.

15 (d) "Discrimination" means any differences in the treatment of similarly situated
16 employees, unless the differences are related to the actual job responsibilities of the employees
17 or are agreed to in writing by the employees.

18 (e) (1) "Employee" means any person hired for permanent employment by an employer
19 for a probationary, full- or part-time position.

20 (2) A substitute education employee is considered an "employee" only on matters related
21 to days worked or when there is a violation, misapplication or misinterpretation of a statute, policy,
22 rule or written agreement relating to the substitute.

23 (3) "Employee" does not mean a member of the West Virginia State Police employed
24 pursuant to article two, chapter fifteen of this code, but does include civilian employees hired by
25 the superintendent of the State Police. "Employee" does not mean an employee of a
26 Constitutional officer unless he or she is covered under the civil service system, an employee of
27 the Legislature or a patient or inmate employed by a state institution.

28 (f) "Employee organization" means an employee advocacy organization with employee
29 members that has filed with the board the name, address, chief officer and membership criteria

30 of the organization.

31 (g) "Employer" means a state agency, department, board, commission, college, university,
32 institution, State Board of Education, Department of Education, ~~county~~ school district board of
33 education, regional educational service agency or multicounty vocational center, or agent thereof,
34 using the services of an employee as defined in this section.

35 (h) "Favoritism" means unfair treatment of an employee as demonstrated by preferential,
36 exceptional or advantageous treatment of a similarly situated employee unless the treatment is
37 related to the actual job responsibilities of the employee or is agreed to in writing by the employee.

38 (i) (1) "Grievance" means a claim by an employee alleging a violation, a misapplication or
39 a misinterpretation of the statutes, policies, rules or written agreements applicable to the
40 employee including:

41 (i) Any violation, misapplication or misinterpretation regarding compensation, hours, terms
42 and conditions of employment, employment status or discrimination;

43 (ii) Any discriminatory or otherwise aggrieved application of unwritten policies or practices
44 of his or her employer;

45 (iii) Any specifically identified incident of harassment;

46 (iv) Any specifically identified incident of favoritism; or

47 (v) Any action, policy or practice constituting a substantial detriment to or interference with
48 the effective job performance of the employee or the health and safety of the employee.

49 (2) "Grievance" does not mean any pension matter or other issue relating to public
50 employees insurance in accordance with article sixteen, chapter five of this code, retirement or
51 any other matter in which the authority to act is not vested with the employer.

52 (j) "Grievance proceeding", "proceeding" or the plural means a conference, level one
53 hearing, mediation, private mediation, private arbitration or level three hearing, or any
54 combination, unless the context clearly indicates otherwise.

55 (k) "Grievant" means an employee or group of similarly situated employees filing a

56 grievance.

57 (l) "Harassment" means repeated or continual disturbance, irritation or annoyance of an
58 employee that is contrary to the behavior expected by law, policy and profession.

59 (m) "Party", or the plural, means the grievant, intervenor, employer and the Director of the
60 Division of Personnel or his or her designee, for state government employee grievances. The
61 Division of Personnel shall not be a party to grievances involving higher education employees.

62 (n) "Representative" means any employee organization, fellow employee, attorney or
63 other person designated by the grievant or intervenor as his or her representative and may not
64 include a supervisor who evaluates the grievant.

65 (o) "Reprisal" means the retaliation of an employer toward a grievant, witness,
66 representative or any other participant in the grievance procedure either for an alleged injury itself
67 or any lawful attempt to redress it.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 4. PROSECUTING ATTORNEY, REWARDS AND LEGAL ADVICE.

§7-4-1. Duties of prosecuting attorney; further duties upon request of Attorney General.

1 It shall be the duty of the prosecuting attorney to attend to the criminal business of the
2 state in the county in which he or she is elected and qualified, and when ~~he~~ the prosecuting
3 attorney has information of the violation of any penal law committed within such county, ~~he~~ the
4 prosecuting attorney shall institute and prosecute all necessary and proper proceedings against
5 the offender, and may in such case issue or cause to be issued a summons for any witness ~~he~~
6 the prosecuting attorney may deem material. Every public officer shall give ~~him~~ the prosecuting
7 attorney information of the violation of any penal law committed within his or her county. It shall
8 also be the duty of the prosecuting attorney to attend to civil suits in such county in which the
9 state, or any department, commission or board thereof, is interested, and to advise, attend to,
10 bring, prosecute or defend, as the case may be, all matters, actions, suits and proceedings in

11 which such county or any ~~county~~ school district board of education is interested.

12 It shall be the duty of the prosecuting attorney to keep his or her office open in the charge
 13 of a responsible person during the hours polls are open on general, primary and special county-
 14 wide election days, and the prosecuting attorney, or his the prosecuting attorney's assistant, if
 15 any, shall be available for the purpose of advising election officials. It shall be the further duty of
 16 the prosecuting attorney, when requested by the Attorney General, to perform or to assist the
 17 Attorney General in performing, in the county in which he the prosecuting attorney is elected, any
 18 legal duties required to be performed by the Attorney General, and which are not inconsistent with
 19 the duties of the prosecuting attorney as the legal representative of such county. It shall also be
 20 the duty of the prosecuting attorney, when requested by the Attorney General, to perform or to
 21 assist the Attorney General in performing, any legal duties required to be performed by the
 22 Attorney General, in any county other than that in which such prosecuting attorney is elected, and
 23 for the performance of any such duties in any county other than that in which such prosecuting
 24 attorney is elected he the prosecuting attorney shall be paid his or her actual expenses.

25 Upon the request of the Attorney General the prosecuting attorney shall make a written
 26 report of the state and condition of the several causes in which the state is a party, pending in his
 27 or her county, and upon any matters referred to him the prosecuting attorney by the Attorney
 28 General as provided by law.

ARTICLE 6. COUNTY DEPOSITORIES.

§7-6-4. Deposit and disbursement of moneys by sheriff.

1 The sheriff, upon receipt of a certified copy of the order of the county court, showing that
 2 a depository has been designated and bond accepted in compliance with the provisions of this
 3 article, and naming the depository or depositories, shall deposit therein to the credit of the county
 4 treasurer all public money in his the sheriff's possession, except such as may be necessary to
 5 meet current demands; and, thereafter, he the sheriff shall make daily deposits in the public
 6 depositories of all public money received by him the sheriff, except as hereinafter provided, the

7 deposit of such money to be made as early as practicable after the receipt or collection thereof,
8 and such money shall be payable by the depository only on an order issued by the county court,
9 after such order has been endorsed by the county treasurer directing payment by the depository.
10 If at any time the cash in the hands of the sheriff is not sufficient to meet current demands, ~~he~~ the
11 sheriff is authorized to withdraw sufficient cash from the depository to meet such current
12 demands, such withdrawals to be made by check drawn by the sheriff and countersigned by the
13 county clerk. Such current demands shall not be anticipated more than a week in advance. All
14 moneys due the sheriff are to be drawn from the depository on an order issued by the sheriff. At
15 the end of each month the president and clerk of the county court shall sign proper orders on the
16 sheriff, in ~~his~~ the sheriff's favor, to pay ~~him~~ the sheriff the moneys due him or her. All moneys
17 belonging to the state, or any municipality, or Board of Education, shall be disbursed from the
18 depository on a check drawn by the sheriff, payable to the Auditor of the State of West Virginia,
19 or to the treasurer of the municipality or to the treasurer of the ~~county~~ school district board of
20 education, unless the sheriff is designated as the treasurer, as provided in section six, article nine,
21 chapter eighteen of this code.

ARTICLE 11B. WEST VIRGINIA TAX INCREMENT FINANCING ACT.

§7-11B-3. Definitions.

1 (a) *General.* -- When used in this article, words and phrases defined in this section have
2 the meanings ascribed to them in this section unless a different meaning is clearly required either
3 by the context in which the word or phrase is used or by specific definition in this article.

4 (b) *Words and phrases defined.* --

5 "Agency" includes a municipality, a county or municipal development agency established
6 pursuant to authority granted in section one, article twelve of this chapter, a port authority, an
7 airport authority or any other entity created by this state or an agency or instrumentality of this

8 state that engages in economic development activity or the Division of Highways.

9 “Base assessed value” means the taxable assessed value of all real and tangible personal
10 property, excluding personal motor vehicles, having a tax situs within a development or
11 redevelopment district as shown upon the landbooks and personal property books of the assessor
12 on July 1 of the calendar year preceding the effective date of the order or ordinance creating and
13 establishing the development or redevelopment district: *Provided*, That for any development or
14 redevelopment district approved after the effective date of the amendments to this section
15 enacted during the regular session of the Legislature in 2014, personal trailers, personal boats,
16 personal campers, personal motor homes, personal ATVs and personal motorcycles having a tax
17 situs within a development or redevelopment district are excluded from the base assessed value.

18 “Blighted area” means an area within the boundaries of a development or redevelopment
19 district located within the territorial limits of a municipality or county in which the structures,
20 buildings or improvements, by reason of dilapidation, deterioration, age or obsolescence,
21 inadequate provision for access, ventilation, light, air, sanitation, open spaces, high density of
22 population and overcrowding or the existence of conditions which endanger life or property, are
23 detrimental to the public health, safety, morals or welfare. “Blighted area” includes any area which,
24 by reason of the presence of a substantial number of substandard, slum, deteriorated or
25 deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in
26 relation to size, adequacy, accessibility or usefulness, unsanitary or unsafe conditions,
27 deterioration of site or other improvements, diversity of ownership, defective or unusual conditions
28 of title or the existence of conditions which endanger life or property by fire and other causes, or
29 any combination of such factors, substantially impairs or arrests the sound growth of a
30 municipality, retards the provision of housing accommodations or constitutes an economic or
31 social liability and is a menace to the public health, safety, morals or welfare in its present
32 condition and use, or any area which is predominantly open and which because of lack of
33 accessibility, obsolete platting, diversity of ownership, deterioration of structures or of site

34 improvements, or otherwise, substantially impairs or arrests the sound growth of the community.

35 “Commissioner of Highways” means the Commissioner of the Division of Highways.

36 “Conservation area” means any improved area within the boundaries of a development or
37 redevelopment district located within the territorial limits of a municipality or county in which fifty
38 percent or more of the structures in the area have an age of thirty-five years or more. A
39 conservation area is not yet a blighted area but is detrimental to the public health, safety, morals
40 or welfare and may become a blighted area because of any one or more of the following factors:
41 Dilapidation; obsolescence; deterioration; illegal use of individual structures; presence of
42 structures below minimum code standards; abandonment; excessive vacancies; overcrowding of
43 structures and community facilities; lack of ventilation, light or sanitary facilities; inadequate
44 utilities; excessive land coverage; deleterious land use or layout; depreciation of physical
45 maintenance; and lack of community planning. A conservation area shall meet at least three of
46 the factors provided in this subdivision.

47 “County commission” means the governing body of a county of this state and, for purposes
48 of this article only, includes the governing body of a Class I or II municipality in this state.

49 “Current assessed value” means the annual taxable assessed value of all real and tangible
50 personal property, excluding personal motor vehicles, having a tax situs within a development or
51 redevelopment district as shown upon the landbook and personal property records of the
52 assessor: *Provided*, That for any development or redevelopment district approved after the
53 effective date of the amendments to this section enacted during the regular session of the
54 Legislature in 2014, personal trailers, personal boats, personal campers, personal motor homes,
55 personal ATVs and personal motorcycles having a tax situs within a development or
56 redevelopment district are excluded from the current assessed value.

57 “Development office” means the West Virginia Development Office created in section one,
58 article two, chapter five-b of this code.

59 “Development project” or “redevelopment project” means a project undertaken in a

60 development or redevelopment district for eliminating or preventing the development or spread of
61 slums or deteriorated, deteriorating or blighted areas, for discouraging the loss of commerce,
62 industry or employment, for increasing employment or for any combination thereof in accordance
63 with a tax increment financing plan. A development or redevelopment project may include one or
64 more of the following:

65 (A) The acquisition of land and improvements, if any, within the development or
66 redevelopment district and clearance of the land so acquired; or

67 (B) The development, redevelopment, revitalization or conservation of the project area
68 whenever necessary to provide land for needed public facilities, public housing or industrial or
69 commercial development or revitalization, to eliminate unhealthful, unsanitary or unsafe
70 conditions, to lessen density, mitigate or eliminate traffic congestion, reduce traffic hazards,
71 eliminate obsolete or other uses detrimental to public welfare or otherwise remove or prevent the
72 spread of blight or deterioration;

73 (C) The financial or other assistance in the relocation of persons and organizations
74 displaced as a result of carrying out the development or redevelopment project and other
75 improvements necessary for carrying out the project plan, together with those site improvements
76 that are necessary for the preparation of any sites and making any land or improvements acquired
77 in the project area available, by sale or lease, for public housing or for development,
78 redevelopment or rehabilitation by private enterprise for commercial or industrial uses in
79 accordance with the plan;

80 (D) The construction of capital improvements within a development or redevelopment
81 district designed to increase or enhance the development of commerce, industry or housing within
82 the development project area; or

83 (E) Any other projects the county commission or the agency deems appropriate to carry
84 out the purposes of this article.

85 "Development or redevelopment district" means an area proposed by one or more

86 agencies as a development or redevelopment district which may include one or more counties,
87 one or more municipalities or any combination thereof, that has been approved by the county
88 commission of each county in which the project area is located if the project is located outside the
89 corporate limits of a municipality, or by the governing body of a municipality if the project area is
90 located within a municipality, or by both the county commission and the governing body of the
91 municipality when the development or redevelopment district is located both within and without a
92 municipality.

93 “Division of Highways” means the state Department of Transportation, Division of
94 Highways.

95 “Economic development area” means any area or portion of an area within the boundaries
96 of a development or redevelopment district located within the territorial limits of a municipality or
97 county that is neither a blighted area nor a conservation area and for which the county
98 commission finds that development or redevelopment will not be solely used for development of
99 commercial businesses that will unfairly compete in the local economy and that development or
100 redevelopment is in the public interest because it will:

101 (A) Discourage commerce, industry or manufacturing from moving their operations to
102 another state;

103 (B) Result in increased employment in the municipality or county, whichever is applicable;
104 or

105 (C) Result in preservation or enhancement of the tax base of the county or municipality.

106 “Governing body of a municipality” means the city council of a Class I or Class II
107 municipality in this state.

108 “Incremental value”, for any development or redevelopment district, means the difference
109 between the base assessed value and the current assessed value. The incremental value will be
110 positive if the current value exceeds the base value and the incremental value will be negative if
111 the current value is less than the base assessed value.

112 “Includes” and “including”, when used in a definition contained in this article, shall not
113 exclude other things otherwise within the meaning of the term being defined.

114 “Intergovernmental agreement” means any written agreement that may be entered into by
115 and between two or more county commissions, or between two or more municipalities, or between
116 a county commission and a municipality, in the singular and the plural, or between two or more
117 government entities and the Commissioner of Highways: *Provided*, That any intergovernmental
118 agreement shall not be subject to provisions governing intergovernmental agreements set forth
119 in other provisions of this code, including, but not limited to, article twenty-three, chapter eight of
120 this code, but shall be subject to the provisions of this article.

121 “Local levying body” means the county board of education and the county commission
122 and includes the governing body of a municipality when the development or redevelopment district
123 is located, in whole or in part, within the boundaries of the municipality.

124 “Obligations” or “tax increment financing obligations” means bonds, loans, debentures,
125 notes, special certificates or other evidences of indebtedness issued by a county commission or
126 municipality pursuant to this article to carry out a development or redevelopment project or to
127 refund outstanding obligations under this article.

128 “Order” means an order of the county commission adopted in conformity with the
129 provisions of this article and as provided in this chapter.

130 “Ordinance” means a law adopted by the governing body of a municipality in conformity
131 with the provisions of this article and as provided in chapter eight of this code.

132 “Payment in lieu of taxes” means those estimated revenues from real property and
133 tangible personal property having a tax situs in the area selected for a development or
134 redevelopment project which revenues, according to the development or redevelopment project
135 or plan, are to be used for a private use, which levying bodies would have received had a county
136 or municipality not adopted one or more tax increment financing plans and which would result
137 from levies made after the date of adoption of a tax increment financing plan during the time the

138 current assessed value of all taxable real and tangible personal property in the area selected for
139 the development or redevelopment project exceeds the total base assessed value of all taxable
140 real and tangible personal property in the development or redevelopment district until the
141 designation is terminated as provided in this article.

142 “Person” means any natural person, and any corporation, association, partnership, limited
143 partnership, limited liability company or other entity, regardless of its form, structure or nature,
144 other than a government agency or instrumentality.

145 “Private project” means any project that is subject to ad valorem property taxation in this
146 state or to a payment in lieu of tax agreement that is undertaken by a project developer in
147 accordance with a tax increment financing plan in a development or redevelopment district.

148 “Project” means any capital improvement, facility or both, as specifically set forth and
149 defined in the project plan, requiring an investment of capital including, but not limited to,
150 extensions, additions or improvements to existing facilities, including water or wastewater
151 facilities, and the remediation of contaminated property as provided for in article twenty-two,
152 chapter twenty-two of this code, but does not include performance of any governmental service
153 by a county or municipal government.

154 “Project area” means an area within the boundaries of a development or redevelopment
155 district in which a development or redevelopment project is undertaken as specifically set forth
156 and defined in the project plan.

157 “Project costs” means expenditures made in preparation of the development or
158 redevelopment project plan and made, or estimated to be made, or monetary obligations incurred,
159 or estimated to be incurred, by the county commission which are listed in the project plan as
160 capital improvements within a development or redevelopment district, plus any costs incidental
161 thereto. “Project costs” include, but are not limited to:

162 (A) Capital costs, including, but not limited to, the actual costs of the construction of public
163 works or improvements, capital improvements and facilities, new buildings, structures and

164 fixtures, the demolition, alteration, remodeling, repair or reconstruction of existing buildings,
165 structures and fixtures, environmental remediation, parking and landscaping, the acquisition of
166 equipment and site clearing, grading and preparation;

167 (B) Financing costs, including, but not limited to, an interest paid to holders of evidences
168 of indebtedness issued to pay for project costs, all costs of issuance and any redemption
169 premiums, credit enhancement or other related costs;

170 (C) Real property assembly costs, meaning any deficit incurred resulting from the sale or
171 lease as lessor by the county commission of real or personal property having a tax situs within a
172 development or redevelopment district for consideration that is less than its cost to the county
173 commission;

174 (D) Professional service costs including, but not limited to, those costs incurred for
175 architectural planning, engineering and legal advice and services;

176 (E) Imputed administrative costs including, but not limited to, reasonable charges for time
177 spent by county employees or municipal employees in connection with the implementation of a
178 project plan;

179 (F) Relocation costs including, but not limited to, those relocation payments made
180 following condemnation and job training and retraining;

181 (G) Organizational costs including, but not limited to, the costs of conducting
182 environmental impact and other studies and the costs of informing the public with respect to the
183 creation of a development or redevelopment district and the implementation of project plans;

184 (H) Payments made, in the discretion of the county commission or the governing body of
185 a municipality, which are found to be necessary or convenient to creation of development or
186 redevelopment districts or the implementation of project plans; and

187 (I) That portion of costs related to the construction of environmental protection devices,
188 storm or sanitary sewer lines, water lines, amenities or streets or the rebuilding or expansion of
189 streets, or the construction, alteration, rebuilding or expansion of which is necessitated by the

190 project plan for a development or redevelopment district, whether or not the construction,
191 alteration, rebuilding or expansion is within the area or on land contiguous thereto.

192 “Project developer” means any person who engages in the development of projects in the
193 state.

194 “Project plan” means the plan for a development or redevelopment project that is adopted
195 by a county commission or governing body of a municipality in conformity with the requirements
196 of this article and this chapter or chapter eight of this code.

197 “Real property” means all lands, including improvements and fixtures on them and
198 property of any nature appurtenant to them or used in connection with them and every estate,
199 interest and right, legal or equitable, in them, including terms of years and liens by way of
200 judgment, mortgage or otherwise, and indebtedness secured by the liens.

201 “Redevelopment area” means an area designated by a county commission or the
202 governing body of a municipality in respect to which the commission or governing body has made
203 a finding that there exist conditions which cause the area to be classified as a blighted area, a
204 conservation area, an economic development area or a combination thereof, which area includes
205 only those parcels of real property directly and substantially benefitted by the proposed
206 redevelopment project located within the development or redevelopment district or land
207 contiguous thereto.

208 “Redevelopment plan” means the comprehensive program under this article of a county
209 or municipality for redevelopment intended by the payment of redevelopment costs to reduce or
210 eliminate those conditions, the existence of which qualified the redevelopment area as a blighted
211 area, conservation area, economic development area or combination thereof, and to thereby
212 enhance the tax bases of the levying bodies which extend into the redevelopment area. Each
213 redevelopment plan shall conform to the requirements of this article.

214 “Tax increment” means the amount of regular levy property taxes attributable to the
215 amount by which the current assessed value of real and tangible personal property having a tax

216 situs in a development or redevelopment district exceeds the base assessed value of the property.

217 “Tax increment financing fund” means a separate fund for a development or
 218 redevelopment district established by the county commission or governing body of the
 219 municipality into which all tax increment revenues and other pledged revenues are deposited and
 220 from which projected project costs, debt service and other expenditures authorized by this article
 221 are paid.

222 “This code” means the Code of West Virginia, 1931, as amended by the Legislature.

223 “Total ad valorem property tax regular levy rate” means the aggregate levy rate of all
 224 levying bodies on all taxable property having a tax situs within a development or redevelopment
 225 district in a tax year but does not include excess levies, levies for general obligation bonded
 226 indebtedness or any other levies that are not regular levies.

ARTICLE 13. ECONOMIC OPPORTUNITY PROGRAMS.

§7-13-6. Membership and participation in community action program organizations.

1 A county court, ~~county~~ school district board of education, or municipal government is
 2 hereby authorized and empowered to become associated with a community action program
 3 organization, and to participate in the development and implementation of component projects
 4 conceived and placed into operation by community action program organizations.

5 In so doing, a county court, ~~county~~ school district of education, or municipal government
 6 may extend, without compensation, the use of its buildings, equipment, machinery, public lands,
 7 personnel, technical and other services, and other resources for the benefit of a community action
 8 program organization; may provide money, and real and other property, tangible or intangible, to
 9 a recognized community action program organization in the furtherance of the objectives of the
 10 federal Economic Opportunity Act of 1964; and may cooperate and act in conjunction with other
 11 county courts, ~~county~~ school district boards of education, municipal governments, public bodies,
 12 and all agencies of federal, state and local governments in the promotion and advancement of
 13 the projects, in operation or in evolutionary stages, under the jurisdiction of a recognized

14 community action program organization: *Provided*, That any such contribution, whether in cash
15 or in kind, in goods or in services fairly evaluated, should, in all practical instances, constitute the
16 whole or a portion of the matching share required by the federal Office of Economic Opportunity
17 from the community action program organization in the orderly implementation and conduct of
18 community action programs.

§7-13-6a. Community action agencies.

1 A county court, a ~~county~~ school district board of education or a municipal government is
2 hereby authorized and empowered to become a community action program organization or
3 agency pursuant to Title II of the "Federal Economic Opportunity Act of 1964," as amended. If any
4 one of the foregoing governmental agencies shall be designated under said Title II as a
5 community action program organization or agency, it shall have the power and authority to
6 conduct, operate and manage a community action program in conformity with the requirements
7 of the federal Economic Opportunity Act; to apply for, receive and disburse all federal funds made
8 available to it for the purpose of carrying out its duties under the federal Economic Opportunity
9 Act; and to receive grants and gifts from private or local public sources and disburse the same.
10 Whenever a county court, ~~county~~ school district board of education or municipal government is
11 acting as a community action program organization or agency, such county court, ~~county~~ school
12 district board of education or municipal government may establish a governing board to administer
13 such community action program, such governing board to be selected in compliance with the
14 provisions of the federal Economic Opportunity Act and such rules and regulations as may be
15 adopted by such county court, ~~county~~ school district board of education or municipal government,
16 the promulgation of which is hereby authorized; may transfer any of the funds, grants and gifts
17 referred to above to such governing board, if such transfer is in conformity with the provisions of
18 the federal Economic Opportunity Act; and may delegate to such governing board all authority
19 necessary and convenient to enable it to perform and carry out its duties.

§7-13-8. Contributions by county courts, ~~county~~ school district boards of education and

municipal governments.

1 A county court, ~~county~~ school district board of education, or municipal government shall
2 be authorized and empowered to contribute to the costs of duly recognized community action
3 program organizations by appropriating for such purposes money from its general funds not
4 otherwise appropriated. A county court, ~~county~~ school district board of education, or municipal
5 government likewise is authorized and empowered to transfer and convey to a duly recognized
6 community action program organization property, equipment and machinery, and other goods:
7 *Provided*, That such transfer will further the conduct and implementation of component projects
8 of a community action program.

9 A county court, ~~county~~ school district board of education, or municipal government is
10 authorized and empowered to accept, use and dispose of gifts of property, real, personal or mixed,
11 tangible or intangible, and to convey or otherwise transfer the same to a recognized community
12 action program organization: *Provided, however*, That such transfer will further the conduct and
13 implementation of component projects of a community action program.

14 A county court, ~~county~~ school district board of education, or municipal government is
15 authorized and empowered to enter into and perform such contracts, leases, cooperative
16 arrangements, or other transactions as may assist in the performance of component projects of
17 a community action program: *Provided further*, That no county court, ~~county~~ school district board
18 of education, or municipal government shall enter into any such contract, lease or cooperative
19 arrangement unless it is requested to assist in such manner through notification, in writing, by the
20 chairman, president, administrator or other chief executive officer of a recognized community
21 action program organization.

§7-13-9. Accountability of funds.

1 As a condition to participation in community action program organization activities, as

2 specified in section eight, a county court, ~~county~~ school district board of education, or municipal
 3 government may require a community action program organization to render an accounting, at
 4 such intervals as the county court, ~~county~~ school district board of education, or municipal
 5 government may designate, of the use of money, property, goods, and services made available
 6 to the community action program organization by the county court, ~~county~~ school district board of
 7 education, or municipal government, and to make available at quarterly intervals an itemized
 8 statement of receipts and disbursements, and its books, records and accounts, during the
 9 preceding quarter, for audit and examination by the office of the State Tax Commissioner of West
 10 Virginia and any other proper public body or official.

ARTICLE 23. LOCAL GOVERNMENT FLEXIBILITY ACT

§7-23-3. Flexibility for county commissions, municipalities and ~~county~~ school district boards of education.

1 (a) *Application for waiver of policies, rules and regulations.*

2 (1) The purpose of this section is to provide a procedure by which county commissions,
 3 municipalities and ~~county~~ school district boards of education may apply for waiver of a policy, rule
 4 or regulation the commission, municipality or board believes is preventing it from carrying out its
 5 duties and responsibilities in the most cost efficient, effective and timely manner.

6 (2) The chief executive officer of a county commission, municipality or ~~county~~ school
 7 district board of education may file with the Secretary of Commerce an application for waiver of a
 8 policy, rule or regulation he or she believes is preventing the commission, municipality or board
 9 from carrying out its duties in the most cost efficient, effective and timely manner.

10 (3) The application shall be made in writing and be in the form prescribed by the Secretary
 11 of Commerce for that purpose. The application shall, at a minimum, require the applicant to
 12 provide the official citation of the policy, rule or regulation for which waiver is sought. If there is no

13 official citation, a copy of the policy or letter from which a waiver is sought shall be attached to the
 14 application. The applicant shall describe in sufficient detail the problem created by the policy, rule
 15 or regulation for which waiver is sought and describe in sufficient detail how the waiver will allow
 16 the applicant to carry out the applicant's duties in the most cost efficient, effective and timely
 17 manner.

18 (b) *Review by Secretary of Commerce.* -- Upon receipt of an application as provided in
 19 subsection (a) of this section, the Secretary of Commerce may conduct an investigation or inquiry
 20 to gather any additional information necessary to evaluate the application. The Secretary of
 21 Commerce shall periodically submit to the Governor a written report summarizing the applications
 22 and any recommendations for applications the Secretary of Commerce determines in his or her
 23 discretion to forward to the Governor for disposition in accordance with this section. The Secretary
 24 of Commerce is granted no authority under this section to issue any waiver.

25 (c) *Review by Governor.* -- Upon receipt of the summary and recommendations of the
 26 Secretary of Commerce, the Governor may take any action he or she considers appropriate under
 27 the circumstances that is within the authority granted to the Governor by the laws of this state.
 28 Whenever the Governor believes a statutory change is needed, the Governor shall bring the
 29 matter to the attention of the Speaker of the House of Delegates and the President of the Senate.

ARTICLE 25. RESORT AREA DISTRICTS.

§7-25-18. Exemption of public property from assessments.

1 No lots or parcels of land owned or controlled by the United States, this state, any
 2 municipality, county, ~~county~~ school district board of education, resort area district or other public
 3 body shall be subject to any assessments under this article.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 19. MUNICIPAL AND COUNTY WATERWORKS AND ELECTRIC POWER

SYSTEMS.**§8-19-4. Estimate of cost; ordinance or order for issuance of revenue bonds; interest on bonds; rates for services; exemption from taxation.**

1 Whenever a municipality or county commission shall, under the provisions of this article,
2 determine to acquire, by purchase or otherwise, construct, establish, extend or equip a
3 waterworks system or an electric power system, or to construct any additions, betterments or
4 improvements to any waterworks or electric power system, it shall cause an estimate to be made
5 of the cost thereof, and may, by ordinance or order, provide for the issuance of revenue bonds
6 under the provisions of this article, which ordinance or order shall set forth a brief description of
7 the contemplated undertaking, the estimated cost thereof, the amount, rate or rates of interest,
8 the time and place of payment and other details in connection with the issuance of the bonds.
9 The bonds shall be in such form and shall be negotiated and sold in such manner and upon such
10 terms as the governing body of such municipality or county commission may, by ordinance or
11 order, specify. All the bonds and the interest thereon shall be exempt from all taxation by this
12 state, or any county, municipality or county commission, political subdivision or agency thereof.
13 Notwithstanding any other provision of this code to the contrary, the real and personal property
14 which a municipality or county has acquired and constructed according to the provisions of this
15 article, and any leasehold interest therein held by other persons, shall be deemed public property
16 and shall be exempt from taxation by the state, or any county, municipality or other levying body,
17 so long as the same is owned by the municipality or county: *Provided*, That with respect to electric
18 power systems, this exemption for real and personal property shall be applicable only for the real
19 and personal property: (1) Physically situate within the municipal or county boundaries of the
20 municipality or county which acquired or constructed the electric power system and there was in
21 place prior to the effective date of the amendments to this section made in the year 1992 an
22 agreement between the municipality and the county commission for payments in lieu of tax; or (2)
23 acquired or constructed with the written agreement of the ~~county~~ school district board, county

24 commission and any municipal authority within whose jurisdiction the electric power system is or
25 is to be physically situate. Notwithstanding anything contained in this statute to the contrary, this
26 exemption shall be applicable to any leasehold or similar interest held by persons other than a
27 municipality or county only if acquired or constructed with the written agreement of the ~~county~~
28 school district board, county commission and any municipal authority within whose jurisdiction the
29 electric power system is or is to be physically situate: *Provided, however,* That payments made
30 to any county commission, ~~county~~ school district board or municipality in lieu of tax pursuant to
31 such an agreement shall be distributed as if the payments resulted from ad valorem property
32 taxation. The bonds shall bear interest at a rate per annum set by the municipality or county
33 commission, payable at such times, and shall be payable as to principal at such times, not
34 exceeding fifty years from their date, and at such place or places, within or without the state, as
35 shall be prescribed in the ordinance or order providing for their issuance. Unless the governing
36 body of the municipality or county commission shall otherwise determine, the ordinance or order
37 shall also declare that a statutory mortgage lien shall exist upon the property so to be acquired,
38 constructed, established, extended or equipped, fix minimum rates or charges for water or
39 electricity to be collected prior to the payment of all of said bonds and shall pledge the revenues
40 derived from the waterworks or electric power system for the purpose of paying the bonds and
41 interest thereon, which pledge shall definitely fix and determine the amount of revenues which
42 shall be necessary to be set apart and applied to the payment of the principal of and interest upon
43 the bonds and the proportion of the balance of the revenues, which are to be set aside as a proper
44 and adequate depreciation account, and the remainder shall be set aside for the reasonable and
45 proper maintenance and operation thereof. The rates or charges to be charged for the services
46 from the waterworks or electric power system shall be sufficient at all times to provide for the
47 payment of interest upon all bonds and to create a sinking fund to pay the principal thereof as and
48 when the same become due, and reasonable reserves therefor, and to provide for the repair,
49 maintenance and operation of the waterworks or electric power system, and to provide an

50 adequate depreciation fund, and to make any other payments which shall be required or provided
51 for in the ordinance or order authorizing the issuance of said bonds.

**ARTICLE 23. INTERGOVERNMENTAL RELATIONS -- CONTRACTING AND JOINT
ENTERPRISES.**

§8-23-2. Definitions.

1 For the purposes of this article:

2 (1) The term "public agency" shall mean any municipality, county or other political
3 subdivision of this state, or any ~~county~~ school district board of education of this state; and

4 (2) The term "public works" shall mean any improvement or project involving an outlay of
5 a capital nature which may be required by or convenient for the purposes of any public agency,
6 including, without limiting the generality of the foregoing, the construction, reconstruction,
7 establishment, acquisition, improvement, renovation, extension, enlargement, increase,
8 equipment, maintenance, repair (including replacements) and operation of jails, jail facilities,
9 municipal buildings, police stations, fire stations, libraries, museums, other public buildings,
10 incinerator plants, land fill or other garbage disposal systems, hospitals, piers, docks, terminals,
11 airports, drainage systems, flood control systems, floodwalls, sewers, culverts, bridges (including
12 approaches, causeways, viaducts, underpasses and connecting roadways), public markets,
13 cemeteries, motor vehicle parking facilities (including parking lots, buildings, ramps, curb-line
14 parking, meters and other facilities deemed necessary, appropriate, useful, convenient or
15 incidental to the regulation, control and parking of motor vehicles), stadiums, gymnasiums, sports
16 arenas, Auditoriums, public recreation centers, public recreation parks, swimming pools, roller
17 skating rinks, ice skating rinks, tennis courts, golf courses, polo grounds, or other public
18 improvements, or the grading, regrading, paving, repaving, surfacing, resurfacing, curbing,
19 recurbing, widening or otherwise improving of any street, avenue, road, alley or way.

CHAPTER 8A. LAND USE PLANNING

ARTICLE 6. ANNEXATION.**§8A-6-2. Conditions as part of final plat approval.**

1 (a) A subdivision and land development ordinance may provide for the voluntary proffering
2 by a landowner as a requirement of final plat approval for a development project.

3 (b) For purposes of this section, a "voluntary proffer" is a written offer by a landowner to a
4 governing body whereby the landowner offers to satisfy certain reasonable conditions as a
5 requirement of the final plat approval for a development project. A voluntary proffer made to a
6 governing body shall be in lieu of payment of an impact fee as authorized by section four, article
7 twenty, chapter seven of this code: *Provided*, That no proffer may be accepted by a governing
8 body in lieu of an impact fee that would otherwise go to schools without the approval of the ~~county~~
9 school district board of education.

10 (c) For purposes of this section, a condition contained in a voluntary proffer is considered
11 reasonable if:

12 (1) The development project results in the need for the conditions;

13 (2) The conditions have a reasonable relation to the development project; and

14 (3) All conditions are in conformity with the comprehensive plan adopted pursuant to this
15 chapter.

16 (d) No proffer may be accepted by a governing body unless it has approved a list detailing
17 any proposed capital improvements from all areas within the jurisdiction of the governing body to
18 which the proffer is made, which list contains descriptions of any proposed capital improvements,
19 cost estimates, projected time frames for constructing the improvements and proposed or
20 anticipated funding sources: *Provided*, That the approval of the list does not limit the governing
21 body from accepting proffers relating to items not contained on the list.

22 (e) For purposes of this section, "capital improvement" has the same definition as found
23 in section three, article twenty, chapter seven of this code.

24 (f) If a voluntary proffer includes the dedication of real property or the payment of cash,

25 the proffer shall provide for the alternate disposition of the property or cash payment in the event
26 the property or cash payment is not to be used for the purpose for which it was proffered.

27 (g) Notwithstanding any provision of this code to the contrary, a municipality may transfer
28 the portion of the proceeds of a voluntary proffer intended by the terms of the proffer to be used
29 by the board of Education of a ~~county~~ school district in which the municipality is located upon the
30 condition that the portion so transferred may only be used by the board for capital improvements.

CHAPTER 9. HUMAN SERVICES.

ARTICLE 9. WV WORKS ACT.

§9-9-16. Intergovernmental coordination.

1 (a) The commissioner of the Bureau of Employment Programs and the superintendent of
2 the Department of Education shall assist the secretary in the establishment of the WV works
3 program. Before implementation of this program, each department shall address in its respective
4 plan the method in which its resources will be devoted to facilitate the identification of or delivery
5 of services for participants and shall coordinate its respective programs with the department in
6 the provision of services to participants and their families. Each ~~county~~ school district board of
7 education shall designate a person to coordinate with the local Department of Health and Human
8 Resources office the board's services to participant families and that person shall work to achieve
9 coordination at the local level.

10 (b) The secretary and the superintendent shall develop a plan for program implementation
11 to occur with the use of existing state facilities and county transportation systems within the project
12 areas whenever practicable. This agreement shall include, but not be limited to, the use of
13 buildings, grounds and buses. Whenever possible, the supportive services, education and training
14 programs should be offered at the existing school facilities.

15 (c) The commissioner shall give priority to participants of the WV works program within
16 the various programs of the Bureau of Employment Programs. The secretary and the

17 commissioner shall develop reporting and monitoring mechanisms between their respective
18 agencies.

**CHAPTER 10. PUBLIC LIBRARIES; PUBLIC RECREATION;
ATHLETIC ESTABLISHMENTS; MONUMENTS AND MEMORIALS;
ROSTER OF SERVICEMEN; EDUCATIONAL BROADCASTING
AUTHORITY.**

ARTICLE 1. PUBLIC LIBRARIES.

§10-1-1. "Public library" and "governing authority" defined.

1 The term "public library" as used in this article shall be construed to mean a library
2 maintained wholly or in part by any governing authority from funds derived by taxation and the
3 services of which are free to the public, except for those charges for which provision may be made
4 elsewhere in this article. The term shall not, however, include special libraries, such as law,
5 medical or other professional libraries, or school libraries which are maintained primarily for school
6 purposes. The term "governing authority" shall be construed to mean county court [county
7 commission], ~~county~~ school district board of education or the governing body of any municipality.

ARTICLE 2. PUBLIC RECREATION AND PLAYGROUNDS.

§10-2-1. Definitions.

1 (a) The term "governing body" as used in this article shall be construed to mean any city
2 council, city commission, county court, or body acting in lieu thereof, or ~~county~~ school district
3 board of education in the State of West Virginia; (b) the term "governmental division" when
4 hereinafter used in this article shall be construed to mean any city, town, county, or school district
5 in the State of West Virginia; (c) the term "board" when hereinafter used in this article shall be
6 construed to mean any board, commission, committee, or council appointed or designated to
7 carry out the provisions of this article.

ARTICLE 2A. ATHLETIC ESTABLISHMENTS.

§10-2A-1. Definitions.

1 (a) The term "board" as used in this article shall mean any county court, municipal
 2 corporation or ~~county~~ school district board of education in the State of West Virginia; (b) the term
 3 "athletic establishment" shall be construed to mean and include athletic fields of all types,
 4 stadiums, gymnasiums, field houses, and all other types of athletic establishments capable of
 5 producing revenue, where the cost of such acquisition, construction, extension, equipment or
 6 improvements, together with reasonable interest thereon, will be returned within a reasonable
 7 period, not exceeding thirty years, by means of charges, rentals, radio broadcasting franchise
 8 fees, and other tolls, fees and charges other than taxation; and shall mean and include such
 9 athletic establishment in its entirety, and all integral parts thereof.

§10-2A-3. Construction, etc., to be under control of board or committee appointed by board.

1 The construction, acquisition, improvement, extension, equipment, custody, operation and
 2 maintenance of any such athletic establishment, and the collection of revenues therefrom, shall
 3 be under the supervision and control of the county court, municipal corporation or ~~county~~ school
 4 district board of education, or all or any part of such powers, duties and responsibilities may be
 5 placed in a committee appointed by such board by resolution duly adopted. The term "board"
 6 when hereafter used in this article shall be construed to mean the county court, municipal
 7 corporation or the ~~county~~ school district board of education or such duly appointed committee, as
 8 the case may be.

§10-2A-4. Powers of board; contracts; employees.

1 The board shall have power to take all steps and proceedings, and to make and enter into
 2 all contracts or agreements necessary or incidental to the performance of its duties and the
 3 execution of its powers under this article: *Provided*, That any contract relating to the financing or
 4 the acquisition, construction, extension or improvement of any such works, or any trust indenture

5 as hereafter provided for, shall be approved by the county court, municipal corporation or ~~county~~
6 school district board of education.

7 The board may employ engineers, architects, inspectors, superintendents, managers,
8 collectors, attorneys and such other employees as in its judgment may be necessary in the
9 execution of its powers and duties, and may fix their compensation, all of whom shall do such
10 work as the board may direct. No contract or agreement with any contractor or contractors for
11 labor or material exceeding in amount the sum of \$1,000 shall be made without advertising for
12 bidders, which shall be publicly opened and award made to the lowest responsible bidder, with
13 power in the board to reject any and all bids. After the acquisition, construction, equipment and
14 completion of the athletic establishment the board shall operate, manage and control the same,
15 and may order and complete any extensions, and improvements of and to the athletic
16 establishments that the board may deem expedient if funds therefor be available, and shall
17 establish rules and regulations for the use and operation of the athletic establishment, and do all
18 things necessary or expedient for the successful operation thereof.

§10-2A-6. Resolution for construction, etc., of establishment; notice and hearing.

1 Before any board shall construct, acquire, improve, extend or equip any athletic
2 establishment under this article, the board shall adopt a resolution which shall (a) set forth a brief
3 general description of the athletic establishment, and if the same is to be constructed a reference
4 to the preliminary report or plans and specifications which shall theretofore have been prepared;
5 (b) set forth the estimated cost thereof; (c) order the construction, acquisition, extension,
6 improvement or equipment of such establishment; (d) direct that revenue bonds of the ~~county~~
7 school district board of education be issued pursuant to this article; in such amount as may be
8 found necessary to pay the costs of such athletic establishment; and (e) contain such other
9 provisions as may be necessary or proper in the premises. Before such resolution shall become
10 effective it, together with the following described notice, shall be published as a Class II legal
11 advertisement in compliance with the provisions of article three, chapter fifty-nine of this code,

12 and the publication area for such publication shall be the ~~county~~ school district in which such
13 Board of Education is located. The notice shall specify a time and place for a public hearing, the
14 time being not less than ten days after the first publication of said notice; at which time and place
15 all parties and interests may appear before the board, and may be heard as to whether or not
16 said resolution shall be put into effect. At such hearing all objections and suggestions shall be
17 heard and the board shall take such action as it shall deem proper in the premises: *Provided,*
18 *however,* That if at such hearing a written protest is filed by thirty percent or more of the owners
19 of real estate situate in said ~~county~~ school district, then the board of Education shall not take
20 further action unless four fifths of the members of said board assent thereto: *And provided further,*
21 That in case written protest is filed purporting to have been signed by or on behalf of thirty percent
22 or more of the owners of real estate in said ~~county~~ school district, the board shall have authority
23 to appoint a subcommittee to consist of one proponent, one opponent and the third to be selected
24 by these two, to determine whether or not thirty percent of the property owners have in fact
25 protested, and said subcommittee shall report its findings to the board.

§10-2A-7. Acquisition of property or establishments; eminent domain.

1 Every such board shall have power to condemn any land or easements, necessary or
2 convenient for the construction of any such athletic establishment, or extensions, improvements
3 or additions thereto, and in connection therewith shall have and may exercise all the rights,
4 powers and privileges of eminent domain granted to county courts, municipal corporations or
5 ~~county~~ school district boards of education under the laws relating thereto. Title to property shall
6 be taken in the name of the county court, municipal corporation or ~~county~~ school district board of
7 education. Proceedings for such appropriation of property shall be under and pursuant to the
8 general provisions of law relating to condemnation proceedings in the exercise of eminent
9 domain: *Provided,* That the board shall be under no obligation to accept and pay for any property
10 condemned, and shall in no event pay for property condemned or purchased, except from funds
11 provided pursuant to this article; and in any proceedings to condemn such orders may be made

12 as may be just to the board and the owners of the property to be condemned; and an
13 understanding or other security may be required securing such owners against any loss or
14 damage which may be sustained by reason of the failure of the board to accept and pay for the
15 property, but such undertaking or security shall impose no liability upon the board, except such
16 as may be paid from the funds provided under the authority of this article.

17 In the event of acquisition by purchase, the board may obtain and exercise an option from
18 the owners of said property for the purchase thereof, and may enter into a contract for the
19 purchase thereof, and such purchase may be made upon such terms and conditions, and in such
20 manner as the board may deem proper: *Provided, however,* That such exercise of option,
21 purchase or contract for such purchase shall in no event bind or obligate said board, or create
22 any debt, liability or claim, except such as may be paid from the funds provided under the authority
23 of this article.

24 In the event of the acquisition of any athletic establishment already constructed by
25 purchase or condemnation, the board at or before the time of the adoption of the resolution
26 described in section six hereof, shall cause to be determined what repairs, replacements,
27 additions and improvements will be necessary, in order that said establishment may be effective
28 for its purpose, and an estimate of the cost of such improvements shall be included in the estimate
29 of the costs required by section six hereof, and such improvements shall be made upon the
30 acquisition of the establishment and as a part of the cost thereof: *Provided, however,* That no
31 board shall, under the authority conferred by this article, condemn any existing privately owned
32 athletic establishment in operation at the date of the condemnation.

§10-2A-10. Bonds to be payable from special fund; exemption from taxation.

1 Funds for the payment of all or such part of the costs of such athletic establishment as
2 may be determined by the board, shall be provided by the issuance of revenue bonds of such
3 board. Such bonds shall be payable solely from the special fund herein provided for such
4 payment; and such bonds shall not in any respect be a corporate indebtedness of the county

5 court, municipal corporation or ~~county~~ school district board of education issuing the same. All
 6 such bonds shall be exempt from taxation by the State of West Virginia or any county or
 7 municipality therein. All of the details of such bonds and the issuance thereof shall be determined
 8 by resolution of the board.

CHAPTER 11. TAXATION.

ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.

§11-1C-2. Definitions.

1 For the purposes of this article, the following words shall have the meanings hereafter
 2 ascribed to them unless the context clearly indicates otherwise:

3 (a) "Timberland" means any surface real property except farm woodlots of not less than
 4 ten contiguous acres which is primarily in forest and which, in consideration of their size, has
 5 sufficient numbers of commercially valuable species of trees to constitute at least forty percent
 6 normal stocking of forest trees which are well distributed over the growing site.

7 (b) "Managed timberland" means surface real property, except farm woodlots, of not less
 8 than ten contiguous acres which is devoted primarily to forest use and which, in consideration of
 9 their size, has sufficient numbers of commercially valuable species of trees to constitute at least
 10 forty percent normal stocking of forest trees which are well distributed over the growing site, and
 11 that is managed pursuant to a plan provided for in section ten of this article: *Provided*, That none
 12 of the following may be considered as managed timberland within the meaning of this article:

13 (1) Any tract or parcel of real estate, regardless of its size, which is part of any subdivision
 14 that is approved or exempted from approval pursuant to the provisions of a planning ordinance
 15 adopted under the provisions of article twenty-four of chapter eight of this code; or

16 (2) Any tract or parcel of real estate, regardless of its size, which is subject to a deed
 17 restriction, deed covenant or zoning regulation which limits the use of that real estate in a way
 18 that precludes the commercial production and harvesting of timber upon it.

19 (c) "Tax commissioner," "commissioner" or "tax department" means the State Tax
20 Commissioner or a designee of the State Tax Commissioner.

21 (d) "Valuation commission" or "commission" means the commission created in section
22 three of this article.

23 (e) "~~County~~ School District Board of Education" or "board" means the duly elected Board
24 of Education of each ~~county~~ school district.

25 (f) "Farm woodlot" means that portion of a farm in timber but may not include land used
26 primarily for the growing of timber for commercial purposes except that Christmas trees, or
27 nursery stock and woodland products, such as nuts or fruits harvested for human consumption,
28 shall be considered farm products and not timber products.

29 (g) "Owner" means the person who is possessed of the freehold, whether in fee or for life.
30 A person seized or entitled in fee subject to a mortgage or deed of trust securing a debt or liability
31 is deemed the owner until the mortgagee or trust takes possession, after which such mortgagee
32 or trustee shall be deemed the owner. A person who has an equitable estate of freehold, or is a
33 purchaser of a freehold estate who is in possession before transfer of legal title is also deemed
34 the owner.

35 The definitions in subdivisions (f) and (g) of this section shall apply to tax years beginning
36 on or after January 1, 2001.

§11-1C-5. Tax Commissioner powers and duties.

1 (a) In addition to the powers and duties of the Tax Commissioner in other provisions of
2 this article and this code, the Tax Commissioner shall have the power and duty to:

3 (1) Perform such duties and exercise such powers as may be necessary to accomplish
4 the purposes of this article;

5 (2) Determine the methods of valuation for both real and personal property in accordance
6 with the following:

7 (A) As to personal property, the Tax Commissioner shall provide a method to appraise

8 each major specie of personal property in the state so that all such items of personal property are
9 valued in the same manner no matter where situated in the state, shall transmit these methods to
10 each county assessor who shall use these methods to value the various species of personal
11 property. The Tax Commissioner shall periodically conduct such studies as are necessary to
12 determine that such methods are being followed. Such method shall be in accordance with the
13 provisions of article five of this chapter: *Provided*, That notwithstanding any other provision of this
14 code to the contrary, the several county assessors shall appraise motor vehicles as follows: The
15 State Tax Commissioner shall annually compile a schedule of automobile values based upon the
16 lowest values shown in a nationally accepted used car guide, which said schedule shall be
17 furnished to each assessor and shall be used by the several county assessors to determine the
18 assessed value for all motor vehicles in an amount equal to sixty percent of said lowest values.

19 (B) As to managed timberland as defined in section two of this article, the Tax
20 Commissioner shall provide a method to appraise such property in the state so that all such
21 property is valued in the same manner no matter where it is situated in the state, which shall be
22 a valuation based on its use and productive potential as managed timberland, which may be
23 accorded special valuation as forestlands as authorized by section fifty-three, article six of the
24 Constitution of West Virginia: *Provided*, That timberland that does not qualify for identification as
25 managed timberland shall be valued at market value: *Provided, however*, That the Tax
26 Commissioner may not implement any rules or regulations in title one hundred ten, which relate
27 to valuation or classification of timberland: *Provided further*, That on or before October 1, 1990,
28 the Tax Commissioner shall, in accordance with chapter twenty-nine-a of this code, promulgate
29 new rules relating to the valuation and classification of timberland.

30 (C) As to farmland used, occupied and cultivated by an owner or bona fide tenant, the Tax
31 Commissioner shall provide a method to appraise such property in the state so that all such
32 property is valued in the same manner no matter where it is situated in the state, which valuation
33 shall be arrived at according to the fair and reasonable value of the property for the purpose for

34 which it is actually used regardless of what the value of the property would be if used for some
35 other purpose, in accordance with section one, article three of this chapter and as authorized by
36 subsection B, section one-b, article X of the Constitution of West Virginia.

37 (D) As to public utility property, the Tax Commissioner shall prescribe appropriate methods
38 for the appraisal of the various types of property subject to taxation as public utilities and the types
39 of property which are to be included in the operating property of a public utility and thereby not
40 subject to taxation by the county assessor. Only parcels or other property, or portions thereof,
41 which are an integral part of the public utility's function as a utility shall be included as operating
42 property and assessed by the board of public works under provisions of article six of this chapter;

43 (3) Evaluate the performance of each assessor based upon the criteria established by the
44 commission and each county's approved plan and take appropriate measures to require any
45 assessor who does not meet these criteria or adequately carry out the provisions of the plan to
46 correct any deficiencies. Such evaluation shall include the periodic review of the progress of each
47 assessor in conducting the appraisals required in sections seven and nine of this article and in
48 following the approved valuation plan. If the Tax Commissioner determines that an assessor has
49 substantially failed to perform the duties required by said sections, the Tax Commissioner shall
50 take all necessary steps, including the appointment of one or more special assessors in
51 accordance with the provisions of section one, article three of this chapter, or utilize such other
52 authority as the commissioner has over county assessors pursuant to other provisions of this
53 code as may be necessary to complete the tasks and duties imposed by this article: *Provided,*
54 That a writ of mandamus shall be the appropriate remedy if the Tax Commissioner fails to perform
55 his or her statutory duty provided for in section five, article one of this chapter.

56 (4) Submit to the Legislature, on or before February 15 of each year, a preliminary
57 statewide aggregate tax revenue projection and other information which shall assist the
58 Legislature in its deliberations regarding ~~county~~ school district board of education levy rates
59 pursuant to section six-f, article eight of this chapter, which information shall include any amount

60 of reduction required by said section six-f;

61 (5) Maintain the valuations each year by making or causing to be made such surveys,
62 examinations, audits and investigations of the value of the several classes of property in each
63 county which should be listed and taxed under the several classifications; and

64 (6) Establish by uniform rules a procedure for the sale of computer generated material and
65 appraisal manuals. Any funds received as a result of the sale of such reproductions shall be
66 deposited to the appropriate account from which the payment for reproduction is made.

67 (b) The Tax Commissioner may adopt any regulation adopted prior to January 1, 1990,
68 pursuant to article one-a of this chapter, which adoption shall not constitute an implementation of
69 the statewide mass reappraisal of property. Such adoption, including context modifications made
70 necessary by the enactment of this article, shall occur on or before July 1, 1991, through inclusion
71 in the plan required by section ten of this article or inclusion in the minute record of the valuation
72 commission. Upon the adoption of any such regulations, any modification or repeal of such
73 regulation shall be in accordance with the provisions of article three, chapter twenty-nine-a of this
74 code.

§11-1C-8. Additional funding for assessors' offices; maintenance funding.

1 (a) In order to finance the extra costs associated with the valuation and training mandated
2 by this article, there is hereby created a revolving valuation fund in each county which shall be
3 used exclusively to fund the assessor's office. No persons whose salary is payable from the
4 valuation fund shall be hired under this section without the approval of the valuation commission,
5 the hirings shall be without regard to political favor or affiliation, and the persons hired under this
6 section are subject to the provisions of the ethics act in chapter six-b of this code, including, but
7 not limited to, the conflict of interest provisions under chapter six-b of this code. Notwithstanding
8 any other provisions of this code to the contrary, assessors may employ citizens of any West
9 Virginia county for the purpose of performing, assessing and appraising duties under this chapter
10 upon approval of the employment by the valuation commission.

11 (b) During the fiscal year commencing July 1, 1994, and thereafter as necessary, any
12 county receiving moneys provided by the valuation commission under this section shall use the
13 county's valuation fund receipts which exceed the total amount received in the fiscal year ending
14 June 30, 1994, and such other portion of the county's valuation fund receipts that may be required
15 by the valuation commission, to repay the valuation commission the money received plus accrued
16 interest: *Provided*, That the fund should not drop below one percent of the total municipal, county
17 commission and ~~county~~ school district board revenues generated by application of the respective
18 regular levy rates.

19 (c) (1) To finance the ongoing extra costs associated with the valuation and training
20 mandated by this article, beginning with the fiscal year commencing on July 1, 1991, and for a
21 period of at least three consecutive years, an amount equal to two percent of the previous year's
22 projected tax collections, or whatever percent is approved by the valuation commission, from the
23 regular levy set by, or for, the county commission, the ~~county~~ school district board and any
24 municipality in the county shall be prorated as to each levying body, set aside and placed in the
25 valuation fund. In May of each year the sheriff of each county shall make a final transfer to the
26 assessor's valuation fund which will reflect any difference in the amount of actual collections in
27 the previous fiscal year as opposed to those previously projected by the chief inspector's office
28 as the basis for the contributions to the valuation fund, to bring the total transfers for that year to
29 two percent of the previous year's actual collections. The two-percent payment shall continue in
30 any county where funds borrowed from the state pursuant to subsection (a) of this section have
31 not been fully repaid until such moneys, together with accrued interest thereon, have been fully
32 repaid or until July 1, 1999, whichever comes last. Each year thereafter, for counties with loans,
33 and each fiscal year after June 30, 1999, for those counties without loans, the valuation fund shall
34 be continued at an annual amount not to exceed two percent, as determined by the valuation
35 commission, of the previous year's projected tax collections from such regular levies: *Provided*,
36 That on and after July 1, 1999, a valuation fund of a county with a loan shall be continued at an

37 annual amount not to exceed three percent, as determined by the valuation commission, and any
38 amounts received in excess of two percent of the collections shall be expended solely to repay
39 the loan and for no other purpose. No provision of this subdivision shall be construed to abrogate
40 any requirement imposed under subsection (b) of this section.

41 (2) For the fiscal year beginning on July 1, 1999, and any fiscal year thereafter, the
42 assessors, in order to receive any percent of the previous year's projected tax collections for their
43 valuation funds, must submit a request to the valuation commission no later than December 15,
44 1994, and by the same date in December each year thereafter. The submission shall include a
45 projected expenditure budget, including any balances expected to be carried forward, with
46 justification for the percent requested for their valuation fund for the ensuing fiscal year. A copy
47 of the projected budget and justifications shall also be sent to the assessor's county commission,
48 municipalities and school board. The valuation commission shall meet after January 15, but prior
49 to February 1 each year beginning in the year 1995, and has authority to accept and confirm up
50 to two percent as a justifiable amount for counties without loans, and to accept and confirm up to
51 three percent for counties with loans, subject to the requirement of subdivision (1) of this
52 subsection that any amounts received in excess of two percent of the collections shall be
53 expended solely to repay the loan and for no other purpose. The valuation commission may
54 establish whatever lower percent of the previous year's projected tax collections each assessor
55 shall receive based upon the evidence at hand, and the particular reevaluation needs of the
56 county. Absent a proper application by any assessor, the valuation commission may, after
57 consultation with the Tax Commissioner's office, set whatever allowable percent it considers
58 proper. Following its decisions, the valuation commission shall certify to the chief inspector's office
59 of the Department of Tax and Revenue and the Joint Committee on Government and Finance,
60 the percent approved for each assessor's valuation fund, and the chief inspector's office shall
61 notify each affected sheriff and levying body of the moneys due from their levies to their respective
62 valuation funds. County commissions, boards of education and municipalities may present written

63 evidence, prior to January 15, 1995, and by the same date of each year thereafter, acceptable to
64 the valuation commission showing that a lesser amount than that requested by the assessor
65 would be adequate to fund the extra costs associated with the valuation mandated by section
66 seven of this article: *Provided*, That the county commissions, in addition, shall fund the county
67 assessor's office at least the level of funding provided during the fiscal year in which this section
68 was initially enacted.

69 These additional funds are intended to enable assessors to maintain current valuations
70 and to perform the periodic reevaluation required under section nine of this article.

71 (d) Moneys due the valuation fund shall be deposited by the sheriff of the county on a
72 monthly basis as directed by the chief inspector's office for the benefit of the assessor and shall
73 be available to and may be spent by the assessor without prior approval of the county commission,
74 which may not exercise any control over the fund. Clerical functions related to the fund shall be
75 performed in the same manner as done with other normal funding provided to the assessor.

ARTICLE 8. LEVIES.

§11-8-6b. Maximum levies on each classification by county courts; order of levies.

1 County courts are hereby authorized to lay not in excess of the following maximum levies,
2 for the purposes specified and in the following order:

3 (1) With respect to the county as a whole for the payment of (a) interest and sinking fund
4 requirements for bonded indebtedness incurred prior to the adoption of the Tax Limitation
5 Amendment; and (to the extent not so required), (b) other legally incurred contractual
6 indebtedness, not bonded, if any, incurred prior to the adoption of the Tax Limitation Amendment,
7 of the county as follows: On Class I property, twenty-five one hundredths of 1¢; on Class II
8 property, one half of 1¢; and on Classes III and IV property, 1¢.

9 (2) With respect to a magisterial or special taxing district for which the county court is
10 required to lay the levy, for the payment of (a) interest and sinking fund requirements for bonded
11 indebtedness, incurred prior to the adoption of the Tax Limitation Amendment; and (to the extent

12 not so required), (b) other legally incurred contractual indebtedness not bonded, if any, incurred
 13 prior to the adoption of the Tax Limitation Amendment, as follows: On Class I property, two and
 14 fifteen one hundredths cents; on Class II property, four and three tenths cents; and on Classes III
 15 and IV property, eight and six tenths cents.

16 (3) For general county current expense as follows: On Class I property, eleven and nine
 17 tenths cents; on Class II property, twenty-three and eight tenths cents; and on Classes III and IV
 18 property, forty-seven and six tenths cents. But in a county where the total assessed valuation of
 19 all classes of property is less than \$6 million, the county court may, with the prior written approval
 20 of the Tax Commissioner, exceed the rates of levy for general county current expense by not
 21 more than twenty-five percent of the rates specified: *Provided, however,* That if the rates of levy
 22 under paragraph (3) of this section are not required in whole or in part for the purpose for which
 23 they are allocated, the county court may, with the prior written approval of the State Tax
 24 Commissioner, surrender to the ~~county~~ school district board of education such unused parts of
 25 the authorized rates of levy as provided herein.

**§11-8-6c. Maximum levies on each classification by ~~county~~ school district boards of
 education; order of levy; exceeding levy for school bond issues.**

1 ~~County~~ School district boards of education are hereby authorized to lay not in excess of
 2 the following maximum levies, for the purposes specified and in the following order:

3 (1) With respect to a magisterial, independent or other school district existing in a county
 4 prior to May 22, 1933, or any special taxing district for which the board of Education is required
 5 to lay the levy, for the payment of (a) interest and sinking fund requirements for bonded
 6 indebtedness incurred prior to the adoption of the Tax Limitation Amendment; and (to the extent
 7 not so required), (b) other legally incurred contractual indebtedness not bonded, if any, incurred
 8 prior to the adoption of the Tax Limitation Amendment as follows: On Class I property, thirty-five

9 one hundredths of 1¢; on Class II property, seven tenths of 1¢; and on Classes III and IV property,
10 one and four tenths cents.

11 (2) For either or both of (a) the permanent improvement fund, and (b) the payment of
12 interest and sinking fund requirements for bonded indebtedness incurred subsequent to the
13 adoption of the Tax Limitation Amendment, as follows: On Class I property, one and five tenths
14 cents; on Class II property, 3¢; and on Classes III and IV property, 6¢.

15 (3) For the general current expenses of schools as follows: On Class I property, twenty-
16 one and one tenth cents; on Class II property, forty-two and two tenths cents; and on Classes III
17 and IV property, eighty-four and four tenths cents. But if the Tax Commissioner has approved the
18 levy of an additional amount for the general current expenses of the ~~county~~ school district as
19 authorized by section six-b, subsection three, the amount of the levy authorized for boards of
20 education by this subsection shall be reduced by the Tax Commissioner to that extent.

21 If the rates of levy under paragraph (2) above are not required in whole or in part for the
22 purposes for which they are allocated by this section, the ~~county~~ school district board of education
23 may, with the prior written approval of the state board of school finance, created by section three,
24 article nine-b, chapter eighteen of the code, as amended, lay such rates of levy or portion thereof
25 not so required, for the general current expenses of schools: *Provided, however,* That if the rates
26 of levy under paragraph (3) of this section are not sufficient for the purposes for which they are
27 allocated, the ~~county~~ school district board of education may, with the prior written approval of the
28 State Tax Commissioner, lay such additional rates of levy, or portion thereof, as are surrendered
29 by the county court under paragraph (3), section six-b of this article: *Provided further,* That a
30 ~~county~~ school district board of education shall be required to levy outside the levy rates
31 hereinabove provided sufficient to pay the principal and interest requirements on bonds now or
32 hereafter issued by any school district not exceeding in the aggregate five per centum of the

33 assessed value of all taxable property in the ~~county~~ school district, to be ascertained by the last
34 assessment for state and county taxes, previous to the incurring of such indebtedness, in the
35 manner provided by the "Better Schools Amendment," as ratified.

§11-8-6g. Effect on special levy rates when appraisal results in tax revenue increase; public hearings.

1 (a) Until July 1, 1995, as to any special levy in effect prior to that date, and notwithstanding
2 any other provision of law to the contrary, where any annual appraisal, triennial appraisal or
3 general valuation of property would produce an assessment that would cause an increase of four
4 percent or more in the total projected property tax revenues that would be realized were the
5 special levy rates then in effect by the county commission, the municipalities or the ~~county~~ school
6 district board of education to be imposed, the local levying body shall comply with subsection (b)
7 of this section and may reduce the rate of special levy in accordance with the provisions of
8 subsection (d) of this section until July 1, 1995. After July 1, 1995, each levying body shall adopt
9 only the levy rate which is specified and approved in the levy ballot: *Provided*, That if the special
10 levy ballot provision authorizes the levying body to reduce the rate of special levy, such rate may
11 be reduced in accordance with the special levy ballot provision.

12 An additional appraisal or valuation due to new construction or improvements to existing
13 real property, including beginning recovery of natural resources, and newly acquired personal
14 property shall not be an annual appraisal or general valuation within the meaning of this section,
15 nor shall the assessed value of such improvements be included in calculating the new tax levy for
16 purposes of this section.

17 (b) Any local levying body projected to realize such increase greater than four percent
18 shall conduct a public hearing no later than March 20 in the years 1994 and 1995, which hearing
19 may be held at the same time and place as the annual budget hearing. Notice of the public hearing

20 and the meeting in which the levy rate shall be on the agenda shall be given at least seven days
21 before the date for each public hearing by the publication of a notice in at least one newspaper of
22 general circulation in such county or municipality: *Provided*, That a Class IV town or village as
23 defined in section two, article one, chapter eight of this code, in lieu of the publication notice
24 required by this subsection, may post no less than four notices of each public hearing, which
25 posted notices shall contain the information required by the publication notice and which shall be
26 in available, visible locations including the town hall. The notice shall be at least the size of one-
27 eighth page of a standard size newspaper or one-fourth page of a tabloid size newspaper, and
28 the headline in the advertisement shall be in a type no smaller than twenty-four point. The
29 publication notice shall be placed outside that portion, if any, of the newspaper reserved for legal
30 notices and classified advertisements and shall also be published as a Class II-O legal
31 advertisement in accordance with the provisions of article three, chapter fifty-nine of this code.
32 The publication area is the county. The notice shall be in the following form and contain the
33 following information, in addition to such other information as the local governing body may elect
34 to include:

35 HEARING REGARDING SPECIAL LEVY RATES

36 The (name of the local levying body) hereby gives notice that the special levy rate imposed
37 by the (local levying body) causes an increase in property tax revenues due to increased
38 valuations.

39 1. Appraisal/Assessment Increase: Total assessed value of property, excluding additional
40 assessments due to new or improved property, exceeds last year's total assessed value of
41 property by percent.

42 2. Current Year's Revenue Produced Under Special Levy:

43 3. Projected Revenue Under Special Levy for Next Tax Year:

44 4. Revenue Projected from New Property or Improvements: \$.....

45 5. General areas in which new revenue is to be allocated:

46 A public hearing on the issue of special levy rates will be held on (date and time) at
47 (meeting place). A decision regarding the special levy rate will be made on (date and time) at
48 (meeting place).

49 Notwithstanding any other provision of this subsection to the contrary, for the year 1993
50 only, any local levying body required to conduct a public hearing due to a four-percent increase
51 as set forth in this subsection projected for the next fiscal year shall hold the public hearing prior
52 to May 6, shall only be required to publish a Class I legal advertisement in accordance with the
53 provisions of article three, chapter fifty-nine of this code, and need not provide such notice at least
54 seven days before the date of the hearing as required in this subsection: *Provided*, That a Class
55 IV town or village may provide notice as otherwise set forth in this subsection: *Provided, however*,
56 That any public hearings held pursuant to the provisions of this section in the year 1993 prior to
57 the effective date of this section are hereby ratified and confirmed as having full force and effect:
58 *Provided further*, That no county commission or municipality shall be required to hold a public
59 hearing as required by this section during the year 1993 for the fiscal year 1994.

60 (c) All hearings are open to the public, and the local levying body shall permit persons
61 desiring to be heard an opportunity to present oral testimony within such reasonable time limits
62 as are determined by the governing body. A decision regarding the special levy rate shall be made
63 within ten days of the hearing.

64 (d) For the fiscal years beginning on July 1, 1993, 1994 and 1995, as to any special levy
65 in effect prior to July 1, 1995, a local levying body may reduce the rate of the special levy for all
66 classes of property for the forthcoming tax year so as to cause such rate of special levy to produce
67 no more than one hundred four percent of the previous year's projected property tax revenues

68 from extending such special levy rates or such lesser reduction the local levying body considers
69 adequate: *Provided*, That no levying body shall reduce any special levy if such levy rate has been
70 covenanted or otherwise dedicated and is necessary to the payment of bonds or other obligations
71 existing as of the effective date of this section: *Provided, however*, That nothing contained in this
72 subsection shall be construed to limit the reduction of the levy rate when the terms of the special
73 levy permit a lower reduction: *Provided further*, That this provision shall not restrict the ability of a
74 local levying body to enact excess levies as authorized under existing statutory or Constitutional
75 provisions.

76 (e) If any provision of this section is held invalid, such invalidity shall not affect other
77 provisions or applications of this section which can be given effect without the invalid provision or
78 its application and to this end the provisions of this section are declared to be severable.

**§11-8-16. What order for election to increase levies to show; vote required; amount and
continuation of additional levy; issuance of bonds.**

1 A local levying body may provide for an election to increase the levies by entering on its
2 record of proceedings an order setting forth:

- 3 (1) The purpose for which additional funds are needed;
- 4 (2) The amount for each purpose;
- 5 (3) The total amount needed;
- 6 (4) The separate and aggregate assessed valuation of each class of taxable property
7 within its jurisdiction;
- 8 (5) The proposed additional rate of levy in cents on each class of property;
- 9 (6) The proposed number of years, not to exceed five, to which the additional levy applies;
- 10 (7) The fact that the local levying body will or will not issue bonds, as provided by this
11 section, upon approval of the proposed increased levy.

12 The local levying body shall submit to the voters within their political subdivision the
13 question of the additional levy at either a primary, general or special election. If at least sixty
14 percent of the voters cast their ballots in favor of the additional levy, the county commission or
15 municipality may impose the additional levy. If at least a majority of voters cast their ballot in favor
16 of the additional levy, the ~~county~~ school district board of education may impose the additional
17 levy: *Provided*, That any additional levy adopted by the voters, including any additional levy
18 adopted prior to the effective date of this section, shall be the actual number of cents per each
19 \$100 of value set forth in the ballot provision, which number shall not exceed the maximum
20 amounts prescribed in this section, regardless of the rate of regular levy then or currently in effect,
21 unless such rate of additional special levy is reduced in accordance with the provisions of section
22 six-g of this article or otherwise changed in accordance with the applicable ballot provisions. For
23 county commissions, this levy shall not exceed a rate greater than seven and fifteen hundredths
24 cents for each \$100 of value for Class I properties, and for Class II properties a rate greater than
25 twice the rate for Class I properties, and for Class III and IV properties a rate greater than twice
26 the rate for Class II properties. For municipalities, this levy shall not exceed a rate greater than
27 six and twenty-five hundredths cents for each \$100 of value for Class I properties, and for Class
28 II properties a rate greater than twice the rate for Class I properties, and for Class III and IV
29 properties a rate greater than twice the rate for Class II properties. For ~~county~~ school district
30 boards of education, this levy shall not exceed a rate greater than twenty-two and ninety-five
31 hundredths cents for each \$100 of value for Class I properties, and for Class II properties a rate
32 greater than twice the rate for Class I properties, and for Class III and IV properties a rate greater
33 than twice the rate for Class II properties.

34 Levies authorized by this section shall not continue for more than five years without
35 resubmission to the voters.

36 Upon approval of an increased levy as provided by this section, a local levying body may
37 immediately issue bonds in an amount not exceeding the amount of the increased levy plus the
38 total interest thereon, but the term of the bonds shall not extend beyond the period of the
39 increased levy.

40 Insofar as they might concern the issuance of bonds as provided in this section, the
41 provisions of sections three and four, article one, chapter thirteen of this code shall not apply.

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-14. Overpayments; credits; refunds and limitations.

1 (a) *Refunds or credits of overpayments.* -- In the case of overpayment of any tax (or fee),
2 additions to tax, penalties or interest imposed by this article, or any of the other articles of this
3 chapter, or of this code, to which this article is applicable, the Tax Commissioner shall, subject to
4 the provisions of this article, refund to the taxpayer the amount of the overpayment or, if the
5 taxpayer so elects, apply the same as a credit against the taxpayer's liability for the tax for other
6 periods. The refund or credit shall include any interest due the taxpayer under the provisions of
7 section seventeen of this article.

8 (b) *Refunds or credits of gasoline and special fuel excise tax or motor carrier road tax.* --
9 Any person who seeks a refund or credit of gasoline and special fuel excise taxes under the
10 provisions of section ten, eleven or twelve, article fourteen of this chapter, section nine or eleven,
11 article fourteen-a of this chapter, or of motor fuel excise tax under section nine, article fourteen-c
12 of this chapter shall file his or her claim for refund or credit in accordance with the provisions of
13 the applicable sections. The ninety-day time period for determination of claims for refund or credit
14 provided in subsection (d) of this section does not apply to these claims for refund or credit:
15 *Provided,* That claims for refund or credit of the motor fuel excise tax under section nine, article
16 fourteen-c, of this chapter are subject to the ninety-day time period provided in subsection (d) of

17 this section: *Provided, however,* That claims for refund or credit of the motor fuel excise tax under
18 section nine, article fourteen-c of this chapter made by the United States government or unit or
19 agency thereof, any municipal government or any agency thereof, or any ~~county~~ school district
20 board of education made pursuant to subdivisions one, two, three, four, five and six, subsection
21 (c), section nine, article fourteen-c of this chapter will be subject to a thirty-day time period.

22 (c) *Claims for refund or credit.* -- No refund or credit shall be made unless the taxpayer
23 has timely filed a claim for refund or credit with the Tax Commissioner. A person against whom
24 an assessment or administrative decision has become final is not entitled to file a claim for refund
25 or credit with the Tax Commissioner as prescribed herein. The Tax Commissioner shall determine
26 the taxpayer's claim and notify the taxpayer in writing of his or her determination.

27 (d) *Petition for refund or credit; hearing.* --

28 (1) If the taxpayer is not satisfied with the Tax Commissioner's determination of taxpayer's
29 claim for refund or credit, or if the Tax Commissioner has not determined the taxpayer's claim
30 within ninety days after the claim was filed, or six months in the case of claims for refund or credit
31 of the taxes imposed by articles twenty-one, twenty-three and twenty-four of this chapter, after
32 the filing thereof, the taxpayer may file, with the Tax Commissioner, either personally or by
33 certified mail, a petition for refund or credit: *Provided,* That no petition for refund or credit may be
34 filed more than sixty days after the taxpayer is served with notice of denial of taxpayer's claim:
35 *Provided, however,* That after December 31, 2002, the taxpayer shall file the petition with the
36 office of tax appeals in accordance with the provisions of section nine, article ten-a of this chapter.

37 (2) The petition for refund or credit shall be in writing, verified under oath by the taxpayer,
38 or by taxpayer's duly authorized agent having knowledge of the facts, and set forth with
39 particularity the items of the determination objected to, together with the reasons for the
40 objections.

41 (3) When a petition for refund or credit is properly filed, the procedures for hearing and for
42 decision applicable when a petition for reassessment is timely filed shall be followed.

43 (e) *Appeal.* -- An appeal from the office of tax appeal's administrative decision upon the
44 petition for refund or credit may be taken by the taxpayer in the same manner and under the same
45 procedure as that provided for judicial review of an administrative decision on a petition for
46 reassessment, but no bond is required of the taxpayer. An appeal from the administrative decision
47 of the office of tax appeals on a petition for refund or credit, if taken by the taxpayer, shall be taken
48 as provided in section nineteen, article ten-a of this chapter.

49 (f) *Decision of the court.* -- Where the appeal is to review an administrative decision on a
50 petition for refund or credit, the court may determine the legal rights of the parties but in no event
51 shall it enter a judgment for money.

52 (g) *Refund made or credit established.* -- The Tax Commissioner shall promptly issue his
53 or her requisition on the treasury or establish a credit, as requested by the taxpayer, for any
54 amount finally administratively or judicially determined to be an overpayment of any tax (or fee)
55 administered under this article. The Auditor shall issue his or her warrant on the treasurer for any
56 refund requisitioned under this subsection payable to the taxpayer entitled to the refund, and the
57 treasurer shall pay the warrant out of the fund into which the amount refunded was originally paid:
58 *Provided,* That refunds of personal income tax may also be paid out of the fund established
59 pursuant to section ninety-three, article twenty-one of this chapter.

60 (h) *Forms for claim for refund or a credit; where return constitutes claim.* -- The Tax
61 Commissioner may prescribe by rule or regulation the forms for claims for refund or credit.
62 Notwithstanding the foregoing, where the taxpayer has overpaid the tax imposed by article twenty-
63 one, twenty-three or twenty-four of this chapter, a return signed by the taxpayer which shows on
64 its face that an overpayment of tax has been made constitutes a claim for refund or credit.

65 (i) *Remedy exclusive.* -- The procedure provided by this section constitutes the sole
66 method of obtaining any refund, credit, or any tax (or fee) administered under this article, it being
67 the intent of the Legislature that the procedure set forth in this article is in lieu of any other remedy,
68 including the uniform declaratory judgments act embodied in article thirteen, chapter fifty-five of

69 this code, and the provisions of section two-a, article one of this chapter.

70 (j) *Applicability of this section.* -- The provisions of this section apply to refunds or credits
71 of any tax (or fee), additions to tax, penalties or interest imposed by this article, or any article of
72 this chapter, or of this code, to which this article is applicable.

73 (k) *Erroneous refund or credit.* -- If the Tax Commissioner believes that an erroneous
74 refund has been made or an erroneous credit has been established, he or she may proceed to
75 investigate and make an assessment or institute civil action to recover the amount of the refund
76 or credit, within two years from the date the erroneous refund was paid or the erroneous credit
77 was established, except that the assessment may be issued or civil action brought within five
78 years from the date if it appears that any portion of the refund or credit was induced by fraud or
79 misrepresentation of a material fact.

80 (l) *Limitation on claims for refund or credit.* --

81 (1) *General rule.* -- Whenever a taxpayer claims to be entitled to a refund or credit of any
82 tax (or fee), additions to tax, penalties or interest imposed by this article, or any article of this
83 chapter, or of this code, administered under this article, paid into the treasury of this state, the
84 taxpayer shall, except as provided in subsection (d) of this section, file a claim for refund, or credit,
85 within three years after the due date of the return in respect of which the tax (or fee) was imposed,
86 determined by including any authorized extension of time for filing the return, or within two years
87 from the date the tax, (or fee), was paid, whichever of the periods expires the later, or if no return
88 was filed by the taxpayer, within two years from the time the tax (or fee) was paid, and not
89 thereafter.

90 (2) *Extensions of time for filing claim by agreement.* -- The Tax Commissioner and the
91 taxpayer may enter into a written agreement to extend the period within which the taxpayer may
92 file a claim for refund or credit, which period shall not exceed two years. The period agreed upon
93 may be extended for additional periods not in excess of two years each by subsequent
94 agreements in writing made before expiration of the period previously agreed upon.

95 (3) *Special rule where agreement to extend time for making an assessment.* --
96 Notwithstanding the provisions of subdivisions (1) and (2) of this subsection, if an agreement is
97 made under the provisions of section fifteen of this article extending the time period in which an
98 assessment of tax can be made, then the period for filing a claim for refund or credit for
99 overpayment of the same tax made during the periods subject to assessment under the extension
100 agreement are also extended for the period of the extension agreement plus ninety days.

101 (4) *Overpayment of federal tax.* -- Notwithstanding the provisions of subdivisions (1) and
102 (2) of this subsection, in the event of a final determination by the United States Internal Revenue
103 Service or other competent authority of an overpayment in the taxpayer's federal income or estate
104 tax liability, the period of limitation upon claiming a refund reflecting the final determination in
105 taxes imposed by articles eleven, twenty-one and twenty-four of this chapter shall not expire until
106 six months after the determination is made by the United States Internal Revenue Service or other
107 competent authority.

108 (5) *Tax paid to the wrong state.* -- Notwithstanding the provisions of subdivisions (1) and
109 (2) of this subsection, when an individual, or the fiduciary of an estate, has in good faith
110 erroneously paid personal income tax, estate tax or sales tax, to this state on income or a
111 transaction which was lawfully taxable by another state and, therefore, not taxable by this state,
112 and no dispute exists as to the jurisdiction to which the tax should have been paid, then the time
113 period for filing a claim for refund, or credit, for the tax erroneously paid to this state does not
114 expire until ninety days after the tax is lawfully paid to the other state.

115 (6) *Exception for gasoline and special fuel excise tax, motor fuel excise tax and motor*
116 *carrier road tax.* -- This subsection does not apply to refunds or credits of gasoline and special
117 fuel excise tax, motor carrier road tax, or motor fuel excise tax sought under the provisions of
118 article fourteen, fourteen-a or fourteen-c of this chapter.

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-2p. Credit against tax based on the taxable generating capacity of a generating unit

utilizing a turbine powered primarily by wind.

1 (a) For taxable periods beginning on or after January 1, 2008, a credit shall be allowed
2 against tax imposed by this article and calculated based on the taxable generating capacity of a
3 generating unit utilizing a turbine powered primarily by wind. The total credit shall be equal to the
4 amount of qualified contractually agreed contributions as defined in this section. The amount of
5 total credit shall be reduced each year by the amount of credit annually applied to reduce tax
6 under this section.

7 (b) *Definitions.* -- For purposes of this section:

8 (1) "Qualified contractually agreed contribution" means money paid, or the lower of the
9 cost or fair market value, at the time of transfer, of property transferred, by the taxpayer, the owner
10 of the taxpayer or the operator or owner of the wind turbine unit to a county in which the wind
11 turbine unit is located, a ~~county~~ school district board of the ~~county~~ school district in which the wind
12 turbine unit is located or to a municipality located in the county in which the wind turbine unit is
13 located pursuant to a written transfer agreement.

14 (A) The term "qualified contractually agreed contribution" does not include any payment
15 in lieu of taxes or any tax, fee or levy paid to any county, ~~county~~ school district board or
16 municipality or to any other governmental subdivision, agency or instrumentality of this state or of
17 any county or municipality.

18 (B) The term "qualified contractually agreed contribution" does not include any payment
19 in lieu of taxes or any tax, fee or levy paid to any county, ~~county~~ school district board or
20 municipality or to any other governmental subdivision, agency or instrumentality of any state other
21 than this state or of any county or municipality of any state other than this state.

22 (C) The term "qualified contractually agreed contribution" does not include any payment
23 in lieu of taxes or any tax, fee or levy paid to the United States or to any governmental subdivision
24 of the United States or to any agency or instrumentality of the United States or to any foreign
25 government or subdivision, agency or instrumentality thereof.

26 (2) "Taxpayer" means any person that is legally liable for tax imposed by this article that
27 is calculated based on the taxable generating capacity of a generating unit utilizing a turbine
28 powered primarily by wind.

29 (3) "Wind turbine unit" means, and is limited to, an electricity-generating unit utilizing a
30 turbine powered primarily by wind that has a taxable generating capacity determined in
31 accordance with subdivision (2), subsection (c), section two-o of this article.

32 (4) "Written transfer agreement" means a written contract or written promise to transfer
33 money or property to a county in which the wind turbine unit is located, a ~~county~~ school district
34 board of the county in which the wind turbine unit is located or a municipality located in the county
35 in which the wind turbine unit is located, executed not later than March 1, 2007, by the taxpayer,
36 the owner of the taxpayer or the operator or owner of the wind turbine unit and executed by the
37 county commission of the county in which the wind turbine unit is located or by any officer or
38 representative of the county commission having authority to execute binding legal documents for
39 the county commission, the ~~county~~ school district board of the ~~county~~ school district in which the
40 wind turbine unit is located or any officer or representative of the ~~county~~ school district board
41 having authority to execute binding legal documents for the ~~county~~ school district board, or the
42 city council, mayor or city manager of a municipality located in the county in which the wind turbine
43 unit is located or any officer or representative of the municipality having authority to execute
44 binding legal documents for the municipality.

45 (c) *Credit limitations.* —

46 (1) The total amount of credit allowable under this section is limited to the amount of
47 qualified contractually agreed contributions made pursuant to a written transfer agreement.

48 (2) The credit allowed under this section may only be applied to offset annual tax imposed
49 by this article that is measured by the taxable generating capacity of the wind turbine unit. No
50 other tax imposed by or under this article may be offset by the credit allowed under this section
51 and no other tax imposed by this code may be offset by the credit.

52 (3) The credit allowed under this section shall be applied after application of the credit
53 allowed under article thirteen-d of this chapter, as applicable, and after any other applicable
54 credits allowed by this chapter against tax imposed by this article.

55 (4) The amount of credit allowed under this section and the amount of the credit allowed
56 under article thirteen-d of this chapter may not, in combination, reduce the amount of annual tax
57 imposed by this article on the taxable generating capacity of the wind turbine unit to an amount
58 that is less than fifty percent of the amount of annual tax that would have been imposed by this
59 article on the wind turbine unit if the taxable generating capacity of the wind turbine unit was set
60 at five percent of the official capacity of the wind turbine unit.

61 (d) *Time over which credit may be applied.* —

62 (1) The total amount of credit determined under subsection (a) of this section shall be
63 reduced annually by the amount of credit applied in each tax year to offset tax under this section.

64 (2) The credit allowed under this section may be applied annually, beginning on the later
65 of:

66 (A) The year a qualified contractually agreed contribution in money was paid or a qualified
67 contractually agreed contribution in property was delivered to the county, the ~~county~~ school district
68 board or the municipality; or

69 (B) The year in which title thereto irrevocably passed to the transferee;

70 (3) The credit may thereafter be taken in each succeeding tax year until the amount of
71 total credit has been exhausted or until the ninth succeeding tax year after the contractually
72 agreed contribution of money was so paid or the contractually agreed contribution of property was
73 so delivered. Credit remaining after the ninth succeeding tax year is forfeited.

74 (4) Credit to which a taxpayer is entitled under this section shall be applied in an order and
75 sequence such that the credit earned earliest in time shall be applied first in any tax year to offset
76 tax under this section.

77 (e) *Credit for successor businesses and transferees of a wind turbine unit; apportionment.*

78 --

79 (1) *Mere change in form of business.* -- The credit allowed under this section shall not be
80 forfeited by reason of a mere change in the form of the entity or organization that is conducting
81 the business so long as the successor business continues to remain a taxpayer, as defined in this
82 section, in this state, operating the wind turbine unit that was originally owned or operated by the
83 predecessor taxpayer. Such successor shall acquire the amount of credit that remains available
84 under this section for each subsequent taxable year until the credit expires or is exhausted, based
85 on the years remaining and amount of credit remaining to which the transferor was entitled at the
86 time of the transfer.

87 (2) *Transfer or sale to successor.* -- The credit allowed under this section shall not be
88 forfeited by reason of a transfer or sale to a successor business of a wind turbine unit so long as
89 the successor business continues to remain a taxpayer, as defined in this section, in this state,
90 operating the wind turbine unit that was originally owned or operated by the predecessor taxpayer.
91 Upon transfer or sale of a wind turbine unit, the successor shall acquire the amount of credit that
92 remains available under this section for each subsequent taxable year until the credit expires or
93 is exhausted, based on the years remaining and amount of credit remaining to which the transferor
94 was entitled at the time of the transfer.

95 (3) *Apportionment in the year of transfer.* -- Upon transfer or sale, the successor shall
96 acquire the amount of credit that remains available under this section for each taxable year
97 subsequent to the taxable year of the transferor during which the transfer occurred and, for the
98 year of transfer, an amount of annual credit for the year in the same proportion as the number of
99 days remaining in the transferor's taxable year bears to the total number of days in the transferor's
100 taxable year.

ARTICLE 14. GASOLINE AND SPECIAL FUEL EXCISE TAX.

§11-14-5. Exemptions from tax.

1 There shall be exempted from the excise tax on gasoline or special fuel imposed by this

2 article the following:

3 (1) All gallons of gasoline or special fuel exported from this state to any other state or
4 nation;

5 (2) All gallons of gasoline or special fuel sold to and purchased by the United States or
6 any agency of the United States when delivered in bulk quantities of five hundred gallons or more;

7 (3) All gallons of gasoline or special fuel sold to and purchased by a ~~county~~ school district
8 board of education when delivered in bulk quantities of five hundred gallons or more;

9 (4) All gallons of gasoline or special fuel sold pursuant to a government contract, in bulk
10 quantities of five hundred gallons or more, for use in conjunction with any municipal, county, state
11 or federal civil defense or emergency service program, or to any person on whom is imposed a
12 requirement to maintain an inventory of gasoline or special fuel for the purpose of the program:
13 *Provided*, That fueling facilities used for these purposes are not capable of fueling motor vehicles
14 and the person in charge of the program has in his or her possession a letter of authority from the
15 Tax Commissioner certifying his or her right to the exemption;

16 (5) All gallons of gasoline or special fuel imported into this state in the fuel supply tank or
17 tanks of a motor vehicle, other than in the fuel supply tank of a vehicle being hauled. This
18 exemption does not relieve a person owning or operating as a motor carrier of any taxes imposed
19 by article fourteen-a of this chapter;

20 (6) All gallons of gasoline and special fuel used and consumed in stationary off-highway
21 turbine engines;

22 (7) All gallons of special fuel for heating any public or private dwelling, building or other
23 premises;

24 (8) All gallons of special fuel for boilers;

25 (9) All gallons of gasoline or special fuel used as a dry cleaning solvent or commercial or
26 industrial solvent;

27 (10) All gallons of gasoline or special fuel used as lubricants, ingredients or components

28 of any manufactured product or compound;

29 (11) All gallons of gasoline or special fuel sold to any municipality or agency of a
30 municipality for use in vehicles or equipment owned and operated by the municipality or agency
31 of a municipality and when purchased for delivery in bulk quantities of five hundred gallons or
32 more;

33 (12) All gallons of gasoline or special fuel sold to any urban mass transportation authority,
34 created pursuant to the provisions of article twenty-seven, chapter eight of this code, for use in
35 an urban mass transportation system;

36 (13) All gallons of gasoline or special fuel sold for use as aircraft fuel;

37 (14) All gallons of gasoline or special fuel sold for use or used as a fuel for commercial
38 watercraft;

39 (15) All gallons of special fuel sold for use or consumed in railroad diesel locomotives;

40 (16) All gallons of gasoline or special fuel sold to and purchased by a unit of county
41 government when delivered in bulk quantities of five hundred gallons or more;

42 (17) All gallons of special dyed diesel fuel; and

43 (18) All gallons of propane gas for off road use.

§11-14-5b. Exemptions for sales made through special devices.

1 (a) Where the requirements of this section have been met, gasoline or special fuel sold by
2 a distributor or producer to a customer described in subsection (b) of this section through a special
3 device described in subsection (c) of this section is exempt from the taxes otherwise imposed by
4 this article and article fifteen of this chapter.

5 (b) For purposes of this section, "customer" means any of the following entities that
6 regularly purchase gasoline or special fuel for nontaxable uses for its exclusive use in vehicles it
7 owns or leases:

8 (A) The United States government or any agency thereof;

9 (B) A municipality in this state;

10 (C) A county commission in this state;

11 (D) A ~~county~~ school district board of education in this state; and

12 (E) An organization in a county in this state that is certified annually by the county
13 commission as a bona fide:

14 (i) Volunteer fire department;

15 (ii) Nonprofit ambulance service; or

16 (iii) Nonprofit emergency rescue service.

17 (c) For purposes of this section, "special device" means a device, such as a cardlock
18 system, that accurately accounts for sales of gasoline or special fuel for nontaxable uses that is
19 maintained by a distributor or producer at an attended or unattended location in this state.

20 (d) (1) To qualify for the exemption described in subsection (a) of this section, the
21 distributor or producers must maintain accurate records that establish to the satisfaction of the
22 Tax Commissioner the right to the exemption.

23 (2) The records must include purchase orders or contracts for the sale or sales of the
24 gasoline or special fuel or, in the absence of such purchase orders or contracts, a certificate,
25 signed by an authorized officer of the customer, that the gasoline or special fuel was purchased
26 for the exclusive use of an entity described in subsection (b) of this section.

27 (3) The records must also include, for each nontaxable sale:

28 (A) The names of the customer and the person to whom the gasoline or special fuel was
29 delivered;

30 (B) The date of delivery;

31 (C) The license number of the vehicle fueled;

32 (D) The type and quantity of gasoline or special fuel delivered; and

33 (E) Such other information as the Tax Commissioner may require.

34 (e) (1) A customer's privilege to purchase nontaxable gasoline or special fuel through a
35 special device is subject to suspension or revocation by the Tax Commissioner.

36 (2) A customer is required to make and retain such records of its purchases of gasoline
37 and special fuel through a special device as may be required by the Tax Commissioner.

38 (f) When the Tax Commissioner determines, as the result of an audit or investigation, that
39 a customer purchasing gasoline or special fuel that is exempt from tax under subsection (a) of
40 this section is reselling the gasoline or special fuel, is using the gasoline or special fuel for
41 purposes other than the customer's exclusive use, or is failing to make and retain sufficient and
42 adequate records showing the quantity of gasoline or special fuel used or consumed for the
43 customer's exclusive use, the Tax Commissioner shall suspend the privilege of the customer to
44 purchase untaxed gasoline or special fuel through any special device for such period as the Tax
45 Commissioner by written order specifies. The order shall be served on the customer in the same
46 manner as a notice of assessment may be served under article ten of this chapter. The customer
47 may appeal the order in the same manner and within the same period of time as a notice of
48 assessment may be appealed under article ten of this chapter. A copy of the order and any
49 subsequent change or revision of the order shall also be served on any distributor or producer
50 that maintains a special device through which the customer purchases untaxed gasoline or
51 special fuel.

52 (g) When the Tax Commissioner determines, as the result of an audit or other
53 investigation, that a customer purchasing gasoline or special fuel that is exempt from tax under
54 subsection (a) of this section is knowingly and intentionally failing to comply with any requirements
55 of this section, the Tax Commissioner shall by written order revoke the customer's privilege to
56 purchase untaxed gasoline or special fuel through any special device. The order of the Tax
57 Commissioner shall be served on the customer in the same manner as a notice of assessment is
58 served under article ten of this chapter. The customer may appeal the order in the same manner
59 and within the same period of time as a notice of assessment may be appealed under article ten
60 of this chapter. A copy of the order and any subsequent change or revision of that order shall also
61 be served on any distributor or producer that maintains a special device through which the

62 customer purchases untaxed gasoline or special fuel.

63 (h) Notwithstanding the exemption provided under subsection (a) of this section to the
64 contrary, a customer is liable for the taxes that would otherwise be imposed by this article and
65 article fifteen of this chapter on the gasoline or special fuel delivered to the customer if the
66 customer sells or uses the gasoline or special fuel in a manner or under circumstances that fails
67 to meet the requirements of this article for the exemption of the gasoline or special fuel from
68 taxation.

69 (i) A customer liable for the taxes described in subsection (h) of this section shall, in
70 addition to paying the taxes described in subsection (h) of this section, pay a money penalty equal
71 to twenty-five percent of the taxes plus interest calculated beginning with the day the gasoline or
72 special fuel was received by the customer until the day the taxes, penalty and interest are paid to
73 the Tax Commissioner. For each subsequent sale or use, during a fiscal year, of the gasoline or
74 special fuel in a manner or under circumstances that fails to meet the requirements of this article
75 for the exemption of the gasoline or special fuel from taxation, the purchaser shall pay the taxes
76 and a money penalty equal to fifty percent of the tax plus interest calculated in the same manner.
77 For purposes of this section, gasoline and special fuel is received by the customer when it is put
78 into the supply tank of a vehicle owned or leased by the customer.

79 (j) A customer liable for the taxes described in subsection (h) of this section is not entitled
80 to a refund or any credit for the taxes paid or required to be paid under subsection (i) of this
81 section.

82 (k) The exemptions created by this section apply to gasoline or special fuel received by a
83 customer through a special device on or after July 1, 1998.

**§11-14-11a. Refund of tax on gasoline or special fuel paid by any municipality, county,
~~county~~ school district board of education, volunteer fire department, nonprofit
ambulance service and emergency rescue service.**

1 (a) Upon application by a municipality, county or ~~county~~ school district board of education,

2 or upon application and certification by the county commission to the State Tax Commissioner
3 that an organization in the county is a bona fide volunteer fire department, nonprofit ambulance
4 service or emergency rescue service, the tax imposed by this article and paid by any municipality,
5 unit of county government or any such organization shall be refunded.

6 (b) The tax shall be refunded upon presentation to the commissioner of an affidavit
7 accompanied by the original or top copy sales slips or invoices, or certified copies thereof, from
8 the distributor or producer or retail dealer, showing the purchases, together with evidence of
9 payment thereof, which affidavit shall set forth the total amount of the gasoline or special fuel
10 purchased and consumed by the user and the commissioner upon the receipt of the affidavit and
11 the paid sales slips or invoices shall cause to be refunded the tax paid on gasoline or special fuel
12 purchased and consumed as provided in this section.

13 (c) The right to receive any refund under the provisions of this section is not assignable
14 and any assignment thereof is void and of no effect, nor shall any payment be made to any person
15 other than the original person entitled thereto using gasoline or special fuel as set forth in this
16 section. The commissioner shall cause a refund to be made under the authority of this section
17 only when the application for the refund is filed with the commissioner, upon forms prescribed by
18 the commissioner, no later than the thirty-first day of August for purchases of fuel made during
19 the preceding fiscal year ending June 30. Any claim for a refund not timely filed shall not be
20 construed to be or constitute a moral obligation of the State of West Virginia for payment. The
21 claim for refund is also subject to the provisions of section fourteen, article ten of this chapter:
22 *Provided*, That the refund established in this section for counties and municipalities shall only
23 apply to those purchases of gasoline and special fuels made after June 30, 1995.

ARTICLE 14C. MOTOR FUEL EXCISE TAX.

§11-14C-9. Exemptions from tax; claiming refunds of tax.

1 (a) *Per se exemptions from flat rate component of tax.* — Sales of motor fuel to the
2 following, or as otherwise stated in this subsection, are exempt per se from the flat rate of the tax

3 levied by section five of this article and the flat rate may not be paid at the rack:

4 (1) All motor fuel exported from this state to any other state or nation: *Provided*, That the
5 supplier collects and remits to the destination state or nation the appropriate amount of tax due
6 on the motor fuel transported to that state or nation. This exemption does not apply to motor fuel
7 which is transported and delivered outside this state in the motor fuel supply tank of a highway
8 vehicle;

9 (2) Sales of aviation fuel;

10 (3) Sales of dyed special fuel; and

11 (4) Sales of propane unless sold for use in a motor vehicle.

12 (b) *Per se exemptions from variable component of tax.* — Sales of motor fuel to the
13 following are exempt per se from the variable component of the tax levied by section five of this
14 article and the variable component may not be paid at the rack:

15 All motor fuel exported from this state to any other state or nation: *Provided*, That the
16 supplier collects and remits to the destination state or nation the appropriate amount of tax due
17 on the motor fuel transported to that state or nation. This exemption does not apply to motor fuel
18 which is transported and delivered outside this state in the motor fuel supply tank of a highway
19 vehicle.

20 (c) *Refundable exemptions from flat rate component of tax.* — A person having a right or
21 claim to any of the following exemptions from the flat rate component of the tax levied by section
22 five of this article shall first pay the tax levied by this article and then apply to the Tax
23 Commissioner for a refund:

24 (1) The United States or agency thereof: *Provided*, That if the United States government,
25 or agency or instrumentality thereof, does not pay the seller the tax imposed by section five of
26 this article on a purchase of motor fuel, the person selling tax previously paid motor fuel to the
27 United States government, or its agencies or instrumentalities, may claim a refund of the flat rate
28 component of tax imposed by section five of this article on those sales;

- 29 (2) A county government or unit or agency thereof;
- 30 (3) A municipal government or any agency thereof;
- 31 (4) A ~~county~~ school district board of education;
- 32 (5) An urban mass transportation authority created pursuant to the provisions of article
33 twenty-seven, chapter eight of this code;
- 34 (6) A municipal, county, state or federal civil defense or emergency service program
35 pursuant to a government contract for use in conjunction therewith or to a person who is required
36 to maintain an inventory of motor fuel for the purpose of the program: *Provided*, That motor fueling
37 facilities used for these purposes are not capable of fueling motor vehicles and the person in
38 charge of the program has in his or her possession a letter of authority from the Tax Commissioner
39 certifying his or her right to the exemption. In order for this exemption to apply, motor fuel sold
40 under this subdivision and subdivisions (1) through (5), inclusive, of this subsection shall be used
41 in vehicles or equipment owned and operated by the respective government entity or government
42 agency or authority;
- 43 (7) All invoiced gallons of motor fuel purchased by a licensed exporter and subsequently
44 exported from this state to any other state or nation: *Provided*, That the exporter has paid the
45 applicable motor fuel tax to the destination state or nation prior to claiming this refund or the
46 exporter has reported to the destination state or nation that the motor fuel was sold in a transaction
47 not subject to tax in that state or nation. A refund may not be granted on motor fuel which is
48 transported and delivered outside this state in the motor fuel supply tank of a highway vehicle;
- 49 (8) All gallons of motor fuel used and consumed in stationary off-highway turbine engines;
- 50 (9) All gallons of fuel used for heating any public or private dwelling, building or other
51 premises;
- 52 (10) All gallons of fuel used for boilers;
- 53 (11) All gallons of motor fuel used as a dry cleaning solvent or commercial or industrial
54 solvent;

55 (12) All gallons of motor fuel used as lubricants, ingredients or components of a
56 manufactured product or compound;

57 (13) All gallons of motor fuel sold for use or used as a motor fuel for commercial watercraft;

58 (14) All gallons of motor fuel sold for use or consumed in railroad diesel locomotives;

59 (15) All gallons of motor fuel purchased in quantities of twenty-five gallons or more for use
60 as a motor fuel for internal combustion engines not operated upon highways of this state;

61 (16) All gallons of motor fuel purchased in quantities of twenty-five gallons or more and
62 used to power a power take-off unit on a motor vehicle. When a motor vehicle with auxiliary
63 equipment uses motor fuel and there is no auxiliary motor for the equipment or separate tank for
64 a motor, the person claiming the refund may present to the Tax Commissioner a statement of his
65 or her claim and is allowed a refund for motor fuel used in operating a power take-off unit on a
66 cement mixer truck or garbage truck equal to twenty-five percent of the tax levied by this article
67 paid on all motor fuel used in such a truck;

68 (17) Motor fuel used by a person regularly operating a vehicle under a certificate of public
69 convenience and necessity or under a contract carrier permit for transportation of persons when
70 purchased in an amount of twenty-five gallons or more: *Provided*, That the amount refunded is
71 equal to 6 cents per gallon: *Provided, however*, That the gallons of motor fuel have been
72 consumed in the operation of urban and suburban bus lines and the majority of passengers use
73 the bus for traveling a distance not exceeding forty miles, measured one way, on the same day
74 between their places of abode and their places of work, shopping areas or schools; and

75 (18) All gallons of motor fuel that are not otherwise exempt under subdivisions (1) through
76 (6), inclusive, of this subsection and that are purchased and used by any bona fide volunteer fire
77 department, nonprofit ambulance service or emergency rescue service that has been certified by
78 the municipality or county wherein the bona fide volunteer fire department, nonprofit ambulance
79 service or emergency rescue service is located.

80 (d) *Refundable exemptions from variable rate component of tax.* — Any of the following

81 persons may claim an exemption from the variable rate component of the tax levied by section
82 five of this article on the purchase and use of motor fuel by first paying the tax levied by this article
83 and then applying to the Tax Commissioner for a refund.

84 (1) The United States or agency thereof: *Provided*, That if the United States government,
85 or agency or instrumentality thereof, does not pay the seller the tax imposed by section five of
86 this article on any purchase of motor fuel, the person selling tax previously paid motor fuel to the
87 United States government, or its agencies or instrumentalities, may claim a refund of the variable
88 rate of tax imposed by section five of this article on those sales.

89 (2) This state and its institutions;

90 (3) A county government or unit or agency thereof;

91 (4) A municipal government or agency thereof;

92 (5) A ~~county~~ school district board of education;

93 (6) An urban mass transportation authority created pursuant to the provisions of article
94 twenty-seven, chapter eight of this code;

95 (7) A municipal, county, state or federal civil defense or emergency service program
96 pursuant to a government contract for use in conjunction therewith, or to a person who is required
97 to maintain an inventory of motor fuel for the purpose of the program: *Provided*, That fueling
98 facilities used for these purposes are not capable of fueling motor vehicles and the person in
99 charge of the program has in his or her possession a letter of authority from the Tax Commissioner
100 certifying his or her right to the exemption;

101 (8) A bona fide volunteer fire department, nonprofit ambulance service or emergency
102 rescue service that has been certified by the municipality or county where the bona fide volunteer
103 fire department, nonprofit ambulance service or emergency rescue service is located;

104 (9) All invoiced gallons of motor fuel purchased by a licensed exporter and subsequently
105 exported from this state to any other state or nation: *Provided*, That the exporter has paid the
106 applicable motor fuel tax to the destination state or nation prior to claiming this refund. A refund

107 may not be granted on motor fuel which is transported and delivered outside this state in the motor
 108 fuel supply tank of a highway vehicle; or

109 (10) Beginning on January 1, 2018, all gallons of motor fuel sold for use or consumed in
 110 railroad diesel locomotives: *Provided*, That the refundable exemption contained in this
 111 subdivision may not exceed an aggregate amount of \$4,300,000 in any year to all taxpayers
 112 claiming the exemption and that if more than an aggregate amount of \$4,300,000 is appropriately
 113 claimed in any year, then the refundable exemption shall be distributed proportionately to the
 114 taxpayers so that the total aggregate refund is \$4,300,000 in that year. The Tax Commissioner
 115 may propose rules for legislative approval in accordance with article three, chapter twenty-nine-a
 116 of this code that the Tax Commissioner considers necessary to administer the exemption
 117 contained in this subdivision.

118 (e) The provision in subdivision (9), subsection (a), section nine, article fifteen of this
 119 chapter that exempts as a sale for resale those sales of gasoline and special fuel by a distributor
 120 or importer to another distributor does not apply to sales of motor fuel under this article.

CHAPTER 11A. COLLECTION AND ENFORCEMENT OF PROPERTY TAXES.

ARTICLE 1. ACCRUAL AND COLLECTION OF TAXES.

§11A-1-15. Payment by sheriff to municipal and ~~county~~ school district board of education treasuries.

1 Each month the sheriff shall pay all moneys collected for any municipal corporation and
 2 the ~~county~~ school district board of education into the respective treasuries of such municipal
 3 corporation and ~~county~~ school district board of education, payment to be made on or before the
 4 tenth day of each month of all moneys collected during the preceding month for such municipal
 5 corporation and the ~~county~~ school district board of education: *Provided*, That the sheriff shall not
 6 be required to make such monthly payments to the ~~county~~ school district board of education, if
 7 the ~~county~~ school district board has designated the sheriff as its treasurer pursuant to section six,

8 article nine, chapter eighteen of this code. For the faithful performance of this duty, he or she shall
 9 execute a bond, to be approved by the municipal council or Board of Education, in the penalty to
 10 be fixed by the council or board, not to exceed the amount of municipal or school taxes which it
 11 is estimated he or she will collect within any period of two months. The premium on such bond
 12 shall be paid by the municipality or Board of Education. Every sheriff who fails to make any
 13 payment when due shall be charged with interest at the rate of twelve percent a year.

§11A-1-15. Payment by sheriff to municipal and ~~county~~ school district board of education treasuries.

1 Each month the sheriff shall pay all moneys collected for any municipal corporation and
 2 the ~~county~~ school district board of education into the respective treasuries of such municipal
 3 corporation and ~~county~~ school district board of education, payment to be made on or before the
 4 tenth day of each month of all moneys collected during the preceding month for such municipal
 5 corporation and the ~~county~~ school district board of education: *Provided*, That the sheriff shall not
 6 be required to make such monthly payments to the ~~county~~ school district board of education, if
 7 the ~~county~~ school district board has designated the sheriff as its treasurer pursuant to section six,
 8 article nine, chapter eighteen of this code. For the faithful performance of this duty, he or she shall
 9 execute a bond, to be approved by the municipal council or Board of Education, in the penalty to
 10 be fixed by the council or board, not to exceed the amount of municipal or school taxes which it
 11 is estimated he or she will collect within any period of two months. The premium on such bond
 12 shall be paid by the municipality or Board of Education. Every sheriff who fails to make any
 13 payment when due shall be charged with interest at the rate of twelve percent a year.

CHAPTER 11B. DEPARTMENT OF REVENUE.

ARTICLE 2. STATE BUDGET OFFICE.

§11B-2-3. Requests for appropriations; copies to legislative Auditor.

1 (a) The spending officer of each spending unit, other than the legislative and the judicial
2 branches of state government, shall, on or before September 1, of each year, submit to the
3 secretary a request for appropriations for the fiscal year next ensuing. On or before the same
4 date, the spending officer shall also transmit two copies of the request to the Legislative Auditor
5 for the use of the finance committees of the Legislature.

6 (b) If the spending officer of any spending unit fails to transmit to the Legislative Auditor
7 two copies of the request for appropriations within the time specified in this section, the Legislative
8 Auditor or the state budget office shall notify the secretary, Auditor and treasurer of the failure.
9 Upon notification, no funds appropriated to that spending unit shall be encumbered or expended
10 until the spending officer thereof has transmitted two copies of the request for appropriation to the
11 Legislative Auditor.

12 (c) If a spending officer submits to the secretary an amendment to the request for
13 appropriations, two copies of the amendment shall forthwith be transmitted to the Legislative
14 Auditor.

15 (d) Notwithstanding any provision in this section to the contrary, the State Superintendent
16 of Schools shall, on or before December 15, of each year, submit to the secretary a request for
17 appropriations for the fiscal year next ensuing for state aid to schools and submit two copies of
18 the request to the Legislative Auditor for the use of the finance committees of the Legislature. The
19 request for appropriation shall be accompanied with copies of certified enrollment and employee
20 lists from all ~~county~~ school district superintendents for the current school year. If certified
21 enrollment and employee lists are not available to the state superintendent from any of the ~~county~~
22 school district boards, the state superintendent shall notify those school boards and no funds shall
23 be expended for salary or compensation to their school district superintendent until the certified
24 lists of enrollment and employees are submitted.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.**§12-3-20. Electronic or wire transfer.**

1 (a) Notwithstanding any other provision of this code to the contrary, whenever the
2 treasurer of a ~~county~~ school district board of education, a county commission or a municipality is
3 authorized or directed pursuant to law to disburse or transfer on behalf of the ~~county~~ school district
4 board of education, county commission or municipality, funds in the custody of the treasurer or in
5 the treasury of the ~~county~~ school district board of education, county commission or municipality,
6 the treasurer is authorized to disburse or transfer the funds by means of electronic or wire transfer
7 and that transfer shall include appropriate electronic remittance voucher information. The ~~county~~
8 school district of education, county commission or governing body of a municipality may enter into
9 a written agreement with the banking institution in which the funds are deposited, prescribing the
10 manner in which electronic or wire transfer of the funds shall be accomplished, identifying by
11 number and name those accounts from which electronic or wire transfers may be made,
12 identifying which person or persons are authorized to order the electronic or wire transfer of funds
13 from those accounts, and implementing a security procedure as defined in section two hundred
14 one, article four-a, chapter forty-six of this code.

15 (b) It is the duty of the ~~county~~ school district board of education, county commission or
16 governing body of a municipality to adopt a system of internal controls satisfactory to the Tax
17 Commissioner as ex officio, the chief inspector and supervisor of public offices for the
18 documentation and reporting of all transfers or disbursements of funds accomplished by electronic
19 or wire transfer to ensure the safety and integrity of the payment process.

20 (c) The ~~county~~ school district board of education, county commission or governing body
21 of a municipality shall also adopt procedures:

22 (1) Governing the method by which the treasurer is authorized to direct payments from the
23 funds of the ~~county~~ school district board of education, county commission or municipality on
24 deposit with a banking institution;

25 (2) Governing the method of payment of obligations of the ~~county~~ school district board of
26 education, county commission or municipality, including payment by check, draft, electronic or
27 wire transfer, or other method of payment mutually acceptable to the ~~county~~ school district board
28 of education, county commission or governing body of a municipality, and the banking institution;
29 and

30 (3) Covering any other matters it believes necessary to ensure the safety and integrity of
31 the payment process.

32 (d) A ~~county~~ school district board of education, county commission or governing body of
33 a municipality shall file a copy of the procedures it adopts in accordance with the provisions of
34 subsection (c) of this section with each banking institution in which its funds are deposited.

35 (e) The treasurer of the ~~county~~ school district board of education, county commission or
36 municipality, and the banking institution shall agree to follow rules and procedures for electronic
37 fund transfers promulgated by the federal reserve bank and the national clearing house
38 association (NACHA) to ensure the safety and integrity of the payment process. These
39 safeguards must be approved by the ~~county~~ school district board of education, county commission
40 or governing body of a municipality. If the ~~county~~ school district board of education, county
41 commission or governing body of a municipality finds that the safeguards are consistent with and
42 do not contravene the procedures adopted under the provisions of subsection (c) of this section,
43 the safeguards must be approved.

44 (f) This section applies to disbursements or transfers made after May 31, 1998.

ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.

§12-4-15. Bank at school.

1 (a) The State Treasurer may conduct a program in West Virginia public schools to educate
2 students about banking activities and to encourage savings. Banking institutions under the
3 jurisdiction of the West Virginia commissioner of banking may participate in the program by
4 assisting the treasurer in developing and producing materials for use in the schools, opening

5 savings accounts for students at the schools and receiving and accepting deposits at the schools.

6 (b) The State Treasurer may not implement the banking program in any school ~~in a county~~
 7 unless he or she obtains permission from the ~~county~~ school district board of education and the
 8 principal of the school; and

9 (c) Nothing in this section shall be construed to require any professional or service
 10 employee to perform additional duties as a result of the establishment of the banking program.

ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.

§12-6-2. Definitions.

1 As used in this article, unless a different meaning clearly appears from the context:

2 (1) "Beneficiaries" means those individuals entitled to benefits from the participant plans;

3 (2) "Board" means the governing body for the West Virginia Investment Management
 4 Board and any reference elsewhere in this code to Board of Investments or West Virginia Trust
 5 Fund means the board as defined in this subdivision;

6 (3) "401(a) plan" means a plan which is described in Section 401(a) of the Internal
 7 Revenue Code of 1986, as amended, and with respect to which the board has been designated
 8 to hold assets of the plan in trust pursuant to the provisions of section nine-a of this article;

9 (4) "Local government funds" means the moneys of a political subdivision, including
 10 policemen's pension and relief funds, firemen's pension and relief funds and volunteer fire
 11 departments, transferred to the board for deposit;

12 (5) "Participant plan" means any plan or fund subject now or hereafter to subsection (a),
 13 section nine-a of this article;

14 (6) "Political subdivision" means and includes a county, municipality or any agency,
 15 authority, board, ~~county~~ school district board of education, commission or instrumentality of a
 16 county or municipality and regional councils created pursuant to the provisions of section five,
 17 article twenty-five, chapter eight of this code;

18 (7) "Trustee" means any member serving on the West Virginia Investment Management

19 Board: *Provided*, That in section nine-a of this article in which the terms of the trusts are set forth,
 20 "trustee" means the West Virginia Investment Management Board;

21 (8) "Securities" means all forms and types of investments, financial instruments or financial
 22 transactions which may be considered prudent for investment by the board under section eleven
 23 of this article; and

24 (9) "State funds" means all moneys of the state which may be lawfully invested except the
 25 "school fund" established by section four, article XII of the State Constitution.

§12-6-9c. Authorization of additional investments.

1 Notwithstanding the restrictions which may otherwise be provided by law with respect to
 2 the investment of funds, all administrators, custodians or trustees of pension funds other than the
 3 board, each political subdivision of this state and each ~~county~~ school district board of education
 4 may invest funds in the securities of or any other interest in any investment company or
 5 investment trust registered under the Investment Company Act of 1940, 15 U.S.C. §80a, the
 6 portfolio of which is limited: (i) To obligations issued by or guaranteed as to the payment of both
 7 principal and interest by the United States of America or its agencies or instrumentalities; and (ii)
 8 to repurchase agreements fully collateralized by obligations of the United States government or
 9 its agencies or instrumentalities: *Provided*, That the investment company or investment trust takes
 10 delivery of the collateral either directly or through an authorized custodian: *Provided, however*,
 11 That the investment company or investment trust is rated within one of the top two rating
 12 categories of any nationally recognized rating service such as Moody's or Standard & Poor's.

ARTICLE 6C. WEST VIRGINIA BOARD OF TREASURY INVESTMENTS.

12-6C-3. Definitions.

1 As used in this article, unless a different meaning clearly appears from the context:

2 (1) "Board" means the governing body for the West Virginia Board of Treasury
 3 Investments. References in this code to the entity investing the moneys of the Consolidated Fund,
 4 to the West Virginia Board of Investments, to the West Virginia Trust Fund or to the West Virginia

5 Investment Management Board in connection with investing moneys in the Consolidated Fund
6 means the Board as defined in this subdivision;

7 (2) "Consolidated fund" means the investment fund continued in section six of this article
8 and transferred to the Board by the West Virginia Investment Management Board for
9 Management and Investment;

10 (3) "Director" means any member serving on the Board;

11 (4) "Local government funds" means the moneys of a political subdivision, including
12 policemen's and firemen's pension and relief funds, and volunteer fire department funds,
13 transferred to the Board for deposit;

14 (5) "Participant" means any state government spending unit or political subdivision which
15 transfers moneys to the Board for investment;

16 (6) "Political subdivision" means and includes a county, municipality or any agency,
17 authority, board, ~~county~~ school district board of education, commission or instrumentality of a
18 county or municipality and regional councils created pursuant to the provisions of section five,
19 article twenty-five, chapter eight of this code;

20 (7) "Securities" means all bonds, notes, debentures or other evidences of indebtedness
21 and other lawful investment instruments; and

22 (8) "State funds" means all moneys of the state which may be lawfully invested except for
23 the "school fund" established by section four, article XII of the State Constitution.

CHAPTER 13. PUBLIC BONDED INDEBTEDNESS.

ARTICLE 1. BOND ISSUES FOR ORIGINAL INDEBTEDNESS.

§13-1-3. Amount and purpose of indebtedness for which bonds may be issued.

1 No political division authorized by this article to issue bonds, except ~~county~~ school district
2 boards of education, shall by any bond issue, become indebted to an amount, including all other
3 indebtedness, exceeding two and one-half percent of the value of the taxable property therein, as

4 shown by the last assessment thereof, for state and county purposes, next prior to the issuing of
5 such bonds: *Provided*, That any county for the erection and equipment of a courthouse and/or jail
6 for such county, with funds borrowed from the government of the United States or any
7 governmental agency, federal or state, and any municipal corporation of three hundred
8 inhabitants or more, for the purpose of grading, paving, sewerage, and otherwise improving or
9 re-improving its streets and alleys, or for establishing and maintaining a library or museum for the
10 public use, or a building or structure for educational purposes, or acquiring a recreation park for
11 the public use, or for acquiring, constructing, furnishing, equipping and maintaining civic arenas,
12 Auditoriums, exhibition halls and theaters, may become indebted and issue bonds in an additional
13 sum not exceeding two and one-half percent of the value of the taxable property therein,
14 ascertained as aforesaid: *Provided, however*, That no ~~county~~ school district board of education
15 authorized by this article to issue bonds, shall, by any bond issue, become indebted, in any
16 manner, or for any purpose, to an amount, including all other indebtedness, in the aggregate,
17 exceeding five percent on the value of the taxable property therein, in the ~~county~~ school district
18 to be ascertained by the last assessment for state and county taxes, previous to the incurring of
19 such indebtedness, in the manner provided by the "School Bond Amendment," as ratified.

20 The term "sewerage" as used herein shall be treated in a comprehensive sense, so as to
21 include all mains, laterals, connections, traps, incinerating and disposal plants, and other
22 necessary and convenient accessories to a modern sanitary and efficient sewerage system and
23 shall include storm sewers.

24 The county court of any county is hereby authorized and empowered to negotiate and sell
25 to the government of the United States or to any governmental agency, federal or state, at private
26 sale, at not less than par any bonds issued for the purpose of erecting and equipping a courthouse
27 or other public buildings for such county, under and by virtue of this article, without first offering
28 them for sale at public auction, or to any other person or agency.

§13-1-4. Bond issue proposal to be submitted to voters; election order.

1 No debt shall be contracted or bonds issued under this article until all questions connected
2 with the same are first submitted to a vote of the qualified electors of the political division for which
3 the bonds are to be issued, and receive three fifths of all the votes cast for and against the same:
4 *Provided, That a ~~county~~ school district board of education may contract indebtedness and issue*
5 *bonds for public school purposes when submitted to a vote of the people of the ~~county~~ school*
6 *district if the question of contracting indebtedness and issuing bonds is approved by a majority of*
7 *all the votes cast for and against the same pursuant to section ten, article X of the Constitution.*
8 The governing body of any political division referred to in this article may, and when requested so
9 to do by a petition in writing, praying that bonds be issued and stating the purpose and amount
10 thereof, signed by legal voters of the political division equal to twenty percent of the votes cast in
11 a county for Governor, or in a municipal corporation or school district for mayor or member of the
12 Board of Education, as the case may be, shall, by order entered of record, direct that an election
13 be held for the purpose of submitting to the voters of the political division all questions connected
14 with the contracting of debt and the issuing of bonds. The order shall state:

15 (a) The necessity for issuing the bonds or, if a petition has been filed as provided herein,
16 that the petition has been filed;

17 (b) If for the construction of a county-district road or bridge thereon, a summary of the
18 engineer's report provided for in the following section setting forth the approximate extent and the
19 estimated cost of the proposed improvement and the kind or class of work to be done thereon;

20 (c) Purpose or purposes for which the proceeds of bonds are to be expended;

21 (d) Valuation of the taxable property as shown by the last assessment thereof for state
22 and county purposes;

23 (e) Indebtedness, bonded or otherwise;

24 (f) Amount of the proposed bond issue;

25 (g) Maximum term of bonds;

26 (h) Maximum rate of interest;

27 (i) Date of election;

28 (j) That the levying body is authorized to lay a sufficient levy annually to provide funds for
 29 the payment of the interest upon the bonds and the principal at maturity and the approximate rate
 30 of levy necessary for this purpose; the bonds in that year, together with any deficiencies for prior
 31 years, within, and not exceeding thirty-four years, which tax levies will be laid separate and apart
 32 and in addition to the maximum rates provided for tax levies by school districts on the several
 33 classes of property in section one, article X of the Constitution, but in the same proportions as the
 34 maximum rates are levied on the several classes of property; and the tax may be levied outside
 35 the limits fixed by section one, article X of the Constitution.

36 Any other provision which does not violate any provision of law, or transgress any principle
 37 of public policy, may be incorporated in the order

38 (k) In the case of school bonds, that the bonds, together with all existing bonded
 39 indebtedness, will not exceed in the aggregate five percent of the value of the taxable property in
 40 the school district ascertained in accordance with section eight, article X of the Constitution; and
 41 that the bonds will be payable from a direct annual tax levied and collected in each year on all
 42 taxable property in the school district sufficient to pay the principal and the interest maturing on

§13-1-19. Signing, sealing and delivery of bonds.

1 All bonds issued under this article by any county shall be signed by the president of the
 2 county commission and countersigned by the clerk of the county commission; bonds issued by
 3 any municipality shall be signed by the mayor or other chief executive and countersigned by the
 4 clerk, recorder or secretary; bonds issued by a ~~county~~ school district board of education shall be
 5 signed by the president of the Board of Education and countersigned by the secretary thereof.
 6 The seal of the political division shall be affixed to the bonds. The delivery of any bonds so
 7 executed at any time thereafter shall be valid, although before the date of delivery the person
 8 signing the bonds shall have ceased to hold office.

ARTICLE 2H. LOTTERY REVENUE BOND ACT.

§13-2H-2. Definitions.

1 Unless the context clearly indicates otherwise, as used in this article:

2 (a) "Board of education" means a ~~county~~ school district board of education of a growth
3 county, as that term is defined in section three, article twenty, chapter seven of this code, which
4 has enacted the Local Powers Act and in which county a racetrack is located that has participated
5 in the West Virginia Thoroughbred Development Fund since on or before January 1, 1991, and is
6 receiving lottery revenues.

7 (b) "Governmental body" means any municipality, ~~county~~ school district or board of
8 education that receives lottery revenues.

9 (c) "Lottery revenues" means the funds distributed to a governmental body pursuant to the
10 provisions of sections ten and ten-b, article twenty-two-a, chapter twenty-nine of this code; section
11 one thousand four hundred eight, article twenty-two-b of said chapter, or section twenty-seven,
12 article twenty-two-c of said chapter or section twenty-two, article twenty-five, chapter twenty-nine
13 of this code.

14 (d) "Lottery revenue bonds" means bonds, debentures, notes, certificates of participation,
15 certificates of beneficial interest, certificates of ownership or other evidences of indebtedness or
16 ownership that are issued by a governmental body, the proceeds of which are used directly or
17 indirectly to finance or refinance public projects pursuant to this article and are secured by the
18 lottery revenues of the governmental body.

19 (e) "Lottery revenue fund" means the fund required to be established by the governmental
20 body to deposit lottery revenues if the governmental body issues lottery revenue bonds.

21 (f) "Public project" means any project approved by a governmental body to acquire,
22 improve, renovate, extend, enlarge, increase, repair, construct, equip, maintain and operate
23 public buildings, structures, fixtures, property, public infrastructure and appurtenant facilities of
24 any type or types for which the governmental body is permitted by law to expend public funds
25 including, but not limited to, those projects as defined in section one, article sixteen, chapter eight

26 of this code. Additionally, a public project would include all roads and transportation infrastructure.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 11. THE CHILD PROTECTION ACT OF 2006.

§15-11-2. Legislative findings.

1 (a) The purpose of "The Child Protection Act of 2006" is to put in place a series of
2 programs, criminal law revisions and other reforms to provide and promote the ability of the
3 children of this state to live their lives without being exposed and subjected to neglect and physical
4 and sexual abuse. The targeted increases in terms of incarceration, enhanced treatment, post-
5 release supervision and new approaches toward the state's child protection system will, in the
6 aggregate, strengthen government's ability to address this most serious problem. The Legislature
7 finds that the broad reaching measures encompassed in this Act will provide for greater
8 intervention among and punishment and monitoring of individuals who create a risk to our
9 children's safety and well-being.

10 (b) The Legislature further finds that the following reforms implemented as part of this Act
11 will provide protections to the children of this state and are all important to eliminate risks to
12 children and are essential elements of "The Child Protection Act of 2006":

13 (1) Creating a special unit in the State Police specializing in the investigation of child abuse
14 and neglect -- section fifteen, article two, chapter fifteen of this code;

15 (2) Modifying the Sex Offender Registration Act to ensure more effective registration,
16 identification and monitoring of persons convicted of sexual offenses -- article twelve, chapter
17 fifteen of this code;

18 (3) Establishing the Child Abuse and Neglect Registry, requiring the registry to disclose
19 information to certain state and local officials -- article thirteen, chapter fifteen of this code;

20 (4) Providing for coded driver's licenses and nondriver identification cards to more easily
21 identify sexually violent predators -- section three, article two, chapter seventeen-b of this code;

22 (5) Prohibiting contractors and service providers convicted of certain offenses from
23 accessing school grounds and providing for the release of criminal history information by the
24 central abuse registry to ~~county~~ school ~~district~~ boards -- section fifteen-c, article five, chapter
25 eighteen of this code;

26 (6) Establishing a task force to study the feasibility of constructing separate correctional
27 facilities for the incarceration and treatment of sex offenders -- section twenty-two, article one,
28 chapter twenty-five of this code;

29 (7) Requiring the State Police and the Department of Health and Human Resources to
30 maintain statewide child abuse and neglect statistical indexes of all convictions and allegations,
31 respectively -- section fifteen, article two, chapter fifteen and section eleven, article six-a, chapter
32 forty-nine of this code;

33 (8) Providing for increased terms of incarceration for first degree sexual assault and first
34 degree sexual abuse committed against children under the age of twelve -- sections three and
35 seven of article eight-b, chapter sixty-one of this code;

36 (9) Eliminating eligibility of certain sex offenders for probation, home incarceration and
37 alternative sentences and providing for enhanced terms of incarceration for certain subsequent
38 sex offenses committed by recidivist sex offenders -- sections nine-a and nine-b of article eight-
39 b, chapter sixty-one of this code;

40 (10) Providing for polygraph examinations for certain sex offenders on probation, parole
41 or supervised release -- article eleven-d, chapter sixty-two of this code;

42 (11) Providing for electronic monitoring of certain sex offenders on probation, parole and
43 supervised release -- article eleven-d, chapter sixty-two of this code;

44 (12) Establishing a task force to develop measures aimed at managing sexually violent
45 predators released from confinement -- article eleven-e, chapter sixty-two of this code;

46 (13) Making psychiatric evaluations a condition of probation eligibility for certain sex
47 offenders -- section two, article twelve, chapter sixty-two of this code;

48 (14) Authorizing the Department of Health and Human Resources to establish
49 qualifications for sex offender treatment programs and counselors -- sections two and twenty-six,
50 article twelve, chapter sixty-two of this code;

51 (15) Providing for extended supervision of certain offenders and supervised release
52 requirements for sexually violent offenders -- section twenty-six, article twelve, chapter sixty-two
53 of this code; and

54 (16) Providing for prerelease risk assessments of certain sex offenders -- section twenty-
55 seven, article twelve, chapter sixty-two of this code.

56 (c) In addition, the Legislature finds that those enhanced terms of incarceration and post-
57 conviction measures provided for in this Act which impact certain offenders convicted of sexual
58 offenses against adults are necessary and appropriate to protect children from neglect and
59 physical and sexual abuse given that: (1) Clinical research indicates that a substantial percentage
60 of sexual offenders "cross over" among age groups in selecting their victims; (2) many of the risk
61 factors prevalent among sex offenders that "cross over" (e.g., substance abuse, lack of empathy
62 toward victim, inability to control inappropriate impulses, childhood abuse) also are prevalent
63 among perpetrators of child abuse and neglect; and (3) enhanced terms of incarceration, post-
64 conviction supervision, monitoring and treatment measures will enable the criminal justice system
65 to identify and address those "cross over" offenders before they can victimize additional children.

ARTICLE 6. STATE ARMORY BOARD.

§15-6-17. Disposition of abandoned and unsuitable armories or armory facilities.

1 Whenever any armory shall be no longer needed by the National Guard, or other military
2 organization, or in the judgment of the board is unsuitable for military purposes, the board shall
3 have the authority, and it is hereby expressly empowered to sell, transfer and convey such armory
4 to the municipality, county or ~~county~~ school district board of education or any two or more of the
5 same or combination thereof in which the same is located, for public purposes, upon such terms
6 as the board may deem to be in the best interest of the state: *Provided*, That if such municipality,

7 county or Board of Education shall not purchase such armory, the board shall then be authorized
8 to sell, transfer and convey the same to any person, firm, or corporation upon such terms as the
9 board may deem to be in the best interest of the state: *Provided further*, That if the armory cannot
10 be sold in this manner, the board may lease it for other than military purposes as provided in
11 section ten of this article.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 9A. TOBACCO USAGE RESTRICTIONS.

§16-9A-4. Use of tobacco, tobacco products, alternative nicotine products or vapor products in certain areas of certain public schools prohibited; penalty.

1 Every person who shall smoke a cigarette or cigarettes, pipe, cigar or other implement, of
2 any type or nature, designed, used or employed for smoking any tobacco or tobacco product; or
3 who shall use any tobacco product or tobacco-derived product in any building or part thereof used
4 for instructional purposes, in any school of this state, as defined in section one, article one, chapter
5 eighteen of this code, or on any lot or grounds actually used for instructional purposes of any such
6 school of this state while such school is used or occupied for school purposes, shall be guilty of
7 a misdemeanor, and, upon conviction thereof, shall be punished for each offense by a fine of not
8 less than one nor more than five dollars: *Provided*, That this prohibition shall not be construed to
9 prevent the use of any tobacco or tobacco product or tobacco-derived product, in any faculty
10 lounge or staff lounge or faculty office or other area of said public school not used for instructional
11 purposes: *Provided, however*, That students do not have access thereto: *Provided further*, That
12 nothing herein contained shall be construed to prevent any ~~county~~ school district board of
13 education from promulgating rules and regulations that further restrict the use of tobacco products
14 or tobacco-derived products, in any form, from any other part or section of any public school
15 building under its jurisdiction.

CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.**§17B-2-3a. Graduated driver's license.**

1 (a) Any person under the age of eighteen may not operate a motor vehicle unless he or
2 she has obtained a graduated driver's license in accordance with the three-level graduated
3 driver's license system described in the following provisions.

4 (b) Any person under the age of twenty-one, regardless of class or level of licensure, who
5 operates a motor vehicle with any measurable alcohol in his or her system is subject to the
6 provisions of section two, article five, chapter seventeen-c of this code and section two, article
7 five-a of said chapter. Any person under the age of eighteen, regardless of class or licensure
8 level, is subject to the mandatory school attendance and satisfactory academic progress
9 provisions of section eleven, article eight, chapter eighteen of this code.

10 (c) *Level one instruction permit.* — An applicant who is fifteen years or older meeting all
11 other requirements prescribed in this code may be issued a level one instruction permit.

12 (1) *Eligibility.* — The division shall not issue a level one instruction permit unless the
13 applicant:

14 (A) Presents a completed application, as prescribed by the provisions of section six of this
15 article, and which is accompanied by a writing, duly acknowledged, consenting to the issuance of
16 the graduated driver's license and executed by a parent or guardian entitled to custody of the
17 applicant;

18 (B) Presents a certified copy of a birth certificate issued by a state or other governmental
19 entity responsible for vital records unexpired, or a valid passport issued by the United States
20 government evidencing that the applicant meets the minimum age requirement and is of verifiable
21 identity;

22 (C) Passes the vision and written knowledge examination and completes the driving under
23 the influence awareness program, as prescribed in section seven of this article;

24 (D) Presents a driver's eligibility certificate or otherwise shows compliance with the

25 provisions of section eleven, article eight, chapter eighteen of this code; and

26 (E) Pays a fee of \$5, which shall permit the applicant two attempts at the written knowledge
27 test.

28 (2) *Terms and conditions of instruction permit.* — A level one instruction permit issued
29 under the provisions of this section is valid until thirty days after the date the applicant attains the
30 age of eighteen and is not renewable. However, any permit holder who allows his or her permit
31 to expire prior to successfully passing the road skills portion of the driver examination, and who
32 has not committed any offense which requires the suspension, revocation or cancellation of the
33 instruction permit, may reapply for a new instruction permit under the provisions of section six of
34 this article. The division shall immediately revoke the permit upon receipt of a second conviction
35 for a moving violation of traffic regulations and laws of the road or violation of the terms and
36 conditions of a level one instruction permit, which convictions have become final unless a greater
37 penalty is required by this section or any other provision of this code. Any person whose
38 instruction permit has been revoked is disqualified from retesting for a period of ninety days.
39 However, after the expiration of ninety days, the person may retest if otherwise eligible. In addition
40 to all other provisions of this code for which a driver's license may be restricted, suspended,
41 revoked or canceled, the holder of a level one instruction permit may only operate a motor vehicle
42 under the following conditions:

43 (A) Under the direct supervision of a licensed driver, twenty-one years of age or older, or
44 a driver's education or driving school instructor who is acting in an official capacity as an instructor,
45 who is fully alert and unimpaired, and the only other occupant of the front seat. The vehicle may
46 be operated with no more than two additional passengers, unless the passengers are family
47 members;

48 (B) Between the hours of five a.m. and ten p.m.;

49 (C) All occupants must use safety belts in accordance with the provisions of section forty-
50 nine, article fifteen, chapter seventeen-c of this code;

51 (D) Without any measurable blood alcohol content, in accordance with the provisions of
52 subsection (h), section two, article five, chapter seventeen-c of this code; and

53 (E) Maintains current school enrollment and is making satisfactory academic progress or
54 otherwise shows compliance with the provisions of section eleven, article eight, chapter eighteen
55 of this code.

56 (F) A holder of a level one instruction permit who is under the age of eighteen years shall
57 be prohibited from using a wireless communication device while operating a motor vehicle, unless
58 the use of the wireless communication device is for contacting a 9-1-1 system. A person violating
59 the provisions of this paragraph is guilty of a misdemeanor and, upon conviction thereof, shall for
60 the first offense be fined \$25; for a second offense be fined \$50; and for a third or subsequent
61 offense be fined \$75.

62 (d) *Level two intermediate driver's license.* -- An applicant sixteen years of age or older,
63 meeting all other requirements of the code, may be issued a level two intermediate driver's
64 license.

65 (1) *Eligibility.* -- The division shall not issue a level two intermediate driver's license unless
66 the applicant:

67 (A) Presents a completed application as prescribed in section six of this article;

68 (B) Has held the level one instruction permit conviction-free for the one hundred eighty
69 days immediately preceding the date of application for a level two intermediate license;

70 (C) Has completed either a driver's education course approved by the state Department
71 of Education or fifty hours of behind-the-wheel driving experience, including a minimum of ten
72 hours of nighttime driving, certified by a parent or legal guardian or other responsible adult over
73 the age of twenty-one as indicated on the form prescribed by the division: *Provided*, That nothing
74 in this paragraph shall be construed to require any school or any ~~county~~ school district board of
75 education to provide any particular number of driver's education courses or to provide driver's
76 education training to any student;

77 (D) Presents a driver's eligibility certificate or otherwise shows compliance with the
78 provisions of section eleven, article eight, chapter eighteen of this code;

79 (E) Passes the road skills examination as prescribed by section seven of this article; and

80 (F) Pays a fee of \$5.

81 (2) *Terms and conditions of a level two intermediate driver's license.* -- A level two
82 intermediate driver's license issued under the provisions of this section shall expire thirty days
83 after the applicant attains the age of eighteen, or until the licensee qualifies for a level three full
84 Class E license, whichever comes first. In addition to all other provisions of this code for which a
85 driver's license may be restricted, suspended, revoked or canceled, the holder of a level two
86 intermediate driver's license may only operate a motor vehicle under the following conditions:

87 (A) Unsupervised between the hours of five a.m. and ten p.m.;

88 (B) Only under the direct supervision of a licensed driver, age twenty-one years or older,
89 between the hours of ten p.m. and five a.m. except when the licensee is going to or returning
90 from:

91 (i) Lawful employment;

92 (ii) A school-sanctioned activity;

93 (iii) A religious event; or

94 (iv) An emergency situation that requires the licensee to operate a motor vehicle to prevent
95 bodily injury or death of another;

96 (C) All occupants shall use safety belts in accordance with the provisions of section forty-
97 nine, article fifteen, chapter seventeen-c of this code;

98 (D) For the first six months after issuance of a level two intermediate driver's license, the
99 licensee may not operate a motor vehicle carrying any passengers less than twenty years old,
100 unless these passengers are family members of the licensee; for the second six months after
101 issuance of a level two intermediate driver's license, the licensee may not operate a motor vehicle
102 carrying more than one passenger less than twenty years old, unless these passengers are family

103 members of the licensee;

104 (E) Without any measurable blood alcohol content in accordance with the provisions of
105 subsection (h), section two, article five, chapter seventeen-c of this code;

106 (F) Maintains current school enrollment and is making satisfactory academic progress or
107 otherwise shows compliance with the provisions of section eleven, article eight, chapter eighteen
108 of this code;

109 (G) A holder of a level two intermediate driver's license who is under the age of eighteen
110 years shall be prohibited from using a wireless communication device while operating a motor
111 vehicle, unless the use of the wireless communication device is for contacting a 9-1-1 system. A
112 person violating the provisions of this paragraph is guilty of a misdemeanor and, upon conviction
113 thereof, shall for the first offense be fined \$25; for a second offense be fined \$50; and for a third
114 or subsequent offense be fined \$75.

115 (H) Upon the first conviction for a moving traffic violation or a violation of paragraph (A),
116 (B), (C), (D) or (G), subdivision (1), subsection (d) of this section of the terms and conditions of a
117 level two intermediate driver's license, the licensee shall enroll in an approved driver improvement
118 program unless a greater penalty is required by this section or by any other provision of this code;
119 and

120 At the discretion of the commissioner, completion of an approved driver improvement
121 program may be used to negate the effect of a minor traffic violation as defined by the
122 commissioner against the one year conviction-free driving criteria for early eligibility for a level
123 three driver's license and may also negate the effect of one minor traffic violation for purposes of
124 avoiding a second conviction under paragraph (I) of this subdivision; and

125 (I) Upon the second conviction for a moving traffic violation or a violation of the terms and
126 conditions of the level two intermediate driver's license, the licensee's privilege to operate a motor
127 vehicle shall be revoked or suspended for the applicable statutory period or until the licensee's
128 eighteenth birthday, whichever is longer unless a greater penalty is required by this section or any

129 other provision of this code. Any person whose driver's license has been revoked as a level two
130 intermediate driver, upon reaching the age of eighteen years and if otherwise eligible may reapply
131 for an instruction permit, then a driver's license in accordance with the provisions of sections five,
132 six and seven of this article.

133 (e) *Level three, full Class E license.* -- The level three license is valid until thirty days after
134 the date the licensee attains his or her twenty-first birthday. Unless otherwise provided in this
135 section or any other section of this code, the holder of a level three full Class E license is subject
136 to the same terms and conditions as the holder of a regular Class E driver's license.

137 A level two intermediate licensee whose privilege to operate a motor vehicle has not been
138 suspended, revoked or otherwise canceled and who meets all other requirements of the code
139 may be issued a level three full Class E license without further examination or road skills testing
140 if the licensee:

141 (1) Has reached the age of seventeen years; and

142 (A) Presents a completed application as prescribed by the provisions of section six of this
143 article;

144 (B) Has held the level two intermediate license conviction free for the twelve-month period
145 immediately preceding the date of the application;

146 (C) Has completed any driver improvement program required under paragraph (G),
147 subdivision (2), subsection (d) of this section; and

148 (D) Pays a fee of \$2.50 for each year the license is valid. An additional fee of \$.50 shall
149 be collected to be deposited in the Combined Voter Registration and Driver's Licensing Fund
150 established in section twelve, article two, chapter three of this code;

151 (E) Presents a driver's eligibility certificate or otherwise shows compliance with the
152 provisions of section eleven, article eight, chapter eighteen of this code; or

153 (2) Reaches the age of eighteen years; and

154 (A) Presents a completed application as prescribed by the provisions of section six of this

155 article; and

156 (B) Pays a fee of \$2.50 for each year the license is valid. An additional fee of \$.50 shall
157 be collected to be deposited in the Combined Voter Registration and Driver's Licensing Fund
158 established in section twelve, article two, chapter three of this code.

159 (f) A person violating the provisions of the terms and conditions of a level one or level two
160 intermediate driver's license is guilty of a misdemeanor and, upon conviction thereof, shall for the
161 first offense be fined \$25; for a second offense be fined \$50; and for a third or subsequent offense
162 be fined \$75.

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

ARTICLE 6. SPEED RESTRICTIONS.

§17C-6-1. Speed limitations generally; penalty.

1 (a) No person may drive a vehicle on a highway at a speed greater than is reasonable and
2 prudent under the existing conditions and the actual and potential hazards. In every event speed
3 shall be controlled as necessary to avoid colliding with any person, vehicle or other conveyance
4 on or entering the highways in compliance with legal requirements and the duty of all persons to
5 use due care.

6 (b) Where no special hazard exists that requires lower speed for compliance with
7 subsection (a) of this section, the speed of any vehicle not in excess of the limits specified in this
8 section or established as authorized in this section is lawful, but any speed in excess of the limits
9 specified in this subsection or established as authorized in this section is unlawful. The following
10 speed limits apply:

11 (1) Fifteen miles per hour in a school zone during school recess or while children are going
12 to or leaving school during opening or closing hours. A school zone is all school property, including
13 school grounds and any street or highway abutting the school grounds and extending one
14 hundred twenty-five feet along the street or highway from the school grounds. The West Virginia

15 Division of Highways shall erect signage indicating the place of entry and exit of each school
16 zone. Upon a formal vote and a written request by a ~~county~~ school district board of education to
17 expand a school zone to a road that is adjacent to school property, the West Virginia Division of
18 Highways shall expand the school zone by erecting new signage indicating the expanded school
19 zone's location and speed limit within ninety days of receiving the request: *Provided*, That the
20 school zone may not be expanded more than one hundred twenty-five feet along an adjacent
21 road unless the division determines that the additional extension is needed and necessary for the
22 safety of the school children. The speed restriction does not apply to vehicles traveling on a
23 controlled-access highway which is separated from the school or school grounds by a fence or
24 barrier approved by the Division of Highways;

25 (2) Twenty-five miles per hour in any business or residence district; and

26 (3) Fifty-five miles per hour on open country highways, except as otherwise provided by
27 this chapter.

28 The speeds set forth in this section may be altered as authorized in sections two and three
29 of this article.

30 (c) The driver of every vehicle shall, consistent with the requirements of subsection (a) of
31 this section, drive at an appropriate reduced speed when approaching and crossing an
32 intersection or railway grade crossing, when approaching and going around a curve, when
33 approaching a hill crest, when traveling upon any narrow or winding roadway and when a special
34 hazard exists with respect to pedestrians or other traffic or by reason of weather or highway
35 conditions.

36 (d) The speed limit on controlled access highways and interstate highways, where no
37 special hazard exists that requires a lower speed, shall be not less than fifty-five miles per hour
38 and the speed limits specified in subsection (b) of this section do not apply.

39 (e) Unless otherwise provided in this section, any person who violates the provisions of
40 this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than

41 \$100; upon a second conviction within one year thereafter, shall be fined not more than \$200;
42 and, upon a third or subsequent conviction within two years thereafter, shall be fined not more
43 than \$500: *Provided*, That if the third or subsequent conviction is based upon a violation of the
44 provisions of this section where the offender exceeded the speed limit by fifteen miles per hour
45 or more, then upon conviction, shall be fined not more than \$500 or confined in jail for not more
46 than six months, or both fined and confined.

47 (f) Any person who violates the provisions of subdivision (1), subsection (b) of this section
48 is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor
49 more than \$500: *Provided*, That if the conviction is based upon a violation of the provisions of
50 subdivision (1), subsection (b) of this section where the offender exceeded the speed limit by
51 fifteen miles per hour or more in the presence of one or more children, then upon conviction, shall
52 be fined not less than \$100 nor more than \$500 or confined in jail for not more than six months,
53 or both fined and confined: *Provided*, that if the signage required by subdivision (1) is not present
54 in the school zone at the time of the violation, then any person who violates said provision is guilty
55 of a misdemeanor, and upon conviction thereof, shall be fined not more than \$25.

56 (g) If an owner or driver is arrested under the provisions of this section for the offense of
57 driving above the posted speed limit on a controlled access highway or interstate highway and if
58 the evidence shows that the motor vehicle was being operated at ten miles per hour or less above
59 the speed limit, then, upon conviction thereof, that person shall be fined not more than \$5, plus
60 court costs.

61 (h) Any person operating a commercial motor vehicle engaged in the transportation of coal
62 on the coal resource transportation road system who violates subsection (a), (b) or (c) of this
63 section shall, upon conviction, be subject to fines in triple the amount otherwise provided in
64 subsection (e) of this section.

65 (i) If an owner or driver is convicted under the provisions of this section for the offense of
66 driving above the speed limit on a controlled access highway or interstate highway of this state

67 and if the evidence shows that the motor vehicle was being operated at ten miles per hour or less
68 above the speed limit, then notwithstanding the provisions of section four, article three, chapter
69 seventeen-b of this code, a certified abstract of the judgment on the conviction shall not be
70 transmitted to the Division of Motor Vehicles: *Provided*, That the provisions of this subsection do
71 not apply to conviction of owners or drivers who have been issued a commercial driver's license
72 as defined in chapter seventeen-e of this code, if the offense was committed while operating a
73 commercial vehicle.

74 (j) If an owner or driver is convicted in another state for the offense of driving above the
75 maximum speed limit on a controlled access highway or interstate highway and if the maximum
76 speed limit in the other state is less than the maximum speed limit for a comparable controlled
77 access highway or interstate highway in this state, and if the evidence shows that the motor
78 vehicle was being operated at ten miles per hour or less above what would be the maximum
79 speed limit for a comparable controlled access highway or interstate highway in this state, then
80 notwithstanding the provisions of section four, article three, chapter seventeen-b of this code, a
81 certified abstract of the judgment on the conviction shall not be transmitted to the Division of Motor
82 Vehicles or, if transmitted, shall not be recorded by the division, unless within a reasonable time
83 after conviction, the person convicted has failed to pay all fines and costs imposed by the other
84 state: *Provided*, That the provisions of this subsection do not apply to conviction of owners or
85 drivers who have been issued a commercial driver's license as defined in chapter seventeen-e of
86 this code, if the offense was committed while operating a commercial vehicle.

ARTICLE 12. SPECIAL STOPS REQUIRED.

§17C-12-7. Overtaking and passing school bus; penalties; signs and warning lights upon buses; requirements for sale of buses; mounting of cameras; educational information campaign; limitation on idling.

1 (a) The driver of a vehicle, upon meeting or overtaking from either direction any school
2 bus which has stopped for the purpose of receiving or discharging any school children, shall stop

3 the vehicle before reaching the school bus when there is in operation on the school bus flashing
4 warning signal lights, as referred to in section eight of this article, and the driver may not proceed
5 until the school bus resumes motion, or is signaled by the school bus driver to proceed or the
6 visual signals are no longer actuated. This section applies wherever the school bus is receiving
7 or discharging children including, but not limited to, any street, highway, parking lot, private road
8 or driveway: *Provided*, That the driver of a vehicle upon a controlled access highway need not
9 stop upon meeting or passing a school bus which is on a different roadway or adjacent to the
10 highway and where pedestrians are not permitted to cross the roadway.

11 (b) Any driver acting in violation of subsection (a) of this section is guilty of a misdemeanor
12 and, upon conviction for a first offense, shall be fined not less than \$250 or more than \$500, or
13 confined in jail not more than six months, or both fined and confined. Upon conviction of a second
14 violation of subsection (a), the driver shall be fined not less than \$500 nor more than \$1,000, or
15 confined in jail not more than six months, or both fined and confined. Upon conviction of a third
16 or subsequent violation of subsection (a), the driver shall be fined \$1,000, and confined not less
17 than forty-eight hours in jail but not more than six months.

18 (c) Where the actual identity of the operator of a motor vehicle operated in violation of
19 subsection (a) of this section is unknown but the license plate number of the motor vehicle is
20 known, it may be inferred that the operator was an owner or lessee of the motor vehicle for
21 purposes of the probable cause determination. Where there is more than one registered owner
22 or lessee, the inference created by this subsection shall apply to the first listed owner or lessee
23 as found on the motor vehicle registration: *Provided*, That a person charged with a violation of
24 subsection (a) of section under the provisions of this subsection where the sole evidence against
25 the owner or lessee is the presence of the vehicle at the scene at the time of the offense shall
26 only be subject to the applicable fine set forth in subsection (b) of this section upon conviction:
27 *Provided, however*, That, the offenses set forth in subsection (f) and (g) of this section are
28 separate and distinct from that set forth in subsection (a) of this section.

29 (d) Service of process of a complaint issued pursuant to subsection (c) of this section shall
30 be effected consistent with West Virginia Rule of Criminal Procedure 4.

31 (e) In addition to the penalties prescribed in subsections (b) of this section, the
32 Commissioner of Motor Vehicles shall, upon conviction, suspend the driver's license of the person
33 so convicted:

34 (1) Of a first offense under subsection (b) of this section, for a period of thirty days;

35 (2) Of a second offense under subsection (b) of this section, for a period of ninety days;

36 or

37 (3) Of a third or subsequent offense under subsection (b) of this section, for a period of
38 one hundred eighty days.

39 (f) Any driver of a vehicle who willfully violates the provisions of subsection (a) of this
40 section and the violation causes serious bodily injury to any person other than the driver, is guilty
41 of a felony and, upon conviction, shall be confined in a state correctional facility not less than one
42 year nor more than three years and fined not less than \$500 nor more than \$2,000.

43 (g) Any driver of a vehicle who willfully violates the provisions of subsection (a) of this
44 section, and the violation causes death, is guilty of a felony and, upon conviction, shall be confined
45 in a state correctional facility not less than one year nor more than ten years and fined not less
46 than \$1,000 nor more than \$3,000.

47 (h) Every bus used for the transportation of school children shall bear upon the front and
48 rear of the bus a plainly visible sign containing the words "school bus" in letters not less than eight
49 inches in height. When a contract school bus is being operated upon a highway for purposes
50 other than the actual transportation of children either to or from school, all markings on the
51 contract school bus indicating "school bus" shall be covered or concealed. Any school bus sold
52 or transferred to another owner by a ~~county~~ school district board of education, agency or individual
53 shall have all flashing warning lights disconnected and all lettering removed or permanently
54 obscured, except when sold or transferred for the transportation of school children.

55 (i) Every ~~county~~ school district board of education is hereby authorized to mount a camera
56 on any school bus for the purpose of enforcing this section or for any other lawful purpose.

57 (j) To the extent that state, federal or other funds are available, the State Police shall
58 conduct an information campaign to educate drivers concerning the provisions of this section and
59 the importance of school bus safety.

60 (k) The State Board of Education shall promulgate a rule in accordance with the provisions
61 of article three-b, chapter twenty-nine-a of this code governing the idling of school buses.

ARTICLE 14. MISCELLANEOUS RULES.

§17C-14-12. School bus rules.

1 (a) The West Virginia Board of Education by and with the advice of the motor vehicle
2 commissioner shall adopt and enforce rules consistent with this chapter, including the provisions
3 of subsection (c), section nineteen, article fifteen of this chapter, to govern the design and
4 operation of all school buses used for the transportation of school children when owned and
5 operated by any ~~county~~ school district board of education or privately owned and operated under
6 contract with any ~~county~~ school district board of education in this state and these rules shall by
7 reference be made a part of any such contract with a ~~county~~ school district board of education.
8 Every ~~county~~ school district board of education, its officers and employees, and every person
9 employed under contract by a ~~county~~ school district board of education shall be subject to these
10 rules.

11 (b) Any officer or employee of any ~~county~~ school district board of education who violates
12 any of said rules or who fails to include the obligation to comply with said rules in any contract
13 executed by him or her on behalf of a ~~county~~ school district board of education is guilty of
14 misconduct and subject to removal from office or employment. Any person operating a school bus
15 under contract with ~~county~~ school district board of education who fails to comply with any of said
16 rules is guilty of breach of contract and the contract shall be canceled after notice and hearing by
17 the responsible officers of the ~~county~~ school district board of education.

ARTICLE 15. EQUIPMENT.**§17C-15-19. Additional lighting equipment.**

1 (a) Any motor vehicle may be equipped with not more than two side cowl or fender lamps
2 which shall emit an amber or white light without glare.

3 (b) Any motor vehicle may be equipped with not more than one running board courtesy
4 lamp on each side thereof which shall emit a white or amber light without glare.

5 (c) All motor vehicles shall be equipped with a minimum of at least two functioning back-
6 up lamps either separately or in combination with other lamps, unless the vehicle was originally
7 equipped with one lamp. Any such back-up lamp shall not be lighted when the motor vehicle is in
8 forward motion. School buses used for the transportation of school children in this state, whether
9 owned and operated by a ~~county~~ school district board of education or privately owned and
10 operated under contract with a ~~county~~ school district Board of Education, shall be equipped with
11 at least two back-up lamps, one on each side of the rear door, with white lens or reflectors,
12 capable of lighting the roadway and objects to the rear of the bus for safe backing during darkness,
13 and which, at the option of the ~~county~~ school district board of education, may each provide fifty
14 candlepower in illumination intensity instead of thirty-two candlepower.

15 (d) Any vehicle may be equipped with lamps which may be used for the purpose of warning
16 the operators of other vehicles of the presence of a vehicular traffic hazard requiring the exercise
17 of unusual care in approaching, overtaking or passing, and when so equipped may display such
18 warning in addition to any other warning signals required by this article. The lamps used to display
19 such warning to the front shall be mounted at the same level and as widely spaced laterally as
20 practicable and shall display simultaneously flashing white or amber lights, or any shade of color
21 between white and amber. The lamps used to display such warning to the rear shall be mounted
22 at the same level and as widely spaced laterally as practicable, and shall show simultaneously
23 flashing amber or red lights, or any shade of color between amber and red.

24 (e) Vehicles used by "rural mail carriers" in carrying or delivering mail in rural areas may

25 be equipped with amber flashing lights. Such lights shall be on the front and rear of the vehicle
26 and may be activated when the vehicle is stopped or decreasing speed in order to stop in the
27 course of carrying, delivering or picking up mail along the route.

28 (f) Vehicles used as the lead car in a funeral procession are hereby authorized to be
29 equipped with, but are not required to use, purple lamps or purple flashing lights. Such lamps may
30 be used for the purpose of warning the operators of other vehicles of the presence of a vehicular
31 traffic hazard requiring the exercise of unusual care in approaching, overtaking or passing a
32 funeral procession, and when so equipped may display such warning in addition to any other
33 warning signals required by this article. The lamps or flashing lights used to display such warning
34 to the front shall be mounted at the same level and as widely spaced laterally as practicable and
35 shall display simultaneously either illuminated or flashing purple lights. The lamps used to display
36 such warning to the rear shall be mounted at the same level and as widely spaced laterally as
37 practicable, and shall show simultaneously flashing or illuminated purple light.

§17C-15-26. Special restrictions on lamps.

1 (a) Any lighted lamp or illuminating device upon a motor vehicle other than head lamps,
2 spot lamps, auxiliary lamps or flashing front-direction signals which projects a beam of light of an
3 intensity greater than three hundred candlepower shall be so directed that no part of the beam
4 will strike the level of the roadway on which the vehicle stands at a distance of more than seventy-
5 five feet from the vehicle.

6 (b) No person may drive or move any vehicle or equipment upon any highway with any
7 lamp or device on the vehicle displaying other than a white or amber light visible from directly in
8 front of the center of the vehicle except as authorized by subsection (d) of this section.

9 (c) Except as authorized in subsections (d) and (g) of this section and authorized in section
10 nineteen of this article, flashing lights are prohibited on motor vehicles: *Provided*, That any vehicle
11 as a means for indicating right or left turn or any vehicle as a means of indicating the same is
12 disabled or otherwise stopped for an emergency may have blinking or flashing lights.

13 (d) Notwithstanding any other provisions of this chapter, the following colors of flashing
14 warning lights are restricted for the use of the type of vehicle designated:

15 (1) Blue flashing warning lights are restricted to police vehicles. Authorization for police
16 vehicles shall be designated by the chief administrative official of each police department.

17 (2) Except for standard vehicle equipment authorized by section nineteen of this article,
18 red flashing warning lights are restricted to the following:

19 (A) Ambulances;

20 (B) Firefighting vehicles;

21 (C) Hazardous material response vehicles;

22 (D) Industrial fire brigade vehicles;

23 (E) Rescue squad vehicles not operating out of a fire department;

24 (F) School buses;

25 (G) Class A vehicles, as defined by section one, article ten, chapter seventeen-a of this
26 code, of those firefighters who are authorized by their fire chiefs to have the lights;

27 (H) Class A vehicles of members of duly chartered rescue squads not operating out of a
28 fire department;

29 (I) Class A vehicles of members of ambulance services or duly chartered rescue squads
30 who are authorized by their respective chiefs to have the lights;

31 (J) Class A vehicles of out-of-state residents who are active members of West Virginia fire
32 departments, ambulance services or duly chartered rescue squads who are authorized by their
33 respective chiefs to have the lights;

34 (K) West Virginia Department of Agriculture emergency response vehicles;

35 (L) Vehicles designated by the Secretary of the Department of Military Affairs and Public
36 Safety for emergency response or emergency management by the Division of Corrections,
37 Regional Jail and Correctional Facility Authority, Division of Juvenile Services and Division of
38 Homeland Security and Emergency Management; and

39 (M) Class A vehicles of emergency response or emergency management personnel as
40 designated by the Secretary of the Department of Military Affairs and Public Safety and the county
41 commission of the county of residence.

42 Red flashing warning lights attached to a Class A vehicle may be operated only when
43 responding to or engaged in handling an emergency requiring the attention of the firefighters,
44 members of the ambulance services or chartered rescue squads.

45 (3) The use of red flashing warning lights is authorized as follows:

46 (A) Authorization for all ambulances shall be designated by the Department of Health and
47 Human Resources and the sheriff of the county of residence.

48 (B) Authorization for all fire department vehicles shall be designated by the fire chief and
49 the State Fire Marshal's Office.

50 (C) Authorization for all hazardous material response vehicles and industrial fire brigades
51 shall be designated by the chief of the fire department and the State Fire Marshal's Office.

52 (D) Authorization for all rescue squad vehicles not operating out of a fire department shall
53 be designated by the squad chief, the sheriff of the county of residence and the Department of
54 Health and Human Resources.

55 (E) Authorization for school buses shall be designated as set out in section twelve, article
56 fourteen of this chapter.

57 (F) Authorization for firefighters to operate Class A vehicles shall be designated by their
58 fire chiefs and the state Fire Marshal's office.

59 (G) Authorization for members of ambulance services or any other emergency medical
60 service personnel to operate Class A vehicles shall be designated by their chief official, the
61 Department of Health and Human Resources and the sheriff of the county of residence.

62 (H) Authorization for members of duly chartered rescue squads not operating out of a fire
63 department to operate Class A vehicles shall be designated by their squad chiefs, the sheriff of
64 the county of residence and the Department of Health and Human Resources.

65 (I) Authorization for out-of-state residents operating Class A vehicles who are active
66 members of a West Virginia fire department, ambulance services or duly chartered rescue squads
67 shall be designated by their respective chiefs.

68 (J) Authorization for West Virginia Department of Agriculture emergency response
69 vehicles shall be designated by the Commissioner of the Department of Agriculture.

70 (K) Authorization for vehicles for emergency response or emergency management by the
71 Division of Corrections, Regional Jail and Correctional Facility Authority, Division of Juvenile
72 Services and Division of Homeland Security and Emergency Management shall be designated
73 by the Secretary of the Department of Military Affairs and Public Safety.

74 (L) Authorization for Class A vehicles of emergency response or emergency management
75 personnel as designated by the Secretary of the Department of Military Affairs and Public Safety
76 and the county commission of the county of residence.

77 (4) Yellow or amber flashing warning lights are restricted to the following:

78 (A) All other emergency vehicles, including tow trucks and wreckers, authorized by this
79 chapter and by section twenty-seven of this article;

80 (B) Postal service vehicles and rural mail carriers, as authorized in section nineteen of this
81 article;

82 (C) Rural newspaper delivery vehicles;

83 (D) Flag car services;

84 (E) Vehicles providing road service to disabled vehicles;

85 (F) Service vehicles of a public service corporation;

86 (G) Snow removal equipment;

87 (H) School buses; and

88 (I) Automotive fire apparatus owned by a municipality or other political subdivision, by a
89 volunteer or part-volunteer fire company or department or by an industrial fire brigade.

90 (5) The use of yellow or amber flashing warning lights shall be authorized as follows:

91 (A) Authorization for tow trucks, wreckers, rural newspaper delivery vehicles, flag car
92 services, vehicles providing road service to disabled vehicles, service vehicles of a public service
93 corporation and postal service vehicles shall be designated by the sheriff of the county of
94 residence.

95 (B) Authorization for snow removal equipment shall be designated by the Commissioner
96 of the Division of Highways.

97 (C) Authorization for school buses shall be designated as set out in section twelve, article
98 fourteen of this chapter.

99 (D) Authorization for automotive fire apparatus shall be designated by the fire chief in
100 conformity with the NFPA 1901 Standard for Automotive Fire Apparatus as published by the
101 National Fire Protection Association (NFPA) on July 18, 2003, and adopted by the state Fire
102 Commission by legislative rule (87 CSR 1, *et seq.*), except as follows:

103 (i) With the approval of the State Fire Marshal, used automotive fire apparatus may be
104 conformed to the NFPA standard in effect on the date of its manufacture or conformed to a later
105 NFPA standard; and

106 (ii) Automotive fire apparatus may be equipped with blinking or flashing headlamps.

107 (e) Notwithstanding the foregoing provisions of this section, any vehicle belonging to a
108 ~~county~~ school district board of education, an organization receiving funding from the state or
109 Federal Transit Administration for the purpose of providing general public transportation or hauling
110 solid waste may be equipped with a white flashing strobotron warning light. This strobe light may
111 be installed on the roof of a school bus, a public transportation vehicle or a vehicle hauling solid
112 waste not to exceed one-third the body length forward from the rear of the roof edge. The light
113 shall have a single clear lens emitting light three hundred sixty degrees around its vertical axis
114 and may not extend above the roof more than six and one-half inches. A manual switch and a
115 pilot light must be included to indicate the light is in operation.

116 (f) Notwithstanding the foregoing provisions of this section, any waste service vehicle as

117 defined in section eleven, article six of this chapter may be equipped with yellow or amber flashing
 118 warning lights.

119 (g) It is unlawful for flashing warning lights of an unauthorized color to be installed or used
 120 on a vehicle other than as specified in this section, except that a police vehicle may be equipped
 121 with either or both blue or red warning lights.

CHAPTER 18. EDUCATION.

ARTICLE 1. DEFINITIONS; LIMITATIONS OF CHAPTER; GOALS FOR EDUCATION.

§18-1-1. Definitions.

1 The following words used in this chapter and in any proceedings pursuant thereto have
 2 the meanings ascribed to them unless the context clearly indicates a different meaning:

3 (a) "School" means the students and teachers assembled in one or more buildings,
 4 organized as a unit;

5 (b) "District" means ~~county~~ school district;

6 (c) "State board" means the West Virginia Board of Education;

7 ~~(d) "County board" or "Board" means a county board of education.~~

8 (d) "School district board" or "board" means a school district board of education.

9 (e) "State superintendent" means the state superintendent of free Schools;

10 (f) ~~"County superintendent"~~ "School district superintendent" or "superintendent" means a
 11 ~~county school district~~ superintendent of schools;

12 (g) "Teacher" means a teacher, supervisor, principal, superintendent, public school
 13 librarian or any other person regularly employed for instructional purposes in a public school in
 14 this state;

15 (h) "Service person" or "service personnel," whether singular or plural, means any
 16 nonteaching school employee who is not included in the meaning of "teacher" as defined in this
 17 section, and who serves the school or schools as a whole, in a nonprofessional capacity, including

18 such areas as secretarial, custodial, maintenance, transportation, school lunch and aides. Any
19 reference to "service employee" or "service employees" in this chapter or chapter eighteen-a of
20 this code means service person or service personnel as defined in this section;

21 (i) "Social worker" means a nonteaching school employee who, at a minimum, possesses
22 an undergraduate degree in social work from an accredited institution of higher learning and who
23 provides various professional social work services, activities or methods as defined by the state
24 board for the benefit of students;

25 (j) "Regular full-time employee" means any person employed by a ~~county~~ school district
26 board who has a regular position or job throughout his or her employment term, without regard to
27 hours or method of pay;

28 (k) "Career clusters" means broad groupings of related occupations;

29 (l) "Work-based learning" means a structured activity that correlates with and is mutually
30 supportive of the school-based learning of the student and includes specific objectives to be
31 learned by the student as a result of the activity;

32 (m) "School-age juvenile" means any individual who is entitled to attend or who, if not
33 placed in a residential facility, would be entitled to attend public schools in accordance with: (1)
34 Section five, article two of this chapter; (2) sections fifteen and eighteen, article five of this chapter;
35 or (3) section one, article twenty of this chapter;

36 (n) "Student with a disability" means an exceptional child, other than gifted, pursuant to
37 section one, article twenty of this chapter;

38 (o) "Casual deficit" means a deficit of not more than three percent of the approved levy
39 estimate or a deficit that is nonrecurring from year to year; and

40 (p) "Athletic director" means a person employed by a ~~county~~ school district board to work
41 in a school's athletic program pursuant to section one-a, article two, chapter eighteen-a of this
42 code.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-5. Powers and duties generally; specific powers and duties for alternatives that improve student learning.

1 (a) Subject to and in conformity with the Constitution and laws of this state, the State Board
2 of Education shall exercise general supervision of the public schools of the state, and shall
3 promulgate rules in accordance with the provisions of article three-b, chapter twenty-nine-a of this
4 code for carrying into effect the laws and policies of the state relating to education. The rules shall
5 relate to the following:

6 (1) Standards for performance and measures of accountability;

7 (2) Physical welfare of students;

8 (3) Education of all children of school age;

9 (4) School attendance;

10 (5) Evening and continuation or part-time day schools;

11 (6) School extension work;

12 (7) Classification of schools;

13 (8) Issuing certificates based upon credentials;

14 (9) Distribution and care of instructional resources by ~~county~~ school district boards;

15 (10) General powers and duties of ~~county~~ school district boards, teachers, principals,
16 supervisors and superintendents; and

17 (11) Such other matters pertaining to the public schools of the state as the state board
18 considers necessary and expedient.

19 (b) The state board, in exercising its constitutional responsibility for the general
20 supervision of public schools, must do so as provided by general law. Included within the general
21 law is the process for improving education which has been recognized by the court as the method
22 chosen by the Legislature to measure whether a thorough and efficient education is being
23 provided. The court further recognized that the resulting student learning is the ultimate measure
24 of a thorough education and that it must be achieved in an efficient manner. To achieve this result,

25 the state board must have reasonable discretion to balance the local autonomy and flexibility
26 needed by schools to deliver a thorough and efficient education with the letter of the laws as
27 enacted for school operations.

28 (c) The purpose of this subsection is to authorize the state board to approve alternatives
29 to the letter of the laws enacted for school operations in the areas enumerated in this subsection.
30 The state board may approve such alternatives as proposed by a ~~county~~ school district board or
31 school if, in the sole judgment of the state board, the alternatives meet the spirit and intent of the
32 applicable statutes and are intended solely to optimize student learning.

33 (1) The Legislature finds that alternatives are warranted and may be approved by the state
34 board on a case-by-case basis when a ~~county~~ school district board submits to the state board a
35 comprehensive plan for optimizing student learning that:

36 (A) Achieves the spirit and intent of the laws for an instructional term that provide the
37 instructional time necessary for students to meet or exceed the high quality standards for student
38 performance adopted by the state board;

39 (B) Ensures sufficient time within the instructional term to promote the improvement of
40 instruction and instructional practices;

41 (C) Incorporates a school calendar approved in accordance with the approval process
42 required by section forty-five, article five of this chapter;

43 (D) Allows for school-level determination of alternatives affecting time within the school
44 day that preserve the spirit and intent of providing teachers with: (i) Sufficient planning time to
45 develop engaging, differentiated instruction for all students in all classes, which includes at least
46 forty minutes in length for the elementary level and as required by section fourteen, article four,
47 chapter eighteen-a of this code for the secondary level; and (ii) Collaborative time for teachers to
48 undertake and sustain instructional improvement. This determination may be made only in the
49 form of a school policy that is part of the school's strategic improvement plan and is approved by
50 a vote of the faculty senate; and

51 (E) Has the sole purpose of improving student learning and that improvement is evident
52 within a reasonable period.

53 (2) The Legislature makes the following findings for consideration by the state board with
54 respect to optimizing student learning:

55 (A) Maximizing learning time is a critical factor needed to improve student learning and
56 requires multiple strategies and policies that support great teaching and learning;

57 (B) Learning time is that portion of instructional time in the school day during which a
58 student is paying attention and receiving instruction that is appropriately leveled, and learning is
59 taking place. Learning time must not be assumed to be the time that a student is seated at a desk,
60 but may be achieved through a variety of methods that actively engage students in learning;

61 (C) A student's time engaged in learning is maximized when the student is allowed to
62 progress and acquire competency at a pace which challenges his or her interest and intellect
63 while receiving guidance and assistance when needed. Instructional strategies to help
64 personalize student learning in this manner are frequently assisted by technology;

65 (D) Providing teachers with the resources and support needed to engage students in
66 meaningful, appropriately leveled learning for as much time as is possible during the school day
67 may be as important as facilities, equipment and staff development for maximizing learning time
68 and improving student learning;

69 (E) Successful schools are distinguishable from unsuccessful schools by the frequency
70 and extent to which teachers discuss professional practices, collectively design materials and
71 inform and critique one another;

72 (F) Even successful schools must be self-renewing systems and learning organizations
73 marked by deliberate effort to identify helpful knowledge and spread its use within the
74 organization;

75 (G) Unless teachers are collectively involved in planning and implementing school
76 improvement, it is unlikely to be sustained; and

77 (H) Given sufficient control over their own programs and supportive district leadership and
78 policies, schools themselves may best be suited to determine the variety of methods through
79 which time during the school day is allocated for teachers to plan individually and collectively to
80 maximize learning time. Examples of methods used by successful schools include, but are not
81 limited to, scheduling, using special subject teachers and guest presenters, dedicating time set
82 aside for staff development, implementing alternative staff utilization patterns, providing
83 opportunities for administrators to teach, and utilizing accrued instructional time.

§18-2-5f. Use of student social security numbers.

1 (a) *Restrictions on use of student social security numbers.* -- No public or private
2 elementary or secondary school or college or university shall display any student's social security
3 number to identify students for posting or public listing of grades, on class rosters or other lists
4 provided to teachers, on student identification cards, in student directories or similar listings, or,
5 unless specifically authorized or required by law, for any public identification purpose: *Provided,*
6 That any student identification cards, directories or similar listings produced prior to July 1, 2002
7 shall not be subject to the provisions of this section.

8 (b) *Use of social security numbers.* -- Nothing in this section shall be construed as
9 prohibiting the Higher Education Policy Commission, state institutions of higher education, state
10 Board of Education, ~~county~~ school district boards of education or the public or private schools
11 from using a student's social security number for internal record keeping purposes or studies.

12 (c) *Social security number or alternative required for enrollment or attendance in public*
13 *school.* --

14 (1) Effective on July 1, 2003, the appropriate ~~county~~ school district board shall request the
15 parent, guardian, or other responsible person to furnish the social security number of each child
16 who is currently enrolled in a public school under the jurisdiction of the ~~county~~ school district
17 board.

18 (2) Prior to admitting a child to a public school in this state, the appropriate ~~county~~ school

19 district board shall request the parent, guardian, or other responsible person to furnish the social
20 security number for each child who is to be enrolled after July 1, 2003.

21 (3) The ~~county~~ school district board shall inform the parent, guardian or other responsible
22 person that, if he or she declines to provide a social security number for a child who is currently
23 enrolled or for a child to be enrolled, the ~~county~~ school district board shall assign to the child a
24 nine-digit number as designated by the state board.

25 (4) For any student who is attending a public school and for whom a social security number
26 has not been provided, the ~~county~~ school district board shall make a request annually to the
27 parent, guardian, or other responsible person to furnish the social security number.

§18-2-5h. Student Data Accessibility, Transparency and Accountability Act.

1 (a) *Title.* -- This section shall be known and may be cited as the “Student Data
2 Accessibility, Transparency and Account-ability Act.”

3 (b) *Definitions.* -- As used in this section, the following words have the meanings ascribed
4 to them unless the context clearly implies a different meaning:

5 (1) “Board” means the West Virginia Board of Education;

6 (2) “Department” means the West Virginia Department of Education;

7 (3) “Student Data system” means the West Virginia Department of Education statewide
8 longitudinal data system;

9 (4) “Aggregate data” means data collected that is reported at the group, cohort, or
10 institutional level with a data set of sufficient size that no information for an individual parent or
11 student is identifiable;

12 (5) “Redacted data” means a student dataset in which parent and student identifying
13 information has been removed;

14 (6) “State-assigned student identifier” means the unique student identifier assigned by the
15 state to each student that shall not be or include the Social Security number of a student in whole
16 or in part;

17 (7) "Student data" means data collected or reported at the individual student level included
18 in a student's educational record;

19 (8) "Provisional student data" means new student data proposed for inclusion in the
20 student data system;

21 (9) "School district" means a ~~county~~ school district board of education, the West Virginia
22 Schools for the Deaf and Blind and the West Virginia Department of Education with respect to the
23 education programs under its jurisdiction that are not in the public schools;

24 (10) "Directory information" means the following individual student information that is
25 subject to disclosure for school-related purposes only: Student name, address, telephone
26 number, date and place of birth, major field of study, participation in officially recognized activities
27 and sports, weight and height of members of athletic teams, dates of attendance, indication of
28 "graduate" or "nongraduate," degrees and awards receives, most recent previous school
29 attended, and photograph.

30 (11) "Confidential student information" means data relating to a person's Social Security
31 number, or other identification number issued by a state or federal agency, except for the state-
32 assigned student identifier as defined in this section, religious affiliation, whether the person or a
33 member of their household owns or possesses a firearm, whether the person or their family are
34 or were recipients of financial assistance from a state or federal agency, medical, psychological
35 or behavioral diagnoses, criminal history, criminal history of parents, siblings or any members of
36 the person's household, vehicle registration number, driver's license number, biometric
37 information, handwriting sample, credit card numbers, consumer credit history, credit score, or
38 genetic information;

39 (12) "Affective computing" means human-computer interaction in which the device has the
40 ability to detect and appropriately respond to its user's emotions and other stimuli; and

41 (13) "Fair Information Practice Principles" are United States Federal Trade Commission
42 guidelines that represent widely accepted concepts concerning fair information practice in an

43 electronic marketplace.

44 (c) *Data Inventory -- State Responsibilities.* -- The Department of Education shall:

45 (1) Create, publish, and make publicly available a data inventory and dictionary or index
46 of data elements with definitions of individual student data fields in the student data system to
47 include, but not be limited to:

48 (A) Any individual student data required to be reported by state and federal education
49 mandates;

50 (B) Any individual student data which has been proposed in accordance with paragraph
51 (A), subdivision (7) of this subsection for inclusion in the student data system with a statement
52 regarding the purpose or reason and legal authority for the proposed collection; and

53 (C) Any individual student data that the department collects or maintains with no current
54 identified purpose;

55 (2) Develop, publish, and make publicly available policies and procedures to comply with
56 all relevant state and federal privacy laws and policies, including, but not limited to, the Federal
57 Family Educational Rights and Privacy Act (FERPA) and other relevant privacy laws and policies.
58 The policies and procedures specifically shall include, but are not limited to:

59 (A) Access to student and redacted data in the statewide longitudinal data system shall
60 be restricted to:

61 (i) The authorized staff of the department and the contractors working on behalf of the
62 department who require access to perform their assigned duties as required by law and defined
63 by interagency data-sharing agreements;

64 (ii) District administrators, teachers and school personnel who require access to perform
65 their assigned duties;

66 (iii) Students and their parents; and

67 (iv) The authorized staff of other West Virginia state agencies as required by law and
68 defined by interagency data-sharing agreements;

69 (B) Ensure that any inter-agency data-sharing agreements shall be posted on the
70 Department website, and parents shall be notified of their right to opt out of sharing the child's
71 data pursuant to agreements.

72 (C) Use only aggregate data in public reports or in response to record requests in
73 accordance with this section;

74 (D) Unless otherwise prohibited by law, develop criteria for the approval of research and
75 data requests from state and local agencies, the Legislature, researchers working on behalf of
76 the department, and the public. Student data maintained by the department shall remain redacted;
77 and

78 (E) Notification to students and parents regarding student privacy rights under federal and
79 state law;

80 (3) Unless otherwise provided by law, the department shall not transfer confidential
81 student information or redacted data that is confidential under this section to any federal, state or
82 local agency or other person or entity, public or private, with the following exceptions:

83 (A) A student transfers out-of-state or a school or school district seeks help with locating
84 an out-of-state transfer;

85 (B) A student leaves the state to attend an out-of-state institution of higher education or
86 training program;

87 (C) A student registers for or takes a national or multistate assessment;

88 (D) A student voluntarily participates in a program for which a data transfer is a condition
89 or requirement of participation;

90 (E) The department enters into a contract that governs databases, assessments, student
91 or redacted data, special education or instructional supports with an in-state or out-of-state
92 contractor for the purposes of state level reporting;

93 (F) A student is classified as "migrant" for federal reporting purposes;

94 (G) A federal agency is performing a compliance review; or

95 (H) In the event that the ACT or the SAT tests are adopted for use as the state summative
96 assessment, nothing in this article prevents the ACT or the College Board from using a student's
97 assessment results and necessary directory or other permissible information under this Act. If
98 information classified as confidential is required, the ACT, SAT or College Board shall obtain
99 affirmative written consent from the student if the student is eighteen years of age or older, or
100 from the student's parent or guardian if the student is under eighteen years of age. The consent
101 shall contain a detailed list of confidential information required and the purpose of its requirement.

102 (4) Develop a detailed data security plan that includes:

103 (A) Guidelines for the student data system and for individual student data including
104 guidelines for authentication of authorized access;

105 (B) Privacy compliance standards;

106 (C) Privacy and security audits;

107 (D) Breach planning, notification and procedures;

108 (E) Data retention and disposition policies; and

109 (F) Data security policies including electronic, physical, and administrative safeguards,
110 such as data encryption and training of employees;

111 (5) Ensure routine and ongoing compliance by the department with FERPA, other relevant
112 privacy laws and policies, and the privacy and security policies and procedures developed under
113 the authority of this act, including the performance of compliance audits;

114 (6) Ensure that any contracts that govern databases, assessments or instructional
115 supports that include student or redacted data and are outsourced to private vendors include
116 express provisions that safeguard privacy and security and include penalties for noncompliance;
117 and

118 (7) Notify the Governor and the Legislature annually of the following:

119 (A) New student data proposed for inclusion in the state student data system. Any proposal
120 by the Department of Education to collect new student data must include a statement regarding

121 the purpose or reason and legal authority for the proposed collection. The proposal shall be
122 announced to the general public for a review and comment period of at least sixty days and
123 approved by the state board before it becomes effective. Any new student data collection
124 approved by the state board is a provisional requirement for a period sufficient to allow schools
125 and school districts the opportunity to meet the new requirement;

126 (B) Changes to existing data collections required for any reason, including changes to
127 federal reporting requirements made by the U.S. Department of Education and a statement of the
128 reasons the changes were necessary;

129 (C) An explanation of any exceptions granted by the state board in the past year regarding
130 the release or out-of-state transfer of student or redacted data; and

131 (D) The results of any and all privacy compliance and security audits completed in the past
132 year. Notifications regarding privacy compliance and security audits shall not include any
133 information that would itself pose a security threat to the state or local student information systems
134 or to the secure transmission of data between state and local systems by exposing vulnerabilities.

135 (8) Notify the Governor upon the suspicion of a data security breach or confirmed breach
136 and upon regular intervals as the breach is being managed. The parents shall be notified as soon
137 as possible after the suspected or confirmed breach.

138 (9) Prohibit the collection of confidential student information as defined in subdivision ten
139 of subsection (b) of this section.

140 (d) *Data Inventory -- District Responsibilities.* -- A school district shall not report to the state
141 the following individual student data:

142 (1) Juvenile delinquency records;

143 (2) Criminal records;

144 (3) Medical and health records; and

145 (4) Student biometric information.

146 (e) *Data Inventory -- School Responsibilities.* -- Schools shall not collect the following

147 individual student data:

148 (1) Political affiliation and beliefs;

149 (2) Religion and religious beliefs and affiliations;

150 (3) Any data collected through affective computing;

151 (4) Any data concerning the sexual orientation or beliefs about sexual orientation of the
152 student or any student's family member; and

153 (5) Any data concerning firearm's ownership by any member of a student's family.

154 (f) *Data Governance Manager*. -- The state superintendent shall appoint a data
155 governance manager, who shall report to and be under the general supervision of the state
156 superintendent. The data governance manager shall have primary responsibility for privacy policy,
157 including:

158 (1) Assuring that the use of technologies sustain, and do not erode, privacy protections
159 relating to the use, collection, and disclosure of student data;

160 (2) Assuring that student data contained in the student data system is handled in full
161 compliance with the Student Data Accessibility, Transparency, and Accountability Act, FERPA,
162 and other state and federal privacy laws;

163 (3) Evaluating legislative and regulatory proposals involving collection, use, and disclosure
164 of student data by the Department of Education;

165 (4) Conducting a privacy impact assessment on proposed rules of the state board and
166 department in general and on the privacy of student data, including the type of personal
167 information collected and the number of students affected;

168 (5) Coordinating with the general counsel of the state board and department, other legal
169 entities, and organization officers to ensure that programs, policies, and procedures involving civil
170 rights, civil liberties, and privacy considerations are addressed in an integrated and
171 comprehensive manner;

172 (6) Preparing a report to the Legislature on an annual basis on activities of the department

173 that affect privacy, including complaints of privacy violations, internal controls, and other matters;

174 (7) Establishing department-wide policies necessary for implementing Fair Information
175 Practice Principles to enhance privacy protections;

176 (8) Working with the Office of Data Management and Analysis, the general counsel, and
177 other officials in engaging with stakeholders about the quality, usefulness, openness, and privacy
178 of data;

179 (9) Establishing and operating a department-wide Privacy Incident Response Program to
180 ensure that incidents are properly reported, investigated and mitigated, as appropriate;

181 (10) Establishing and operating a process for parents to file complaints of privacy
182 violations;

183 (11) Establishing and operating a process to collect and respond to complaints of privacy
184 violations and provides redress, as appropriate; and

185 (12) Providing training, education and outreach to build a culture of privacy across the
186 department and transparency to the public.

187 The data governance manager shall have access to all records, reports, audits, reviews,
188 documents, papers, recommendations, and other materials available to the department that relate
189 to programs and operations with respect to his or her responsibilities under this section and shall
190 make investigations and reports relating to the administration of the programs and operations of
191 the department as are necessary or desirable.

192 (g) *Parental rights regarding child's information and education record.* -- Parents have the
193 right to inspect and review their child's education record maintained by the school and to request
194 student data specific to their child's educational record. School districts must provide parents or
195 guardians with a copy of their child's educational record upon request. Whenever possible, an
196 electronic copy of the educational record must be provided if requested and the identity of the
197 person requesting the information is verified as the parent or guardian.

198 The state board shall develop guidance for school district policies that:

- 199 (1) Annually notify parents of their right to request student information;
200 (2) Ensure security when providing student data to parents;
201 (3) Ensure student data is provided only to the authorized individuals;
202 (4) Detail the timeframe within which record requests must be provided;
203 (5) Ensure that school districts have a plan to allow parents to view and access data
204 specific to their child's educational record and that any electronic access provided is restricted to
205 eligible parties;
206 (6) Ensure compliance in the collection, use and disclosure of directory information and
207 providing parents or guardians with a form to limit the information concerning their child in
208 directory and subject to release; and
209 (7) Informing parents of their rights and the process for filing complaints of privacy
210 violations.
211 (h) *State Board Rules.* -- The state board shall adopt rules necessary to implement the
212 provisions of the Student Data Accessibility, Transparency, and Accountability Act.
213 (i) *Effect on Existing Data.* -- Upon the effective date of this section, any existing student
214 data collected by the Department of Education shall not be considered a new student data
215 collection under this section.

§18-2-6. Classification and standardization of schools; standards for degrees and diplomas; certificates of proficiency; establishment of alternative education programs.

- 1 (a) The state board shall promulgate rules for the accreditation, classification and
2 standardization of all schools in the state, except institutions of higher education, and shall
3 determine the minimum standards for granting diplomas and certificates of proficiency by those
4 schools.
5 (1) The certificates of proficiency shall include specific information regarding the
6 graduate's skills, competence and readiness for employment or honors and advanced education

7 and shall be granted, along with the diploma, to every eligible high school graduate.

8 (2) The certificate of proficiency shall include the program of study major completed by the
9 student only for those students who have completed the required major courses, or higher level
10 courses, advanced placement courses, college courses or other more rigorous substitutes related
11 to the major, and the recommended electives.

12 (b) An institution of less than collegiate or university status may not grant any diploma or
13 certificate of proficiency on any basis of work or merit below the minimum standards prescribed
14 by the state board.

15 (c) A charter or other instrument containing the right to issue diplomas or certificates of
16 proficiency may not be granted by the State of West Virginia to any institution or other associations
17 or organizations of less than collegiate or university status within the state until the condition of
18 granting or issuing the diplomas or other certificates of proficiency has first been approved in
19 writing by the state board.

20 (d) The state board shall promulgate a rule for the approval of alternative education
21 programs for disruptive students who are at risk of not succeeding in the traditional school
22 structure.

23 (1) This rule may provide for the waiver of other policies of the state board, the
24 establishment and delivery of a nontraditional curriculum, the establishment of licensure
25 requirements for alternative education program teachers, and the establishment of performance
26 measures for school accreditation.

27 (2) This rule shall provide uniform definitions of disruptive student behavior and uniform
28 standards for the placement of students in alternative settings or providing other interventions
29 including referrals to local juvenile courts to correct student behavior so that they can return to a
30 regular classroom without engaging in further disruptive behavior.

31 (e) The state board shall establish up to five pilot projects at the elementary or middle
32 school levels, or both, that employ alternative schools or other placements for disruptive students

33 to learn appropriate behaviors so they can return to the regular classroom without further
34 disrupting the learning environment. The state board shall report to the Legislative Oversight
35 Commission on Education Accountability by December 1, 2010, on its progress in establishing
36 the pilot projects and by December 1 in each year after that for the duration of the pilot projects
37 on the effect of the projects on maintaining student discipline.

38 (f) If a student attends an approved alternative education program or the Mountaineer
39 Challenge Academy, which is designated as a special alternative education program pursuant to
40 section twenty-four, article one-b, chapter fifteen of this code, and the student graduates or
41 passes the General Equivalency Development (GED) Tests within five years of beginning ninth
42 grade, that student shall be considered graduated for the purposes of calculating the high school
43 graduation rate used for school accreditation and school system approval, subject to the following:

44 (1) The student shall be considered graduated only to the extent that this is not in conflict
45 with any provision of federal law relating to graduation rates;

46 (2) If the state board determines that this is in conflict with a provision of federal law relating
47 to graduation rates, the state board shall request a waiver from the United States department of
48 education; and

49 (3) If the waiver is granted, notwithstanding the provisions of subdivision (1) of this
50 subsection, the student graduating or passing the General Educational Development (GED) Tests
51 within five years shall be considered graduated.

52 (g) The state board shall promulgate a rule to support the operation of the National Guard
53 Youth Challenge Program operated by the Adjutant General and known as the Mountaineer
54 Challenge Academy which is designated as a special alternative education program pursuant to
55 section twenty-four, article one-b, chapter fifteen of this code for students who are at risk of not
56 succeeding in the traditional school structure. The rule shall set forth policies and procedures
57 applicable only to the Mountaineer Challenge Academy that provide for, but are not limited to, the
58 following:

59 (1) Implementation of provisions set forth in section twenty-four, article one-b, chapter
60 fifteen of this code;

61 (2) Precedence of the policies and procedures designated by the National Guard Bureau
62 for the operation of the Mountaineer Challenge Academy special alternative education program;

63 (3) Consideration of a student participating in the Mountaineer Challenge Academy special
64 alternative education program at full enrollment status in the referring ~~county~~ school district for
65 the purposes of funding and calculating attendance and graduation rates, subject to the following:

66 (A) The student shall be considered at full enrollment status only for the purposes of
67 calculating attendance and graduation rates to the extent that this is not in conflict with any
68 provision of federal law relating to attendance or graduation rates;

69 (B) If the state board determines that this is in conflict with a provision of federal law
70 relating to attendance or graduation rates, the state board shall request a waiver from the United
71 States Department of Education;

72 (C) If the waiver is granted, notwithstanding the provisions of paragraph (A) of this
73 subdivision, the student shall be considered at full enrollment status in the referring ~~county~~ school
74 district for the purposes of calculating attendance and graduation rates; and

75 (D) Consideration of the student at full enrollment status in the referring ~~county~~ school
76 district is for the purposes of funding and calculating attendance and graduation rates only. For
77 any other purpose, a student participating in the academy is considered withdrawn from the public
78 school system;

79 (4) Articulation of the knowledge, skills and competencies gained through alternative
80 education so that students who return to regular education may proceed toward attainment or
81 may attain the standards for graduation without duplication;

82 (5) Consideration of eligibility to take the General Educational Development (GED) Tests
83 by qualifying within the extraordinary circumstances provisions established by state board rule for
84 a student participating in the Mountaineer Challenge Academy special alternative education

85 program who does not meet any other criteria for eligibility; and

86 (6) Payment of tuition by a ~~county~~ school district board to the Mountaineer Challenge
87 Academy for each student graduating from the academy with a high school diploma that resides
88 in that ~~county board's~~ school district. For purposes of this subdivision, "tuition" means an amount
89 equal to seventy-five percent of the amount allotted per pupil under the school aid formula.

90 (h) Nothing in this section or the rules promulgated under this section compels the
91 Mountaineer Challenge Academy to be operated as a special alternative education program or to
92 be subject to any other laws governing the public schools except by its consent.

93 (i) The Legislature makes the following findings regarding students at risk:

94 (1) *Defeated and discouraged learners.* —

95 (A) Any child who is unlikely to graduate on schedule with both the skills and self esteem
96 necessary to exercise meaningful options in the areas of work, leisure, culture, civic affairs and
97 personal relationships may be defined as being an at-risk student;

98 (B) Problems associated with students at risk often begin for them in the early grades as
99 they gradually fall further behind in the essential skills of reading, writing and math;

100 (C) These problems may be accompanied by such behavior patterns as poor attendance,
101 inattentiveness, negative attitudes and acting out in class. These patterns are both symptoms of
102 and added catalysts for students to become increasingly defeated and discouraged learners;

103 (D) By the middle grades, students with growing skill deficits usually know they are behind
104 other students and have good reason to feel discouraged. A growing lack of self confidence and
105 self worth, limited optimism for the future, avoidance of school and adults and a dimming view of
106 the relationship between effort and achievement are among the characteristics of defeated and
107 discouraged learners;

108 (E) Public schools are expected to address the needs of all students, minimizing the
109 likelihood that they will become at risk and giving additional attention to those who do; however,
110 the circumstances involved with a child becoming at risk often are complex and may include

111 influences both within and outside of the school environment; and

112 (F) In fragile homes, a child who is at risk and is becoming a discouraged and defeated
113 learner often lacks adequate support and may develop peer relationships that further exacerbate
114 the difficulty of reengaging him or her in learning, school and responsible social behavior.

115 (2) The Legislature further finds that the public schools should not be deterred from
116 seeking and assisting with enrollment of students in an alternative program that helps remedy the
117 discouragement, lessens skill deficits and facilitates a successful return to public school.

118 For this purpose, subject to approval of the ~~county~~ school district superintendent, a
119 student enrolled in the public schools of the ~~county~~ school district may continue to be enrolled
120 while also enrolled in an alternative program subject to the following conditions:

121 (1) The alternative program is approved by the state board;

122 (2) The student meets the general description of an at-risk student and exhibits behaviors
123 and characteristics associated with a discouraged and defeated learner;

124 (3) The alternative program complies with all requests of the ~~county~~ school district
125 superintendent for information on the educational program and progress of the student;

126 (4) The alternative program includes a family involvement component in its program. This
127 component shall include, but is not limited to, providing for student and parent participation in
128 activities that help address the challenging issues that have hindered the student's engagement
129 and progress in learning;

130 (5) The alternative program includes an on-site boarding option for students;

131 (6) The alternative program provides an individualized education program for students that
132 is designed to prepare them for a successful transition back into the public schools; and

133 (7) The parents or legal guardian of the student make application for enrollment of the
134 student in the alternative program, agree to the terms and conditions for enrollment, and enroll
135 the student in the program.

§18-2-9. Required courses of instruction.

1 (a) In all public, private, parochial and denominational schools located within this state
2 there shall be given prior to the completion of the eighth grade at least one year of instruction in
3 the history of the State of West Virginia. The schools shall require regular courses of instruction
4 by the completion of the twelfth grade in the history of the United States, in civics, in the
5 Constitution of the United States and in the government of the State of West Virginia for the
6 purpose of teaching, fostering and perpetuating the ideals, principles and spirit of political and
7 economic democracy in America and increasing the knowledge of the organization and machinery
8 of the government of the United States and of the State of West Virginia. The state board shall,
9 with the advice of the state superintendent, prescribe the courses of study covering these subjects
10 for the public schools. It shall be the duty of the officials or boards having authority over the
11 respective private, parochial and denominational schools to prescribe courses of study for the
12 schools under their control and supervision similar to those required for the public schools. To
13 further such study, every high school student eligible by age for voter registration shall be afforded
14 the opportunity to register to vote pursuant to section twenty-two, article two, chapter three of this
15 code.

16 (b) The state board shall cause to be taught in all of the public schools of this state the
17 subject of health education, including instruction in any of the grades six through twelve as
18 considered appropriate by the ~~county~~ school district board, on: (1) The prevention, transmission
19 and spread of acquired immune deficiency syndrome and other sexually transmitted diseases;
20 (2) substance abuse, including the nature of alcoholic drinks and narcotics, tobacco products and
21 other potentially harmful drugs, with special instruction as to their effect upon the human system
22 and upon society in general; (3) the importance of healthy eating and physical activity to
23 maintaining healthy weight; and (4) education concerning cardiopulmonary resuscitation and first
24 aid, including instruction in the care for conscious choking, and recognition of symptoms of drug
25 or alcohol overdose. The course curriculum requirements and materials for the instruction shall
26 be adopted by the state board by rule in consultation with the Department of Health and Human

27 Resources. The state board shall prescribe a standardized health education assessment to be
28 administered within health education classes to measure student health knowledge and program
29 effectiveness.

30 (c) An opportunity shall be afforded to the parent or guardian of a child subject to
31 instruction in the prevention, transmission and spread of acquired immune deficiency syndrome
32 and other sexually transmitted diseases to examine the course curriculum requirements and
33 materials to be used in the instruction. The parent or guardian may exempt the child from
34 participation in the instruction by giving notice to that effect in writing to the school principal.

35 (d) After July 1, 2015, the required instruction in cardiopulmonary resuscitation in
36 subsection (b) of this section shall include at least thirty minutes of instruction for each student
37 prior to graduation on the proper administration of cardiopulmonary resuscitation (CPR) and the
38 psychomotor skills necessary to perform cardiopulmonary resuscitation. The term "psychomotor
39 skills" means the use of hands-on practicing to support cognitive learning. Cognitive-only training
40 does not qualify as "psychomotor skills". The CPR instruction must be based on an instructional
41 program established by the American Heart Association or the American Red Cross or another
42 program which is nationally recognized and uses the most current national evidence-based
43 Emergency Cardiovascular Care guidelines and incorporates psychomotor skills development
44 into the instruction. A licensed teacher is not required to be a certified trainer of cardiopulmonary
45 resuscitation to facilitate, provide or oversee such instruction. The instruction may be given by
46 community members, such as emergency medical technicians, paramedics, police officers,
47 firefighters, licensed nurses and representatives of the American Heart Association or the
48 American Red Cross. These community members are encouraged to provide necessary training
49 and instructional resources such as cardiopulmonary resuscitation kits and other material at no
50 cost to the schools. The requirements of this subsection are minimum requirements. A local
51 school district may offer CPR instruction for longer periods of time and may enhance the
52 curriculum and training components, including, but not limited to, incorporating into the instruction

53 the use of an automated external defibrillator (AED): *Provided*, That any instruction that results in
54 a certification being earned must be taught by an authorized CPR/AED instructor.

§18-2-11. Sabbatical leaves for teachers and certain aides.

1 (a) The state board shall by December 1, 1988, establish by policy a sabbatical leave
2 program. Such program participation shall be considered optional for each ~~county~~ school district
3 board. Individuals employed as professional educators, as defined in section one, article one,
4 chapter eighteen-a of this code, and aides shall be eligible for the sabbatical leave program:
5 *Provided*, That such aides have a cumulative grade point of three and two tenths on a possible
6 four point scale pursuant to successful completion of at least sixty-four semester hours of course
7 work at an approved institution of higher education. Such policy shall establish the educational
8 objectives, peer selection criteria and other guidelines the board deems necessary. The
9 sabbatical leave policy shall provide that not less than ninety-five percent of sabbatical leaves
10 granted shall be for classroom teachers and such policy shall not provide for the granting of
11 sabbatical leave to any employee who has fewer than ten years of West Virginia public school
12 service, nor shall compensation during such leave be more than one half of the employee's
13 regular salary. While on sabbatical leave the employee shall be deemed to be a full-time employee
14 for purposes of years of experience and participation in the Teachers Retirement System and the
15 public employee insurance program. Any employee receiving a sabbatical leave shall be required
16 to return to employment by the board which granted the leave for a period of at least one year or
17 repay the compensation and benefits received during that time and have deducted the retirement
18 credit and years of service credit accrued during sabbatical leave: *Provided, however*, That
19 sabbatical leaves for teachers and certain aides shall be optional by the respective boards.

20 (b) Notwithstanding any other provision of this code to the contrary, if the state teacher of
21 the year either works with programs approved by the state department or attends school at a
22 college or university to further his or her education, the teacher shall receive a sabbatical from his
23 or her position for up to one year in which the teacher has been selected as state teacher of the

24 year: *Provided*, That if the state teacher of the year chooses to take a sabbatical, then the state
 25 department shall provide the ~~county~~ school district from where the teacher is taking the sabbatical
 26 with an allowance equal to the state average contractual salary for teachers.

**§18-2-25. Authority of ~~county~~ school district boards to regulate athletic and other
 extracurricular activities of secondary schools; delegation of authority to West
 Virginia secondary school activities commission; authority of commission;
 approval of rules and regulations by state board; incorporation; funds; participation
 by private and parochial schools.**

1 The ~~county~~ school district boards of education are hereby granted and shall exercise the
 2 control, supervision and regulation of all interscholastic athletic events, and other extracurricular
 3 activities of the students in public secondary schools, and of said schools of their respective
 4 ~~counties~~ school districts. The ~~county~~ school district board of education may delegate such control,
 5 supervision and regulation of interscholastic athletic events and band activities to the "West
 6 Virginia secondary school activities commission," which is hereby established.

7 The West Virginia secondary school activities commission shall be composed of the
 8 principals, or their representatives, of those secondary schools whose ~~county~~ school district
 9 boards of education have certified in writing to the state Superintendent of Schools that they have
 10 elected to delegate the control, supervision and regulation of their interscholastic athletic events
 11 and band activities of the students in the public secondary schools in their respective ~~counties~~
 12 school districts to said commission. The West Virginia secondary school activities commission is
 13 hereby empowered to exercise the control, supervision and regulation of interscholastic athletic
 14 events and band activities of secondary schools, delegated to it pursuant to this section. The rules
 15 and regulations of the West Virginia secondary school activities commission shall contain a
 16 provision for a proper review procedure and review board and be promulgated in accordance with
 17 the provisions of chapter twenty-nine-a of this code, but shall, in all instances be subject to the
 18 prior approval of the state board. The West Virginia secondary school activities commission, may,

19 with the consent of the state Board of Education, incorporate under the name of "West Virginia
20 Secondary School Activities Commission, Inc.," as a nonprofit, nonstock corporation under the
21 provisions of chapter thirty-one of this code. County boards of education are hereby authorized
22 to expend moneys for and pay dues to the West Virginia secondary school activities commission,
23 and all moneys paid to such commission, as well as moneys derived from any contest or other
24 event sponsored by said commission, shall be quasi-public funds as the same are defined in
25 article five, chapter eighteen, and such funds of the commission shall be subject to an annual
26 audit by the State Tax Commissioner.

27 The West Virginia secondary school activities commission shall promulgate reasonable
28 rules and regulations providing for the control, supervision and regulation of the interscholastic
29 athletic events and other extracurricular activities of such private and parochial secondary schools
30 as elect to delegate to such commission such control, supervision and regulation, upon the same
31 terms and conditions, subject to the same regulations and requirements and upon the payment
32 of the same fees and charges as those provided for public secondary schools. Any such private
33 or parochial secondary school shall receive any monetary or other benefits in the same manner
34 and in the same proportion as any public secondary school.

**§18-2-26. Establishment of multicounty regional educational service agencies; purpose;
authority of state board; governance; annual performance standards.**

1 (a) *Legislative intent.* -- The intent of the Legislature in providing for establishment of
2 regional education service agencies, hereinafter referred to in this section as agency or agencies,
3 is to provide for high quality, cost effective education programs and services to students, schools
4 and school systems.

5 Since the first enactment of this section in 1972, the focus of public education has shifted
6 from a reliance on input models to determine if education programs and services are providing to
7 students a thorough and efficient education to a performance based accountability model which
8 relies on the following:

9 (1) Development and implementation of standards which set forth the things that students
10 should know and be able to do as the result of a thorough and efficient education including
11 measurable criteria to evaluate student performance and progress;

12 (2) Development and implementation of assessments to measure student performance
13 and progress toward meeting the standards;

14 (3) Development and implementation of a system for holding schools and school systems
15 accountable for student performance and progress toward obtaining a high quality education
16 which is delivered in an efficient manner; and

17 (4) Development and implementation of a method for building the capacity and improving
18 the efficiency of schools and school systems to improve student performance and progress.

19 (b) *Purpose.* -- In establishing the agencies the Legislature envisions certain areas of
20 service in which the agencies can best assist the state board in implementing the standards based
21 accountability model pursuant to subsection (a) of this section and, thereby, in providing high
22 quality education programs. These areas of service include the following:

23 (1) Providing technical assistance to low performing schools and school systems;

24 (2) Providing high quality, targeted staff development designed to enhance the
25 performance and progress of students in state public education;

26 (3) Facilitating coordination and cooperation among the ~~county~~ school district boards
27 within their respective regions in such areas as cooperative purchasing; sharing of specialized
28 personnel, communications and technology; curriculum development; and operation of
29 specialized programs for exceptional children;

30 (4) Installing, maintaining and/or repairing education related technology equipment and
31 software with special attention to the state level technology learning tools for public schools
32 program;

33 (5) Receiving and administering grants under the provisions of federal and/or state law;

34 and

35 (6) Developing and/or implementing any other programs or services as directed by law,
36 the state board or the regional council.

37 (c) *State board rule.* -- The state board shall reexamine the powers and duties of the
38 agencies in light of the changes in state level education policy that have occurred and shall
39 establish multicounty regional education service agencies by rule, promulgated in accordance
40 with the provisions of article three-b, chapter twenty-nine-a of this code.

41 The rule shall contain all information necessary for the effective administration and
42 operation of the agencies. In developing the rule, the state board may not delegate its
43 Constitutional authority for the general supervision of schools to the agencies, however, it may
44 allow the agencies greater latitude in the development and implementation of programs in the
45 service areas outlined in subsection (b) of this section with the exceptions of providing technical
46 assistance to low performing schools and school systems and providing high quality, targeted
47 staff development designed to enhance the performance and progress of students in state public
48 education. These two areas constitute the most important responsibilities for the agencies.

49 The rule establishing the agencies shall be promulgated before November 1, 2015, and
50 shall be consistent with the provisions of this section. It shall include, but is not limited to, the
51 following procedures:

52 (1) Providing for a uniform governance structure for the agencies containing at least these
53 elements:

54 (A) Selection by the state board of an executive director who shall be responsible for the
55 administration of his or her respective agency. The rule shall provide for the state board to select
56 the executive director only upon the nomination of one or more candidates by the regional council
57 of the agency. In case the board refuses to select any of the candidates nominated, the regional
58 council shall nominate others and submit them to the board. All candidates nominated must meet
59 the qualifications for the position established by the state board. Nothing shall prohibit the timely
60 employment of persons to perform necessary duties;

61 (B) Development of a job description and qualifications for the position of executive
62 director, together with procedures for informing the public of position openings, for taking and
63 evaluating applications, for making nominations for these positions, and for annually evaluating
64 the performance of persons employed as executive director. The state board shall consult with
65 the regional councils on the development of the job description, qualifications and procedures;

66 (C) Provisions for the annual performance evaluation of the executive director that provide
67 for one half of the evaluation rating to be determined by the regional council;

68 (D) Provisions for the agencies to employ other staff, as necessary, with the approval of
69 the state board and upon the recommendation of the executive director: *Provided*, That prior to
70 July 1, 2003, no person who is an employee of an agency on the effective date of this section
71 may be terminated or have his or her salary and benefit levels reduced as the sole result of the
72 changes made to this section or by state board rule;

73 (E) Appointment by the ~~county~~ school district boards of a regional council in each agency
74 area consisting of representatives of ~~county~~ school district boards and ~~county~~ school district
75 superintendents from within that area for the purpose of advising, assisting and informing the
76 executive director in carrying out his or her duties to achieve the purposes of this section and
77 provide educational services to the ~~county~~ school district school systems within the region. The
78 state board may provide for membership on the regional council for representatives from other
79 agencies and institutions who have interest or expertise in the development or implementation of
80 regional education programs; and

81 (F) Selection by the state superintendent of a representative from the state Department of
82 Education to serve on each regional council. These representatives shall meet with their
83 respective regional councils at least quarterly;

84 (2) Establishing statewide standards by the state board for service delivery by the
85 agencies. These standards may be revised annually and shall include, but are not limited to,
86 programs and services to fulfill the purposes set forth in subsection (b) of this section;

87 (3) Establishing procedures for developing and adopting an annual basic operating budget
88 for each agency and for other budgeting and accounting procedures as the state board may
89 require;

90 (4) Establishing procedures clarifying that agencies may acquire and hold real property;

91 (5) Dividing the state into appropriate, contiguous geographical areas and designating an
92 agency to serve each area. The rule shall provide that each of the state's counties is contained
93 within a single service area and that all ~~counties~~ school districts located within the boundaries of
94 each agency, as determined by the state board, shall be members of that agency; and

95 (6) Such other standards or procedures as the state board finds necessary or convenient.

96 (d) *Regional services.* -- In furtherance of the purposes provided for in this section, the
97 state board and the regional council of each agency shall continually explore possibilities for the
98 delivery of services on a regional basis which will facilitate equality in the education offerings
99 among ~~counties~~ school districts in its service area, permit the delivery of high quality education
100 programs at a lower per student cost, strengthen the cost effectiveness of education funding
101 resources, reduce administrative and/or operational costs, including the consolidation of
102 administrative, coordinating and other ~~county~~ school district level functions into region level
103 functions, and promote the efficient administration and operation of the public school systems
104 generally.

105 Technical, operational, programmatic or professional services are among the types of
106 services appropriate for delivery on a regional basis. Nothing in this section prohibits regional
107 education service agencies from cooperating, sharing or combining services or programs with
108 each other, at their discretion, to further the purposes of this section.

109 (e) *Virtual education.* -- The state board, in conjunction with the various agencies, shall
110 develop an effective model for the regional delivery of instruction in subjects where there exists
111 low student enrollment or a shortage of certified teachers or where the delivery method
112 substantially improves the quality of an instructional program. The model shall incorporate an

113 interactive electronic classroom approach to instruction. To the extent funds are appropriated or
114 otherwise available, ~~county~~ school district boards or regional education service agencies may
115 adopt and utilize the model for the delivery of the instruction.

116 (f) *Computer information system.* -- Each ~~county~~ school district board of education shall
117 use the statewide electronic information system established by the state board for data collection
118 and reporting to the state Department of Education.

119 (g) *Reports and evaluations.* -- Each agency shall submit to the state superintendent on
120 such date and in such form as specified in the rules adopted by the state board a report and
121 evaluation of the technical assistance and other services provided and utilized by the schools
122 within each respective region and their effectiveness. Additionally, any school may submit an
123 evaluation of the services provided by the agency to the state superintendent at any time. This
124 report shall include an evaluation of the agency program, suggestions on methods to improve
125 utilization and suggestions on the development of new programs and the enhancement of existing
126 programs. The reports and evaluations submitted pursuant to this subsection shall be submitted
127 to the state board and shall be made available upon request to the standing committees on
128 education of the West Virginia Senate and House of Delegates and to the secretary of education
129 and the arts.

130 (h) *Funding sources.* -- An agency may receive and disburse funds from the state and
131 federal governments, from member counties, or from gifts and grants.

132 (i) *Employee expenses.* -- Notwithstanding any other provision of this code to the contrary,
133 employees of agencies shall be reimbursed for travel, meals and lodging at the same rate as state
134 employees under the travel management office of the Department of Administration.

135 A ~~county~~ school district board member may not be an employee of an agency.

136 (j) *Meetings and compensation.* --

137 (1) Agencies shall hold at least one half of their regular meetings during hours other than
138 those of a regular school day. The executive director of each agency shall attend at least one

139 meeting of each of the member ~~county~~ school district boards of education each year to explain
140 the agency's services, garner suggestions for program improvement and provide any other
141 information as may be requested by the ~~county~~ school district board.

142 (2) Notwithstanding any other provision of this code to the contrary, ~~county~~ school district
143 board members serving on regional councils may receive compensation at a rate not to exceed
144 \$100 per meeting attended, not to exceed fifteen meetings per year. ~~county~~ School district board
145 members serving on regional councils may be reimbursed for travel at the same rate as state
146 employees under the rules of the travel management office of the Department of Administration.

**§18-2-26a. Regional meetings on shared services and functions; notice, solicitation of
input and approval; reports.**

1 (a) During the months of July and August, 2013, and thereafter biennially within two
2 months following the organizational meetings of ~~county~~ school district boards required by section
3 one-c, article five of this chapter, all ~~county~~ school district superintendents of schools and
4 members of ~~county~~ school district boards belonging to the same regional educational service
5 agency shall meet together to identify administrative, coordinating and other ~~county~~ school district
6 level services and functions that may be shared between or among the ~~county~~ school district
7 boards, especially when resignations, retirements, staffing realignments or similar events may
8 occur. The meeting shall be a special meeting of each participating ~~county~~ school district board,
9 to be called pursuant to section four, article five of this chapter solely for the purposes set forth in
10 this section.

11 (b) As soon as each meeting is scheduled, the West Virginia School Board Association
12 shall notify the State Superintendent in writing of the time, place and date of the meeting. The
13 association shall conduct the meetings and for that purpose may consult with the regional
14 educational service agencies. The format of the meetings shall be approved by the state board in
15 advance.

16 (c) Prior to seeking the approval of the state board for the format of the meetings, the

17 association shall solicit input from statewide organizations that have an interest in public
18 education, including organizations representing the interests of parents, business and industry,
19 public school administrators, teachers and service personnel.

20 (d) By October 1, following the meetings required by this section, the West Virginia School
21 Board Association shall provide a report of the meetings to the state board and the Legislative
22 Oversight Commission on Education Accountability. The report shall include, but is not limited to,
23 the following items:

24 (1) Identification of the administrative, coordinating and other ~~county~~ school district level
25 services and functions that may be shared between or among the ~~county~~ school district boards;

26 (2) An analysis of the advantages and disadvantages of sharing services in each instance;
27 and

28 (3) A process for implementing recommended changes.

29 (e) Subject to state board approval, the ~~county~~ school district board member training
30 standards review committee established by section one-a, article five of this chapter may
31 determine that the attendance of a ~~county~~ school district board member at the meeting required
32 by subsection (a) of this section shall be approved as training related to boardsmanship and
33 governance effectiveness.

34 (f) Nothing in this section requires the elimination or consolidation of ~~county~~ school
35 districts.

**§18-2-34. High school diplomas for surviving veterans of World War II, the Korean War,
and the Vietnam Conflict.**

1 (a) Notwithstanding any provision of this code to the contrary, the state board shall provide
2 for the awarding of a high school diploma to any surviving veteran of World War II, the Korean
3 War, or the Vietnam Conflict, who:

4 (1) Left school prior to graduation and served in the Armed Forces of the United States;

5 (2) Did not receive a high school diploma;

6 (3) Was discharged from the armed forces under honorable conditions; and

7 (4) Completes the application process as provided by the joint rules of the state board and
8 the veterans' council.

9 (b) The state board and the veterans' council, created in article one, chapter nine-a of this
10 code, shall jointly propose rules for the identification of eligible veterans and for awarding high
11 school diplomas. The rules shall provide for an application process and the credentials required
12 to receive a high school diploma.

13 (c) A diploma shall be awarded by the ~~county~~ school district board in the county in which
14 the veteran resides or in the county in which the veteran would have received his or her diploma,
15 whichever location the veteran chooses.

16 (d) For purposes of this section:

17 (1) "World War II veteran" means any veteran who performed wartime service between
18 September 16, 1940, and December 31, 1946;

19 (2) "Korean War veteran" means any veteran who performed military service between
20 June 27, 1950, and January 31, 1955;

21 (3) "Vietnam Conflict veteran" means any veteran who performed military service between
22 February 28, 1961, and May 7, 1975.

§18-2-35. Dress codes requiring school uniforms for students.

1 (a) The Legislature hereby finds that the clothing and footwear worn by students in public
2 schools often preoccupy and distract students from their major purpose for being in school, which
3 is obtaining an education. The Legislature finds that in schools that have adopted a dress code
4 requiring students to wear school uniforms, disparities in student socioeconomic levels are less
5 obvious and disruptive incidents are less likely to occur.

6 (b) The state board shall promulgate rules in accordance with article three-b, chapter
7 twenty-nine-a of this code that allow a ~~county~~ school district board to implement a dress code
8 requiring students to wear a school uniform. The uniforms may be required by the ~~county~~ school

9 district board for either a school district, or for any certain school within the district. The rules shall
10 provide at least the following:

11 (1) The ~~county~~ school district board may create an advisory committee comprised of
12 parents, school employees and students for the purpose of considering whether the board should
13 adopt a dress code requiring school uniforms for students in the district;

14 (2) The ~~county~~ school district board may create an advisory committee comprised of
15 parents, school employees and students for the purpose of considering whether the board should
16 adopt a dress code requiring school uniforms for students in any certain school within the district;

17 (3) If the advisory committee recommends to the board that a dress code requiring school
18 uniforms for students be adopted either for the district or for any certain school within the district,
19 the advisory committee also shall make recommendations on alternative methods of paying for
20 the school uniforms; and

21 (4) If the advisory committee recommends to the board that a dress code requiring school
22 uniforms for students be adopted either for the district or for any certain school within the district
23 and if the advisory committee reports its recommendations on alternative methods of paying for
24 the school uniforms to the board, the board may adopt a dress code requiring school uniforms for
25 students.

26 (c) Nothing in this section requires a ~~county~~ school district board to adopt a dress code
27 requiring school uniforms for students.

28 (d) Nothing in this section requires any level of funding by the Legislature, boards of
29 education or any other agency of government.

§18-2-36. Framework for initiating comprehensive transformation of school leadership.

1 (a) *Legislative findings.--*

2 (1) The report and recommendations of Imagine West Virginia on Transforming School
3 Leadership in West Virginia are clearly on point that school leadership and the essential role of
4 the principal in achieving a high performing school are well documented, long studied and too

5 often set aside. The report and recommendations also clearly recognize the value of providing
6 teachers with authentic opportunities and resources to lead, influence professional practice, and
7 assume shared responsibility for school and classroom improvement. The recommendations
8 related to school leadership, the role, preparation and selection of the principal and a career
9 ladder for teacher leaders once again bring the importance of strong school-level instructional
10 leadership, including mechanisms for career advancement for teachers in leadership roles, to the
11 forefront of discussions on school improvement. The state board posted the report
12 recommendations for comment with the intent of providing a starting point for deeper deliberation
13 and stakeholder input.

14 (2) Among the general conclusions of the Education Efficiency Audit of West Virginia's
15 Primary and Secondary Education System is the need to drive more educational decision-making
16 down to the level closest to the students, to the classroom and building level, allowing principals
17 to lead and teachers to deliver the most effective curriculum for their students, and then holding
18 them accountable for student success. Such a system heightens the imperative for strong school
19 leadership. The school climate and culture observed in high quality schools reflects strong
20 leadership that develops shared beliefs and values among the staff, high expectations for all, and
21 a safe, orderly and engaging environment. A key concept in developing good school leadership
22 and then holding schools accountable for student performance is that they have the authority,
23 resources and flexibility to affect the outcome.

24 (3) An increasing body of knowledge concludes that unless teachers are collectively
25 involved in the planning and implementation of school improvement, it is unlikely to be sustained.
26 Successful schools are distinguishable from unsuccessful ones by the frequency and extent to
27 which teachers discuss professional practices, collectively design materials and inform and
28 critique one another. Even successful schools must be self-renewing systems, learning
29 organizations marked by deliberate effort to identify helpful knowledge and spread its use within
30 the organization. Again, leadership by the principal combined with authentic roles for teacher

31 leaders are necessary ingredients.

32 (4) The school responsibilities for accreditation adopted by the state board to implement
33 West Virginia's performance based accreditation system embodied in section five, article two-e
34 of this chapter, the Process for Improving Education, include a collective and collaborative
35 process for continuous school improvement led by the principal. The process includes data
36 analysis, goal setting, strategic planning, progress review and results analysis. It includes
37 identifying what and where improvement is needed, establishing goals and a strategic plan for
38 improved student learning, defining the roles and responsibilities of all team members, securing
39 the professional development needed to achieve the goals, and sharing the responsibility and
40 rewards for the results. The principal must foster and develop distributed leadership in order to
41 focus collective action for improved school performance. The school's faculty and members of
42 the Local School Improvement Council must participate effectively in the self-assessment and
43 annual and cyclical reviews of school performance to effect a process of continuous improvement.

44 (5) The prior studies and Imagine WV report in which they are cited recognize that the job
45 of principal has become overwhelming. The report focuses on instructional leadership as the
46 most important role of the principal, but notes that it has become a less prominent function in the
47 overall job of being a principal. The diminished time devoted to instructional leadership has been
48 a gradual crowding out by other necessary functions, rather than a conscience choice. Just as
49 important for high performing schools is the strong leadership role necessary for operations
50 management, establishing the climate and culture of the school as a learning environment, and
51 instructional leadership. All require strong leadership skills, but in a different context. They
52 require different skill sets, all of which are needed to lead high quality schools. The reality,
53 however, is that these many responsibilities inherent in the operation of high quality schools
54 compete for time and it is difficult for principals to do them all well. Various scenarios have been
55 discussed for enabling a heightened focus on instructional leadership, including the introduction
56 of school manager positions or the broader use of assistant principals in all schools to allow

57 greater principal attention to instructional improvement. A further scenario builds upon the
58 research that high quality schools are distinguishable by the collective and collaborative
59 involvement of teachers in sustained school improvement. It brings a heightened focus on
60 instructional leadership to assist, and under direction of, the principal by providing authentic
61 opportunities for teacher leaders to participate and assume greater responsibility. This scenario
62 involves various approaches to reward excellent teaching, to provide the time necessary for
63 excellent teachers to lead instructional improvement, and to enable excellent teachers to advance
64 in their teaching careers and levels of compensation through instructional leadership positions
65 without leaving the classroom completely.

66 (6) Emerging research and policy direction toward distributed leadership and shared
67 responsibility for results as cited in these findings, elevate the focus for all teachers on
68 instructional improvement, and particularly for excellent teachers to assume instructional
69 leadership roles. In most schools today, excellent teachers rarely have authority, time, or
70 sustained incentives to lead while teaching. Developing models for supporting new teacher
71 induction, for professional development and mentoring for struggling teachers, and for teacher
72 collaboration on instructional improvement all involve a role for teacher leaders. As professional
73 educators, teachers should have an established structure through which they can advance their
74 careers as experienced instructional leaders without leaving classroom teaching completely. Like
75 other professionals, teachers should be afforded an opportunity to take on more responsibility,
76 share their expertise with other less experienced teachers and advance their teaching career as
77 teacher leaders. Like other professions, teaching should provide for a routine progression of
78 continuing education for license maintenance and opportunities for salary advancement as
79 additional knowledge, skill and expertise are acquired that directly affect student learning.
80 Examples of leadership roles that may be performed by teachers include serving on the school
81 leadership team, leading collective and collaborative processes for strategic improvement
82 planning, leading teacher collaboration processes within the school day, leading the faculty

83 senate, serving on the local school improvement council, supervising student teachers, serving
84 as mentors and models for new and struggling teachers and teachers-in-residence, and helping
85 arrange school level professional development. Ideally, in an opportunity culture for teachers,
86 career paths and teacher pay will recognize and reward the value of excellent teaching and
87 teacher leadership roles for extending excellent teaching to all students consistently.

88 (7) Education is a human resources intensive endeavor. It competes for talented
89 professionals with other occupations with higher levels of compensation, particularly in the STEM
90 fields. While opportunities for career advancement and added compensation for teachers under
91 career ladder type arrangements may improve the attractiveness of the profession for excellent
92 teachers, it will not replace the need for general salary increases. In West Virginia and nationally,
93 the enrollments in college and university teacher preparation programs are declining. For West
94 Virginia particularly, the need to recruit and retain excellent teachers is exacerbated by the
95 increasing numbers of retirements of a very senior teaching force. Increasingly important will be
96 a variety of methods for encouraging and supporting an interest in the teaching profession,
97 preparing the next generation of educators, actively recruiting top talent graduating from teacher
98 preparation programs and supporting their development through the first years of their careers.
99 In the human resources intensive business of education, human resource development should
100 not be left to chance.

101 (b) *Legislative purpose, intent, process for stakeholder input; items for recommendation.-*

102 -

103 (1) The purpose of this section is to provide a framework for development of the statutory
104 and policy changes needed to support and sustain a comprehensive transformation of school
105 leadership. A further purpose of this section is to initiate the comprehensive transformation of
106 school leadership through a general statement of legislative intent to pursue this change in public
107 policy and, thereby, provide assurances and parameters under which the work toward this change
108 may proceed. It is expected that the transformation will affect both the public education system

109 and the educator preparation programs at institutions of higher education to develop, prepare and
110 credential teacher, principal and administrative leaders to accomplish a systemic change in school
111 leadership. It is expected that the transformation will involve multiple, and in some cases
112 sequential, steps that may require a period of years to accomplish to ensure that the necessary
113 supports are in place to enable school leaders to meet the expectations of new roles and
114 responsibilities and to finance the necessary improvements.

115 (2) It is further expected that the transformation will involve roles and responsibilities for
116 leadership that may not match the certification and training of all of those currently in leadership
117 positions. Therefore, the options for implementation will need to take the existing legacy into
118 account to minimize cost and system disruption while bringing new models of leadership for
119 instructional improvement to every school expeditiously. Finally, it is expected that district size
120 and resources, school size and programmatic level, existing leadership positions, and differences
121 in school performance may all be factors that will affect the transformation of school leadership
122 within the various school systems and they should be afforded ample local flexibility for
123 establishing priorities and implementation within their schools.

124 (3) The findings set forth in subsection (a) of this section provide a context for considering
125 a leadership framework that promotes instructional improvement and for determining the statutory
126 and policy changes needed to enable it. It is the intent of the Legislature to begin this
127 transformation through a process of broad stakeholder input to consider and make
128 recommendations to accomplish this task. Therefore, the state board shall convene the relevant
129 stakeholders, including, but not limited to, principals, teachers, superintendents, ~~county~~ school
130 district board members, educator preparation program personnel, legislators or their designees
131 and a Governor's designee to assist the state board in developing state board policies, practices
132 and recommended statutory changes consistent with the findings of this section. Among the
133 issues the state board shall consider are:

134 (A) Issues relating to principal leadership that include, but are not limited to, the following:

- 135 (i) A clear definition of the role and responsibilities of principals and assistant principals in
136 statute and policy that include leadership for instructional improvement;
- 137 (ii) The role and responsibilities of the principal as the legally responsible party in charge
138 of the school with the added need for authority and flexibility to delegate responsibilities to
139 accomplish a distributed leadership model for instructional improvement;
- 140 (iii) Leadership standards that include the essential role of the principal for leadership in
141 developing a culture of collegiality and professionalism among the staff so that improving student
142 learning is a shared responsibility;
- 143 (iv) The scope of topics to be covered in the preparation programs and certifications for
144 principals and assistant principals;
- 145 (v) A process of preparing new principals that may include clinical experiences and
146 mentoring through a partnership between higher education and ~~county~~ school district boards. It
147 may include a commitment of ~~county~~ school district board resources to assist in the training, as
148 well as a commitment from the candidate to stay in the system for some period of time;
- 149 (vi) The additional school-level tools needed to give good principals the flexibility and
150 authority necessary for success, including additional independent, school-level authority needed
151 to adequately fulfill the responsibilities;
- 152 (vii) A method of implementation under which the capacity of the principal for leading is a
153 condition precedent to implementation of methods for distributed leadership;
- 154 (viii) Limitations on the employment of new principals to those candidates prepared and
155 credentialed under the new standards, or some comparable standards approved by the state
156 board, and limitations on the applicability of Master's degrees in education administration for
157 advanced salary classification if earned after a certain date following state board approval of a
158 new preparation program; and
- 159 (ix) Differentiation and improvements in the salary schedules and increments for principals
160 subject to the newly defined roles and responsibilities for school leadership;

161 (B) Issues relating to teacher leadership that include, but are not limited to, the following:

162 (i) Various approaches that reward excellent teaching, provide authentic opportunities for
163 excellent teachers to influence professional practice and enable excellent teachers to advance in
164 their teaching careers and compensation without leaving the classroom completely including, but
165 are not limited to, incentive increments, career lattice steps and career ladder positions;

166 (ii) Incentive increments in the salary scale for advanced degrees, approved course work
167 or advanced certification in the teacher's area of certification and for excellent teaching;

168 (iii) Career lattice steps that provide extra pay and/or extra time for teachers for specific
169 types of assignments made by the principal or, in some cases, by the faculty senate for
170 instructional and school improvement work. These types of steps may not be permanent and
171 may change or involve different teachers and team members from time to time depending on the
172 needs of the school and the ability of teachers to participate;

173 (iv) Career ladder steps that are permanent steps for master teachers who possess the
174 appropriate leadership certification to progress in teacher leadership positions with additional
175 compensation and reduced teaching load to assume duties under the direction of the principal
176 without leaving the classroom completely;

177 (v) A clear definition in statute and policy of the role and responsibilities of career ladder
178 teacher leaders that includes leadership for instructional improvement;

179 (vi) Career ladder teacher leader standards that include the essential role of leadership in
180 developing a culture of collegiality and professionalism among the staff so that improving student
181 learning is a shared responsibility;

182 (vii) The scope of topics to be covered in the preparation programs and certifications for
183 career ladder teacher leaders;

184 (viii) Appropriate limitations on the number of teachers in career lattice positions and on
185 the number of teachers in career ladder positions, separately, for schools of different size and
186 programmatic level; and

187 (ix) An additional incentive increment in the salary scale for excellent teachers and
188 principals who accept transfer to a low performing school for a certain number of years;

189 (C) Issues relating to a leadership development pipeline that include, but are not limited
190 to, the following:

191 (i) A comprehensive leadership development process for school systems to identify, recruit
192 and train outstanding leadership candidates consistent with numbers needed to meet the
193 projected needs of the school system;

194 (ii) A method for school-level identification of those teachers who most clearly demonstrate
195 budding leadership qualities as potential candidates for development into the career ladder
196 teacher leaders, assistant principals and principals of the future;

197 (iii) Appropriate school district and higher education partnerships for preparation, support
198 and credentialing at each step so the focus on instructional leadership will become pervasive; and

199 (iv) Allowances that may be necessary to fill positions during the transition to new
200 leadership models; and

201 (D) Issues related to local and state systems of support that include, but are not limited to,
202 the following:

203 (i) Information management tools that enhance the capacity of school leaders and
204 leadership teams to quickly assemble performance information on student learning and other
205 aspects of the school's learning environment into the actionable intelligence needed for strategic
206 planning, adjusting instructional strategies and focusing on individual student needs;

207 (ii) School-level tools or resources that give principals a flexible, timely and targeted way
208 to meet the professional development needs of teachers at their school;

209 (iii) Methods to help ensure the uniformity and inter-rater reliability of the portion of the
210 professional personnel performance evaluation based on teaching standards;

211 (iv) Additional state-level infrastructure that may be needed to support the additional
212 credentialing and monitoring of course work and degree attainment for salary progressions and

213 new leadership positions;

214 (v) Methods to support, encourage and facilitate school-level leadership for instructional
215 improvement, to endorse and encourage innovation to improve the success of all students rather
216 than rely on top-down enforcement of one size fits all approaches to education; and

217 (vi) Methods to establish an emphasis on human resource management including, but
218 not limited to, approaches to improve the position posting and recruitment of new graduates for
219 shortage area positions, and improving the retention of new professional personnel.

220 (c) *Reports and recommendations to Legislature and Governor.--*

221 (1) Not later than regular session of the Legislature, 2018, the state board shall make a
222 report to the Joint Standing Committee on Education and the Governor on transforming school
223 leadership including, at a minimum:

224 (A) Recommendations on a general leadership structure and definitions of the roles and
225 responsibilities for principals and teacher leaders;

226 (B) Identification of affected statutes and policies, including pending and completed policy
227 revisions, and recommendations for statutory amendments, if any, needed to effectuate its
228 recommendations;

229 (C) An outline of sequential implementation of the changes needed to transform school
230 leadership, and recommendations for phased implementation, if any; and

231 (D) The estimated costs of implementation of the recommendations and statutory changes
232 necessary to effectuate the recommendations along with potential funding sources from improved
233 efficiencies or other cost savings from the 5 elimination of unnecessary operations or programs.

ARTICLE 2A. ADOPTION OF TEXTBOOKS, INSTRUCTIONAL MATERIALS AND LEARNING TECHNOLOGIES.

§18-2A-1. Definition; adoption groups; adoption schedule.

1 (a) "Instructional Resources" include print materials, electronic resources and systems, or

2 combinations of such instructional resources which convey information to the pupil.

3 (b) Instructional resources approved for adoption and listed on the state multiple list shall
4 substantially cover the required content and skills for the subject as approved by the state board.
5 The instructional resources shall be current and the information shall be presented accurately.
6 The instructional resources may consist of a single resource, print or electronic, or a compilation
7 of resources, print or electronic, that together cover the required criteria established for approval
8 as a primary instructional resource. The resources may be updated or otherwise changed and
9 improved on an ongoing basis to ensure that they are current and accurate.

10 (c) On or before July 1 of each year, the state board shall classify the elementary and
11 secondary school subjects required to be taught in the schools of our state into adoption groups
12 by related subject fields as nearly as possible. A schedule for the periods of adoption, not to
13 exceed six years, shall be determined by the state board. However, during the school year
14 beginning on July 1, 2010, the state board shall develop a method by which newly developed and
15 substantially revised instructional materials submitted by vendors or available as open resources
16 may be reviewed for compliance with established criteria. When an instructional resource is found
17 to be in compliance with established criteria, it may be added to the official multiple list and
18 thereafter be available for adoption by a county school district board. County school district board
19 instructional resources adoption committees may request a waiver of the adoption cycles from
20 the state board. Software, print and electronic magazines, print and electronic newspapers and
21 other print and electronic periodicals and other licensed or subscription-based instructional
22 resources may be purchased county school district board for classroom use to supplement those
23 items adopted on the state multiple list without having to comply with the adoption procedures
24 provided in this article.

25 (d) Software, print and electronic magazines, print and electronic newspapers and print
26 and electronic periodicals are considered to be instructional resources for purposes of special
27 excess levies subject to the provisions of section sixteen, article eight, chapter eleven of this code

28 when the described purpose under that section is for textbooks or instructional resources.

29 (e) A ~~county~~ school district board that selects an electronic instructional resource may,
30 subject to the approval by the state board of its request to do so, choose not to renew that option
31 before the end of the established contract period and select a new or different instructional
32 resource from the official multiple listing before the end of the established contract period.

33 (f) The vendor of an adopted electronic resource, after notice of explanation to the state
34 board, may offer an update to the navigational features or management system, or both, related
35 to the learning technology and may update the content of the learning technology as needed to
36 accurately reflect current knowledge or information without charge. Vendor changes to the
37 electronic resources may not require the purchase of a new operating system during the
38 established contract period. Vendors shall continue to provide support for the version adopted.

39 (g) The state board shall adopt guidelines and procedures for updates and changes to
40 electronic instructional resources submitted by vendors.

**§18-2A-2. Request for samples and bids; deposit by bidder; selection, approval and
publication of multiple list.**

1 (a) Prior to each adoption year, and not later than August 1, the state board by written
2 request or otherwise shall ask the various vendors of instructional resources, print or electronic,
3 or any combination thereof, to submit samples and prices on items considered appropriate by the
4 state board to teach the curriculum in the public elementary and secondary schools of the state
5 for the current adoption period. The state board also shall accept for consideration newly
6 developed and substantially revised instructional resources for content areas not in the current
7 adoption cycle.

8 (b) All bids or proposals shall be under seal, and each bidder shall deposit in the State
9 Treasury such sum of money as the state board may designate, such deposit to be not less than
10 \$1,000, and not more than \$3,000 and such deposit shall be forfeited to the general school fund
11 if such bidder shall fail or refuse to make and execute such contract and bond as are herein

12 required in case of acceptance of all or part of the vendor's bid, and otherwise shall be returned
13 to such bidder after the contract has been made. The state board reserves the right to set the
14 sum of money a vendor is required to deposit in the State Treasury upon submitting a bid:
15 *Provided*, That the vendor has a previous history of failure or refusal to execute contracts or bonds
16 with the State of West Virginia. The state board may set and collect review fees from publishers
17 and vendors participating in the state instructional resources approval and adoption process.

18 (c) All bids shall be opened by the state board, or its designee, in public session. After
19 considering the subject matter, product quality, general suitability, and prices of items
20 submitted, the state board shall, prior to March 1 of each year in which approvals for adoption are
21 made by it, establish a committee of teachers and other educational specialists, including a
22 sufficient number with experience with electronic instructional resources, and with the aid of the
23 committee, shall on or before December 1, prior to ~~county~~ school district adoptions, select,
24 approve and publish a list of items in each subject and grade in the elementary and secondary
25 subjects required to be taught by the state board. The committee of teachers and other
26 educational specialists shall report their recommendations to the state board on or before
27 November 15 of the year preceding the adoption by the ~~county~~ school district board. The state
28 board may create a standing committee of teachers and other education specialists, including a
29 sufficient number with experience with electronic instructional resources, for each subject and
30 grade level to review all new or revised instructional resources submitted after the initial approvals
31 for adoption.

§18-2A-3. Disposition of and requests for samples.

1 (a) Items to be reviewed in excess of the official sample submitted to the state board for
2 examination shall remain the property of the vendor submitting them if claimed within thirty days
3 after state board adoption of the multiple list. If not claimed within that period, the items may be
4 sold by the state board and the money credited to the Department of Education Instructional
5 Resources Fund or items may be distributed to state educational agencies.

6 (b) Sample items submitted to ~~county~~ school district boards or regional education service
7 agency selection teams remain the property of the vendor submitting them if claimed within thirty
8 days after instructional materials have been formally adopted. Unclaimed items may be distributed
9 free of charge by the respective ~~county~~ school district board or regional educational service
10 agency to any school, library or individual who may have need for the sample items.

11 (c) Vendors claiming samples within the thirty-day period shall notify the respective board
12 of education or regional education service agency at the time samples are submitted for study of
13 their intent to recall the samples. All costs shall be borne by the vendors.

14 (d) No ~~county~~ school district or regional education service agency adoption committee is
15 entitled to request or receive more than eight free samples of any multigrade program being
16 considered for adoption. Any single grade level subject area items used above grade six shall be
17 limited to five free samples per ~~county~~ school district selection committee. Any individual
18 requesting samples in excess of these limits shall be billed by the vendor at the lowest wholesale
19 price plus shipping. In the case of electronic instructional resources, it is sufficient for vendors to
20 provide access for the purpose of reviewing the resources via a user name and password to a
21 web-based resource or through on-line file transfer or download.

§18-2A-4. Execution of contracts; bond.

1 (a) When the selection and approval of the multiple list have been properly made, it is the
2 duty of the state board to furnish contracts for the selected items with the vendors within thirty
3 days of the approval and adoption of the multiple list, prepare a list of the adopted resources on
4 the multiple list and publish it in electronic format and make the list available through a page on
5 the West Virginia Department of Education web page. The contract for adoption shall run for a
6 period of time as designated by the state board.

7 (b) Each vendor awarded a contract by the West Virginia Department of Education shall
8 enter into a bond payable to the State of West Virginia in the penal sum of not less than \$2,000
9 and not more than \$10,000 to be approved by the state board of public works. The bond shall be

10 executed as surety by a responsible surety company authorized to carry on its business in West
11 Virginia. The contract shall be prepared by the Attorney General in accordance with the terms
12 and provisions of this article. The contract shall be executed in triplicate, one copy to be held by
13 the vendor, one by the state board and one attached to the bond filed with the board of public
14 works.

15 (c) Bonds required of successful vendors shall provide that:

16 (1) The vendor will furnish any of the instructional resources on the multiple list under
17 vendors contract for the period of the adoption, from the date of the bond, to any ~~county~~ school
18 district, a dealer appointed by the ~~county~~ school district, or any state board approved depository
19 or depositories as defined in section seven of this article, at the lowest wholesale price contained
20 in the bids or contracts made to any other ~~county~~ school district unit, dealer, ~~county~~, school or
21 depository in any other state, like conditions prevailing. The state board shall determine, from time
22 to time, the terms of the bids and contracts and may require the vendor to bear the costs of
23 shipping, mail or transportation or offer any other financial benefit available in the highest amount
24 paid by a vendor to any other ~~county~~ school district unit, dealer, ~~county~~ school district or depository
25 in any other state: *Provided*, That the state board shall decide whether from time to time bids and
26 contracts for instructional resources are to be for the delivery directly to each ~~county~~ school district
27 unit, dealer appointed by the ~~county~~ school district, ~~county~~ school district or to each depository or
28 depositories, or any combination thereof, under this section.

29 (2) The vendor will automatically reduce the prices in West Virginia when prices are
30 reduced anywhere in the United States, so that no such item or items shall at any time be sold in
31 West Virginia at a higher wholesale price than received for items elsewhere in the United States,
32 like conditions prevailing.

33 (3) All items sold in West Virginia will be identical with the official samples submitted to the
34 state board as regards quality standards, specifications, subject matter, and other particulars
35 which may affect the value of the items. The state board may, however, during the period of the

36 contract approve revised editions of adopted items, which will authorize a vendor to furnish such
37 revisions. All contracts and bonds shall be filed in accordance with the appropriate state board
38 process prior to July 1.

§18-2A-5. Selection by ~~county~~ school district boards; school curriculum teams.

1 (a) Vendors, upon requests of ~~county~~ school district superintendents, shall furnish to
2 ~~county~~ school district boards the requested sample copies of resources that were selected and
3 placed on the state multiple list by the state board in accordance with the provisions of section
4 three of this article. In the case of electronic instructional resources, it is sufficient for vendors to
5 provide access for the purpose of reviewing the resources via a web-hosted online format.

6 (b) School curriculum teams shall make their curriculum and instructional needs known to
7 the ~~county~~ school district superintendent and selection committees prior to the consideration of
8 any adopted grouping in accordance with the provisions of section three of this article. The ~~county~~
9 school district board shall, upon recommendation of the ~~county~~ school district superintendent with
10 the aid of a committee of teachers and not later than May 1 of the year following that in which the
11 multiple list for the group was made and approved, select from the state multiple list one or more
12 resources to deliver instruction for a period as provided for elsewhere in this article. Counties
13 ~~School Districts~~ are authorized to include nonvoting advisors from the general public in the
14 adoption process, but shall require advisors to provide their assessment of the resources
15 appropriate for the subject before the voting committee commences the selection process.

16 (c) In order to avoid duplication and to maximize resources, with agreement of all ~~county~~
17 school district superintendents within a regional education service agency area and subsequent
18 regional education service agency actions, a regional education service agency instructional
19 resources selection team may be established to conduct a review of selected resources placed
20 on the state multiple list by the state board. The membership of the selection team will be
21 established through agreement of the ~~county~~ school district superintendents with representation
22 of all ~~counties~~ school districts, including any nonvoting advisors from the general public. The

23 resource selection team will provide recommendations to each ~~county~~ school district
24 superintendent for consideration, review and adoption by each ~~county~~ school district board.

25 (d) ~~County~~ School district boards adopting electronic instructional resources shall ensure
26 equity of access for all students at school and shall have a plan to provide equity of access at
27 home if necessary through alternate avenues including, but not limited to, print, software, and
28 hardware support.

**§18-2A-8. Instructional resources must be approved and listed; when changes may be
effected; rules.**

1 (a) No instructional resource, print or electronic, may be used in any public elementary or
2 secondary school in West Virginia as the primary source to deliver the instructional goals and
3 objectives for state required courses unless it has been approved and listed on the state multiple
4 list by the state board, except as otherwise provided in this section. Any changes of items made
5 by the state board shall become effective upon approval. The state board may upon request by a
6 ~~county~~ school district board and upon justification of that request, and subsequent to the adoption
7 by a ~~county~~ school district board approve the adoption of additional items to meet the needs of
8 specific children which were not provided for in the original adoption, or waive the requirement to
9 adopt and use resources in a particular school as provided for in section six, article five-a of this
10 chapter. Nothing in this section shall apply to the supplementary items that are needed from time
11 to time.

12 (b) The state board may grant permission to ~~county~~ school district boards for the continued
13 use of previously adopted resources that are listed on the most recently expired multiple list
14 appropriate for the subject category under consideration. The continued use shall not exceed a
15 period as designated by the state board. The state board may make such rules as it may deem
16 necessary and expedient to carry out the provisions of this article.

**§18-2A-9. Gifts and bribes to influence adoption of instructional resources a felony;
penalty.**

1 Any member of the state board, any ~~county~~ school district superintendent, any member of
2 a ~~county~~ school district board or any other person who shall receive, solicit, or accept any gift,
3 present, or thing of value to influence that individual in the vote for the adoption of instructional
4 resources, print or electronic, or any combination thereof, or any person who shall either directly
5 or indirectly give or offer to give any such gift, present, or thing of value to any person to influence
6 that individual in voting for the adoption of instructional resources, print or electronic, or any
7 combination thereof, shall be guilty of a felony and, upon conviction thereof, shall be confined in
8 a correctional facility for not less than one year nor more than three years.

ARTICLE 2C. HARASSMENT, INTIMIDATION OR BULLYING PROHIBITION.

§18-2C-3. Policy prohibiting harassment, intimidation or bullying.

1 (a) Each ~~county~~ school district board shall establish a policy prohibiting harassment,
2 intimidation or bullying. Each ~~county~~ school district board has control over the content of its policy
3 as long as the policy contains, at a minimum, the requirements of subdivision (b) of this section.
4 The policy shall be adopted through a process that includes representation of parents or
5 guardians, school employees, school volunteers, students and community members.

6 (b) Each ~~county~~ school district board policy shall, at a minimum, include the following
7 components:

8 (1) A statement prohibiting harassment, intimidation or bullying of any student on school
9 property, a school bus, at a school bus stop or at school sponsored events;

10 (2) A definition of harassment, intimidation or bullying no less inclusive than that in section
11 two of this article;

12 (3) A procedure for reporting prohibited incidents;

13 (4) A requirement that school personnel report prohibited incidents of which they are
14 aware;

15 (5) A requirement that parents or guardians of any student involved in an incident
16 prohibited pursuant to this article be notified;

- 17 (6) A procedure for documenting any prohibited incident that is reported;
- 18 (7) A procedure for responding to and investigating any reported incident;
- 19 (8) A strategy for protecting a victim from additional harassment, intimidation or bullying,
20 and from retaliation following a report;
- 21 (9) A disciplinary procedure for any student guilty of harassment, intimidation or bullying;
- 22 (10) A requirement that any information relating to a reported incident is confidential, and
23 exempt from disclosure under the provisions of chapter twenty-nine-b of this code; and
- 24 (11) A requirement that each ~~county~~ school district board shall input into the uniform
25 integrated regional computer information system (commonly known as the West Virginia
26 Education Information System) described in section twenty-six, article two of this chapter, and
27 compile an annual report regarding the means of harassment, intimidation or bullying that have
28 been reported to them, and the reasons therefor, if known. The West Virginia Department of
29 Education shall compile the information and report it annually beginning July 1, 2012, to the
30 Legislative Oversight Committee on Education Accountability.
- 31 (c) Each ~~county~~ school district board shall adopt the policy and submit a copy to the State
32 Superintendent of Schools by December 1, 2011.
- 33 (d) To assist ~~county~~ school district boards in developing their policies, the West Virginia
34 Department of Education shall develop a model policy applicable to grades kindergarten through
35 twelfth. The model policy shall be issued by September 1, 2011.
- 36 (e) Notice of the ~~county~~ school district board's policy shall appear in any student handbook,
37 and in any ~~county~~ school district board publication that sets forth the comprehensive rules,
38 procedures and standards of conduct for the school.

§18-2C-5. Policy training and education.

- 1 (a) Schools and ~~county~~ school district boards are encouraged, but not required, to form
2 bullying prevention task forces, programs and other initiatives involving school staff, students,
3 teachers, administrators, volunteers, parents, law enforcement and community members.

4 (b) To the extent state or federal funds are appropriated for these purposes, each school
5 district shall:

6 (1) Provide training on the harassment, intimidation or bullying policy to school employees
7 and volunteers who have direct contact with students; and

8 (2) Develop a process for educating students on the harassment, intimidation or bullying
9 policy.

10 (c) Information regarding the ~~county~~ school district board policy against harassment,
11 intimidation or bullying shall be incorporated into each school's current employee training
12 program.

ARTICLE 2D. COMMUNITY EDUCATION.

§18-2D-4. ~~County~~ School district boards of education authorized to participate.

1 Each ~~county~~ school district board of education in this state is hereby authorized, but not
2 obligated, to coordinate a community education program within its ~~county~~ district.

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-3a. Honors and advanced placement programs.

1 (a) The purpose of this section is to provide honors and advanced placement programs to
2 meet the needs of students who have the potential and desire to complete curriculum more
3 demanding than that offered in the regular classroom for their current grade level. Honors
4 programs are those programs offering courses to expand the academic content in a given
5 program of study and may include but shall not be limited to research and in-depth studies,
6 mentorships, content-focused seminars, and extended learning outcomes instruction in the
7 content area. Advanced placement programs are those programs offering classes which are
8 advanced in terms of content and performance expectations of those normally available for the
9 age/grade level of the student and providing credit toward graduation and possible college credit.
10 Advanced placement classes also include those recognized or offered by the college board,

11 postsecondary institutions and other recognized foundations, corporations or institutions.

12 Curriculum approved under this section shall be designed to advance the achievement of
13 students in the subject area or areas in which the student has achieved at least two of the following
14 three criteria: (a) Demonstrated exceptional ability and interest through past performance, (b)
15 obtained the prerequisite knowledge and skills to perform honors or advanced placement work,
16 and (c) recommended by the student's former or present teachers. Honors and advanced
17 placement curriculum may include advanced placement courses offered through the college
18 board or other public or private foundations, corporations, institutions, or businesses whose
19 courses are generally accepted as leading to advanced placement or standing in a postsecondary
20 institution, accelerated instructional courses offered via satellite and other courses and
21 arrangements, approved by the state board, which provide students an opportunity to advance
22 their learning above that offered through the regular curriculum. To the maximum extent possible,
23 honors and advanced placement courses shall be taught by a regular classroom teacher. Such
24 classroom teacher shall have adequate knowledge in the subject area for the instruction of such
25 course. If a teacher, licensed by the state board, with adequate knowledge in the advanced
26 subject area is not available, an adjunct teacher or other qualified person may be employed,
27 contracted for, or shared between schools to instruct such course: *Provided*, That the position
28 shall be posted annually prior to the beginning of the school year immediately following the school
29 year in which the adjunct teacher or other qualified person is employed. The state board may
30 grant waivers to existing certification requirements for an adjunct teacher or other qualified person
31 who has an earned bachelors degree and has demonstrated competence in the subject to be
32 taught.

33 (b) The honors and advanced placement curriculum shall be phased-in in accordance with
34 the following schedule:

35 (1) Prior to June 1, 1989, the state board shall establish a program coordinated through
36 the colleges and universities or some other entity, to provide training to teachers in the instruction

37 of honors and advanced placement courses: *Provided*, That the state board shall not establish an
38 additional certification area for the teaching of honors or advanced placement courses.

39 (2) To assist in the implementation of teacher training for honors and advanced placement
40 instruction, there shall be an appropriation to the state board;

41 (3) On or before June 1, 1989, and each year thereafter, teachers shall be selected to
42 teach honors and advanced placement courses based upon the teacher's qualifications and
43 academic interests and the needs of the students. The ~~county~~ school district boards of education
44 shall, if necessary, make arrangements for the teachers to attend a training program;

45 (4) Beginning in the school year 1990-91, each ~~county~~ school district board shall provide
46 in grades nine through twelve honors and advanced placement courses as provided under
47 subsection (a) of this section.

48 (c) The state board shall designate one employee who is an expert in the area of higher
49 education financial aid, including, but not limited to, loans, grants and work studies, to work on a
50 full-time continuous basis with high school counselors to ensure that all high school students are
51 informed of the availability of financial assistance to attend college.

**§18-2E-4. Better schools accountability; school, school district and statewide school
report cards.**

1 (a) For the purpose of providing information to the parents of public school children and
2 the general public on the quality of education in the public schools which is uniform and
3 comparable between schools within and among the various school districts, the state board shall
4 prepare forms for school, school district and statewide school report cards and shall promulgate
5 rules concerning the collection and reporting of data and the preparation, printing and distribution
6 of report cards under this section. The forms shall provide for brief, concise reporting in
7 nontechnical language of required information. Any technical or explanatory material a ~~county~~
8 school district board wishes to include shall be contained in a separate appendix available to the
9 general public upon request.

10 (b) The school report cards shall include information as prescribed by lawfully promulgated
11 rule by the state board to give the parents of students at the school and the general public an
12 indication of the quality of education at the school and other programs supportive of community
13 needs, including, but not limited to, the following:

14 (1) Indicators of student performance at the school in comparison with the ~~county~~ school
15 district, state, regional and national student performance, as applicable, including student
16 performance by grade level in the various subjects measured pursuant to a uniform statewide
17 assessment program adopted by the state board; school attendance rates; the percent of students
18 not promoted to next grade; and the graduation rate;

19 (2) Indicators of school performance in comparison with the aggregate of all other schools
20 in the ~~county~~ school district and the state, as applicable, including average class size; percent of
21 enrollments in courses in high school mathematics, science, English and social science; amount
22 of time per day devoted to mathematics, science, English and social science at middle, junior high
23 and high school grade levels; percentage distribution of students by career cluster as indicated
24 on the individualized student transition plan; pupil-teacher ratio; number of exceptions to pupil-
25 teacher ratio requested by the ~~county~~ school district board and the number of exceptions granted;
26 the number of split-grade classrooms; pupil-administrator ratio; operating expenditure per pupil;
27 ~~county~~ school district expenditure by fund in graphic display; and the average degree
28 classification and years of experience of the administrators and teachers at the school;

29 (3) The names of the members of the local school improvement council, created pursuant
30 to section two, article five-a of this chapter; and

31 (4) The name or names of the business partner or partners of the school.

32 In addition, every ~~county~~ school district board annually shall determine the number of
33 administrators, classroom teachers and service personnel employed that exceeds the number
34 allowed by the public school support plan and determine the amount of salary supplements that
35 would be available per state authorized employee if all expenditures for the excess employees

36 were converted to annual salaries for state authorized administrators, classroom teachers and
37 service personnel within their ~~county~~ school district. The information shall be published annually
38 in each school report card of each such ~~county~~ school district.

39 (c) The school district report card shall include the data for each school for each separately
40 listed applicable indicator and the aggregate of the data for all schools, as applicable, in the ~~county~~
41 school district for each indicator. The statewide school report card shall include the data for each
42 ~~county~~ school district for each separately listed indicator and the aggregate for all ~~counties~~ school
43 districts for each indicator.

44 (d) The report cards shall be prepared using actual local school, county, state, regional
45 and national data indicating the present performance of the school and also shall include the state
46 norms and the upcoming year's targets for the school and the ~~county~~ school district board.

47 The state board shall provide technical assistance to each ~~county~~ school district board in
48 preparing the school and school district report cards.

49 Each ~~county~~ school district board shall prepare report cards in accordance with the
50 guidelines set forth in this section. The school district report cards shall be presented at a regular
51 school board meeting subject to applicable notice requirements and shall be made available to a
52 newspaper of general circulation serving the district. The school report cards shall be mailed
53 directly to the parent or parents of each child enrolled in that school. In addition, each ~~county~~
54 school district board shall submit the completed report cards to the state board which shall make
55 copies available to any person requesting them.

56 The report cards shall be completed and disseminated prior to January 1, 1989, and in
57 each year thereafter, and shall be based upon information for the current school year, or for the
58 most recent school year for which the information is available, in which case the year shall be
59 clearly footnoted.

60 (e) In addition to the requirements of subsection (c) of this section, the school district report
61 card shall list the following information:

62 (1) The names of the members of the ~~county~~ school district board, the dates upon which
 63 their terms expire and whether they have attended an orientation program for new members
 64 approved by the state board and conducted by the West Virginia School Board Association or
 65 other approved organizations;

66 (2) The number of hours of training that meets state board standards that ~~county~~ school
 67 district board members have received during the school term reported; and

68 (3) The names of the ~~county school~~ school district superintendent and every assistant and
 69 associate superintendent and any training programs related to their area of school administration
 70 which they have attended.

71 The information also shall be reported by district in the statewide school report card.

72 (f) The state board shall develop and implement a separate report card for nontraditional
 73 public schools pursuant to the appropriate provisions of this section to the extent practicable.

§18-2E-4a. Exception to requirement of mailing school report cards.

1 Notwithstanding the provisions of section four of this article requiring school report cards
 2 to be mailed directly to the parent or parents of each child enrolled in the school, such report cards
 3 may, at the option of the ~~county~~ school district board of education, be mailed as provided in said
 4 section four or be given to each child for delivery to his or her parent, parents, custodian or legal
 5 guardian: *Provided*, That if the school report card is delivered by the child, written verification must
 6 be received by the school indicating the parent, parents, custodian or legal guardian has received
 7 the school report card.

**§18-2E-5. Process for improving education; education standards; statewide assessment
 program; accountability measures; Office of Education Performance Audits; school
 accreditation and school system approval; intervention to correct low performance.**

1 (a) *Legislative findings, purpose and intent.* — The Legislature makes the following
 2 findings with respect to the process for improving education and its purpose and intent in the
 3 enactment of this section:

4 (1) The process for improving education includes four primary elements, these being:

5 (A) Standards which set forth the knowledge and skills that students should know and be
6 able to perform as the result of a thorough and efficient education that prepares them for the
7 twenty-first century, including measurable criteria to evaluate student performance and progress;

8 (B) Assessments of student performance and progress toward meeting the standards;

9 (C) A system of accountability for continuous improvement defined by high-quality
10 standards for schools and school systems articulated by a rule promulgated by the state board
11 and outlined in subsection (c) of this section that will build capacity in schools and districts to meet
12 rigorous outcomes that assure student performance and progress toward obtaining the
13 knowledge and skills intrinsic to a high-quality education rather than monitoring for compliance
14 with specific laws and regulations; and

15 (D) A method for building the capacity and improving the efficiency of schools and school
16 systems to improve student performance and progress;

17 (2) As the constitutional body charged with the general supervision of schools as provided
18 by general law, the state board has the authority and the responsibility to establish the standards,
19 assess the performance and progress of students against the standards, hold schools and school
20 systems accountable and assist schools and school systems to build capacity and improve
21 efficiency so that the standards are met, including, when necessary, seeking additional resources
22 in consultation with the Legislature and the Governor;

23 (3) As the constitutional body charged with providing for a thorough and efficient system
24 of schools, the Legislature has the authority and the responsibility to establish and be engaged
25 constructively in the determination of the knowledge and skills that students should know and be
26 able to do as the result of a thorough and efficient education. This determination is made by using
27 the process for improving education to determine when school improvement is needed by
28 evaluating the results and the efficiency of the system of schools, by ensuring accountability and
29 by providing for the necessary capacity and its efficient use;

30 (4) In consideration of these findings, the purpose of this section is to establish a process
31 for improving education that includes the four primary elements as set forth in subdivision (1) of
32 this subsection to provide assurances that the high-quality standards are, at a minimum, being
33 met and that a thorough and efficient system of schools is being provided for all West Virginia
34 public school students on an equal education opportunity basis; and

35 (5) The intent of the Legislature in enacting this section and section five-c of this article is
36 to establish a process through which the Legislature, the Governor and the state board can work
37 in the spirit of cooperation and collaboration intended in the process for improving education, to
38 consult and examine the performance and progress of students, schools and school systems and,
39 when necessary, to consider alternative measures to ensure that all students continue to receive
40 the thorough and efficient education to which they are entitled. However, nothing in this section
41 requires any specific level of funding by the Legislature.

42 (b) *Electronic ~~county~~ school district and school strategic improvement plans.* — The state
43 board shall promulgate a rule consistent with the provisions of this section and in accordance with
44 article three-b, chapter twenty-nine-a of this code establishing an electronic ~~county~~ school district
45 strategic improvement plan for each ~~county~~ school district board and an electronic school strategic
46 improvement plan for each public school in this state. Each respective plan shall be for a period
47 of no more than five years and shall include the mission and goals of the school or school system
48 to improve student, school or school system performance and progress, as applicable. The
49 strategic plan shall be revised annually in each area in which the school or system is below the
50 standard on the annual performance measures. The plan shall be revised when required pursuant
51 to this section to include each annual performance measure upon which the school or school
52 system fails to meet the standard for performance and progress, the action to be taken to meet
53 each measure, a separate time line and a date certain for meeting each measure, a cost estimate
54 and, when applicable, the assistance to be provided by the department and other education
55 agencies to improve student, school or school system performance and progress to meet the

56 annual performance measure.

57 The department shall make available to all public schools through its website or the West
58 Virginia Education Information System an electronic school strategic improvement plan
59 boilerplate designed for use by all schools to develop an electronic school strategic improvement
60 plan which incorporates all required aspects and satisfies all improvement plan requirements of
61 the No Child Left Behind Act.

62 (c) *High-quality education standards and efficiency standards.* — In accordance with the
63 provisions of article three-b, chapter twenty-nine-a of this code, the state board shall adopt and
64 periodically review and update high-quality education standards for student, school and school
65 system performance and processes in the following areas:

- 66 (1) Curriculum;
- 67 (2) Workplace readiness skills;
- 68 (3) Finance;
- 69 (4) Transportation;
- 70 (5) Special education;
- 71 (6) Facilities;
- 72 (7) Administrative practices;
- 73 (8) Training of ~~county~~ school district board members and administrators;
- 74 (9) Personnel qualifications;
- 75 (10) Professional development and evaluation;
- 76 (11) Student performance, progress and attendance;
- 77 (12) Professional personnel, including principals and central office administrators, and
78 service personnel attendance;
- 79 (13) School and school system performance and progress;
- 80 (14) A code of conduct for students and employees;
- 81 (15) Indicators of efficiency; and

82 (16) Any other areas determined by the state board.

83 (d) *Comprehensive statewide student assessment program.* — The state board shall
84 establish a comprehensive statewide student assessment program to assess student
85 performance and progress in grades three through twelve. The assessment program is subject to
86 the following:

87 (1) The state board shall promulgate a rule in accordance with the provisions of article
88 three-b, chapter twenty-nine-a of this code establishing the comprehensive statewide student
89 assessment program;

90 (2) Prior to the 2014-2015 school year, the state board shall align the comprehensive
91 statewide student assessment for all grade levels in which the test is given with the college-
92 readiness standards adopted pursuant to section thirty-nine, article two of this chapter or develop
93 other aligned tests to be required at each grade level so that progress toward college readiness
94 in English/language arts and math can be measured;

95 (3) The state board may require that student proficiencies be measured through the ACT
96 EXPLORE and the ACT PLAN assessments or other comparable assessments, which are
97 approved by the state board and provided by future vendors;

98 (4) The state board may require that student proficiencies be measured through the West
99 Virginia writing assessment at any grade levels determined by the state board to be appropriate;
100 and

101 (5) The state board may provide, through the statewide assessment program, other
102 optional testing or assessment instruments applicable to grade levels kindergarten through grade
103 twelve which may be used by each school to promote student achievement. The state board
104 annually shall publish and make available, electronically or otherwise, to school curriculum teams
105 and teacher collaborative processes the optional testing and assessment instruments.

106 (e) *State annual performance measures for school and school system accreditation.* —
107 The state board shall promulgate a rule in accordance with the provisions of article three-

108 b, chapter twenty-nine-a of this code that establishes a system to assess and weigh annual
109 performance measures for state accreditation of schools and school systems. The state board
110 also may establish performance incentives for schools and school systems as part of the state
111 accreditation system. On or before December 1, 2013, the state board shall report to the Governor
112 and to the Legislative Oversight Commission on Education Accountability the proposed rule for
113 establishing the measures and incentives of accreditation and the estimated cost therefore, if any.
114 Thereafter, the state board shall provide an annual report to the Governor and to the Legislative
115 Oversight Commission on Education Accountability on the impact and effectiveness of the
116 accreditation system. The rule for school and school system accreditation proposed by the board
117 may include, but is not limited to, the following measures:

- 118 (1) Student proficiency in English and language arts, math, science and other subjects
119 determined by the board;
- 120 (2) Graduation and attendance rate;
- 121 (3) Students taking and passing AP tests;
- 122 (4) Students completing a career and technical education class;
- 123 (5) Closing achievement gaps within subgroups of a school's student population; and
- 124 (6) Students scoring at or above average attainment on SAT or ACT tests.

125 (f) *Indicators of efficiency.* — In accordance with the provisions of article three-b, chapter
126 twenty-nine-a of this code, the state board shall adopt by rule and periodically review and update
127 indicators of efficiency for use by the appropriate divisions within the department to ensure
128 efficient management and use of resources in the public schools in the following areas:

- 129 (1) Curriculum delivery including, but not limited to, the use of distance learning;
- 130 (2) Transportation;
- 131 (3) Facilities;
- 132 (4) Administrative practices;
- 133 (5) Personnel;

134 (6) Use of regional educational service agency programs and services, including programs
135 and services that may be established by their assigned regional educational service agency or
136 other regional services that may be initiated between and among participating ~~county~~school
137 district boards; and

138 (7) Any other indicators as determined by the state board.

139 (g) *Assessment and accountability of school and school system performance and*
140 *processes.* — In accordance with the provisions of article three-b, chapter twenty-nine-a of this
141 code, the state board shall establish by rule a system of education performance audits which
142 measures the quality of education and the preparation of students based on the annual measures
143 of student, school and school system performance and progress. The system of education
144 performance audits shall provide information to the state board, the Legislature and the Governor,
145 upon which they may determine whether a thorough and efficient system of schools is being
146 provided. The system of education performance audits shall include:

147 (1) The assessment of student, school and school system performance and progress
148 based on the annual measures established pursuant to subsection (e) of this section;

149 (2) The evaluation of records, reports and other information collected by the Office of
150 Education Performance Audits upon which the quality of education and compliance with statutes,
151 policies and standards may be determined;

152 (3) The review of school and school system electronic strategic improvement plans; and

153 (4) The on-site review of the processes in place in schools and school systems to enable
154 school and school system performance and progress and compliance with the standards.

155 (h) *Uses of school and school system assessment information.* — The state board shall
156 use information from the system of education performance audits to assist it in ensuring that a
157 thorough and efficient system of schools is being provided and to improve student, school and
158 school system performance and progress. Information from the system of education performance
159 audits further shall be used by the state board for these purposes, including, but not limited to,

160 the following:

- 161 (1) Determining school accreditation and school system approval status;
- 162 (2) Holding schools and school systems accountable for the efficient use of existing
163 resources to meet or exceed the standards; and
- 164 (3) Targeting additional resources when necessary to improve performance and progress.

165 The state board shall make accreditation information available to the Legislature, the
166 Governor, the general public and to any individual who requests the information, subject to the
167 provisions of any act or rule restricting the release of information.

168 (i) *Early detection and intervention programs.* — Based on the assessment of student,
169 school and school system performance and progress, the state board shall establish early
170 detection and intervention programs using the available resources of the Department of
171 Education, the regional educational service agencies, the Center for Professional Development
172 and the Principals Academy, or other resources as appropriate, to assist underachieving schools
173 and school systems to improve performance before conditions become so grave as to warrant
174 more substantive state intervention. Assistance shall include, but is not limited to, providing
175 additional technical assistance and programmatic, professional staff development, providing
176 monetary, staffing and other resources where appropriate.

177 (j) *Office of Education Performance Audits.* —

178 (1) To assist the state board in the operation of a system of education performance audits,
179 the state board shall establish an Office of Education Performance Audits consistent with the
180 provisions of this section. The Office of Education Performance Audits shall be operated under
181 the direction of the state board independently of the functions and supervision of the State
182 Department of Education and state superintendent. The Office of Education Performance Audits
183 shall report directly to and be responsible to the state board in carrying out its duties under the
184 provisions of this section.

185 (2) The office shall be headed by a director who shall be appointed by the state board and

186 who serves at the will and pleasure of the state board. The annual salary of the director shall be
187 set by the state board and may not exceed eighty percent of the salary of the State Superintendent
188 of Schools.

189 (3) The state board shall organize and sufficiently staff the office to fulfill the duties
190 assigned to it by law and by the state board. Employees of the State Department of Education
191 who are transferred to the Office of Education Performance Audits shall retain their benefits and
192 seniority status with the Department of Education.

193 (4) Under the direction of the state board, the Office of Education Performance Audits shall
194 receive from the West Virginia education Information System staff research and analysis data on
195 the performance and progress of students, schools and school systems, and shall receive
196 assistance, as determined by the state board, from staff at the State Department of Education,
197 the regional education service agencies, the Center for Professional Development, the Principals
198 Academy and the School Building Authority to carry out the duties assigned to the office.

199 (5) In addition to other duties which may be assigned to it by the state board or by statute,
200 the Office of Education Performance Audits also shall:

201 (A) Assure that all statewide assessments of student performance used as annual
202 performance measures are secure as required in section one-a of this article;

203 (B) Administer all accountability measures as assigned by the state board, including, but
204 not limited to, the following:

205 (i) Processes for the accreditation of schools and the approval of school systems; and

206 (ii) Recommendations to the state board on appropriate action, including, but not limited
207 to, accreditation and approval action;

208 (C) Determine, in conjunction with the assessment and accountability processes, what
209 capacity may be needed by schools and school systems to meet the standards established by
210 the state board and recommend to the state board plans to establish those needed capacities;

211 (D) Determine, in conjunction with the assessment and accountability processes, whether

212 statewide system deficiencies exist in the capacity of schools and school systems to meet the
213 standards established by the state board, including the identification of trends and the need for
214 continuing improvements in education, and report those deficiencies and trends to the state
215 board;

216 (E) Determine, in conjunction with the assessment and accountability processes, staff
217 development needs of schools and school systems to meet the standards established by the state
218 board and make recommendations to the state board, the Center for Professional Development,
219 the regional educational service agencies, the Higher Education Policy Commission and the
220 ~~county~~ school district boards;

221 (F) Identify, in conjunction with the assessment and accountability processes, school
222 systems and best practices that improve student, school and school system performance and
223 communicate those to the state board for promoting the use of best practices. The state board
224 shall provide information on best practices to ~~county~~ school district systems; and

225 (G) Develop reporting formats, such as check lists, which shall be used by the appropriate
226 administrative personnel in schools and school systems to document compliance with applicable
227 laws, policies and process standards as considered appropriate and approved by the state board,
228 which may include, but is not limited to, the following:

229 (i) The use of a policy for the evaluation of all school personnel that meets the
230 requirements of sections twelve and twelve-a, article two, chapter eighteen-a of this code;

231 (ii) The participation of students in appropriate physical assessments as determined by
232 the state board, which assessment may not be used as a part of the assessment and
233 accountability system;

234 (iii) The appropriate licensure of school personnel; and

235 (iv) The appropriate provision of multicultural activities.

236 Information contained in the reporting formats is subject to examination during an on-site
237 review to determine compliance with laws, policies and standards. Intentional and grossly

238 negligent reporting of false information are grounds for dismissal of any employee.

239 (k) *On-site reviews.* —

240 (1) The system of education performance audits shall include on-site reviews of schools
241 and school systems which shall be conducted only at the specific direction of the state board upon
242 its determination that circumstances exist that warrant an on-site review. Any discussion by the
243 state board of schools to be subject to an on-site review or dates for which on-site reviews will be
244 conducted may be held in executive session and is not subject to the provisions of article nine-a,
245 chapter six of this code relating to open governmental proceedings. An on-site review shall be
246 conducted by the Office of Education Performance Audits of a school or school system for the
247 purpose of making recommendations to the school and school system, as appropriate, and to the
248 state board on such measures as it considers necessary. The investigation may include, but is
249 not limited to, the following:

250 (A) Verifying data reported by the school or ~~county~~school district board;

251 (B) Examining compliance with the laws and policies affecting student, school and school
252 system performance and progress;

253 (C) Evaluating the effectiveness and implementation status of school and school system
254 electronic strategic improvement plans;

255 (D) Investigating official complaints submitted to the state board that allege serious
256 impairments in the quality of education in schools or school systems;

257 (E) Investigating official complaints submitted to the state board that allege that a school
258 or ~~county~~school district board is in violation of policies or laws under which schools and ~~county~~
259 school district boards operate; and

260 (F) Determining and reporting whether required reviews and inspections have been
261 conducted by the appropriate agencies, including, but not limited to, the State Fire Marshal, the
262 Health Department, the School Building Authority and the responsible divisions within the
263 department of education, and whether noted deficiencies have been or are in the process of being

264 corrected.

265 (2) The Director of the Office of Education Performance Audits shall notify the ~~county~~
266 school district superintendent of schools five school days prior to commencing an on-site review
267 of the ~~county~~ school district system and shall notify both the ~~county~~-school district superintendent
268 and the principal five school days before commencing an on-site review of an individual school:
269 *Provided*, That the state board may direct the Office of Education Performance Audits to conduct
270 an unannounced on-site review of a school or school system if the state board believes
271 circumstances warrant an unannounced on-site review.

272 (3) The Office of Education Performance Audits shall conduct on-site reviews which are
273 limited in scope to specific areas in which performance and progress are persistently below
274 standard as determined by the state board unless specifically directed by the state board to
275 conduct a review which covers additional areas.

276 (4) The Office of Education Performance Audits shall reimburse a ~~county~~-school district
277 board for the costs of substitutes required to replace ~~county~~-school district board employees who
278 serve on a review team.

279 (5) At the conclusion of an on-site review of a school system, the director and team leaders
280 shall hold an exit conference with the superintendent and shall provide an opportunity for
281 principals to be present for at least the portion of the conference pertaining to their respective
282 schools. In the case of an on-site review of a school, the exit conference shall be held with the
283 principal and curriculum team of the school and the superintendent shall be provided the
284 opportunity to be present. The purpose of the exit conference is to review the initial findings of the
285 on-site review, clarify and correct any inaccuracies and allow the opportunity for dialogue between
286 the reviewers and the school or school system to promote a better understanding of the findings.

287 (6) The Office of Education Performance Audits shall report the findings of an on-site
288 review to the ~~county~~-school district superintendent and the principals whose schools were
289 reviewed within thirty days following the conclusion of the on-site review. The Office of Education

290 Performance Audits shall report the findings of the on-site review to the state board within forty-
291 five days after the conclusion of the on-site review. A school or ~~county~~ school district that believes
292 one or more findings of a review are clearly inaccurate, incomplete or misleading, misrepresent
293 or fail to reflect the true quality of education in the school or ~~county~~ school district or address
294 issues unrelated to the health, safety and welfare of students and the quality of education, may
295 appeal to the state board for removal of the findings. The state board shall establish a process for
296 it to receive, review and act upon the appeals.

297 (7) The Legislature finds that the accountability and oversight of some activities and
298 programmatic areas in the public schools are controlled through other mechanisms and agencies
299 and that additional accountability and oversight may be unnecessary, counterproductive and
300 impair necessary resources for teaching and learning. Therefore, the Office of Education
301 Performance Audits may rely on other agencies and mechanisms in its review of schools and
302 school systems.

303 (l) *School accreditation.* —

304 (1) The state board shall establish levels of accreditation to be assigned to schools. The
305 establishment of levels of accreditation and the levels shall be subject to the following:

306 (A) The levels will be designed to demonstrate school performance in all the areas outlined
307 in this section and also those established by the state board;

308 (B) The state board shall promulgate legislative rules in accordance with the provisions of
309 article three-b, chapter twenty-nine-a of this code to establish the performance and standards
310 required for a school to be assigned a particular level of accreditation; and

311 (C) The state board will establish the levels of accreditation in such a manner as to
312 minimize the number of systems of school recognition, both state and federal, that are employed
313 to recognize and accredit schools.

314 (2) The state board annually shall review the information from the system of education
315 performance audits submitted for each school and shall issue to every school a level of

316 accreditation as designated and determined by the state board.

317 (3) The state board, in its exercise of general supervision of the schools and school
318 systems of West Virginia, may exercise any or all of the following powers and actions:

319 (A) To require a school to revise its electronic strategic plan;

320 (B) To define extraordinary circumstances under which the state board may intervene
321 directly or indirectly in the operation of a school;

322 (C) To appoint monitors to work with the principal and staff of a school where extraordinary
323 circumstances are found to exist and to appoint monitors to assist the school principal after
324 intervention in the operation of a school is completed;

325 (D) To direct a ~~county~~school district board to target resources to assist a school where
326 extraordinary circumstances are found to exist;

327 (E) To intervene directly in the operation of a school and declare the position of principal
328 vacant and assign a principal for the school who will serve at the will and pleasure of the state
329 board. If the principal who was removed elects not to remain an employee of the ~~county~~school
330 district board, then the principal assigned by the state board shall be paid by the ~~county~~school
331 district board. If the principal who was removed elects to remain an employee of the ~~county~~school
332 district board, then the following procedure applies:

333 (i) The principal assigned by the state board shall be paid by the state board until the next
334 school term, at which time the principal assigned by the state board shall be paid by the ~~county~~
335 school district board;

336 (ii) The principal who was removed is eligible for all positions in the ~~county~~school district,
337 including teaching positions, for which the principal is certified, by either being placed on the
338 transfer list in accordance with section seven, article two, chapter eighteen-a of this code, or by
339 being placed on the preferred recall list in accordance with section seven-a, article four, chapter
340 eighteen-a of this code; and

341 (iii) The principal who was removed shall be paid by the ~~county~~school district board and

342 may be assigned to administrative duties, without the ~~county~~-school district board being required
343 to post that position until the end of the school term; and

344 (F) Other powers and actions the state board determines necessary to fulfill its duties of
345 general supervision of the schools and school systems of West Virginia.

346 (4) The ~~county~~-school district board may take no action nor refuse any action if the effect
347 would be to impair further the school in which the state board has intervened.

348 (m) *School system approval.* — The state board annually shall review the information
349 submitted for each school system from the system of education performance audits and issue
350 one of the following approval levels to each ~~county~~-school district board: Full approval, temporary
351 approval, conditional approval or nonapproval.

352 (1) Full approval shall be given to a ~~county~~-school district board whose schools have all
353 been given full, temporary or conditional accreditation status and which does not have any
354 deficiencies which would endanger student health or safety or other extraordinary circumstances
355 as defined by the state board. A fully approved school system in which other deficiencies are
356 discovered shall remain on full accreditation status for the remainder of the approval period and
357 shall have an opportunity to correct those deficiencies, notwithstanding other provisions of this
358 subsection.

359 (2) Temporary approval shall be given to a ~~county~~-school district board whose education
360 system is below the level required for full approval. Whenever a ~~county~~-school district board is
361 given temporary approval status, the ~~county~~-school district board shall revise its electronic ~~county~~
362 school district strategic improvement plan in accordance with subsection (b) of this section to
363 increase the performance and progress of the school system to a full approval status level. The
364 revised plan shall be submitted to the state board for approval.

365 (3) Conditional approval shall be given to a ~~county~~-school district board whose education
366 system is below the level required for full approval, but whose electronic ~~county~~-school district
367 strategic improvement plan meets the following criteria:

368 (A) The plan has been revised in accordance with subsection (b) of this section;

369 (B) The plan has been approved by the state board; and

370 (C) The ~~county~~school district board is meeting the objectives and time line specified in
371 the revised plan.

372 (4) Nonapproval status shall be given to a ~~county~~school district board which fails to submit
373 and gain approval for its electronic ~~county~~school district strategic improvement plan or revised
374 electronic ~~county~~school district strategic improvement plan within a reasonable time period as
375 defined by the state board or which fails to meet the objectives and time line of its revised
376 electronic ~~county~~school district strategic improvement plan or fails to achieve full approval by the
377 date specified in the revised plan.

378 (A) The state board shall establish and adopt additional standards to identify school
379 systems in which the program may be nonapproved and the state board may issue nonapproval
380 status whenever extraordinary circumstances exist as defined by the state board.

381 (B) Whenever a ~~county~~school district board has more than a casual deficit, as defined in
382 section one, article one of this chapter, the ~~county~~school district board shall submit a plan to the
383 state board specifying the ~~county~~school district board's strategy for eliminating the casual deficit.
384 The state board either shall approve or reject the plan. If the plan is rejected, the state board shall
385 communicate to the ~~county~~school district board the reason or reasons for the rejection of the
386 plan. The ~~county~~school district board may resubmit the plan any number of times. However, any
387 ~~county~~school district board that fails to submit a plan and gain approval for the plan from the state
388 board before the end of the fiscal year after a deficit greater than a casual deficit occurred or any
389 ~~county~~school district board which, in the opinion of the state board, fails to comply with an
390 approved plan may be designated as having nonapproval status.

391 (C) Whenever nonapproval status is given to a school system, the state board shall
392 declare a state of emergency in the school system and shall appoint a team of improvement
393 consultants to make recommendations within sixty days of appointment for correcting the

394 emergency. When the state board approves the recommendations, they shall be communicated
395 to the ~~county~~ school district board. If progress in correcting the emergency, as determined by the
396 state board, is not made within six months from the time the ~~county~~ school district board receives
397 the recommendations, the state board shall intervene in the operation of the school system to
398 cause improvements to be made that will provide assurances that a thorough and efficient system
399 of schools will be provided. This intervention may include, but is not limited to, the following:

400 (i) Limiting the authority of the ~~county~~ school district superintendent and ~~county~~ school
401 district board as to the expenditure of funds, the employment and dismissal of personnel, the
402 establishment and operation of the school calendar, the establishment of instructional programs
403 and rules and any other areas designated by the state board by rule, which may include delegating
404 decision-making authority regarding these matters to the state superintendent;

405 (ii) Declaring that the office of the ~~county~~ school district superintendent is vacant;

406 (iii) Declaring that the positions of personnel who serve at the will and pleasure of the
407 ~~county~~ school district superintendent as provided in section one, article two, chapter eighteen-a
408 of this code, are vacant, subject to application and reemployment;

409 (iv) Delegating to the state superintendent both the authority to conduct hearings on
410 personnel matters and school closure or consolidation matters and, subsequently, to render the
411 resulting decisions and the authority to appoint a designee for the limited purpose of conducting
412 hearings while reserving to the state superintendent the authority to render the resulting decisions;

413 (v) Functioning in lieu of the ~~county~~ school district board of education in a transfer, sale,
414 purchase or other transaction regarding real property; and

415 (vi) Taking any direct action necessary to correct the emergency including, but not limited
416 to, the following:

417 (l) Delegating to the state superintendent the authority to replace administrators and
418 principals in low performing schools and to transfer them into alternate professional positions
419 within the ~~county~~ school district at his or her discretion; and

420 (II) Delegating to the state superintendent the authority to fill positions of administrators
421 and principals with individuals determined by the state superintendent to be the most qualified for
422 the positions. Any authority related to intervention in the operation of a ~~county~~ school district board
423 granted under this paragraph is not subject to the provisions of article four, chapter eighteen-a of
424 this code.

425 (n) Notwithstanding any other provision of this section, the state board may intervene
426 immediately in the operation of the ~~county~~ school district school system with all the powers, duties
427 and responsibilities contained in subsection (m) of this section, if the state board finds the
428 following:

429 (1) That the conditions precedent to intervention exist as provided in this section; and that
430 delaying intervention for any period of time would not be in the best interests of the students of
431 the ~~county~~ school district school system; or

432 (2) That the conditions precedent to intervention exist as provided in this section and that
433 the state board had previously intervened in the operation of the same school system and had
434 concluded that intervention within the preceding five years.

435 (o) *Capacity*. — The process for improving education includes a process for targeting
436 resources strategically to improve the teaching and learning process. Development of electronic
437 school and school system strategic improvement plans, pursuant to subsection (b) of this section,
438 is intended, in part, to provide mechanisms to target resources strategically to the teaching and
439 learning process to improve student, school and school system performance. When deficiencies
440 are detected through the assessment and accountability processes, the revision and approval of
441 school and school system electronic strategic improvement plans shall ensure that schools and
442 school systems are efficiently using existing resources to correct the deficiencies. When the state
443 board determines that schools and school systems do not have the capacity to correct
444 deficiencies, the state board shall take one or more of the following actions:

445 (1) Work with the ~~county~~ school district board to develop or secure the resources

446 necessary to increase the capacity of schools and school systems to meet the standards and,
447 when necessary, seek additional resources in consultation with the Legislature and the Governor;

448 (2) Recommend to the appropriate body including, but not limited to, the Legislature,
449 ~~county~~ school district boards, schools and communities methods for targeting resources
450 strategically to eliminate deficiencies identified in the assessment and accountability processes.

451 When making determinations on recommendations, the state board shall include, but is not limited
452 to, the following methods:

453 (A) Examining reports and electronic strategic improvement plans regarding the
454 performance and progress of students, schools and school systems relative to the standards and
455 identifying the areas in which improvement is needed;

456 (B) Determining the areas of weakness and of ineffectiveness that appear to have
457 contributed to the substandard performance and progress of students or the deficiencies of the
458 school or school system and requiring the school or school system to work collaboratively with
459 the West Virginia Department of Education State System of Support to correct the deficiencies;

460 (C) Determining the areas of strength that appear to have contributed to exceptional
461 student, school and school system performance and progress and promoting their emulation
462 throughout the system;

463 (D) Requesting technical assistance from the School Building Authority in assessing or
464 designing comprehensive educational facilities plans;

465 (E) Recommending priority funding from the School Building Authority based on identified
466 needs;

467 (F) Requesting special staff development programs from the Center for Professional
468 Development, the Principals Academy, higher education, regional educational service agencies
469 and ~~county~~ school district boards based on identified needs;

470 (G) Submitting requests to the Legislature for appropriations to meet the identified needs
471 for improving education;

472 (H) Directing ~~county~~ school district boards to target their funds strategically toward
473 alleviating deficiencies;

474 (I) Ensuring that the need for facilities in ~~counties~~ school districts with increased enrollment
475 are appropriately reflected and recommended for funding;

476 (J) Ensuring that the appropriate person or entity is held accountable for eliminating
477 deficiencies; and

478 (K) Ensuring that the needed capacity is available from the state and local level to assist
479 the school or school system in achieving the standards and alleviating the deficiencies.

480 (p) *Building leadership capacity* — To help build the governance and leadership capacity
481 of a ~~county~~ school district board during an intervention in the operation of its school system by
482 the state board, and to help assure sustained success following return of control to the ~~county~~
483 school district board, the state board shall require the ~~county~~ school district board to establish
484 goals and action plans, subject to approval of the state board, to improve performance sufficiently
485 to end the intervention within a period of not more than five years. The state superintendent shall
486 maintain oversight and provide assistance and feedback to the ~~county~~ school district board on
487 development and implementation of the goals and action plans. At a minimum, the goals and
488 action plans shall include:

489 (A) An analysis of the training and development activities needed by the ~~county~~ school
490 district board and leadership of the school system and schools for effective governance and
491 school improvement;

492 (B) Support for the training and development activities identified which may include those
493 made available through the state superintendent, regional education service agencies, Center for
494 Professional Development, West Virginia School Board Association, Office of Education
495 Performance Audits, West Virginia Education Information System and other sources identified in
496 the goals and action plans. Attendance at these activities included in the goals and action plans
497 is mandatory as specified in the goals and action plans; and

498 (C) Active involvement by the ~~county~~ school district board in the improvement process,
499 working in tandem with the ~~county~~ school district superintendent to gather, analyze and interpret
500 data, write time-specific goals to correct deficiencies, prepare and implement action plans and
501 allocate or request from the State Board of Education the resources, including board development
502 training and coaching, necessary to achieve approved goals and action plans and sustain system
503 and school improvement.

504 At least once each year during the period of intervention, the Office of Education
505 Performance Audits shall assess the readiness of the ~~county~~ school district board to accept the
506 return of control of the system or school from the state board and sustain the improvements, and
507 shall make a report and recommendations to the state board supported by documented evidence
508 of the progress made on the goals and action plans. The state board may end the intervention or
509 return any portion of control of the operations of the school system or school that was previously
510 removed at its sole determination. If the state board determines at the fifth annual assessment
511 that the ~~county~~ school district board is still not ready to accept return of control by the state board
512 and sustain the improvements, the state board shall hold a public hearing in the affected ~~county~~
513 school district at which the attendance by all members of the ~~county~~ school district board is
514 requested so that the reasons for continued intervention and the concerns of the citizens of the
515 ~~county~~ school district may be heard. The state board may continue the intervention only after it
516 holds the public hearing and may require revision of the goals and action plans.

517 Following the termination of an intervention in the operation of a school system and return
518 of full control by the state board, the support for governance education and development shall
519 continue as needed for up to three years. If at any time within this three years, the state board
520 determines that intervention in the operation of the school system is again necessary, the state
521 board shall again hold a public hearing in the affected ~~county~~ school district so that the reasons
522 for the intervention and the concerns of the citizens of the ~~county~~ school district may be heard.

§18-2E-5a. County School district superintendent employment contract.

1 (a) The Legislature previously granted authority to the state board to intervene in the
2 operation of a ~~county~~ school district system in section five, article two-e of this chapter. Part of
3 the authority given is the authority of the state board to declare that the office of the ~~county~~ school
4 district superintendent is vacant. ~~County~~ School district boards enter into contracts to employ
5 persons as superintendents for a term of years which creates substantial rights and obligations.
6 Although the statute provides that the state board may declare the office of the ~~county~~ school
7 district superintendent vacant, the statute did not specifically give the state board authority to void
8 the contract of the ~~county~~ school district superintendent. The intent of this section is to clarify what
9 contractual obligations continue after removal.

10 (b) Whenever the state board intervenes in the operation of a school system and the office
11 of the ~~county~~ school district superintendent is declared vacant pursuant to section five, article two-
12 e of this chapter, the state board may, for any intervention which is instituted after the effective
13 date of this section, void any existing employment contract between the ~~county~~-school district
14 board and the ~~county~~ school district superintendent.

15 (c) Whenever a ~~county~~ school district board elects a ~~county~~ school district superintendent
16 and enters into a written contract of employment with the superintendent, the ~~county~~-school district
17 board shall include within the contract a conspicuous clause that informs the superintendent that
18 if the state board intervenes in the operation of the ~~county~~ school district system pursuant to
19 section five, article two-e of this chapter, the state board may vacate the office and void the
20 employment contract.

**§18-2E-5d. Standards for the duration of school bus transportation times for students to
and from school.**

1 (a) The high quality standards for transportation adopted by the state board pursuant to
2 section five of this article shall include standards for the recommended duration of the one-way
3 school bus transportation time for students to and from school under normal weather and
4 operating conditions as follows:

5 (1) For elementary school students, thirty minutes;

6 (2) For middle school, intermediate school and junior high school students, forty-five
7 minutes; and

8 (3) For high school students, sixty minutes.

9 (b) A ~~county~~ school district board may not create a new bus route for the transportation of
10 students in any of the grade levels prekindergarten through grade five to and from any school
11 included in a school closure, consolidation or new construction project approved after July 1,
12 2008, which exceeds by more than fifteen minutes the recommended duration of the one-way
13 school bus transportation time for elementary students adopted by the state board in accordance
14 with subsection (a) of this section unless:

15 (1) The ~~county~~ school district board adopts a separate motion to approve creation of the
16 route and request written permission of the state board to create the route; and

17 (2) Receives the written permission of the state board to create the route.

18 (c) A ~~county~~ school district board may not create, nor may the state board permit, the
19 creation of a new bus route for the transportation of students in any of the grade levels
20 prekindergarten through grade five to and from any school included in a school closure,
21 consolidation or new construction project approved after July 1, 2008, which exceeds by more
22 than thirty minutes the recommended duration of the one-way school bus transportation time for
23 elementary students adopted by the state board in accordance with subsection (a) of this section.

24 (d) The state board shall provide technical assistance to ~~county~~ school district boards with
25 the objective of achieving school bus transportation routes for students which are within the
26 recommended time durations established by the state board.

§18-2E-7. Providing for instruction and learning in all public schools.

1 (a) The Legislature finds that:

2 (1) The knowledge and skills children need to succeed are changing dramatically and that
3 West Virginia students must develop proficiency in the subject matter content, technology tools

4 and learning skills to succeed and prosper in life, in school and on the job;

5 (2) Students must be equipped to live in a multitasking, multifaceted, technology-driven
6 world;

7 (3) The provision technologies and software resources in grades prekindergarten through
8 twelve is necessary to meet the goal that high school graduates will be prepared fully for college,
9 other post-secondary education or gainful employment;

10 (4) This goal reflects a fundamental belief that the youth of the state exit the system
11 equipped with the skills, competencies and attributes necessary to succeed, to continue learning
12 throughout their lifetimes and to attain self-sufficiency;

13 (5) To promote learning, teachers must be competent in content and learning skills and
14 must be equipped to fully integrate technology to transform instructional practice and to support
15 skills acquisition;

16 (6) For students to learn technology skills, students and teachers must have equitable
17 access to high quality, technology tools and resources;

18 (7) When aligned with standards and curriculum, technology-based assessments can be
19 a powerful tool for teachers; and

20 (8) Teachers must understand how to use technology to create classroom assessments
21 for accurate, timely measurements of student proficiency in attainment of academic content.

22 (b) The state board shall ensure that the resources to be used to provide technology
23 services to students in grades prekindergarten through twelve are included in a West Virginia
24 Strategic Technology Learning Plan to be developed by the Department of Education as an
25 integral component of the ~~county~~ school district electronic strategic improvement plan required in
26 section five of this article. The provision of technologies and services to students and teachers
27 shall be based on a ~~county~~ school district technology plan developed by a team that includes
28 school building-level professional educators and is aligned with the goals and objectives of the
29 West Virginia Strategic Technology Learning Plan. This plan shall be an integral component of

30 the ~~county~~ school district electronic strategic improvement plan as required in section five of this
31 article. Funds shall be allocated equitably to ~~county~~ school district school systems following peer
32 review of the plans that includes providing necessary technical assistance prior to submission
33 and allows timely review and approval by the West Virginia Department of Education. Equitable
34 allocation shall be defined by the state board and may include per school-site equity for
35 technologies requiring a site license or other per school application. Technology tools purchased
36 from appropriations for this section shall adhere to state contract prices: *Provided*, That contingent
37 upon approval of the ~~county~~ school district technology plan, ~~counties~~ school districts that identify,
38 within that plan, specific software or peripheral equipment not listed on the state contract, but
39 necessary to support implementation, may request the West Virginia Department of Education to
40 secure state purchasing prices for those identified items. Total expenditure to purchase these
41 additional items may not exceed ten percent of the annual ~~county~~ school district allocation. To the
42 extent practicable, the technology shall be used:

43 (1) To maximize student access to learning tools and resources at all times including
44 during regular school hours, before and after school or class, in the evenings, on weekends and
45 holidays and for public education, noninstructional days and during vacations; and

46 (2) For student use for homework, remedial work, personalized learning, independent
47 learning, career planning and adult basic education.

48 (c) The implementation of this section should provide a technology infrastructure capable
49 of supporting multiple technology-based learning strategies designed to enable students to
50 achieve at higher academic levels. The technology infrastructure should facilitate student
51 development by addressing the following areas:

52 (1) Mastery of rigorous core academic subjects in grades prekindergarten through eight
53 by providing software, other technology resources or both aligned with state standards in reading,
54 mathematics, writing, science, social studies and learning tools;

55 (2) Mastery of rigorous core academic subjects in grades nine through twelve by providing

56 appropriate technology tools aligned with state standards for learning skills and technology tools;
57 (3) Attainment of skill outcomes for all students in the use of technology tools and learning
58 skills;
59 (4) Proficiency in new, emerging content;
60 (5) Participation in relevant, contextual instruction that uses dynamic, real-world contexts
61 that are engaging and meaningful for students, making learning relevant to life outside of school
62 and bridging the gap between how students live and how they learn in school;
63 (6) Ability to use digital and emerging technologies to manage information, communicate
64 effectively, think critically, solve problems, work productively as an individual and collaboratively
65 as part of a team and demonstrate personal accountability and other self-directional skills;
66 (7) Providing students with information on post-secondary educational opportunities,
67 financial aid and the skills and credentials required in various occupations that will help them
68 better prepare for a successful transition following high school;
69 (8) Providing greater access to advanced and other curricular offerings than could be
70 provided efficiently through traditional on-site delivery formats, including increasing student
71 access to quality distance learning curricula and online distance education tools;
72 (9) Providing resources for teachers in differentiated instructional strategies, technology
73 integration, sample lesson plans, curriculum resources and online staff development that enhance
74 student achievement; and
75 (10) Providing resources to support basic skills acquisition and improvement at the above
76 mastery and distinguished levels.
77 (d) Developed with input from appropriate stakeholder groups, the West Virginia Strategic
78 Technology Learning Plan shall be an integral component of the electronic strategic ~~county~~ school
79 district improvement plan as required in section five of this article. The West Virginia Strategic
80 Technology Learning Plan shall be comprehensive and shall address, but not necessarily be
81 limited to, the following provisions:

82 (1) Allocation of adequate resources to provide students with equitable access to
83 technology tools, including instructional offerings and appropriate curriculum, assessment and
84 technology integration resources aligned to both the content and rigor of state content standards
85 as well as to learning skills and technology tools;

86 (2) Providing students and staff with equitable access to a technology infrastructure that
87 supports the acquisition of skills in the use of technology, including the ability to access
88 information, solve problems, communicate clearly, make informed decisions, acquire new
89 knowledge, construct products, reports and systems and access online assessment systems;

90 (3) Inclusion of various technologies that enable and enhance the attainment of the skills
91 outcomes for all students;

92 (4) Collaboration with various partners, including parents, community organization, higher
93 education, schools of education in colleges and universities, employers and content providers;

94 (5) Seeking of applicable federal government funds, philanthropic funds, other partnership
95 funds or any combination of those types of funds to augment state appropriations and
96 encouraging the pursuit of funding through grants, gifts, donations or any other sources for uses
97 related to education technology;

98 (6) Sufficient bandwidth to support teaching and learning and to provide satisfactorily for
99 instructional management needs;

100 (7) Protection of the integrity and security of the network, as well as student and
101 administrative workstations;

102 (8) Flexibility to adjust the plan based on developing technology, federal and state
103 requirements and changing local school and ~~county~~ school district needs;

104 (9) Incorporation of findings based upon validation from research-based evaluation
105 findings from previous West Virginia-based evaluation projects;

106 (10) Continuing study of emerging technologies for application in a learning environment
107 and inclusion in the technology plan, as appropriate;

108 (11) An evaluation component to determine the effectiveness of the program and make
109 recommendations for ongoing implementation;

110 (12) A program of embedded, sustained professional development for teachers that is
111 strategically developed to support a thorough and efficient education for all students and that
112 aligns with state standards for technology, integrates technology skills into educational practice
113 and supports the implementation of software, technology and assessment resources in the
114 classroom;

115 (13) Providing for uniformity in technological hardware and software standards and
116 procedures;

117 (14) The strategy for ensuring that the capabilities and capacities of the technology
118 infrastructure is adequate for acceptable performance of the technology being implemented in the
119 public schools;

120 (15) Providing for a comprehensive, statewide uniform, integrated education management
121 and information system for data collection and reporting to the Department of Education and the
122 public;

123 (16) Providing for an effective model for the distance delivery, virtual delivery or both types
124 of delivery of instruction in subjects where there exists low student enrollment or a shortage of
125 certified teachers or where the delivery method substantially improves the quality of an
126 instructional program such as the West Virginia Virtual School;

127 (17) Providing a strategy to implement, support and maintain technology in the public
128 schools;

129 (18) Providing a strategy to provide ongoing support and assistance to teachers in
130 integrating technology into instruction such as with technology integration specialists and
131 technology system specialists;

132 (19) A method of allowing public education to take advantage of appropriate bulk
133 purchasing abilities and to purchase from competitively bid contracts initiated through the

134 southern regional education board educational technology cooperative and the America
135 TelEdCommunications Alliance;

136 (20) Compliance with United States Department of Education regulations and Federal
137 Communications Commission requirements for federal E-rate discounts; and

138 (21) Other provisions as considered appropriate, necessary or both to align with applicable
139 guidelines, policies, rules, regulations and requirements of the West Virginia Legislature, the
140 Board of Education and the Department of Education.

141 (e) Any state code and budget references to the Basic Skills/Computer Education Program
142 and the SUCCESS Initiative will be understood to refer to the statewide technology initiative
143 referenced in this section, commonly referred to as the 21st Century Tools for 21st Century
144 Schools Technology Initiative.

§18-2E-8. Creating jobs through education.

1 (a) *Findings and intent.* -- The Legislature finds that the Governor, the Legislature, the
2 state board and the people of West Virginia established goals for education through an education
3 summit and series of town meetings in the summer of the year 1990, and that these goals were
4 codified in section four, article one of this chapter during the third extraordinary session of the
5 Legislature of that year. Among these goals is the goal that high school graduates will be prepared
6 fully for college, other post-secondary education or gainful employment and that the number of
7 high school graduates entering post-secondary education will increase by fifty percent. The
8 Legislature finds that this goal reflects a fundamental belief that the result of a thorough and
9 efficient system of free schools is that the youth of the state exit the system equipped with the
10 skills, competencies and attributes necessary to succeed, to continue learning throughout their
11 lifetimes and to attain economic self-sufficiency.

12 The Legislature further finds that the full preparation of youth as indicated in these findings
13 cannot be accomplished by the school system alone, but requires the full and active partnership
14 with parents and people from business, labor, higher education, economic development and other

15 organizations and entities in the community that have an interest in providing quality education.
16 Therefore, the intent of this section is to establish a policy framework and strategy for the state
17 board in fulfilling its responsibility for the general supervision of free schools in order to encourage
18 and utilize actively involved partnerships in the formulation of rules and practices to achieve the
19 goal that high school graduates will be prepared fully for college, other post-secondary education
20 or gainful employment, particularly in the delivery of programs that provide work-based learning
21 opportunities for students within the school or at the workplace. The Legislature recognizes that
22 many skilled jobs require education beyond the high school level, that the goals of West Virginia
23 include increased post-secondary attendance and that the goals for post-secondary education as
24 set forth in section one-a, article one, chapter eighteen-b of this code include an increased focus
25 within higher education on relevancy, responsiveness to business, industry, labor and community
26 needs, and on the current and future work force needs of the state. Therefore, it is further the
27 intent of this section to enhance the linkages between secondary and post-secondary education.

28 (b) *Comprehensive goals for jobs through education.* -- The Legislature hereby establishes
29 the following goals to be accomplished by the year 2001 for all students in all schools:

30 (1) The elimination of student grouping or tracking systems that result in high school
31 students completing a general curriculum that does not prepare them fully for college, other post-
32 secondary education or gainful employment;

33 (2) The replacement of the general curriculum, as stated in subdivision (1) of this
34 subsection, with a system of career clusters and education majors that increases the academic
35 expectations for all students, includes a system of career information and guidance and
36 incorporates structured work-based learning;

37 (3) The requirement that every student, in consultation with his or her parents and school
38 advisor, establish an individualized student transition plan covering grades nine through twelve
39 and the first year beyond graduation from high school;

40 (4) The active involvement of partners at the state, regional and local levels in assuring

41 the full preparation of graduates for college, other post-secondary education or gainful
42 employment;

43 (5) The creation of a process through which qualified graduates will receive a portable
44 credential that is recognized and valued by employers as an indicator of the skills, competence
45 and readiness for employment of the graduates; and

46 (6) The implementation of continuous program assessment, program improvement and
47 staff development.

48 (c) *Increased academic expectations and career development for all students.* -- The
49 Legislature finds that there is a need to establish higher academic expectations and a system of
50 career development for all students that contains the following elements:

51 (1) *Assessment.* -- The implementation of an assessment program that measures student
52 performance by grade level and assesses student attainment of the basic academic foundation
53 skills;

54 (2) *Focus on basic skills in kindergarten through fourth grade.* -- The strengthening and
55 refocusing of kindergarten through fourth grade in order to assure that all students perform at
56 grade level at the completion of the fourth grade by concentrating on teaching the basics of
57 reading, writing, mathematics and computer skills;

58 (3) *Development of rigorous curriculum.* -- The development and implementation of a
59 rigorous and relevant curriculum of basic academic requirements that lays a foundation for further
60 learning and skill development. The proficiencies of the students shall be assessed at the end of
61 the eighth grade and all students should attain the basic academic requirement levels by no later
62 than the end of the tenth grade;

63 (4) *Career exploration in grades five through eight.* -- The exploration by students in the
64 fifth through eighth grades of their interests and abilities in career clusters through accessing
65 information about occupational skills and labor markets;

66 (5) *Creation and initial implementation of individual student transition plan for grades nine*

67 *and ten.* -- The creation, by the end of the eighth grade, of the first two years of an individualized
68 student transition plan that builds upon career awareness and exploration activities in the earlier
69 grades and enables the student in consultation with his or her parents and school advisor to select
70 a broad career cluster for further exploration in grades nine and ten;

71 (6) *Choosing career majors for grades eleven through post-secondary.* -- The creation of
72 the second part of the individualized student transition plan by the end of the tenth grade. The
73 second part of the individualized student transition plan shall establish a career major for the final
74 years of high school and the first year after high school that will prepare the student for college,
75 other post-secondary education or gainful employment;

76 (7) *Implementation of career majors.* -- The fulfillment of the secondary education
77 component of the career major in grades eleven and twelve, including the successful completion
78 of the necessary curriculum and participation in work-based learning experiences; and

79 (8) *Completion of individualized student transition plan and assessment.* -- The completion
80 of the individualized student transition plan in the first year following graduation from high school
81 by attending college, other post-secondary education or securing gainful employment. The state
82 board shall provide an assessment form to be completed by the student and returned to the high
83 school upon the completion of the individualized student transition plan. The form shall provide
84 for the student to report his or her success in completing the plan and the strengths and
85 weaknesses of his or her education preparation.

86 (d) *Report of recommendations on comprehensive career development.* -- To assist in the
87 establishment of a comprehensive career development system, the state school-to-work steering
88 committee shall report to the state board and the Legislative Oversight commission on education
89 accountability by November 1, 1996, the recommendations of the career guidance committee
90 established pursuant to the state school-to-work implementation plan.

91 (e) *Guidelines for increasing the ability of all students to meet higher academic*
92 *expectations and become self-motivated learners.* -- Practices that increase the academic

93 expectations for all students and help them to succeed in achieving those higher expectations
94 include, but are not limited to:

95 (1) Utilizing instructional methods that require the student to be a worker who is actively
96 engaged in the learning process;

97 (2) Utilizing methodologies that require students to apply academic knowledge in practical
98 situations and problem solving;

99 (3) Utilizing computers and other technologies to provide opportunities for creative
100 instruction, both individually and in groups in all subjects;

101 (4) Providing structured opportunities for students to participate in credit and noncredit
102 learning activities outside the school that are integrated with and are an extension of the school-
103 based program of study for the student through such activities as field trips, job shadowing,
104 community service, entrepreneurship development, mentoring, internships, apprenticeships,
105 school-based enterprises in partnership with the private sector and other cooperative learning
106 experiences connected to student education majors and school-based instructional programs;

107 (5) Integrating and interrelating academic and technical content throughout the curriculum
108 and ensuring numerous opportunities for cross-disciplinary learning to emphasize the importance
109 of reading, writing, speaking, listening and viewing; and

110 (6) Encouraging teachers to plan and work together and exercise their professional
111 judgment in the classroom.

112 (f) *Establishing partnerships.* -- As soon as practicable following the effective date of this
113 section, the Governor shall appoint or designate a "Jobs Through Education Employer Panel", to
114 assure the high quality preparation of our youth for college, other post-secondary education or
115 gainful employment. The jobs through education employer panel shall advise and assist the state
116 board, the higher education governing boards and institutions, other post-secondary education
117 training programs and agencies and employers in assuring that graduates are prepared fully for
118 further education and training or gainful employment and shall perform other functions as set forth

119 in this section. In providing such advice and assistance and in the performance of such other
120 functions, the jobs through employer panel shall solicit input from the ~~county~~ school district
121 steering committees.

122 As soon as practicable, following the effective date of this section, ~~county~~ school district
123 boards shall appoint a ~~county~~ school district steering committee that includes parents and people
124 from business, labor, higher education, economic development, local school improvement
125 councils, faculty Senates and other organizations and entities in the community as valuable
126 partners in developing and implementing a system within the ~~county~~ school district that meets the
127 intent of this section and adheres to the rules of the state board. The membership of the ~~county~~
128 school district steering committee and participation in the community and technical college district
129 consortia committee, as created by section three-a, article three, chapter eighteen-b of this code,
130 shall be coordinated to the extent that it is practical.

131 (g) *Guidelines for work-based learning.* -- Work-based learning is a structured activity that
132 correlates with and is mutually supportive of school-based learning for the student, and includes
133 specific objectives to be mastered by the student as a result of the activity. It is central to the
134 education preparation process to develop within the student an awareness of the work
135 environment and how the skills the student is acquiring will be applied in that environment. Broadly
136 defined, work-based learning opportunities are activities that assist students to gain an awareness
137 of the workplace, develop an appreciation of the relevancy of academic subject matter to
138 workplace performance and gain valuable work experience and skills while exploring their
139 occupational interests and abilities. Incorporating work-based learning as a central part of the
140 education process and also as a final step in the formal education process includes, but is not
141 limited to:

142 (1) Providing students in the early grades with activities such as field trips, career-oriented
143 speakers in the classroom, courses such as junior achievement which are taught by volunteers
144 in the classroom, job shadowing and other such activities to increase student awareness of the

145 workplace; and

146 (2) Providing students in the later grades, including college and other post-secondary
147 education, with activities such as structured community service, apprenticeships, internships,
148 clinical experiences, cooperative education and other work-site placements, school-based
149 enterprises, workplace simulations and entrepreneurial development, that provide students with
150 more specific work experience in an occupational area associated with their education major.

151 To the extent possible, student work-based learning, and particularly workplace learning,
152 should be jointly assessed by a school-based educator or advisor and a work-based mentor who
153 possesses the skills set forth in the work-based learning objectives of the student, and who has
154 been trained in mentoring and assessing student performance.

155 (h) *Special consideration for providing work-based learning in counties with few*
156 *opportunities for employment.* -- Providing work-based learning opportunities for all students in
157 counties with few employers will be particularly difficult. While the following additional examples
158 of ways to increase opportunities for work-based learning are applicable for all counties, they are
159 most important in counties with few employers. Additional examples include, but are not limited
160 to:

161 (1) Computer software that simulates workplace situations and problem solving;

162 (2) Interactive and other technology to bring an exposure to the workplace into the
163 classroom;

164 (3) Community service;

165 (4) Partnerships with city, state and county government for work-based placements;

166 (5) Volunteer programs, such as junior achievement and other programs that utilize
167 volunteers trained to deliver work-related instruction;

168 (6) Assumption of recordkeeping and other measures by the schools, or through the use
169 of community-based organizations or other intermediaries, that make it easier for small
170 businesses to participate in accepting students for workplace learning;

- 171 (7) Rural entrepreneurship through action learning programs;
172 (8) School-based enterprises;
173 (9) Projects through 4-H, scouts, junior ROTC and other school and nonschool student
174 and civic organizations;
175 (10) Multiple partnerships with existing employers, such as hospitals that have multiple
176 departments;
177 (11) Agricultural education, FFA projects and supervised work experience programs; and
178 (12) Programs at vocational-technical education centers.

179 The state board shall make recommendations to the Legislature by November 1, 1996, on
180 any further actions that may be appropriate to assist counties with few employers in providing
181 work-based learning opportunities for all students.

182 (i) *Electronic portfolio of student accomplishments and preparation.* -- For the purpose of
183 better documenting the preparation of high school graduates for college, other post-secondary
184 education or gainful employment, the state board shall develop an electronic portfolio which will
185 be a permanent record for every student. The electronic portfolio shall be issued by the
186 appropriate ~~county~~ school district board and shall include the accomplishments of the student
187 during his or her education preparation. Upon request, students shall receive the contents of the
188 electronic portfolio in written or computer readable form. The electronic portfolio shall be subject
189 to the same confidentiality and disclosure laws and rules as any other student records. The
190 electronic portfolio shall include, but not be limited to:

191 (1) Documentation of attendance, grades, accomplishments, education plans, education
192 major interests, curriculum, special activities, honors and advanced education and other items
193 appropriate for inclusion in the portfolio as determined by state board rule to present the
194 accomplishments and achievements of the student;

195 (2) A separate area for the student to enter presentations, examples and other information
196 on his or her special areas of interest and advanced achievement;

197 (3) Certification of student attainment of the minimum level of proficiency in the basic skills
198 that lays the foundation for further learning and skill development for success in college, other
199 post-secondary education or gainful employment; and

200 (4) Certification of the skills, competence and readiness for college, other post-secondary
201 education or employment, as indicated by: (i) College entrance tests; (ii) specialized assessments
202 that measure the attainment of necessary skills and competencies required in the workplace; (iii)
203 the attainment of industry recognized credentials, licensure or certification; (iv) the completion of
204 nationally accredited technical education programs; (v) performance in specialized learning
205 experiences such as paid and unpaid structured work-based learning in the private or public
206 sectors, including, but not limited to, registered youth apprenticeships, internships, cooperative
207 education, community service, entrepreneurship development and school-based enterprises in
208 partnership with the private sector; and (vi) other indicators relevant to the student's skills,
209 competence and readiness for college, other post-secondary education or gainful employment.

210 (j) *Guidelines for certification on the electronic portfolio of student skills, competencies and*
211 *readiness for employment.* -- The certification of student skills, competencies and readiness for a
212 particular industry or occupation to be included on the electronic portfolio, including certification
213 offered by an institution of higher education or other job training programs, shall require the
214 approval of an appropriate entity designated by the jobs through education employer panel. Local
215 education agencies, institutions of higher education and other job training programs desiring to
216 issue such certification to meet local labor market or community needs and circumstances may
217 apply to the panel for such approval. To the extent possible, such certification shall provide the
218 student with a proficiency credential that is widely recognized and accepted within an industry or
219 occupational area as a reliable indicator of the ability of the student. The jobs through education
220 employer panel shall consult other established skill standards for use in certifying proficiency in
221 skills, competencies and readiness within specific industries and occupations. The intent of these
222 provisions is to provide a formal mechanism for the ongoing alignment of the certification of

223 student skills, competencies and readiness with current minimum requirements for success in the
224 industry or occupational area for which the student is preparing, including requirements which will
225 be met through additional education in college or other post-secondary education.

226 (k) *Staff development.* -- Meeting the intent and objectives of this section will require a
227 continued focus on staff development to increase the ability of teachers and administrators to
228 employ various methodologies for strengthening the rigor, content and relevance of the learning
229 process and help all students achieve at higher levels. Teachers and administrators must know
230 about workplace requirements to help students internalize the relationship between learning in
231 school and success in the careers they envision for themselves in adult life. The use of student
232 assessment and program evaluation information continually to check and improve the curriculum,
233 instruction, school climate and school organization and management, is critical to maintaining
234 high quality instruction that is relevant to changing workplace requirements. Staff development
235 opportunities shall include, but not be limited to:

236 (1) Designation by the state board of exemplary counties and schools that have
237 implemented comprehensive school-to-work systems as model demonstration sites to be visited
238 and observed;

239 (2) Collaboration and utilization of the resources of the state Department of Education,
240 institutions of higher education, the center for professional development and ~~county~~ school district
241 staff development councils for both in-service and preservice preparation programs;

242 (3) Teacher and business exchange programs that enable teachers to gain exposure and
243 experience in the workplace and business persons to gain exposure and experience in the
244 schools; (4) Structured programs or institutes that take educators into the workplace to observe
245 the work environment and skills necessary to perform work tasks; and

246 (5) Staff development activities which include joint participation by public school, college
247 and other post-secondary faculty where appropriate.

248 (l) *Study committee for staff development credits.* -- There is hereby created a study

249 committee to make recommendations on the feasibility of, and the possible process for, crediting
250 staff development activities toward fulfilling the requirement for renewal of certificates, pursuant
251 to section three, article three, chapter eighteen-a of this code, and the progression through the
252 state minimum salary schedule, pursuant to section two, article four of said chapter. The
253 committee shall consist of the chancellor of the university of West Virginia board of trustees, or a
254 designee; the state superintendent, or a designee, who shall serve as chair of the committee; a
255 member of the state board, to be selected by the state board; a representative of West Virginia
256 University to be selected by the president of the university; a representative of Marshall university,
257 to be selected by the president of the university; a representative of the West Virginia graduate
258 college, to be selected by the president of the college; four classroom teachers to be appointed
259 by the Governor within thirty days of the effective date of this section; and the director of the center
260 for professional development or a designee. Such committee shall report its recommendations to
261 the Legislative Oversight commission on education accountability by January 1, 1997.

262 (m) *State board rule.* -- On or before November 1, 1996, the state board, with advice from
263 the jobs through education employer panel, and in consultation with the higher education
264 governing boards, shall adopt a rule in accordance with the provisions of article three-b, chapter
265 twenty-nine-a of this code for the implementation of this section. The rule shall allow flexibility for
266 local variation to meet local circumstances and shall establish a five-year plan for phased
267 implementation. The proposed rule developed pursuant to this section shall contain a financial
268 impact statement as well as a job impact statement.

269 (n) Any study groups or committees created by the state board to assist in development of
270 policies or rules for the implementation of this section shall contain significant representation by
271 classroom teachers as defined by section one, article one, chapter eighteen-a of this code.
272 Further, the state board shall include in its annual budget request sufficient funds to implement
273 programs, policies or rules adapted to meet the goals set out in this section: *Provided*, That
274 nothing in this section shall be construed to require any specific level of funding by the Legislature.

§18-2E-8d. Further expressions of legislative intent with respect to this article; parental consent for substitute classes.

1 (a) The Legislature finds that many school systems are improving the quality of education
2 for their students through implementation of the goals and policies set forth in this article. The
3 Legislature finds that local school systems have had and should continue to have substantial
4 flexibility for implementing these improvements. The Legislature further finds that certain of the
5 goals address legally recognized elements within the definition of a thorough and efficient
6 education among which is the development in every child his or her capacity and knowledge to
7 intelligently pursue his or her options. The purpose of this section is to further this progress
8 through a greater expression of the legislative intent with respect to eliminating the general track
9 curriculum and to insure that all students perform at high levels of academic achievement.

10 (b) The intent of the Legislature is to provide in an economical manner for a thorough and
11 efficient education that:

12 (1) Provides information to parents and students which clearly identifies the courses a
13 student should take to prepare fully for continuing their education in college, other post-secondary
14 education or employment so they can intelligently choose among the many options available to
15 them;

16 (2) Encourages the involvement of parents in their child's education by providing parents
17 and students with information and opportunities to help students explore their interests and plan
18 a program of study while they are still in high school and have greater options and flexibility;

19 (3) Ensures that the quality, content, and alignment of the curriculum is sufficient to
20 prepare students fully for the transition to college, other post-secondary education or employment
21 in areas in which they have an interest following graduation from high school; and

22 (4) Improves student learning by increasing the rigor of the curriculum, making it more
23 relevant to students, and reinforcing academic instruction through applications to real life problem
24 solving so that whatever options a student pursues following graduation from high school, the

25 student has acquired a foundation of knowledge, skills and abilities that prepares him or her fully
26 for success.

27 (c) Notwithstanding the courses specified as required major courses within a high school
28 program of study, a student in consultation with his or her parents and school advisor, and with
29 the written consent of his or her parents, may take a higher level course, advanced placement
30 course, college course or other more rigorous substitute. The parental consent form shall include
31 a certification signed by the school advisor that the parents were advised of the impact of the
32 substitute course on the student's preparation for college, other post-secondary education or
33 employment in the student's major field of study and that the student's certificate of proficiency
34 will not indicate that the student completed a program of study major unless such substitute
35 courses are related to the major field of study selected by the student.

36 (d) Notwithstanding the courses specified as recommended electives within a high school
37 program of study, a student in consultation with his or her parents and school advisor, and with
38 the written consent of his or her parents, may substitute other elective courses in place of those
39 recommended to prepare the student fully for continuing his or her education in college, other
40 post-secondary education or employment. The parental consent form shall include a certification
41 signed by the school advisor that the parents were advised of the impact of the substitute course
42 on the student's preparation for college, other post-secondary education or employment in the
43 student's major field of study and that the student's certificate of proficiency will not indicate that
44 the student completed a program of study major unless such substitute courses are related to the
45 major field of study selected by the student.

46 (e) On or before July 1, 1999, the state board shall establish a uniform parental consent
47 form to be maintained in the students permanent record for the purposes of subsections (c) and
48 (d) of this section which shall contain:

49 (1) A statement to be signed and dated by the parents to consent to their child's
50 substitution of another course for a required major course as provided in subsection (c) of this

51 section and the course titles of the required major course and the substitute course;

52 (2) A statement to be signed and dated by the parents to consent to their child's
53 substitution of another course for a recommended elective course as provided in subsection (d)
54 of this section and the course titles of the recommended elective course and the substitute course;
55 and

56 (3) A statement to be signed and dated by the school advisor certifying that the school
57 advisor advised the parents of the impact of the substitute course on the student's preparation for
58 college, other post-secondary education or employment in the student's major field of study and
59 the student's certificate of proficiency.

60 (f) Nothing in this section shall prohibit a ~~county~~ school district board from establishing
61 high school graduation requirements which exceed the minimum high school graduation
62 requirements established by the state board.

§18-2E-8e. Veteran's honors funeral assistant community service program.

1 (a) *Findings.* -- The Legislature makes the following findings:

2 (1) Serving in the armed services in defense of the life, liberty and pursuit of happiness
3 enjoyed in our democratic society involves a tremendous sacrifice on the behalf of those who
4 serve, often at the cost of their own lives;

5 (2) It is a fitting tribute to those who have served in the Armed Forces and the families who
6 have shared in their sacrifice to honor that service and that sacrifice in the most respectful manner;

7 (3) It is often difficult for the families of deceased veterans who wish to lay their loved ones
8 finally to rest in a military honors funeral to find a bugler to sound their final Taps; and

9 (4) Organizations within the state and nationally, such as the Veterans of Foreign Wars,
10 the American Legion, Bugles Across America and many others, have recognized the difficulty of
11 finding buglers to sound Taps at military honors funerals and may be able to assist.

12 (b) *Purpose.* -- The purpose of this section is to facilitate collaboration that will encourage
13 capable young people to assist with the sounding of Taps at military funerals honoring our

14 veterans and, thereby, help them to develop a better understanding of the sacrifices, a respect
15 for the commitment and an appreciation of the privileges that the men and women of the armed
16 services have protected through their service.

17 (c) *State board guidelines.* -- The state board shall, in collaboration with organizations and
18 supporters of veterans, establish general guidelines for the establishment of school level
19 programs that encourage capable students in grades six through twelve, inclusive, to sound Taps
20 on a standard or valved bugle, trumpet, cornet or flugelhorn during military honors funerals held
21 in this state. The general guidelines shall address the issues to be set forth in the ~~county~~ school
22 district board policies required under this section and shall include contact information for
23 technical assistance from the Department of Education and organizations and supporters of
24 veterans assisting in these programs. The state board shall distribute the guidelines to every
25 ~~county~~ school district board. The state board shall also distribute an appropriate program
26 summary and contact information to the colleges and universities in the state so that they may
27 establish similar programs for their students.

28 (d) *County School district board policies.* -- Each ~~county~~ school district board shall
29 establish a policy for the implementation of a veteran's honors funeral assistant community
30 service program that addresses at least the following:

31 (1) The distribution of information to music and band teachers for their use in notifying
32 capable students and obtaining the consent of their parents or guardians for voluntary registry as
33 a candidate able to sound Taps during military honors funerals held within a reasonable distance
34 from their residence;

35 (2) The credit toward community service or work based learning requirements of the
36 ~~county~~ school district or other recognition that will be awarded to a student for the registry and
37 sounding of Taps during military honors funerals; and

38 (3) The limits on the amount of regular classroom instruction that a student may miss for
39 the sounding of Taps during military honors funerals to fulfill a community service or work based

40 learning requirement or, if none, on the excused absences that the student may accrue for this
41 activity.

42 ~~County School district~~ boards are not responsible for any costs associated with the
43 program, may not be required to provide or pay for student transportation to funerals and are not
44 liable for student supervision while absent to participate in funerals. However, ~~county school~~
45 district boards are encouraged to collaborate with organizations of veterans and supporters of
46 veterans to assist with the veteran's honors funeral assistant community service program.

§18-2E-9. West Virginia virtual school.

1 (a) *Findings*: -- The Legislature finds that:

2 (1) West Virginia schools have improved and expanded Internet access which enables
3 schools to offer courses through the Internet and other new and developing technologies;

4 (2) Current technology is available to provide students with more resources for learning
5 and new and developing technologies offer even more promise for expanded learning
6 opportunities;

7 (3) A number of states and other jurisdictions have developed Internet-based instruction
8 which is available currently and which is being used by schools in this state;

9 (4) To educate better the students of West Virginia, more course and class offerings can
10 be made available through technology, especially to students who are geographically
11 disadvantaged;

12 (5) Virtual learning enables students to learn from remote sites, learn at times other than
13 the normal school day and learn at a different pace and gives students access to courses that
14 would not be available in their area;

15 (6) There is a need to assure that Internet-based courses and courses offered through
16 new and developing technologies are of high quality; and

17 (7) The state and ~~county school district~~ school systems can benefit from the purchasing
18 power the state can offer.

19 (b) The Legislature hereby creates the West Virginia virtual school. The West Virginia
20 virtual school shall be located within the office of technology and information systems within the
21 West Virginia Department of Education.

22 (c) The State Superintendent of Schools shall appoint the director of the West Virginia
23 virtual school with the approval of the state board.

24 (d) The director of the West Virginia virtual school has the following powers and duties:

25 (1) To contract with providers for courses and other services;

26 (2) To review courses and courseware and make determinations and recommendations
27 relative to the cost and quality of the courses and the alignment with the instructional goals and
28 objectives of the state board;

29 (3) To develop policy recommendations for consideration by the state board, which may
30 include, but not be limited to, the following:

31 (A) Hardware and software considerations for the offering of courses on the Internet or
32 other developing technologies;

33 (B) Standards of teachers and other school employees who are engaged in the activities
34 surrounding the offering of courses on the Internet or other developing technologies;

35 (C) Sharing of resources with other agencies of government, both within and outside West
36 Virginia, to facilitate the offering of courses on the Internet or other developing technologies;

37 (D) Methods for including courses offered on the Internet or through other developing
38 technologies in alternative education programs;

39 (E) Methods for making courses offered on the Internet or through other developing
40 technologies available for students receiving home instruction;

41 (F) Methods for brokering the courses offered on the Internet or through other developing
42 technologies;

43 (G) Methods for applying for grants;

44 (H) Methods for employing persons who are the most familiar with the instructional goals

45 and objectives to develop the courses to be offered on the Internet and through other developing
46 technologies; and

47 (l) Proper funding models that address all areas of funding including, but not limited to,
48 which ~~county~~ school district, if any, may include a student receiving courses on the Internet or
49 through other developing technologies in enrollment and who, if anyone, is required to pay for the
50 courses offered on the Internet or through other developing technologies; and

51 (4) Any other powers and duties necessary to address the findings of the Legislature in
52 subsection (a) of this section.

53 (e) Subject to the process outlined in this section, the West Virginia virtual school's
54 approved virtual and distance learning courses are exempt from the mandatory use of primary
55 source instructional materials listed on the state multiple list.

56 (f) The West Virginia Department of Education shall report the progress of the West
57 Virginia virtual school to the Legislative Oversight commission on education accountability on or
58 before September 1, 2000.

§18-2E-10. Transformative system of support for early literacy.

1 (a) The Legislature finds that:

2 (1) In the early learning years, ensuring that each student masters the content and skills
3 needed for mastery at the next grade level is critically important for student success;

4 (2) Students who do not demonstrate grade-level proficiency in reading by the end of third
5 grade become increasingly less likely to succeed at each successive grade level and often drop
6 out of school prior to graduation;

7 (3) State board policy requires every school to establish a process for ensuring the
8 developmental and academic progress of all students. This process is to be coordinated by a
9 school student assistance team that reviews student developmental and academic needs that
10 have persisted despite being addressed through instruction, intervention, and as applicable,
11 supports for personalized learning. Ensuring the developmental and academic success of all

12 students requires every school to implement, in an equitable manner, programs during and after
13 the instructional day at the appropriate instructional levels that contribute to the success of
14 students; and

15 (4) To ensure that all students read proficiently by the end of third grade, a statewide
16 comprehensive approach to early literacy is required. This approach shall focus on supports
17 during the early learning years which include schools and engaged communities mobilized to
18 remove barriers, expand opportunities, and assist parents in fulfilling their roles and
19 responsibilities to serve as full partners in the success of their children.

20 (b) The state board shall, in accordance with the provisions of article three-b, chapter
21 twenty-nine-a of this code, promulgate legislative rules as necessary to effectuate the provisions
22 of this section. The rules shall provide for at least the following:

23 (1) Development of a comprehensive, systemic approach to close the reading
24 achievement gap by third grade, which targets school readiness, the attendance gap, summer
25 learning loss and a transformative intervention framework for student and learning supports;

26 (2) Ensuring all West Virginia children have access to high quality early learning
27 experiences that focus on healthy learners as part of the school readiness model, resulting in
28 increased populations of children on target for healthy development prior to entering first grade;

29 (3) Closing the attendance gap to certify West Virginia children attend school regularly
30 and limit chronic absenteeism in the early grades;

31 (4) Assisting ~~county~~ school district boards in establishing and operating targeted,
32 sustained extended day and extended year reading programs to ensure grade level proficiency
33 and battle summer learning loss;

34 (5) Maximizing family engagement to result in the development of a culture of literacy from
35 birth through third grade;

36 (6) Supporting high quality schools and a workforce prepared to address early literacy,
37 identification of interventions, and implementation of a system of intervention for children not

38 reaching grade level proficiency;

39 (7) Ensuring the employment of qualified teachers and service personnel in accordance
40 with the provisions of section thirty-nine, article five of this chapter and section seven-c, article
41 four, chapter eighteen-a of this code to provide instruction to students enrolled in early literacy
42 support programs;

43 (8) Creating a formula or grant-based program for the distribution of funds appropriated
44 specifically for the purposes of this section or otherwise available for the support of a targeted,
45 comprehensive system of support for early literacy;

46 (9) Providing support for transportation and healthy foods for students required to attend
47 after-school and extended year early literacy instructional support programs and supervision at
48 the school that accommodates the typical work schedules of parents; and

49 (10) Receiving from ~~county~~ school district boards any applications and annual reports
50 required by rule of the state board.

51 (c) A student in grades kindergarten through three who is recommended by the student
52 assistance team or the student's classroom teacher for additional assistance in one or more of
53 the key standards of English Language Arts, including reading, speaking and listening, writing or
54 language may be required to attend an extended year early literacy instructional support program
55 as a condition for promotion if:

56 (1) The student has been provided additional academic help through an in-school or after-
57 school early literacy instructional support program and, prior to the end of the school year, the
58 student assistance team or the student's classroom teacher recommends that further additional
59 academic help is needed for the student to be successful at the next grade level; and

60 (2) The ~~county~~ school district board has established an early literacy instructional support
61 program during the extended year for the student's grade level.

62 (d) ~~County~~ School district County boards shall provide high-quality educational facilities,
63 equipment and services to support early literacy instructional support programs established

64 pursuant to this section. Extended year programs may be provided at a central location for
65 kindergarten through third graders who qualify for the program.

66 (e) This section may not be construed to prohibit a classroom teacher from recommending
67 the grade level retention of a student based upon the student's lack of mastery of the subject
68 matter and preparation for the subject matter at the next grade level.

69 (f) This section may not be construed to affect the individualized education plans of
70 exceptional students.

71 (g) This section may not be construed to limit the authority of the county board to establish
72 an extended year program in accordance with section thirty-nine, article five of this chapter.
73 ~~County~~ School district boards may not charge tuition for enrollment in early literacy instructional
74 support programs established pursuant to this section.

75 (h) Each ~~county~~ school district board shall prepare to implement the provisions of this
76 section and the provisions of the state board rule required by subsection (b) of this section. The
77 preparations shall at least include planning, ensuring a process for ensuring the developmental
78 and academic progress of all students through the auspices of student assistance teams as
79 currently required by state board policy and performing a needs assessment to determine the
80 potential capacity requirements for the system of support for early learners.

81 (i) The state board shall provide a report describing the proposed implementation of the
82 transformative system of support for early literacy to the Legislative Oversight Commission on
83 Education Accountability on or before July 1, 2014.

84 (j) The state board shall provide a comprehensive report regarding the status of the
85 transformative system of support for early literacy to the Legislative Oversight Commission on
86 Education Accountability, the Joint Committee on Government and Finance, and the Governor on
87 November 1, 2014, and annually on November 1 on each year thereafter. The report shall
88 address, at a minimum, the progress of the program throughout the state, its effect on student
89 achievement and the sources of the funding both available to and used by the program.

90 (k) The provisions of this section are subject to the availability of funds from legislative
91 appropriation or other sources specifically designated for the purposes of this section. If a ~~county~~
92 school district board determines that adequate funds are not available for full implementation of
93 a transformative system of support for early literacy in the ~~county~~ school district , the ~~county~~ school
94 district board may implement its program in phases by first establishing early literacy instructional
95 support programs in the early readiness grades (Kindergarten), then the primary grades (Grades
96 1-2), and then establishing an early literacy instructional support program for the third grade once
97 the ~~county~~ school district board determines that adequate funds are available.

ARTICLE 2K. THE DIABETES CARE PLAN ACT.

§18-2K-2. Adoption of guidelines for individual diabetes care plans.

1 (a) The State Board of Education shall adopt guidelines for the development and
2 implementation of individual diabetes care plans on or before January 1, 2007. The guidelines for
3 information and allowable actions in a diabetes care plan shall meet or exceed the American
4 Diabetes Association's recommendations for the management of children with diabetes in the
5 school and day care setting. The State Board of Education shall consult with the Bureau for Public
6 Health and the Department of Health and Human Resources in the development of these
7 guidelines. The State Board of Education also shall consult with ~~county~~ school district board of
8 education employees who have been designated as responsible for coordinating their individual
9 ~~county's~~ school district's efforts to comply with federal regulations adopted under Section 504 of
10 the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794. In its development of these
11 guidelines, the state Board of Education shall consider recent resolutions by the Office of Civil
12 Rights of the United States Department of Education regarding investigation of complaints
13 alleging discrimination against students with diabetes.

14 The guidelines adopted by the state board shall include:

15 (1) Procedures for school nurses to develop an individual diabetes care plan for any
16 student diagnosed with diabetes, which shall involve the parent or guardian, the student's health

17 care provider, the student's classroom teacher, the student if appropriate, and other appropriate
 18 school personnel;

19 (2) Procedures for regular review of an individual care plan.

20 (3) Information to be included in a diabetes care plan, including the responsibilities and
 21 appropriate staff development for teachers and other school personnel, an emergency care plan,
 22 the identification of allowable actions to be taken, the extent to which the student is able to
 23 participate in the student's diabetes care and management and other information necessary for
 24 teachers and other school personnel in order to offer appropriate assistance and support to the
 25 student; and

26 (4) Procedures for information and staff development to be made available to teachers
 27 and other school personnel in order to appropriately support and assist students with diabetes.

28 (b) The State Board of Education shall provide that the guidelines and any subsequent
 29 changes are published and disseminated to ~~county~~ school district boards of education.

§18-2K-3. Establishment and implementation of diabetes care plans by ~~county~~ school district boards to support and assist students with diabetes.

1 Each ~~county~~ school district board of education shall establish and adopt a diabetes care
 2 plan which shall be implemented in schools in which students diagnosed with diabetes are
 3 enrolled. The plan shall be adopted not later than six months after the state Board of Education
 4 adopts guidelines for the plans pursuant to section two of this article. The plan shall meet all of
 5 the guidelines for diabetes care plans adopted by the state Board of Education pursuant to section
 6 two of this article. In particular, the boards shall require the implementation of the procedures set
 7 forth in those guidelines for the development and implementation of individual diabetes care
 8 plans. ~~County~~ School district boards also shall make available necessary information and staff
 9 development to teachers and school personnel in order to appropriately support and assist
 10 students with diabetes in accordance with their individual diabetes care plans.

ARTICLE 3. STATE SUPERINTENDENT OF SCHOOLS.

§18-3-9a. Authority of state superintendent as to fire hazards and safety of buildings.

1 Whenever any ~~county~~ school district board shall fail to comply with an order of the state
2 Fire Marshal for correction of fire hazards in any public school building, the state superintendent
3 shall close the building, or the unsafe part thereof, until the board complies with such order. The
4 state superintendent shall also have the power and authority to inspect any public school building
5 and to order the making of such repairs or alterations as may be necessary to put the building
6 into a safe condition.

§18-3-12. Special Community Development School Pilot Program.

1 The state superintendent shall establish a Special Community Development School Pilot
2 Program to be implemented in a neighborhood of at least five public schools, which shall include
3 at least one elementary and middle school, for the duration of five years. The neighborhood of
4 public schools designated by the state superintendent for the pilot shall have significant
5 enrollments of disadvantaged, minority and underachieving students. The designated
6 neighborhood of public schools under the direction of the ~~county~~ school district board and ~~county~~
7 school district superintendent shall work in collaboration with higher education, community
8 organizations, Center for Professional Development, local community leaders, affected classroom
9 teachers, affected parents and the state board to develop and implement strategies that could be
10 replicated in other public schools with significant enrollments of disadvantaged, minority and
11 underachieving students to improve academic achievement. For purposes of this section
12 "neighborhood" means an area of no more than seven square miles.

ARTICLE 4. ~~COUNTY~~ SCHOOL DISTRICT SUPERINTENDENT OF SCHOOLS.**§18-4-1. Election and term; interim superintendent.**

1 (a) The ~~county~~ school district superintendent shall be appointed by the board upon a
2 majority vote of the members thereof to serve for a term of not less than one, nor more than four
3 years. At the expiration of the term or terms for which he or she shall have been appointed, each
4 ~~county~~ school district superintendent shall be eligible for reappointment for additional terms of not

5 less than one, nor more than four years.

6 (1) At the expiration of his or her term or terms of service the ~~county~~ school district
7 superintendent may transfer to any teaching position in the ~~county~~ school district for which he or
8 she is qualified and has seniority, unless dismissed for statutory reasons.

9 (2) The appointment of the ~~county~~ school district superintendent shall be made between
10 January 1 and June 1 for a term beginning on July 1 following the appointment.

11 (b) In the event of a vacancy in the superintendent's position that results in an incomplete
12 term, the board may appoint an interim ~~county~~ school district superintendent:

13 (1) To serve until the following July 1 if the vacancy occurs before March 1.

14 (2) To serve until July 1 of the next following year if the vacancy occurs on or after March
15 1, unless a superintendent is appointed sooner.

16 (c) If the superintendent becomes incapacitated due to accident or illness to an extent that
17 may lead to prolonged absence, the ~~county~~ school district board, by unanimous vote, may enter
18 an order declaring that an incapacity exists in which case the ~~county~~ school district board shall
19 appoint an acting superintendent to serve until a majority of the members of the board determine
20 that the incapacity no longer exists. An acting superintendent may not serve in that capacity for
21 more than one year, nor later than the expiration date of the superintendent's term, whichever
22 occurs sooner, unless he or she is reappointed by the ~~county~~ school district board.

23 (d) Immediately following the appointment of a ~~county~~ school district superintendent or an
24 interim ~~county~~ school district superintendent, the president of the ~~county~~ school district board shall
25 certify the appointment to the state superintendent. Immediately following the appointment of an
26 acting ~~county~~ school district superintendent or a vote by a majority of the members of the ~~county~~
27 school district board that an incapacity no longer exists, the president of the ~~county~~ school district
28 board shall certify the appointment, reappointment, or appointment termination of the acting
29 superintendent to the state superintendent.

30 (e) During his or her term of appointment, the ~~county~~ school district superintendent shall

31 be a state resident and shall reside in the ~~county~~ school district which he or she serves or in a
32 contiguous ~~county~~ school district. The ~~county~~ school district superintendent in office on the
33 effective date of this section shall continue in office until the expiration of his or her term.

§18-4-2. Qualifications; health certificate; disability; acting superintendent.

1 (a) Each ~~county~~ school district superintendent shall hold a professional administrative
2 certificate endorsed for superintendent, or a first class permit endorsed for superintendent, subject
3 to the following:

4 (1) A superintendent who holds a first class permit may be appointed for one year only,
5 and may be reappointed two times for an additional year each upon an annual evaluation by the
6 ~~county~~ school district board and a determination of satisfactory performance and reasonable
7 progress toward completion of the requirements for a professional administrative certificate
8 endorsed for superintendent;

9 (2) Any candidate for superintendent, assistant superintendent or associate
10 superintendent, who possesses an earned doctorate from an accredited institution of higher
11 education and either has completed three successful years of teaching in public education or has
12 the equivalent of three years of experience in management or supervision as defined by state
13 board rule, after employment by the ~~county~~ school district board shall be granted a permanent
14 administrative certificate and shall be a licensed ~~county~~ school district superintendent;

15 (3) The state board shall promulgate a legislative rule in accordance with article three-b,
16 chapter twenty-nine-a of this code, to address those cases where a ~~county~~ school district board
17 finds that course work needed by the ~~county~~ school district superintendent who holds a first class
18 permit is not available or is not scheduled at state institutions of higher education in a manner
19 which will enable the ~~county~~ school district superintendent to complete normal requirements for a
20 professional administrative certificate within the three-year period allowed under the permit; and

21 (4) Any person employed as assistant superintendent or educational administrator prior to
22 June 27, 1988, and who was previously employed as superintendent is not required to hold the

23 professional administrative certificate endorsed for superintendent.

24 (b) In addition to other requirements set forth in this section, a ~~county~~ school district
25 superintendent shall meet the following health-related conditions of employment:

26 (1) Before entering upon the discharge of his or her duties, file with the president of the
27 ~~county~~ school district board a certificate from a licensed physician certifying the following:

28 (A) A tuberculin skin test, of the type Mantoux test (PPD skin test), approved by the
29 Director of the Division of Health, has been made within four months prior to the beginning of the
30 term of the ~~county~~ school district superintendent; and

31 (B) The ~~county~~ school district superintendent does not have tuberculosis in a
32 communicable state based upon the test results and any further study;

33 (2) After completion of the initial test, the ~~county~~ school district superintendent shall have
34 an approved tuberculin skin test once every two years or more frequently if medically indicated.
35 Positive reactors to the skin test are to be referred immediately to a physician for evaluation and
36 indicated treatment or further studies;

37 (3) A ~~county~~ school district superintendent who is certified by a licensed physician to have
38 tuberculosis in a communicable stage shall have his or her employment discontinued or
39 suspended until the disease has been arrested and is no longer communicable; and

40 (4) A ~~county~~ school district superintendent who fails to complete required follow-up
41 examinations as set forth in this subsection shall be suspended from employment until a report of
42 examination is confirmed.

§18-4-6. Evaluation of ~~county~~ school district superintendent.

1 (a) At least annually, the ~~county~~ school district board shall evaluate the performance of
2 the ~~county~~ school district superintendent. The evaluation process to be used shall be one
3 authorized by the state board. The West Virginia school board association shall maintain a catalog
4 of evaluation instruments which comply with this section and shall make them available to ~~county~~
5 school district boards.

6 (b) At a minimum, the evaluation process shall require the ~~county~~ school district
7 superintendent and ~~county~~ school district board to establish written goals or objectives for the
8 ~~county~~ school district superintendent to accomplish within a given period of time. Additionally, the
9 ~~county~~ school district board shall evaluate the ~~county~~ school district superintendent on his or her
10 success in improving student achievement generally across the ~~county~~ school district and
11 specifically as it relates to the management and administration of low performing schools.

12 (c) The evaluation also may cover the performance of a ~~county~~ school district
13 superintendent in the areas of community relations, school finance, personnel relations, curricular
14 standards and programs and overall leadership of the school district as indicated primarily by
15 improvements in student achievement, testing and assessment.

16 (d) The evaluation of a ~~county~~ school district superintendent shall occur in executive
17 session. At the conclusion of the evaluation, the ~~county~~ school district board shall make available
18 to the public a general statement about the evaluation process and the overall result. Additional
19 information about the evaluation may be released only by mutual consent of the ~~county~~ school
20 district superintendent and the ~~county~~ school district board. The ~~county~~ school district board may
21 use the evaluation results to determine:

- 22 (1) Whether to extend the contract of the ~~county~~ school district superintendent;
23 (2) Whether to offer the ~~county~~ school district superintendent a new contract; and
24 (3) The level of compensation or benefits to offer the ~~county~~ school district superintendent
25 in any new or extended contract.

§18-4-10. Duties of ~~county~~ school district superintendent.

1 The ~~county~~ school district superintendent shall:

2 (1) Act as the chief executive officer of the ~~county~~ school district board as may be
3 delineated in his or her contract or other written agreement with the ~~county~~ school district board,
4 and, under the direction of the state board, execute all its education policies;

5 (2) Nominate all personnel to be employed; in case the ~~county~~ school district board refuses

6 to employ any or all of the persons nominated, the ~~county~~ school district superintendent shall
7 nominate others and submit the same to the ~~county~~ school district board at a time the ~~county~~
8 school district board may direct. No person or persons shall be employed except on the
9 nomination of the ~~county~~ school district superintendent;

10 (3) Assign, transfer, suspend or promote teachers and all other school employees of the
11 district, subject only to the approval of the ~~county~~ school district board, and to recommend to the
12 ~~county~~ school district board their dismissal pursuant to the provisions of this chapter;

13 (4) Report promptly to the ~~county~~ school district board in such manner as it directs
14 whenever any school in the district appears to be failing to meet the standards for improving
15 education established pursuant to section five, article two-e of this chapter;

16 (5) Close a school temporarily when conditions are detrimental to the health, safety or
17 welfare of the pupils;

18 (6) Certify all expenditures and monthly payrolls of teachers and employees;

19 (7) Serve as the secretary of the ~~county~~ school district board and attend all meetings of
20 the ~~county~~ school district board or its committees, except when the tenure, salary or administration
21 of the ~~county~~ school district superintendent is under consideration;

22 (8) Administer oaths and examine witnesses under oath in any proceedings pertaining to
23 the schools of the district, and have the testimony reduced to writing;

24 (9) Keep the ~~county~~ school district board apprised continuously of any issues that affect
25 the ~~county~~ school district board or its schools, programs and initiatives. The ~~county~~ school district
26 superintendent shall report to the ~~county~~ school district board on these issues using any
27 appropriate means agreeable to both parties. When practicable, the reports shall be fashioned to
28 include a broad array of data and information that the ~~county~~ school district board may consult to
29 aid in making decisions;

30 (10) Exercise all other authority granted by this chapter or required by the ~~county~~ school
31 district board or state board; and

32 (11) In case of emergency, act as the best interests of the school demand. An emergency,
 33 as contemplated in this section, is limited to an unforeseeable, catastrophic event including
 34 natural disaster or act of war and nothing in this section may be construed as granting the ~~county~~
 35 school district superintendent authority to override any statutory or Constitutional provision in the
 36 exercise of his or her emergency power except where such authority is specifically granted in the
 37 particular code section.

§18-4-11. Other powers and duties.

1 The ~~county~~ school district superintendent shall:

2 (1) Visit the schools as often as practicable; observe and make suggestions concerning
 3 the instruction and classroom management of the schools and their sanitary conditions;

4 (2) Report to the ~~county~~ school district board cases of incompetence, neglect of duty,
 5 immorality or misconduct in office of any teacher or employee;

6 (3) Recommend for condemnation buildings unfit for school use;

7 (4) Call, at his or her discretion, conferences of principals and teachers to discuss the work
 8 of the schools of the district;

9 (5) Report to the ~~county~~ school district board the progress and general condition of the
 10 schools;

11 (6) Make reports as required by the state superintendent. In case the ~~county~~ school district
 12 superintendent fails to report as required, the state superintendent may direct that the salary of
 13 the ~~county~~ school district superintendent be withheld until an acceptable report is received; and

14 (7) Perform all other duties prescribed in this chapter or required by the ~~county~~ school
 15 district board or the state board.

ARTICLE 5. COUNTY SCHOOL DISTRICT BOARD OF EDUCATION.

**§18-5-1. Supervision and control of ~~county~~ school districts; number, nomination and
 election of members; transition plan.**

1 ~~(a) Each county school district shall be under the supervision and control of a county~~

2 ~~board of education, which shall be composed of five members, nominated and elected by the~~
3 ~~voters of the respective county without reference to political party affiliation. No more than two~~
4 ~~members shall be elected from the same magisterial district.~~

5 (a) The county school district boards of education, previously established by this article,
6 are hereby abolished, effective July 1, 2021. To carry on the duties, powers, and services provided
7 by the county school district boards of education in effect prior to the reenactment of this section,
8 ten school districts shall be established.

9 (b) There shall be ten school districts throughout the state. Each school district shall be
10 formed to serve a nearly equal number of students. School district boundary lines may cross
11 county borders to allow districts to serve a nearly equal number of students.

12 (c) Each school district shall be under the supervision and control of a school district board
13 of education, which shall be composed of seven members, nominated and elected by popular
14 vote of the voters of the respective school district without reference to political party affiliation.

15 (d) The rules regarding the operation of the county school district boards of education that
16 are in effect immediately prior to the effective date of the reenactment of this section shall remain
17 in force and effect until new or additional rules are promulgated. The state board of education
18 may establish interim policies and procedures to aid in the orderly and efficient transition from
19 county school districts to school districts.

20 (e) The state board of education shall develop and implement a transition plan for the
21 county boards of education. The plan shall be submitted in writing to the Joint Committee on
22 Government and Finance, the Governor, the State Board of Education. This plan shall be
23 submitted no later than December 1, 2017. The plan shall include proposals for the following:

24 (1) Transition to school districts the county board's hard and electronic copies of files;

25 (2) Discontinuation of use of any current building including termination of any lease or
26 rental agreements;

27 (3) The disposition of all state owned or leased office furniture and equipment, including

28 any state owned vehicles;

29 (4) Transferring existing budget allocations;

30 (5) A transition plan for employees of the county boards of education.

31 (6) A new bussing system based upon the school district boundaries.

32 (7) Any other matters which would effectively transition the county boards of education to
33 school district boards of education.

§18-5-1a. Eligibility of members; training requirements.

1 (a) A person who is a member of a ~~county~~ school district board:

2 (1) Shall be a citizen and resident in the ~~county~~ school district in which he or she serves
3 on the ~~county~~ school district board. Also, a person who is a candidate for membership on a ~~county~~
4 school district board or who is a member-elect of a ~~county~~ school district board shall be a citizen
5 and resident in the ~~county~~ school district in which he or she seeks to serve on the ~~county~~ school
6 district board;

7 (2) May not be employed by the ~~county~~ school district board on which he or she serves,
8 including employment as a teacher or service person;

9 (3) May not engage in the following political activities:

10 (A) Become a candidate for or hold any other public office, other than to succeed him or
11 herself as a member of a ~~county~~ school district board subject to the following:

12 (i) A candidate for ~~county~~ school district board, who is not currently serving on a ~~county~~
13 school district board, may hold another public office while a candidate if he or she resigns from
14 the other public office prior to taking the oath of office as a ~~county~~ school district board member.

15 (ii) The term "public office" as used in this section does not include service on any other
16 board, elected or appointed, profit or nonprofit, under the following conditions:

17 (I) The person does not receive compensation; and

18 (II) The primary scope of the board is not related to public schools.

19 (B) Become a candidate for, or serve as, an elected member of any political party

20 executive committee;

21 (C) Become a candidate for, or serve as, a delegate, alternate or proxy to a national
22 political party convention;

23 (D) Solicit or receive political contributions to support the election of, or to retire the
24 campaign debt of, any candidate for partisan office;

25 (4) May engage in any or all of the following political activities:

26 (A) Make campaign contributions to partisan or bipartisan candidates;

27 (B) Attend political fund raisers for partisan or bipartisan candidates;

28 (C) Serve as an unpaid volunteer on a partisan campaign;

29 (D) Politically endorse any candidate in a partisan or bipartisan election; or

30 (E) Attend a county, state or national political party convention.

31 (b) A member or member-elect of a ~~county~~ school district board, or a person desiring to
32 become a member of a ~~county~~ school district board, may make a written request to the West
33 Virginia Ethics Commission for an advisory opinion to determine if another elected or appointed
34 position held or sought by the person is an office or public office which would bar service on a
35 ~~county~~ school district board pursuant to subsection (a) of this section.

36 (1) Within thirty days of receipt of the request, the Ethics Commission shall issue a written
37 advisory opinion in response to the request and also shall publish the opinion in a manner which,
38 to the fullest extent possible, does not reveal the identity of the person making the request.

39 (2) A ~~county~~ school district board member who relies in good faith upon an advisory
40 opinion issued by the West Virginia Ethics Commission to the effect that holding a particular office
41 or public office is not a bar from membership on a ~~county~~ school district board and against whom
42 proceedings are subsequently brought for removal from the ~~county~~ school district board on the
43 basis of holding that office or offices is entitled to reimbursement by the ~~county~~ school district
44 board for reasonable attorney's fees and court costs incurred by the member in defending against
45 these proceedings, regardless of the outcome of the proceedings.

46 (3) A vote cast by the member at a meeting of the ~~county~~ school district board may not be
47 invalidated due to a subsequent finding that holding the particular office or public office is a bar to
48 membership on the ~~county~~ school district board.

49 (4) Good faith reliance on a written advisory opinion of the West Virginia Ethics
50 Commission that a particular office or public office is not a bar to membership on a ~~county~~ school
51 district board is an absolute defense to any civil suit or criminal prosecution arising from any
52 proper action taken within the scope of membership on the ~~county~~ school district board, becoming
53 a member-elect of the ~~county~~ school district board or seeking election to the ~~county~~ school district
54 board.

55 (c) To be eligible for election or appointment as a member of a ~~county~~ school district board,
56 a person shall possess at least a high school diploma or a general educational development
57 (GED) diploma. This provision does not apply to members or members-elect who have taken
58 office prior to May 5, 1992, and who serve continuously from that date forward.

59 (d) A person elected to a ~~county~~ school district board after July 1, 1990, may not assume
60 the duties of ~~county~~ school district board member unless he or she has first attended and
61 completed a course of orientation relating to boardsmanship and governance effectiveness which
62 shall be given between the date of election and the beginning of the member's term of office under
63 the following conditions:

64 (1) A portion or portions of subsequent training such as that offered in orientation may be
65 provided to members after they have commenced their term of office;

66 (2) Attendance at the session of orientation given between the date of election and the
67 beginning of the member's term of office permits the member-elect to assume the duties of ~~county~~
68 school district board member, as specified in this section;

69 (3) Members appointed to the ~~county~~ school district board shall attend and complete the
70 next orientation course offered following their appointment; and

71 (4) The provisions of this subsection relating to orientation do not apply to members who

72 have taken office prior to July 1, 1988, and who serve continuously from that date forward.

73 (e) Annually, each member of a ~~county~~ school district board shall receive seven clock
74 hours of training in areas relating to boardsmanship, governance effectiveness, and school
75 performance issues including, but not limited to, pertinent state and federal statutes such as the
76 "Process for Improving Education" set forth in section five, article two-e of this chapter and the
77 "No Child Left Behind Act" and their respective administrative rules.

78 (1) The orientation and training shall be approved by the state board and conducted by
79 the West Virginia School Board Association or other organization or organizations approved by
80 the state board:

81 (A) The state board may exclude time spent in training on school performance issues from
82 the requisite seven hours herein required; and

83 (B) If the state board elects to exclude time spent in training on school performance issues
84 from the requisite seven hours, the state board shall limit the training to a feasible and practicable
85 amount of time.

86 (2) Failure to attend and complete the approved course of orientation and training relating
87 to boardsmanship and governance effectiveness without good cause as determined by the state
88 board by duly promulgated legislative rules constitutes neglect of duty under section seven, article
89 six, chapter six of this code.

90 (f) In the final year of any four-year term of office, a member shall satisfy the annual training
91 requirement before January 1. Failure to comply with the training requirements of this section
92 without good cause as defined by the state board by duly promulgated legislative rules constitutes
93 neglect of duty under section seven, article six, chapter six of this code.

94 (g) The state board shall appoint a committee named the "~~county~~ school district board
95 member training standards review committee" whose members shall meet at least annually.
96 Subject to state board approval, the committee shall determine which particular trainings and
97 training organizations shall be approved and whether ~~county~~ school district board members have

98 satisfied the annual training requirement. Members of the committee serve without compensation,
99 but may be reimbursed by their agencies or employers for all reasonable and necessary expenses
100 actually incurred in the performance of their duties under this subsection.

§18-5-1b. Election; terms of office.

1 ~~As the terms of county school board members who presently hold office expire, members~~
2 ~~shall be elected for four-year terms at the time of each regular primary election commencing with~~
3 ~~the year one thousand nine hundred ninety. The terms of such members shall begin on July 1,~~
4 ~~next following the primary election at which they were elected.~~

5 ~~The term of office of any member of any county board of education shall immediately~~
6 ~~cease, and a vacancy shall exist, upon occurrence of ineligibility as prescribed in section one-a~~
7 ~~of this article.~~

8 ~~This section shall in no manner be construed so as to affect the unexpired terms of county~~
9 ~~school board members who hold office or were elected under prior existing law.~~

10 School district board members shall be elected to their terms, which commence on July
11 1, at the regular primary election immediately preceding the commencement of their terms.
12 Effective July 1, 2021, the terms of the reconstituted school district boards shall begin. The terms
13 of school district board members shall be staggered initially. Two members shall be elected for a
14 term of two years, three members shall be elected for a term of four years, and two members
15 shall be elected for a term of six years. Subsequent elections shall be for terms of six years. Each
16 board member shall serve until that member's successor has been elected and has been
17 qualified.

18 In case of a vacancy by death or resignation among the members so elected, the
19 remaining members of the board shall choose the successor, or successors, until the next annual
20 election at which latter time all vacancies shall be filled. In the case of an elected member retiring
21 during his or her term, the retired member may continue to serve the remainder of his or her term.

§18-5-1c. Organization of board; evaluation.

1 (a) On the first Monday of July, following each biennial primary election, each respective
2 ~~county~~ school district board shall organize and shall elect a president from its own membership
3 for a two-year term. The ~~county~~ school district board shall report promptly to the state
4 superintendent the name of the member elected as ~~county~~ school district board president.

5 (b) Annually, each ~~county~~ school district board shall assess its own performance using an
6 instrument approved by the state board. In developing or making determinations on approving
7 evaluation instruments, the state board may consult with the West Virginia school board
8 association or other appropriate organizations. The evaluation instrument selected shall focus on
9 the effectiveness of the ~~county~~ school district board in the following areas:

10 (1) Dealing with its various constituency groups and with the general public;

11 (2) Providing a proper framework and the governance strategies necessary to monitor and
12 approve student achievement on a continuing basis; and

13 (3) Enhancing the effective utilization of the policy approach to governance.

14 At the conclusion of the evaluation, the ~~county~~ school district board shall make available
15 to the public a summary of the evaluation, including areas in which the board concludes
16 improvement is warranted.

**§18-5-4. Meetings; employment and assignment of teachers; budget hearing;
compensation of members; affiliation with state and national associations.**

1 (a) The ~~county~~ school district board shall meet upon the dates provided by law, and at any
2 other times the ~~county~~ school district board fixes upon its records. Subject to adequate public
3 notice, nothing in this section prohibits the ~~county~~ school district board from conducting regular
4 meetings in facilities within the ~~county~~ school district other than the ~~county~~ school district board
5 office. At any meeting as authorized in this section and in compliance with the provisions of
6 chapter eighteen-a of this code, the ~~county~~ school district board may employ qualified teachers,
7 or those who will qualify by the time they enter upon their duties, necessary to fill existing or
8 anticipated vacancies for the current or next ensuing school year. Meetings of the ~~county~~ school

9 district board shall be held in compliance with the provisions of chapter eighteen-a of this code
10 for purposes relating to the assignment, transfer, termination and dismissal of teachers and other
11 school employees.

12 (b) Special meetings may be called by the president or any three members, but no
13 business may be transacted other than that designated in the call.

14 (c) In addition, a public hearing shall be held concerning the preliminary operating budget
15 for the next fiscal year not fewer than ten days after the budget has been made available to the
16 public for inspection and within a reasonable time prior to the submission of the budget to the
17 state board for approval. Reasonable time shall be granted at the hearing to any person who
18 wishes to speak regarding any part of the budget. Notice of the hearing shall be published as a
19 Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of
20 this code.

21 (d) A majority of the members of the ~~county~~ school district board is the quorum necessary
22 for the transaction of official business.

23 (e) Board members may receive compensation at a rate not to exceed \$160 per meeting
24 attended, but they may not receive pay for more than fifty meetings in any one fiscal year. Board
25 members who serve on an administrative council of a multicounty vocational center also may
26 receive compensation for attending up to twelve meetings of the council at the same rate as for
27 meetings of the ~~county~~ school district board. Meetings of the council are not counted as board
28 meetings for purposes of determining the limit on compensable board meetings.

29 (f) Members also shall be paid, upon the presentation of an itemized sworn statement, for
30 all necessary traveling expenses, including all authorized meetings, incurred on official business,
31 at the order of the ~~county~~ school district board.

32 (g) When, by a majority vote of its members, a ~~county~~ school district board considers it a
33 matter of public interest, the ~~county~~ school district board may join the West Virginia School Board
34 Association and the National School Board Association and may pay the dues prescribed by the

35 associations and approved by action of the respective ~~county~~ school district boards. Membership
 36 dues and actual traveling expenses incurred by board members for attending meetings of the
 37 West Virginia School Board Association may be paid by their respective ~~county~~ school district
 38 boards out of funds available to meet actual expenses of the members, but no allowance may be
 39 made except upon sworn itemized statements.

**§18-5-5. Corporate character and general powers of board; exemption of school property
 from legal process and taxes.**

1 The ~~county~~ school district board of education shall be a corporation by the name of "The
 2 Board of Education of the ~~county~~ school district of,," and as such may sue and be sued,
 3 plead and be impleaded, contract and be contracted with. It shall succeed and be subrogated to
 4 all the rights of former magisterial and independent district boards and may institute and maintain
 5 any and all actions, suits and proceedings now pending or which might have been brought and
 6 prosecuted in the name of any former board for the recovery of any money or property, or damage
 7 to any property due to or vested in the former board, and shall also be liable in its corporate
 8 capacity for all claims legally existing against the board of which it is a successor. The board shall,
 9 according to law, hold and dispose of any real estate or personal property belonging to the former
 10 corporation or its predecessors, or that may hereafter come into its possession.

11 The board according to law and the intent of the instrument conferring title, shall receive,
 12 hold and dispose of any gift, grant or bequest.

13 All public school property used for school purposes shall be exempt from execution or
 14 other process, and free from lien or distress for taxes or municipal, county or state levies.

§18-5-6. Validation of titles to land in possession of board.

1 The ~~county~~ school district board shall have title to any land or school site which for five
 2 years has been in the undisputed possession of the ~~county~~ school district board or any Board of
 3 Education of a magisterial district, or subdistrict, or independent district, and to which title cannot
 4 be shown by any other claimant. Such land shall be held and used for school purposes, as

5 provided by section eight of this article.

§18-5-7. Sale of school property at public auction; rights of grantor of lands in rural communities; oil and gas leases; disposition of proceeds; lease of school property.

1 (a) Except as set forth in subsection (b) of this section, if at any time a ~~county~~ school
2 district board determines that any building or any land is no longer needed for school purposes,
3 the ~~county~~ school district board may sell, dismantle, remove or relocate the building and sell the
4 land on which it is located at public auction, after proper notice and on such terms as it orders, to
5 the highest responsible bidder.

6 (b) Notwithstanding the provisions of subsection (a) of this section, in rural communities,
7 the grantor of the lands or his or her heirs or assigns has the right to purchase at the sale, the
8 land, exclusive of the buildings on the land and the mineral rights, at the same price for which it
9 was originally sold: *Provided*, That the sale to the board was not a voluntary arms length
10 transaction for valuable consideration approximating the fair market value of the property at the
11 time of the sale to the board: *Provided, however*, That the provisions of this section may not
12 operate to invalidate any provision of the deed to the contrary.

13 (c) The ~~county~~ school district board, by the same method set forth in subsection (a) of this
14 section for the sale of school buildings and lands, may, in lieu of offering the property for sale,
15 enter into a lease for oil or gas or other minerals any lands or school sites owned in fee by it. The
16 proceeds of the sales and rentals shall be placed to the credit of the fund or funds of the district
17 as the ~~county~~ school district board may direct.

18 (d) The ~~county~~ school district board may make any sale of property subject to the provision
19 that all liability for hazards associated with the premises are to be assumed by the purchaser. In
20 any sale by the ~~county~~ school district board of improved property in which the actual consideration
21 is less than \$10,000 or in any sale of unimproved property in which the actual consideration is
22 less than \$1,000, the ~~county~~ school district board shall make any sale of property subject to the
23 provision that all liability for hazards associated with the premises are to be assumed by the

24 purchaser. The ~~county~~ school district board shall inform any prospective purchaser of known or
25 suspected hazards associated with the property.

26 (e) Except as provided by the provisions of subsection (b) of this section, where a ~~county~~
27 school district board determines that any school property is no longer needed for school purposes,
28 the ~~county~~ school district board may, upon determining that it will serve the best interests of the
29 school system and the community, offer the property for lease. The procedure set forth in
30 subsection (a) of this section relating to sale of school buildings and lands shall apply to leasing
31 the school property. Any lease authorized by the provisions of this subsection shall be in writing.
32 The writing shall include a recitation of all known or reasonably suspected hazards associated
33 with the property, an assumption by the lessee of all liability related to all hazards, whether
34 disclosed or not, and provisions wherein the lessee assumes all liability for any actions arising
35 from the property during the term of the lease.

36 (f) Notwithstanding any provision of this section to the contrary, the provisions of this
37 section concerning sale or lease at public auction may not apply to a ~~county~~ school district board
38 selling, leasing or otherwise disposing of its property for a public use to the State of West Virginia,
39 or its political subdivisions, including ~~county~~ school district commissions, for an adequate
40 consideration without considering alone the present commercial or market value of the property.

§18-5-7a. Disposition of school property in flood control projects.

1 (a) If at any time the board ascertains that any land or part thereof then being used for
2 school purposes is to be included in any federal flood control project the board may:

3 (1) Sell, dismantle, remove or relocate any buildings thereon;

4 (2) Contract with the United States of America, or any instrumentality, agency or political
5 subdivision thereof, for the sale or exchange of its interest in the land or any part thereof; and

6 (3) Without auction sell or exchange its interest in the land or any part thereof to the United
7 States of America, or any instrumentality, agency or political subdivision thereof, in accordance
8 with the terms and provisions of the contract.

9 (b) If the flood control project is proposed in a ~~county~~ school district where the state Board
10 of Education has intervened in the operation of the ~~county~~ school district school system pursuant
11 to the provisions of section five, article two-e of this chapter or any other Constitutional or statutory
12 authority to intervene, the powers granted in this section are vested in the state board.

13 (c) Notwithstanding the provisions of section seven of this article, neither the grantor of
14 the land or any part thereof nor his or her heirs or assigns has the right to purchase the land or
15 any part thereof or have any other rights whatever under section seven of this article.

§18-5-9a. Energy-savings contracts.

1 (a) For the purposes of this section:

2 (1) "Energy-conservation measures" means goods or services, or both, to reduce energy
3 consumption operating costs of school facilities. These include, but are not limited to, installation
4 of two or more of the following:

5 (A) Insulation of a building structure and systems within a building;

6 (B) Storm windows or doors, caulking or weather stripping, multi-glazed windows or doors,
7 heat-absorbing or heat-reflective glazed and coated window or door systems or other window or
8 door modifications that reduce energy consumption;

9 (C) Automatic energy control systems;

10 (D) Heating, ventilating or air conditioning systems, including modifications or
11 replacements;

12 (E) Replacement or modification of lighting fixtures to increase energy efficiency;

13 (F) Energy recovery systems;

14 (G) Co-generation systems that produce steam or another form of energy for use by the
15 ~~county~~ school district board of education in a building or complex of buildings owned by the Board
16 of Education; or

17 (H) Energy-conservation maintenance measures that provide long-term operating cost
18 reductions of the building's present cost of operation.

19 (2) "Energy-savings contract" means a contract for the evaluation and recommendation of
20 energy operations conservation measures and for implementation of one or more such measures.
21 The contract shall provide that payments, except obligations upon termination of the contract
22 before its expiration, are to be made over time. A ~~county~~ school district board of education may
23 supplement these payments with federal, state or local funds to reduce the annual cost or to lower
24 the initial amount to be financed.

25 (3) "Qualified provider" means a person, firm or corporation experienced in the design,
26 implementation and installation of energy-conservation measures.

27 (b) ~~County~~ School district boards of education are hereby authorized to enter into
28 performance-based contracts with qualified providers of energy-conservation measures for the
29 purpose of reducing energy operating costs of school buildings.

30 (c) A board of education may enter into an energy-savings contract with a qualified
31 provider to significantly reduce energy operating costs. Before entering into such a contract or
32 before the installation of equipment, modifications or remodeling to be furnished under such a
33 contract, the qualified provider shall first issue a proposal summarizing the scope of work to be
34 performed. Such a proposal shall contain estimates of all costs of installation, modifications or
35 remodeling including the costs of design, engineering, installation, maintenance, repairs or debt
36 service as well as estimates of the amounts by which energy operating costs will be reduced. If
37 the board finds, after receiving the proposal, that the proposal includes more than one energy-
38 conservation measure designed to save energy operating costs, the board may enter into a
39 contract with the provider pursuant to this section.

40 (d) An energy-savings contract shall include the following:

41 (1) A guarantee of a specific minimum amount of money that the board will save in energy
42 operating costs each year during the term of the contract; and

43 (2) A statement of all costs of energy-conservation measures including the costs of design,
44 engineering, installation, maintenance, repairs and operations.

45 (e) An energy-savings contract which is performance-based and includes a guarantee of
46 savings and a comprehensive approach of energy-conservation measures for improving comfort
47 is subject to competitive bidding requirements. The requirements of article five-a, chapter twenty-
48 one of this code as to prevailing wage rates shall apply to the construction and installation work
49 performed under such a contract.

50 (f) A board may enter into a "lease with an option to purchase" contract for the purchase
51 and installation of energy-conservation measures if the term of the lease does not exceed fifteen
52 years and the lease contract includes the provisions hereinafter contained in subsection (g) and
53 meets federal tax requirements for tax-exempt municipal leasing or long-term financing.

54 (g) An energy-savings contract may extend beyond the fiscal year in which it first becomes
55 effective except that such a contract may not exceed a fifteen-year term and shall be void unless
56 such agreement provides the board the option to terminate the agreement during each fiscal year
57 of the contract. The board may include in its annual budget for each fiscal year any amounts
58 payable under long-term energy-savings contracts during that fiscal year.

59 (h) Nothing contained in this section requires or permits the replacement of jobs performed
60 by service personnel employed by the local school board pursuant to sections eight and eight-a,
61 article four, chapter eighteen-a of the code, as amended.

§18-5-11. Joint establishment of schools.

1 (a) The boards of two or more adjoining ~~counties~~ school districts may jointly establish and
2 maintain schools. The title to the school shall be vested in the board of the ~~county~~ school district
3 in which the school is located. The agreement by which the school is established shall be reduced
4 to writing and entered of record in the minutes of each board.

5 (b) The boards of the several districts shall determine the site of the proposed school and
6 the amount to be expended for its establishment and equipment.

7 (1) The participating ~~counties~~ school districts shall enter a formal agreement regarding the
8 manner in which the cost for the acquisition of the property and equipment shall be apportioned.

9 (2) The board in the district in which the building is located shall be vested with the control
10 and management of the school, except as may otherwise be provided in the agreement between
11 the ~~counties~~ school districts.

12 (c) The annual operating costs shall be the responsibility of the ~~county~~ school district in
13 which the joint school is located and subject to the allowance transfer set forth in section fourteen,
14 article nine-a of this chapter unless otherwise provided in the agreement between the ~~counties~~
15 school districts.

16 (d) For a ~~county~~ school district board that sends students to a jointly established school in
17 another ~~county~~ school district and that provides transportation for those students or that otherwise
18 contributes to the support services or instructional program of the school, the net enrollment of
19 the ~~county~~ school district for the purposes of calculating its basic foundation program as provided
20 in article nine-a of this chapter, only, shall be increased by fifteen one hundredths multiplied by
21 the number of full-time equivalent students from the ~~county~~ school district who are enrolled in the
22 jointly established school.

§18-5-11a. Joint governing partnership board pilot initiative.

1 (a) The Legislature finds that many examples exist across the state of students who reside
2 in one the ~~county~~ school district, but who attend the public schools in an adjoining the ~~county~~
3 school district.

4 (1) These arrangements have been accommodated by the boards of the adjoining the
5 ~~counties~~ school districts and applicable statutes to serve best the interests of the students by
6 enabling them to attend a school closer to their homes.

7 (2) Typically, these arrangements have evolved because school closures or construction
8 of new schools in the student's ~~county~~ school district of residence have made a cross- the ~~county~~
9 school district transfer to an existing school in an adjoining ~~county~~ school district a more
10 convenient, practical and educationally sound option.

11 (b) The Legislature further finds that as population changes continue to occur, the boards

12 of adjoining the ~~counties~~ school districts may best serve the interests of their students and families
13 by establishing a new school in partnership to be attended by students residing in each of the the
14 ~~county~~ school district. Particularly in the case of elementary grade level schools established in
15 partnership between adjoining counties, the Legislature finds that each of the ~~county~~ school
16 district boards, as well as the parents of students from each of the ~~counties~~ school districts
17 attending the school, have an interest in the operation of the school and the preparation of the
18 students for success as they transition to the higher grade levels in the other schools of their
19 respective home ~~counties~~ school districts. Therefore, in the absence of a well defined governance
20 structure that accommodates these interests, the purpose of this section is to provide for a joint
21 governing partnership board pilot initiative.

22 (c) The pilot initiative is limited to the joint establishment by two adjoining ~~counties~~ school
23 districts of a school including elementary grade levels for which a memorandum of understanding
24 on the governance and operation of the school has been signed. The pilot initiative is subject to
25 amendment of the agreement as may be necessary to incorporate at least the following features
26 of a joint governing partnership board:

27 (1) The joint governing partnership board is comprised of the ~~county~~ school district
28 superintendent of each ~~county~~ school district, the president of the ~~county~~ board of each ~~county~~
29 school district or his or her designee, and a designee of the state superintendent;

30 (2) The board shall elect a chair from among its membership for a two-year term and may
31 meet monthly or at the call of the chair.

32 (A) Meetings of the board are subject to the open governmental proceedings laws
33 applicable to ~~county~~ school district boards.

34 (B) The boards of the respective ~~counties~~ school districts are responsible for the expenses
35 of its members and shall apportion other operational expenses of the board upon mutual
36 agreement.

37 (C) Once the jointly established school is opened, the meetings of the board shall be held

38 at the school.

39 (3) All provisions of law applicable to the establishment, operation and management of an
40 inter-~~county~~ school district school including, but not limited to, section eleven, article five and
41 section fourteen, article nine-a of this chapter and article eight-i, article four, chapter eighteen-a
42 of this code apply, except that the joint governing partnership board may exercise governing
43 authority for operation and management of the school in the following areas:

44 (A) *Personnel.*

45 (1) Notwithstanding any other laws for employment, evaluation, mentoring, professional
46 development, suspension and dismissal of public school employees, the powers and duties of the
47 ~~county~~ school district superintendent are vested in the joint governing partnership board with
48 respect to the employees employed by the ~~county~~ school district in which the school is located or
49 assigned to the school from the partner ~~county~~ school district. Pursuant to the provisions of section
50 eight-i, article four, chapter eighteen-a of this code, employees who are hired by the ~~county~~ school
51 district board of the receiving ~~county~~ school district shall accrue seniority in both the sending and
52 receiving ~~counties~~ school districts during the time in which they continue to be employed at the
53 jointly established school. Upon losing a position at the jointly established school due to reduction
54 in force or involuntary transfer, an employee shall displace a less senior employee in the ~~county~~
55 school district of employment which immediately preceded employment at the jointly established
56 school. Once an employee from the sending ~~county~~ school district voluntarily transfers or resigns
57 from a position at the jointly established school and is no longer employed in the receiving ~~county~~
58 school district, the employee's seniority and any other statutory rights in the receiving ~~county~~
59 school district cease.

60 (2) When initially filling service and professional employee positions at the jointly
61 established school, the ~~counties~~ school districts shall follow the procedures established in section
62 eight-i, article four, chapter eighteen-a of this code. For the initial school year of the jointly
63 established school's opening only, the receiving ~~county~~ school district may not fill any vacancies

64 created by the retirement or voluntary transfer of employees of the receiving county school district
65 school from February 1 of the school year immediately preceding the opening of the school until
66 January 1 following the opening of the jointly established school until the receiving county school
67 district has received the list of employees created pursuant to the provisions of subsection (c),
68 section eight-i, article four, chapter eighteen-a of this code. The receiving county school district
69 may not fill any of the vacancies referenced in this subsection until the vacancies have been
70 offered to qualified individuals from the certified list.

71 (3) The employees of the jointly established school are the employees of the employing
72 county school district board and the partnership board may make recommendations concerning
73 these employment matters to the employing board it considers necessary and appropriate.

74 (B) *Curriculum.*

75 (1) The joint governing partnership board is responsible for the formulation and execution
76 of the school's strategic improvement plan and technology plan to meet the goals for student and
77 school performance and progress.

78 (2) In its formulation of these plans, the partnership board shall consider the curriculum
79 and plans of the respective county school district boards to ensure preparation of the students at
80 the school for their successful transition into the higher grade level schools of the respective
81 counties school districts;

82 (C) *Finances.* The joint governing partnership board shall control and may approve the
83 expenditure of all funds allocated to the school for the school budget from either county school
84 district and may solicit and receive donations, apply for and receive grants and conduct fund
85 raisers to supplement the budget; and

86 (D) *Facilities.* Consistent with the policies in effect concerning liability insurance coverage,
87 maintenance and appropriate uses of school facilities for the schools of the county school district
88 in which the school is located, the joint governing partnership board governs the use of the school
89 facility and ensures equitable opportunities for access and use by organizations and groups from

90 both ~~counties~~ school districts.

91 (d) The joint governing partnership board may adopt policies for the school that are
92 separate from the policies of the respective ~~counties~~ school districts and, working in concert with
93 its local school improvement council, may propose alternatives to the operation of the school
94 which require the request of a waiver of policy, interpretation or statute from either or both ~~county~~
95 school district boards, the state board or the Legislature as appropriate.

96 (e) The superintendents and presidents of ~~county~~ school district boards of adjoining
97 ~~counties~~ school districts that have in effect on the effective date of this section a memorandum of
98 understanding on the governance and operation of a jointly established school shall report to the
99 Legislative Oversight Commission on Education Accountability on or before November 1, 2013,
100 on the status of implementation of this section.

101 (1) Once established, the joint governing partnership board established under this pilot
102 initiative shall remain in effect for five consecutive school years unless authority for the pilot
103 initiative is repealed.

104 (2) The Legislative Oversight Commission on Education Accountability may request the
105 superintendents and the presidents of the ~~county~~ school district boards to provide periodic
106 updates on this pilot initiative. Also, at the conclusion of the five-year pilot initiative, they shall
107 report their recommendations on the viability of the joint governing partnership board approach
108 and any recommended changes to the Legislative Oversight Commission on Education
109 Accountability.

110 (A) When the five-year period is concluded, by affirmative vote of both boards, the joint
111 governing partnership board shall remain in effect; or

112 (B) The agreement between the boards for the governance and operation of the school
113 shall revert to the terms in effect on the effective date of this section, subject to amendment by
114 agreement of the boards.

§18-5-13. Authority of boards generally.

1 Subject to the provisions of this chapter and the rules of the state board, each ~~county~~
2 school district board may:

3 (a) Control and manage all of the schools and school interests for all school activities and
4 upon all school property owned or leased by the ~~county~~ school district, including:

5 (1) Requiring schools to keep records regarding funds connected with the school or school
6 interests, including all receipts and disbursements of all funds collected or received by:

7 (A) Any principal, teacher, student or other person in connection with the schools and
8 school interests;

9 (B) Any program, activity or other endeavor of any nature operated or conducted by or in
10 the name of the school; and

11 (C) Any organization or body directly connected with the school;

12 (2) Allowing schools to expend funds for student, parent, teacher and community
13 recognition programs. A school may use only funds it generates through a fund-raising or
14 donation-soliciting activity. Prior to commencing the activity, the school shall:

15 (A) Publicize the activity as intended for this purpose; and

16 (B) Designate for this purpose the funds generated;

17 (3) Auditing the records and conserving the funds, including securing surety bonds by
18 expending board moneys. The funds described in this subsection are quasipublic funds, which
19 means the moneys were received for the benefit of the school system as a result of curricular or
20 noncurricular activities;

21 (b) Establish:

22 (1) Schools, from preschool through high school;

23 (2) Vocational schools; and

24 (3) Schools and programs for post-high school instruction, subject to approval of the state
25 board;

26 (c) Close any school:

27 (1) Which is unnecessary and assign the students to other schools. The closing shall occur
28 pursuant to official action of the ~~county~~ school district board. Except in emergency situations when
29 the timing and manner of notification are subject to approval by the state superintendent, the
30 ~~county~~ school district board shall notify the affected teachers and service personnel of the ~~county~~
31 school district board action not later than the first Monday in April. The board shall provide notice
32 in the same manner as set forth in section four of this article; or

33 (2) Pursuant to the provisions of subsection (e) of this section;

34 (d) Consolidate schools;

35 (e) Close any elementary school whose average daily attendance falls below twenty
36 students for two consecutive months. The ~~county~~ school district board may assign the students
37 to other schools in the district or to schools in adjoining districts. If the teachers in the closed
38 school are not transferred or reassigned to other schools, they shall receive one month's salary;

39 (f) Provide transportation according to rules established by the ~~county~~ school district
40 board, as follows:

41 (1) To provide at public expense adequate means of transportation:

42 (A) For all children of school age who live more than two miles distance from school by
43 the nearest available road;

44 (B) For school children participating in ~~county~~ school district board-approved curricular
45 and extracurricular activities;

46 (C) Across ~~county~~ school district lines for students transferred from one district to another
47 by mutual agreement of both ~~county~~ school district boards. The agreement shall be recorded in
48 the meeting minutes of each participating ~~county~~ school district board and is subject to the
49 provisions of subsection (h) of this section; and

50 (D) Within available revenues, for students within two miles distance of the school; and

51 (2) To provide transportation for participants in projects operated, financed, sponsored or
52 approved by the Bureau of Senior Services. This transportation shall be provided at no cost to

53 the ~~county~~ school district board. All costs and expenses incident in any way to this transportation
54 shall be borne by the bureau or the local or county affiliate of the bureau;

55 (3) Any school bus owned by the ~~county~~ school district board may be operated only by a
56 bus operator regularly employed by the ~~county~~ school district board, except as provided in
57 subsection (g) of this section;

58 (4) Pursuant to rules established by the state board, the ~~county~~ school district board may
59 provide for professional employees to be certified to drive ~~county~~ school district board-owned
60 vehicles that have a seating capacity of fewer than ten passengers. These employees may use
61 the vehicles to transport students for school-sponsored activities, but may not use the vehicles to
62 transport students between school and home. Not more than one of these vehicles may be used
63 for any school-sponsored activity;

64 (5) Students may not be transported to a school-sponsored activity in any ~~county~~ school
65 district-owned or leased vehicle that does not meet school bus or public transit ratings. This
66 section does not prohibit a parent from transporting ten or fewer students in a privately-owned
67 vehicle;

68 (6) Students may be transported to a school-sponsored activity in a vehicle that has a
69 seating capacity of sixteen or more passengers which is not owned and operated by the ~~county~~
70 school district board only as follows:

71 (A) The state board shall promulgate a rule to establish requirements for:

72 (i) Automobile insurance coverage;

73 (ii) Vehicle safety specifications;

74 (iii) School bus or public transit ratings; and

75 (iv) Driver training, certification and criminal history record check; and

76 (B) The vehicle owner shall provide to the ~~county~~ school district board proof that the
77 vehicle and driver satisfy the requirements of the state board rule; and

78 (7) Buses shall be used for extracurricular activities as provided in this section only when

79 the insurance coverage required by this section is in effect;

80 (g) Lease school buses pursuant to rules established by the ~~county~~ school district board.

81 (1) Leased buses may be operated only by bus operators regularly employed by the
82 ~~county~~ school district board, except that these buses may be operated by bus operators regularly
83 employed by another ~~county~~ school district board in this state if bus operators from the owning
84 ~~county~~ school district are unavailable.

85 (2) The lessee shall bear all costs and expenses incurred by, or incidental to the use of,
86 the bus.

87 (3) The ~~county~~ school district board may lease buses to:

88 (A) Public and private nonprofit organizations and private corporations to transport school-
89 age children for camps or educational activities;

90 (B) Any college, university or officially recognized campus organization for transporting
91 students, faculty and staff to and from the college or university. Only college and university
92 students, faculty and staff may be transported pursuant to this paragraph. The lease shall include
93 provisions for:

94 (i) Compensation for bus operators;

95 (ii) Consideration for insurance coverage, repairs and other costs of service; and

96 (iii) Any rules concerning student behavior;

97 (C) Public and private nonprofit organizations, including education employee
98 organizations, for transportation associated with fairs, festivals and other educational and cultural
99 events. The ~~county~~ school district board may charge fees in addition to those charges otherwise
100 required by this subsection;

101 (h) To provide at public expense for insurance coverage against negligence of the drivers
102 of school buses, trucks or other vehicles operated by the ~~county~~ school district board. Any
103 contractual agreement for transportation of students shall require the vehicle owner to maintain
104 insurance coverage against negligence in an amount specified by the ~~county~~ school district board;

105 (i) Provide for the full cost or any portion thereof for group plan insurance benefits not
106 provided or available under the West Virginia Public Employees Insurance Act. Any of these
107 benefits shall be provided:

108 (1) Solely from ~~county~~ school district board funds; and

109 (2) For all regular full-time employees of the ~~county~~ school district board;

110 (j) Employ teacher aides; to provide in-service training for the aides pursuant to rules
111 established by the state board; and, prior to assignment, to provide a four-clock-hour program of
112 training for a service person assigned duties as a teacher aide in an exceptional children program.
113 The four-clock-hour program shall consist of training in areas specifically related to the education
114 of exceptional children;

115 (k) Establish and operate a self-supporting dormitory for:

116 (1) Students attending a high school or participating in a post high school program; and

117 (2) Persons employed to teach in the high school or post high school program;

118 (l) At the ~~county~~ school district board's discretion, employ, contract with or otherwise
119 engage legal counsel in lieu of using the services of the prosecuting attorney to advise, attend to,
120 bring, prosecute or defend, as the case may be, any matters, actions, suits and proceedings in
121 which the ~~county~~ school district board is interested;

122 (m) Provide appropriate uniforms for school service personnel;

123 (n) Provide at public expense for payment of traveling expenses incurred by any person
124 invited to appear to be interviewed concerning possible employment by the ~~county~~ school district
125 board, subject to rules established by the ~~county~~ school district board;

126 (o) Allow designated employees to use publicly provided carriage to travel from their
127 residences to their workplace and return. The use:

128 (1) Is subject to the supervision of the ~~county~~ school district board; and

129 (2) Shall be directly connected with, required by and essential to the performance of the
130 employee>s duties and responsibilities;

131 (p) Provide at public expense adequate public liability insurance, including professional
132 liability insurance, for ~~county~~ school district board employees;

133 (q) Enter into cooperative agreements with other ~~county~~ school district boards to provide
134 improvements to the instructional needs of each district. The cooperative agreements may be
135 used to employ specialists in a field of academic study or for support functions or services for the
136 field. The agreements are subject to approval by the state board;

137 (r) Provide information about vocational and higher education opportunities to exceptional
138 students. The ~~county~~ school district board shall provide in writing to the students and their parents
139 or guardians information relating to programs of vocational education and to programs available
140 at state institutions of higher education. The information may include sources of available funding,
141 including grants, mentorships and loans for students who wish to attend classes at institutions of
142 higher education;

143 (s) Enter into agreements with other ~~county~~ school district boards for the transfer and
144 receipt of any funds determined to be fair when students are permitted or required to attend school
145 in a district other than the district of their residence. These agreements are subject to the approval
146 of the state board; and

147 (t) Enter into job-sharing arrangements, as defined in section one, article one, chapter
148 eighteen-a of this code, with its employees, subject to the following provisions:

149 (1) A job-sharing arrangement shall meet all the requirements relating to posting,
150 qualifications and seniority, as provided in article four, chapter eighteen-a of this code;

151 (2) Notwithstanding any contrary provision of this code or legislative rule and specifically
152 the provisions of article sixteen, chapter five of this code, a ~~county~~ school district board that enters
153 into a job-sharing arrangement:

154 (A) Shall provide insurance coverage to the one employee mutually agreed upon by the
155 employees participating in that arrangement; and

156 (B) May not provide insurance benefits of any type to more than one of the job-sharing

157 employees, including any group plan available under the State Public Employees Insurance Act;

158 (3) Each job-sharing agreement shall be in writing on a form prescribed and furnished by
159 the ~~county~~ school district board. The agreement shall designate specifically one employee only
160 who is entitled to the insurance coverage. Any employee who is not designated is not eligible for
161 state public employees insurance coverage regardless of the number of hours he or she works;

162 (4) All employees involved in the job-sharing agreement shall meet the requirements of
163 subdivision (3), section two, article sixteen, chapter five of this code; and

164 (5) When entering into a job-sharing agreement, the ~~county~~ school district board and the
165 participating employees shall consider issues such as retirement benefits, termination of the job-
166 sharing agreement and any other issue the parties consider appropriate. Any provision in the
167 agreement relating to retirement benefits may not cause any cost to be incurred by the retirement
168 system that is more than the cost that would be incurred if a single employee were filling the
169 position; and

170 (u) Under rules it establishes for each child, expend an amount not to exceed the
171 proportion of all school funds of the district that each child would be entitled to receive if all the
172 funds were distributed equally among all the children of school age in the district upon a per capita
173 basis.

§18-5-13a. School closing or consolidation.

1 (a) In addition to the provisions of section thirteen of this article, prior to any final decision
2 of a ~~county~~ school district board on any proposal to close or consolidate any school, except in
3 cases in which a construction bond issue was passed by the voters and which bond issue included
4 the schools to be closed or consolidated, the ~~county~~ school district board shall:

5 (1) Prepare and reduce to writing its reasons and supporting data regarding the school
6 closing or consolidation. The written reasons shall:

7 (A) Be available for public inspection in the office of the ~~county~~ school district school
8 superintendent during the thirty days preceding the date of the public hearing required by this

9 section;

10 (B) Be delivered in duplicate to the:

11 (i) Principal of a school which is proposed to be closed or consolidated, and of any school
12 which will receive the students who are relocated as a result of the closure or consolidation; and

13 (ii) The chair, if any, of the local school improvement council representing a school which
14 is proposed to be closed or consolidated, and any school which will receive the students who are
15 relocated as a result of the closure or consolidation; and

16 (C) Comply with the rule promulgated pursuant to subsection (b) of this section;

17 (2) Provide notice for a public hearing. The notice shall be advertised through a Class III
18 legal advertisement, pursuant to the provisions of article three, chapter fifty-nine of this code for
19 the three weeks prior to the date of the hearing. The notice shall contain the time and place of the
20 hearing and the proposed action of the ~~county~~ school district board. Additionally, the notice shall
21 contain the statement that the hearing location is subject to change if at the time the meeting is
22 called to order, it is determined that the meeting location is of insufficient size. A copy of the notice
23 shall be posted at any school which is proposed to be closed or consolidated, and at any school
24 which will receive the students who are relocated as a result of the closure or consolidation, in
25 conspicuous working places for all professional and service personnel to observe. The notice
26 shall be posted at least thirty days prior to the date of the hearing;

27 (3) Conduct a public hearing which meets the following criteria:

28 (A) At least a quorum of the ~~county~~ school district board members and the ~~county~~
29 superintendent from the ~~county~~ school district wherein an affected school is located shall attend
30 and be present at the public hearing;

31 (B) Members of the public may be present, submit statements and testimony, and question
32 ~~county~~ school district school officials at the public hearing;

33 (C) A separate hearing shall be held for each school closed or consolidated;

34 (D) More than one hearing may be held during any one day;

35 (E) The hearing shall be held in a facility of sufficient size to accommodate all those who
36 desire to attend;

37 (F) If, at the time the hearing is called to order, it is determined by the board that insufficient
38 space is available to accommodate all those who desire to attend, the hearing shall be recessed
39 and moved to a new location of sufficient size to accommodate all those who desire to attend. If
40 the meeting location is changed due to insufficient capacity, the ~~county~~ school district board shall
41 cause the new meeting location to be posted at the original meeting location; and

42 (G) The hearing is subject to the requirements set forth in the rule promulgated in
43 accordance with subsection (c) of this section; and

44 (4) Receive findings and recommendations from any local school improvement council
45 representing an affected school relating to the proposed closure or consolidation prior to or at the
46 public hearing.

47 (b) The state board shall promulgate a rule, in accordance with the provisions of article
48 three-b, chapter twenty-nine-a of this code, detailing the type of supporting data a ~~county~~ school
49 district board shall include as part of its written statement of reason required by this section for
50 school closing or consolidation. The rule shall require at least the following data:

51 (1) The transportation time of the affected students; and

52 (2) Any data required by the state board to amend a ~~county's~~ school district's
53 comprehensive educational facilities plan.

54 (c) The state board shall promulgate a rule, in accordance with the provisions of article
55 three-b, chapter twenty-nine-a of this code, that establishes the procedure to be followed by
56 ~~county~~ school district boards when conducting a public hearing on the issues of school
57 consolidation and closing.

58 (1) The rule shall provide standards for at least the following:

59 (A) The appropriate forum and venue for public hearings to be held;

60 (B) A process for affording interested parties the opportunity for their perspectives to be

61 expressed;

62 (C) Establishing, where necessary, reasonable restrictions on the amount of time allowed
63 each individual desiring to speak so that all parties wishing to speak at the hearing are given an
64 equal amount of time; and

65 (D) Scheduling and organizing public hearings when more than one school within a ~~county~~
66 school district is proposed for consolidation or closure.

67 (2) It is the purpose of this subsection to provide for uniformity among the ~~counties~~ school
68 districts in the procedures followed when scheduling, organizing and conducting public hearings
69 on the issues of school consolidation and closure.

70 (d) The state board shall promulgate the rules required by this section by June 1, 2002.

71 (e) Any document prepared, notice given, hearing conducted or action taken prior to the
72 effective date of the amendments made to this section during the 2002 regular session of the
73 Legislature, is considered sufficient if the county board complied with the terms of this section
74 effective at the time and the ~~county~~ school district board violates no other provision of law which
75 would invalidate the document, notice, hearing or actions.

§18-5-14. Policies to promote school board effectiveness.

1 (a) No later than August 1, 2003, each county board shall adopt and file with the state
2 board copies of policies and summaries of policies that promote school board effectiveness.
3 These policies may be modified by the ~~county~~ school district board as necessary, but shall be
4 refiled with the state board following each modification. The policies shall address the following
5 objectives:

6 (1) Establishing direct links between the ~~county~~ school district board and its local school
7 improvement councils and between the ~~county~~ school district board and its faculty Senates for
8 the purpose of enabling the ~~county~~ school district board to receive information, comments and
9 suggestions directly from the councils and faculty Senates regarding the broad guidelines for
10 oversight procedures, standards of accountability and planning for future needs as required by

11 this section. To further development of these linkages, each ~~county~~ school district board shall:

12 (A) Meet at least annually with a quorum of members from each local school improvement
13 council in the district, at a time and in a manner to be determined by the ~~county~~ school district
14 board, except, in order to facilitate scheduling, the ~~county~~ school district board may adopt an
15 alternate procedure allowing it to conduct the required annual meeting with each council in the
16 absence of a quorum of council members if the alternate procedure has received prior approval
17 from the state board and if the school district serves more than twenty thousand students or has
18 more than twelve public schools.

19 Nothing in this section prohibits a ~~county~~ school district board from meeting with
20 representatives of a local school improvement council, but at least one annual meeting shall be
21 held, as specified in this section.

22 At any time and with reasonable advance notice, ~~county~~ school district boards may
23 schedule additional meetings with the council for any low performing school in the district;

24 (B) At least thirty days before an annual meeting with each local school improvement
25 council, develop and submit to the council an agenda for the annual meeting which requires the
26 council chair or a member designated by the chair, to address items designated by the ~~county~~
27 school district board from the report created pursuant to this section, and one or more of the
28 following issues:

29 (i) School performance;

30 (ii) Curriculum;

31 (iii) Status of the school in meeting the unified school improvement plan established
32 pursuant to section five, article two-e of this chapter; and

33 (iv) Status of the school in meeting the ~~county~~ school district plan established pursuant to
34 section five, article two-e of this chapter;

35 (C) Make written requests for information from the local school improvement council
36 throughout the year or hold community forums to receive input from the affected community as

37 the ~~county~~ school district board considers necessary; and

38 (D) Report details to the state board concerning the meeting or meetings held with
39 councils, as specified in this section. The information shall be provided to the state board at the
40 conclusion of the school year, but no later than September 1, of each year, and shall become an
41 indicator in the performance accreditation process for each ~~county~~ school district. In order to
42 facilitate development of this report, a ~~county~~ school district board may consult with and request
43 assistance from members of the councils.

44 (2) Providing for the development of direct links between the ~~county~~ school district board
45 and the community at large allowing for community involvement at regular ~~county~~ school district
46 board meetings and specifying how the ~~county~~ school district board will communicate regularly
47 with the public regarding important issues;

48 (3) Providing for the periodic review of personnel policies of the district in order to
49 determine their effectiveness;

50 (4) Setting broad guidelines for the school district, including the establishment of specific
51 oversight procedures, development and implementation of standards of accountability and
52 development of long-range plans to meet future needs as required by this section; and

53 (5) Using school-based accreditation and performance data provided by the state board
54 and other available data in ~~county~~ school district board decisionmaking to meet the education
55 goals of the state and other goals as the ~~county~~ school district board may establish.

56 (b) On or before August 1, of each year, ~~county~~ school district school boards shall review
57 the policies listed in subsection (a) of this section and may modify these policies as necessary.

§18-5-15. Ages of persons to whom schools are open; enrollment of suspended or expelled student.

1 (a) The public schools shall be open for the full instructional term to all persons who have
2 attained the entrance age as stated in section five, article two and section eighteen, article five,
3 chapter eighteen of this code: *Provided*, That any student suspended or expelled from public or

4 private school shall only be permitted to enroll in public school upon the approval of the
5 superintendent of the ~~county~~ school district where the student seeks enrollment: *Provided,*
6 *however,* That in making such decision, the principal of the school in which the student may enroll
7 shall be consulted by the superintendent and the principal may make a recommendation to the
8 superintendent concerning the student's enrollment in his or her new school: *Provided further,*
9 That if enrollment to public school is denied by the superintendent, the student may petition the
10 board of Education where the student seeks enrollment.

11 (b) Persons over the age of twenty-one may enter only those programs or classes
12 authorized by the state Board of Education and deemed appropriate by the ~~county~~ school district
13 board of education conducting any such program or class: *Provided,* That authorization for such
14 programs or classes shall in no way serve to affect or eliminate programs or classes offered by
15 ~~county~~ school district boards of education at the adult level for which fees are charged to support
16 such programs or classes.

**§18-5-15c. ~~County~~ School district boards of education; training in prevention of child
abuse and neglect and child assault; regulations; funding.**

1 (a) In recognition of the findings of the Legislature as set forth in section one, article six-c,
2 chapter forty-nine of this code, the Legislature further finds that public schools are able to provide
3 a special environment for the training of children, parents and school personnel in the prevention
4 of child abuse and neglect and child assault and that child abuse and neglect prevention and child
5 assault prevention programs in the public schools are an effective and cost-efficient method of
6 reducing the incidents of child abuse and neglect, promoting a healthy family environment and
7 reducing the general vulnerability of children.

8 (b) ~~County~~ School district boards of education shall be required, to the extent funds are
9 provided, to establish programs for the prevention of child abuse and neglect and child assault.
10 Such programs shall be provided to pupils, parents and school personnel as deemed appropriate.
11 Such programs shall be in compliance with regulations to be developed by the state Board of

12 Education with the advice and assistance of the state Department of Health and Human
13 Resources and the West Virginia State Police: *Provided*, That any such programs which
14 substantially comply with the regulations adopted by the board and were in effect prior to the
15 adoption of the regulations may be continued.

16 (c) Funds for implementing the child abuse and neglect prevention and child assault
17 prevention programs may be allocated to the ~~county~~ school district boards of education from the
18 children's trust fund established pursuant to the provisions of article six-c, chapter forty-nine of
19 this code or appropriated for such purpose by the Legislature.

20 (d) ~~County~~ School district boards of education shall request from the state Criminal
21 Identification Bureau the record of any and all criminal convictions relating to child abuse, sex-
22 related offenses or possession of controlled substances with intent to deliver same for all of its
23 future employees. This request shall be made immediately after the effective date of this section,
24 and thereafter as warranted.

25 (e) Contractors or service providers or their employees may not make direct,
26 unaccompanied contact with students or access school grounds unaccompanied when students
27 are present if it cannot be verified that the contractors, service providers or employees have not
28 previously been convicted of a qualifying offense, as defined in section two, article twelve, chapter
29 fifteen of this code. For the purposes of this section, contractor and service provider shall be
30 limited to any vendor, individual or entity under contract with a ~~county~~-school district board. ~~County~~
31 School district boards may require contractors and service providers to verify the criminal records
32 of their employees before granting the above-mentioned contact or access. Where prior written
33 consent is obtained, ~~county~~ school district boards may obtain information from the Central Abuse
34 Registry regarding contractors, service providers and their employees for the purposes of this
35 subsection. Where a contractor or service provider gives his or her prior written consent, the
36 ~~county~~ school district board also may share information provided by the Central Abuse Registry
37 with other ~~county~~ school district boards for the purposes of satisfying the requirements of this

38 subsection. The requirements of this subsection shall not go into effect until July 1, 2007.

§18-5-16. Student transfers; legislative findings; appeals; calculating net enrollment; fees for transfer.

1 (a) ~~County~~ School district districts and school attendance. -- The ~~county~~ school district
2 board may divide the ~~county~~ school district into such districts as are necessary to determine the
3 schools the students of its ~~county~~ school district shall attend. Upon the written request of any
4 parent or guardian, or person legally responsible for any student, or for reasons affecting the best
5 interests of the schools, the superintendent may transfer students from one school to another
6 within the ~~county~~ school district. Any aggrieved person may appeal the decision of the ~~county~~
7 school district superintendent to the ~~county~~ school district board, and the decision of the ~~county~~
8 school district board shall be final.

9 (b) *Transfers between ~~counties~~ school districts; legislative findings.* --

10 (1) Transfers of students from one ~~county~~ school district to another may be made by the
11 ~~county~~ school district board of the ~~county~~ school district in which the student desiring to be
12 transferred resides. The transfer shall be subject to the approval of both the board of the ~~county~~
13 school district in which the student resides and the board to which the student wishes to be
14 transferred.

15 (2) *Legislative findings.* -- Over the past several years, ~~counties~~ school districts have been
16 forced to close a number of schools because of declining student enrollment. School officials
17 predict that an additional eighteen percent loss in enrollment may occur between 2002 and 2012.
18 This continued decrease in the number of students enrolled in the public schools of the state may
19 result in more instances of consolidation which will increase the problem of long bus rides for
20 students if they remain in a school in their ~~county~~ school district of residence.

21 Therefore the Legislature makes the following findings:

22 (A) ~~County~~ School district lines may impede the effective and efficient delivery of education
23 services;

24 (B) Students often must endure long bus rides to a school within their county school district
25 of residence when a school in an adjacent county school district is a fraction of the distance away;

26 (C) The wishes of parents or guardians to have their children transferred to a county school
27 district other than their county school district of residence should be considered by the county
28 school district boards; and

29 (D) Where counties school districts cannot agree, it is necessary to establish a process to
30 determine when transfers are appropriate.

31 (3) The state board shall establish a process whereby a parent or guardian of a student
32 may appeal the refusal of a county school district board to enter into an agreement to transfer or
33 accept the transfer of the student.

34 (A) The process shall designate the state superintendent to hear the appeal. In
35 determining whether to overturn a decision of a county school district board, the state
36 superintendent shall consider such factors as the following:

37 (i) Travel time for the student;

38 (ii) Impact on levies or bonds;

39 (iii) Other financial impact on the county school district of residence; and

40 (iv) Such other factors as the state superintendent may determine.

41 (B) If, during the appeal process, the state superintendent discovers that the education
42 and the welfare of students in the transferring county school district could be enhanced, the state
43 superintendent may direct that students may be permitted to attend a school in another county
44 school district.

45 (C) If multiple appeals are received from the same geographical area of a county school
46 district, the state superintendent may impose on the receiving county school district restrictions
47 including, but not limited to, requiring the receiving county school district to accept all students in
48 that geographical area of the sending county school district who wish to transfer to the receiving
49 county school district.

50 (D) If a student is transferred on either a full-time or a part-time basis without the
51 agreement of both boards by official action as reflected in the minutes of their respective meetings
52 and if the student's parent or guardian fails to appeal or loses the appeal under the process
53 established in subdivision (3) of this subsection, the student shall be counted only in the net
54 enrollment of the ~~county~~ school district in which the student resides.

55 (4) If, after two ~~county~~ school district boards have agreed to a transfer arrangement for a
56 student, that student chooses to return to a school in his or her ~~county~~ school district of residence
57 after the second month of any school year, the following shall apply:

58 (A) The ~~county~~ school district of residence may issue an invoice to the ~~county~~ school
59 district from which the student transferred for the amount, determined on a pro rata basis, that the
60 ~~county~~ school district of residence otherwise would have received under the state basic
61 foundation program established in article nine-a of this chapter; and

62 (B) The ~~county~~ school district from which the student transferred shall reimburse the
63 ~~county~~ school district of residence for the amount of the invoice.

64 (c) *Transfers between high schools.* -- In any ~~county~~ school district where a high school is
65 maintained, but topography, impassable roads, long bus rides or other conditions prevent the
66 practicable transportation of any students to such high school, the board may transfer them to a
67 high school in an adjoining ~~county~~ school district. In any such case, the ~~county~~ school district
68 boards may enter into an agreement providing for the payment of the cost of transportation, if
69 any, of the students.

70 (d) *Transfers between states.* -- Transfer of students from this state to another state shall
71 be upon such terms as shall be mutually agreed upon by the board of the transferring ~~county~~
72 school district and the authorities of the school to which the transfer is made.

73 (e) No parent, guardian or person acting as parent or guardian shall be required to pay for
74 the transfer of a student or for the tuition of the student after the transfer when such transfer is
75 carried out under the terms of this section.

§18-5-17. Compulsory preenrollment hearing, vision and speech and language testing; developmental screening for children under compulsory school age.

1 (a) All children entering public school for the first time in this state shall be given prior to
2 their enrollments screening tests to determine if they might have vision or hearing impairments or
3 speech and language disabilities. ~~County~~ School district boards of education may provide, upon
4 request, such screening tests to all children entering nonpublic school. ~~County~~ School district
5 boards of education shall conduct these screening tests for all children through the use of trained
6 personnel. Parents or guardians of children who are found to have vision or hearing impairments
7 or speech and language disabilities shall be notified of the results of these tests and advised that
8 further diagnosis and treatment of the impairments or disabilities by qualified professional
9 personnel is recommended.

10 (b) ~~County~~ School district boards of education shall provide or contract with appropriate
11 health agencies to provide, upon the request of a parent or guardian residing within the district,
12 developmental screening for their child or children under compulsory school attendance age:
13 *Provided, That a ~~county~~ school district board is not required to provide such screening to the*
14 *same child more than once in any one school year. Developmental screening is the process of*
15 *measuring the progress of children to determine if there are problems or potential problems or*
16 *advanced abilities in the areas of understanding language, perception through sight, perception*
17 *through hearing, motor development and hand-eye coordination, health, and psycho-social or*
18 *physical development. The boards shall coordinate the provision of developmental screening with*
19 *other public agencies and the interagency plan for exceptional children under section eight, article*
20 *twenty of this chapter to avoid the duplication of services and to facilitate the referral of children*
21 *and their parents or guardians who need other services. The ~~county~~ school district boards shall*
22 *provide notice to the public of the availability of these services.*

23 (c) The state Board of Education is hereby authorized to promulgate rules consistent with
24 this section. The state superintendent is directed to apply for federal funds, if available, for the

25 implementation of the requirements of this section.

§18-5-18. Kindergarten programs.

1 (a) ~~County~~ School district boards shall provide kindergarten programs for all children who
2 have attained the age of five prior to September 1, of the school year in which the pupil enters the
3 kindergarten program and may, pursuant to the provisions of section forty-four, article five,
4 chapter eighteen of this code, establish kindergarten programs designed for children below the
5 age of five. The programs for children who shall have attained the age of five shall be full-day
6 everyday programs.

7 (b) Persons employed as kindergarten teachers, as distinguished from paraprofessional
8 personnel, shall be required to hold a certificate valid for teaching at the assigned level as
9 prescribed by rules established by the state board. The state board shall establish the minimum
10 requirements for all paraprofessional personnel employed in kindergarten programs established
11 pursuant to the provisions of this section and no such paraprofessional personnel may be
12 employed in any kindergarten program unless he or she meets the minimum requirements.
13 Beginning July 1, 2014, any person previously employed as an aide in a kindergarten program
14 and who is employed in the same capacity on and after that date and any new person employed
15 in that capacity in a kindergarten program on and after that date shall hold the position of aide
16 and either Early Childhood Classroom Assistant Teacher I, Early Childhood Classroom Assistant
17 Teacher II or Early Childhood Classroom Assistant Teacher III. Any person employed as an aide
18 in a kindergarten program that is eligible for full retirement benefits before July 1, 2020, may
19 remain employed as an aide in that position and shall be granted an Early Childhood Classroom
20 Assistant Teacher permanent authorization by the state superintendent pursuant to section two-
21 a, article three, chapter eighteen-a of this code.

22 (c) The state board with the advice of the state superintendent shall establish and
23 prescribe guidelines and criteria relating to the establishment, operation and successful
24 completion of kindergarten programs in accordance with the other provisions of this section.

25 Guidelines and criteria so established and prescribed also are intended to serve for the
26 establishment and operation of nonpublic kindergarten programs and shall be used for the
27 evaluation and approval of those programs by the state superintendent, provided application for
28 the evaluation and approval is made in writing by proper authorities in control of the programs.
29 The state superintendent, annually, shall publish a list of nonpublic kindergarten programs,
30 including Montessori kindergartens that have been approved in accordance with the provisions of
31 this section. Montessori kindergartens established and operated in accordance with usual and
32 customary practices for the use of the Montessori method which have teachers who have training
33 or experience, regardless of additional certification, in the use of the Montessori method of
34 instruction for kindergartens shall be considered to be approved.

35 (d) Pursuant to the guidelines and criteria, and only pursuant to the guidelines and criteria,
36 the ~~county~~ school district boards may establish programs taking kindergarten to the homes of the
37 children involved, using educational television, paraprofessional personnel in addition to and to
38 supplement regularly certified teachers, mobile or permanent classrooms and other means
39 developed to best carry kindergarten to the child in its home and enlist the aid and involvement
40 of its parent or parents in presenting the program to the child; or may develop programs of a more
41 formal kindergarten type, in existing school buildings, or both, as the ~~county~~ school district board
42 may determine, taking into consideration the cost, the terrain, the existing available facilities, the
43 distances each child may be required to travel, the time each child may be required to be away
44 from home, the child's health, the involvement of parents and other factors as each ~~county~~ school
45 district board may find pertinent. The determinations by any ~~county~~ school district board are final
46 and conclusive.

§18-5-18a. Maximum teacher-pupil ratio.

1 ~~County~~ School district boards of education shall provide, by the school year 1983-84, and
2 thereafter, sufficient personnel, equipment and facilities as will ensure that each first and second
3 grade classroom, or classrooms having two or more grades that include either the first or second

4 grades shall not have more than twenty-five pupils for each teacher of the grade or grades and
5 shall not have more than twenty pupils for each kindergarten teacher per session, unless the state
6 superintendent has excepted a specific classroom upon application therefor by a ~~county~~ school
7 district board.

8 ~~County~~ School district boards shall provide by the school year 1984-85, and continue
9 thereafter, sufficient personnel, equipment and facilities as will ensure that each third, fourth, fifth
10 and sixth grade classroom, or classrooms having two or more grades that include one or more of
11 the third, fourth, fifth and sixth grades, shall not have more than twenty-five pupils for each teacher
12 of the grade or grades.

13 Beginning with the school year 1986-87, and thereafter, no ~~county~~ school district shall
14 maintain a greater number of classrooms having two or more grades that include one or more of
15 the grade levels referred to in this section than were in existence in said ~~county~~ school district as
16 of January 1, 1983: *Provided*, That for the prior school years, and only if there is insufficient
17 classroom space available in the school or ~~county~~ school district, a ~~county~~ school district may
18 maintain one hundred ten percent of such number of classrooms.

19 During the school year 1984-85, and thereafter, the state superintendent is authorized,
20 consistent with sound educational policy, (a) to permit on a statewide basis, in grades four through
21 six, more than twenty-five pupils per teacher in a classroom for the purposes of instruction in
22 physical education, and (b) to permit more than twenty pupils per teacher in a specific
23 kindergarten classroom and twenty-five pupils per teacher in a specific classroom in grades one
24 through six during a school year in the event of extraordinary circumstances as determined by
25 the state superintendent after application by a ~~county~~ school district board of education.

26 The state board shall establish guidelines for the exceptions authorized in this section, but
27 in no event shall the superintendent except classrooms having more than three pupils above the
28 pupil-teacher ratio as set forth in this section.

29 The requirement for approval of an exception to exceed the twenty pupils per kindergarten

30 teacher per session limit or the twenty-five pupils per teacher limit in grades one through six is
31 waived in schools where the schoolwide pupil-teacher ratio is twenty-five or less in grades one
32 through six: *Provided*, That a teacher shall not have more than three pupils above the
33 teacher/pupil ratio as set forth in this section. Any kindergarten teacher who has more than twenty
34 pupils per session and any classroom teacher of grades one through six who has more than
35 twenty-five pupils shall be paid additional compensation based on the affected classroom
36 teacher's average daily salary divided by twenty for kindergarten teachers or twenty-five for
37 teachers of grades one through six for every day times the number of additional pupils enrolled
38 up to the maximum pupils permitted in the teacher's classroom. All such additional compensation
39 shall be paid from ~~county~~ school district funds exclusively.

40 Notwithstanding any other provision of this section to the contrary, commencing with the
41 school year beginning on July 1, 1994, a teacher in grades one, two or three or classrooms having
42 two or more such grade levels, shall not have more than two pupils above the teacher/pupil ratio
43 as set forth in this section: *Provided*, That commencing with the school year beginning on July 1,
44 1995, such teacher shall not have more than one pupil above the teacher/pupil ratio as set forth
45 in this section: *Provided, however*, That commencing with the school year beginning on July 1,
46 1996, such teacher shall not have any pupils above the teacher/pupil ratio as set forth in this
47 section.

48 No provision of this section is intended to limit the number of pupils per teacher in a
49 classroom for the purpose of instruction in choral, band or orchestra music.

50 Each school principal shall assign students equitably among the classroom teachers,
51 taking into consideration reasonable differences due to subject areas and/or grade levels.

52 The state board shall collect from each ~~county~~ school district board of education
53 information on class size and the number of pupils per teacher for all classes in grades seven
54 through twelve. The state board shall report such information to the Legislative Oversight
55 commission on education accountability before January 1, of each year.

§18-5-18b. School counselors in public schools.

1 (a) A school counselor means a professional educator who holds a valid school
2 counselor's certificate in accordance with article three of this chapter.

3 (b) Each ~~county~~ school district board shall provide counseling services for each pupil
4 enrolled in the public schools of the ~~county~~ school district.

5 (c) The school counselor shall work with individual pupils and groups of pupils in providing
6 developmental, preventive and remedial guidance and counseling programs to meet academic,
7 social, emotional and physical needs; including programs to identify and address the problem of
8 potential school dropouts. The school counselor also may provide consultant services for parents,
9 teachers and administrators and may use outside referral services, when appropriate, if no
10 additional cost is incurred by the ~~county~~ school district board.

11 (d) The state board may adopt rules consistent with the provisions of this section that
12 define the role of a school counselor based on the "National Standards for School Counseling
13 Programs" of the American school counselor association. A school counselor is authorized to
14 perform such services as are not inconsistent with the provisions of the rule as adopted by the
15 state board. To the extent that any funds are made available for this purpose, ~~county~~ school
16 district boards shall provide training for counselors and administrators to implement the rule as
17 adopted by the state board.

18 (e) Each ~~county~~ school district board shall develop a comprehensive drop-out prevention
19 program utilizing the expertise of school counselors and any other appropriate resources
20 available.

21 (f) School counselors shall be full-time professional personnel, shall spend at least
22 seventy-five percent of work time in a direct counseling relationship with pupils, and shall devote
23 no more than one fourth of the work day to administrative activities: *Provided*, That such activities
24 are counselor related.

25 (g) Nothing in this section prohibits a ~~county~~ school district board from exceeding the

26 provisions of this section, or requires any specific level of funding by the Legislature.

§18-5-19a. Special classes for war veterans; authority of ~~county~~ school district boards to contract therefor and to receive assistance.

1 The Board of Education of any ~~county~~ school district shall have authority to enter into
2 contracts of agreement with authorized officials of the "war Veterans' Administration" for the
3 education of veterans in special classes of the elementary and high schools of the ~~county~~ school
4 district. By reason of such contracts, the ~~county~~ school district board of education shall have
5 authority to receive tuitions, fees and other forms of assistance that may now or later be made
6 available by act of the Congress for the education of war veterans. Any funds so accruing to such
7 board from tuitions, fees or other forms of financial assistance shall be credited to the current
8 expense fund of the ~~county~~ school district board of education and reported each year as of June
9 thirtieth in the manner required for other financial reports of the board.

§18-5-19b. Adult education classes and programs; tuition and student assistance loans; authority of ~~county~~ school district boards to contract with federal agencies.

1 (a) The Board of Education of any ~~county~~ school district shall have authority to provide
2 classes and programs for adult education and to charge tuition for members of such classes
3 and/or programs, such tuitions not to exceed in any case the actual cost of operation of such
4 classes and/or programs. The ~~county~~ school district board of education shall also have authority
5 to enter into contracts of agreement with authorized agencies of the federal government for the
6 education of adults and to provide, assemble and house materials and equipment for efficient
7 instruction in any and all such classes and/or programs, contract for instruction for the term of the
8 class and/or program to be offered, and to use school facilities by way of buildings and equipment
9 under the control of said board. Any funds accruing from such tuitions shall be credited to adult
10 education in the current expense fund of the ~~county~~ school district board of education and reported
11 each year as of June thirtieth in the manner required for other financial reports of the board.

12 (b) Student assistance loans for attendance in adult education classes and/or programs

13 shall be available in accordance with the applicable provisions of article twenty-two-d of this
14 chapter to an eligible student pursuant to regulations promulgated by the state Board of
15 Education, who shall administer such loan program as it relates to adult education classes and/or
16 programs, and who shall stand in the place of the board of regents for purposes of loans received
17 pursuant to this section. The limitations on investment provided for in section four of said article
18 twenty-two-d shall remain in full force and effect.

19 State board regulations shall be in accordance with the provisions of article twenty-two-d
20 to the extent practicable, except that the regulations shall provide for the following:

21 (1) The eligible student must be a high school graduate or equivalent or must be eighteen
22 years of age;

23 (2) Maximum loan amounts and the maximum number of loans received by any eligible
24 student shall be prescribed by regulation of the state board;

25 (3) The loan agreement may provide for the repayment of interest only until such time as
26 the eligible student is no longer enrolled in the approved adult education class and/or program.
27 However, in all cases, repayment of the principal shall commence at such time as the eligible
28 student is no longer enrolled in the adult education class or program for which a loan or loans
29 were received pursuant to this section: *Provided*, That an eligible student who enrolls in an
30 institution of higher education subsequent to such adult education enrollment may defer such
31 payment until completion or withdrawal from the institution of higher education; and

32 (4) Notwithstanding the time in which the eligible lending institution may provide for the
33 repayment of the loan, the linked deposit shall be terminated at the maturity date next succeeding
34 complete repayment or five years after cessation of enrollment, whichever is sooner.

35 The state board is not liable to any eligible lending institution in any manner for payment
36 of the principal or interest on the loan to an eligible student.

37 (c) The Board of Education of any ~~county~~ school district shall have authority to enter into
38 contracts of agreement with temporary teachers for the purpose of teaching adult education

39 classes or programs which do not exceed ninety days or seven hundred twenty hours. The
40 appointment of a temporary teacher is a contract of agreement for the duration of the class or
41 program, and the temporary teacher shall not accrue benefits of retirement, personal leave,
42 medical or life insurance, seniority rights, or any other provisions relating to salaries, wages and
43 benefits pursuant to article four, chapter eighteen-a of this code: *Provided*, That such temporary
44 appointment does not preclude the benefits mandated by federal law, workers' compensation and
45 liability insurance coverage for the duration of the class or program.

§18-5-21. Free textbooks.

1 The Board of Education of every ~~county~~ school district may purchase the necessary
2 textbooks to be used in the free schools by the pupils thereof. All textbooks so purchased shall
3 be kept in charge by the ~~county~~ school district superintendent and furnished to the pupils of the
4 free schools of the ~~county~~ school district as hereinafter provided. All such books shall be furnished
5 by the ~~county~~ school district board as prescribed by law, and purchased at the net wholesale
6 price.

7 In such case, at the commencement of every term, the ~~county~~ school district
8 superintendent shall deliver to the teachers of the various schools the textbooks necessary for
9 the use of the several pupils enrolled therein for the ensuing term of school and shall take from
10 them receipts showing the number and kind of textbooks so received. It shall be the duty of the
11 teachers to take charge of such textbooks and to distribute them among the pupils of their schools
12 as needed; and said teachers shall have and exercise general control of all such textbooks, and
13 at the close of the school term, and before receiving an order for salary for the last month of such
14 term, shall collect and gather together all textbooks so used and deliver them to the ~~county~~ school
15 district superintendent.

16 If any of the textbooks delivered to any pupils shall be unnecessarily injured or destroyed,
17 they shall be replaced by the pupils who injured or destroyed them.

§18-5-21b. Textbooks may be furnished to pupils in private schools whose parents are

unable to provide same.

1 The Board of Education of every ~~county~~ school district, upon application of the proper
2 authorities of any private school, may likewise provide state-adopted textbooks for use of the
3 pupils enrolled therein whose parents, in the judgment of the board, are unable to provide same.

§18-5-21a. Textbooks to be furnished pupils whose parents are unable to provide same.

1 The Board of Education of every ~~county~~ school district shall provide the textbooks to be
2 used in the free schools for the pupils whose parents, in the judgment of the board, are unable to
3 provide the same; such textbooks shall be those adopted by the state Board of Education.

**§18-5-21b. Textbooks may be furnished to pupils in private schools whose parents are
unable to provide same.**

1 The Board of Education of every ~~county~~ school district, upon application of the proper
2 authorities of any private school, may likewise provide state-adopted textbooks for use of the
3 pupils enrolled therein whose parents, in the judgment of the board, are unable to provide same.

**§18-5-21c. Distribution of free textbook funds; determination of amount ~~county~~ school
district shall receive.**

1 In accordance with the provisions of this act the state Superintendent of Schools shall
2 distribute among the several ~~county~~ school district of the state each year such amounts of free
3 textbook money as the Legislature may provide for such distribution. The amount of money that
4 a ~~county~~ school district shall so receive shall be determined as follows:

5 Each ~~county~~ school district shall share in state aid for the purchase of state-adopted
6 textbooks according to the ratio which its total net enrollment in public schools, grades one to
7 eight inclusive, for the preceding school year, bears to the total net enrollment in public schools
8 for the state as a whole, grades one to eight inclusive, for the preceding year.

**§18-5-21d. "Free textbook account"; use of surplus; order of preference in providing free
textbooks; purchase of library books, supplementary materials, and used
textbooks.**

1 The money allocated to a ~~county~~ school district board of education under this act shall be
2 kept by such ~~county~~ school district board in a separate account to be known as the "free textbook
3 account" and may be used for no other purpose except as otherwise provided by this section. Any
4 balances being held in the "textbook aid account," as provided by law, are by this act authorized
5 and directed to be transferred to said "free textbook account" to be used in accordance with the
6 provisions of this act.

7 After complying with sections twenty-one-a and twenty-one-b of this article, the ~~county~~
8 school district board of education shall use any proceeds remaining in the "free textbook account"
9 for the purchase (including replacement and repair) of textbooks for all pupils enrolled in the public
10 schools of the ~~county~~ school district, grades one to eight inclusive, who are not provided with free
11 textbooks under the requirements of sections twenty-one-a and twenty-one-b of said article. Such
12 textbooks shall be those adopted by the state Board of Education for the elementary schools of
13 the state.

14 The order of preference used in providing free textbooks for such pupils shall be either by
15 grade preference in accordance with the plan as stated in subsection one below, or by subject
16 preference in accordance with the plan as stated in subsection two below. The ~~county~~ school
17 district board of education shall be required to adopt the one of these plans considered preferable
18 for the ~~county~~ school district, and shall so advise the state Superintendent of Schools in writing
19 before the plan so chosen is made operative through the requisition or purchase of textbooks in
20 accordance therewith.

21 (1) In furnishing free textbooks by grade preference, the order of such preference shall be
22 to begin with grade one and to continue by consecutive grades to and including grade eight.

23 (2) In furnishing free textbooks by subject preference, the order of such preference shall
24 be to begin with the lowest grade and to continue by consecutive grades through grade eight as
25 follows: Reading, arithmetic, history, health and elementary science, music, English, geography,
26 writing, spelling, civics: *Provided*, That the order of subject preference as specified in subsection

27 two above may be changed with prior approval of the state Board of Education, upon written
28 application of any ~~county~~ school district stating reasons for wishing to make such change.

29 In any ~~county~~ school district in which the provisions of sections twenty-one-a, twenty-one-
30 b, and twenty-one-d of this article shall have been fully complied with, any proceeds yet available
31 in the "free textbook account" shall be used for the purchase of approved library books and other
32 supplementary materials for grades one to eight: *Provided*, That such purchase shall have the
33 prior approval of the state Board of Education.

34 In providing free textbooks to pupils under the provisions of this act, the ~~county~~ school
35 district board of education shall have authority to purchase state-adopted textbooks from pupils
36 who own them, or from their parents, at a price commensurate with the usable value of said books
37 at the time, but in no case to exceed one half the original purchase price of the textbook to the
38 pupil as determined by reference to the official contract price entered into between the publisher
39 and the state Board of Education at the time of adoption of said textbook. All such purchases shall
40 conform to the order of preference, either by grade or by subject, adopted by the ~~county~~ school
41 district board of education under the provisions of subsection one and two above of this section
42 for furnishing free textbooks to the pupils of said ~~county~~ school district.

43 Nothing in this act shall be construed to prevent a ~~county~~ school district board of education
44 from supplementing its "free textbook account" with ~~county~~ school district funds available for that
45 purpose and so approved in the annual school budget.

**§18-5-21e. Rules and regulations for care, distribution and use of free textbooks; reports
by ~~county~~ school district boards; funds may be withheld from ~~county~~ school district
for violation of rules.**

1 The state Board of Education shall have authority to prescribe rules and regulations
2 governing the care, distribution and use of free textbooks including their rebinding, reconditioning,
3 replacement, return and storage, and such other measures as may be necessary for efficient and
4 economical administration.

5 The state Board of Education is further authorized to prescribe and require reports to be
6 made by the various ~~county~~ school district boards of education concerning the expenditures and
7 distributions and conditions of inventories at such time and in such form as the board may require.

8 The State Superintendent of Schools is authorized to withhold the state allotment of free
9 textbook money from any ~~county~~ school district for violation of the rules and regulations herein
10 authorized.

**§18-5-22. Medical and dental inspection; school nurses; specialized health procedures;
establishment of council of school nurses.**

1 (a) ~~County~~ School district boards shall provide proper medical and dental inspections for
2 all pupils attending the schools of their ~~county~~ school district and have the authority to take any
3 other action necessary to protect the pupils from infectious diseases, including the authority to
4 require from all school personnel employed in their ~~county~~ school district, certificates of good
5 health and of physical fitness.

6 (b) Each ~~county~~ school district board shall employ full time at least one school nurse for
7 every one thousand five hundred kindergarten through seventh grade pupils in net enrollment or
8 major fraction thereof: *Provided*, That each ~~county~~ school district shall employ full time at least
9 one school nurse: *Provided, however*, That a ~~county~~ school district board may contract with a
10 public health department for services considered equivalent to those required by this section in
11 accordance with a plan to be approved by the state board: *Provided further*, That the state board
12 shall promulgate rules requiring the employment of school nurses in excess of the number
13 required by this section to ensure adequate provision of services to severely handicapped pupils.
14 An appropriation may be made to the state department to be distributed to ~~county~~ school district
15 boards to support school health service needs that exceed the capacity of staff as mandated in
16 this section. Each ~~county~~ school district board shall apply to the state superintendent for receipt
17 of this funding in a manner set forth by the state superintendent that assesses and takes into
18 account varying acuity levels of students with specialized health care needs.

19 (c) Any person employed as a school nurse must be a registered professional nurse
20 properly licensed by the West Virginia Board of Examiners for Registered Professional Nurses in
21 accordance with article seven, chapter thirty of this code.

22 (d) Specialized health procedures that require the skill, knowledge and judgment of a
23 licensed health professional may be performed only by school nurses, other licensed school
24 health care providers as provided in this section, or school employees who have been trained and
25 retrained every two years who are subject to the supervision and approval by school nurses. After
26 assessing the health status of the individual student, a school nurse, in collaboration with the
27 student's physician, parents and, in some instances, an individualized education program team,
28 may delegate certain health care procedures to a school employee who shall be trained pursuant
29 to this section, considered competent, have consultation with, and be monitored or supervised by
30 the school nurse: *Provided*, That nothing in this section prohibits any school employee from
31 providing specialized health procedures or any other prudent action to aid any person who is in
32 acute physical distress or requires emergency assistance. For the purposes of this section
33 "specialized health procedures" means, but is not limited to, catheterization, suctioning of
34 tracheostomy, naso-gastric tube feeding or gastrostomy tube feeding. "School employee" means
35 "teachers" as defined in section one, article one of this chapter and "aides" as defined in section
36 eight, article four, chapter eighteen-a of this code. Commencing with the school year beginning
37 on July 1, 2002, "school employee" also means "secretary I", "secretary II" and "secretary III" as
38 defined in section eight, article four, chapter eighteen-a of this code: *Provided, however*, That a
39 "secretary I", "secretary II" and "secretary III" shall be limited to the dispensing of medications.

40 (e) Any school service employee who elects, or is required by this section, to undergo
41 training or retraining to provide, in the manner specified in this section, the specialized health care
42 procedures for those students for which the selection has been approved by both the principal
43 and the ~~county~~ school district board shall receive additional pay of at least one pay grade higher
44 than the highest pay grade for which the employee is paid: *Provided*, That any training required

45 in this section may be considered in lieu of required in-service training of the school employee
46 and a school employee may not be required to elect to undergo the training or retraining: *Provided,*
47 *however,* That commencing with July 1, 1989, any newly employed school employee in the field
48 of special education is required to undergo the training and retraining as provided in this section:
49 *Provided further,* That if an employee who holds a class title of an aide is employed in a school
50 and the aide has received the training, pursuant to this section, then an employee in the field of
51 special education is not required to perform the specialized health care procedures.

52 (f) Each ~~county~~ school district school nurse, as designated and defined by this section,
53 shall perform a needs assessment. These nurses shall meet on the basis of the area served by
54 their regional educational service agency, prepare recommendations and elect a representative
55 to serve on the council of school nurses established under this section.

56 (g) There shall be a council of school nurses which shall be convened by the state Board
57 of Education. This council shall prepare a procedural manual and shall provide recommendations
58 regarding a training course to the Commissioner of the Bureau for Public Health who shall consult
59 with the state Department of Education. The state board then has the authority to promulgate a
60 rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code to
61 implement the training and to create standards used by those school nurses and school
62 employees performing specialized health procedures. The council shall meet every two years to
63 review the certification and training program regarding school employees.

64 (h) The State Board of Education shall work in conjunction with ~~county~~ school district
65 boards to provide training and retraining every two years as recommended by the Council of
66 School Nurses and implemented by the rule promulgated by the state board.

§18-5-22a. Policy for the administration of medications.

1 All ~~county~~ school district boards of education shall develop a specific medication
2 administration policy which establishes the procedure to be followed for the administration of
3 medication at each school.

4 No school employee shall be required to administer medications: *Provided*, That nothing
5 herein shall prevent any school employee to elect to administer medication after receiving training
6 as provided herein: *Provided, however*, That any school employee in the field of special education
7 whose employment commenced on or after July 1, 1989, may be required to administer
8 medications after receiving training as provided herein.

**§18-5-22b. Providing for self-administration of asthma medication; definitions; conditions;
indemnity from liability; rules.**

1 (a) For the purposes of this section, the following words have the meanings specified
2 unless the context clearly indicates a different meaning:

3 (1) "Medication" means asthma medicine, prescribed by:

4 (A) A physician licensed to practice medicine in all its branches; or

5 (B) A physician assistant who has been delegated the authority to prescribe asthma
6 medications by a supervising physician; or

7 (C) An advanced practice registered nurse who has a written collaborative agreement with
8 a collaborating physician. Such agreement shall delegate the authority to prescribe the
9 medications for a student that pertain to the student's asthma and that have an individual
10 prescription label.

11 (2) "Self-administration" or "self-administer" means a student's discretionary use of
12 prescribed asthma medication.

13 (b) A student enrolled in a public, private, parochial or denominational school located
14 within this state may possess and self-administer asthma medication subject to the following
15 conditions:

16 (1) The parents or guardians of the student have provided to the school:

17 (A) A written authorization for the self-administration of asthma medication; and

18 (B) A written statement from the physician or advanced practice registered nurse which
19 contains the name, purpose, appropriate usage and dosage of the student's medication and the

20 time or times at which, or the special circumstances under which, the medication is to be
21 administered;

22 (2) The student has demonstrated the ability and understanding to self-administer asthma
23 medication by:

24 (A) Passing an assessment by the school nurse evaluating the student's technique of self-
25 administration and level of understanding of the appropriate use of the asthma medication; or

26 (B) In the case of nonpublic schools that do not have a school nurse, providing to the
27 school from the student's physician or advanced practice registered nurse written verification that
28 the student has passed such an assessment; and

29 (3) The parents or guardians of the student have acknowledged in writing that they have
30 read and understand a notice provided by the ~~county~~ school district board or nonpublic school
31 that:

32 (A) The school, ~~county~~ school district school board or nonpublic school and its employees
33 and agents are exempt from any liability, except for willful and wanton conduct, as a result of any
34 injury arising from the self-administration of asthma medication by the student; and

35 (B) The parents or guardians indemnify and hold harmless the school, the ~~county~~ school
36 district board of education or nonpublic school and its employees or guardians and agents against
37 any claims arising out of the self-administration of the medication by the student.

38 (c) The information provided to the school pursuant to subsection (b) of this section shall
39 be kept on file in the office of the school nurse or, in the absence of a school nurse, in the office
40 of the school administrator.

41 (d) Permission for a student to self-administer asthma medication is effective for the school
42 year for which it is granted and shall be renewed each subsequent school year if the requirements
43 of this section are met.

44 (e) Permission to self-administer medication may be revoked if the administrative head of
45 the school finds that the student's technique of self-administration and understanding of the use

46 of the asthma medication is not appropriate or is willfully disregarded.

47 (f) A student with asthma who has met the requirements of this section may possess and
48 use asthma medication:

49 (1) In school;

50 (2) At a school-sponsored activity;

51 (3) Under the supervision of school personnel; or

52 (4) Before or after normal school activities, such as before school or after school care on
53 school operated property.

54 (g) The state board shall promulgate rules necessary to effectuate the provisions of this
55 section in accordance with the provisions of article three-b, chapter twenty-nine-a of this code.

**§18-5-22c. Providing for the maintenance and use of epinephrine auto-injectors;
administration of injections; notice; indemnity from liability; rules.**

1 (a) A public, private, parochial or denominational school located within this state may
2 possess and maintain at the school a supply of epinephrine auto-injectors for use in emergency
3 medical care or treatment for an anaphylactic reaction. A prior diagnosis for a student or school
4 personnel requiring the use of epinephrine auto-injectors is not necessary to permit the school to
5 stock epinephrine auto-injectors. Epinephrine auto-injectors shall be maintained by the school in
6 a secure location which is only accessible by medical personnel and authorized nonmedical
7 personnel and not by students.

8 (b) An allopathic physician licensed to practice pursuant to the provisions of article three,
9 chapter thirty of this code or an osteopathic physician licensed to practice pursuant to the
10 provisions of article fourteen, chapter thirty of this code may prescribe within the course of his or
11 her professional practice standing orders and protocols for use when necessary by a school which
12 wishes to maintain epinephrine auto-injector pursuant to the provisions of this section.

13 (c) A school nurse, as set forth in section twenty-two of this article, is authorized to
14 administer an epinephrine auto-injector to a student or school personnel during regular school

15 hours or at a school function when the school nurse medically believes the individual is
16 experiencing an anaphylactic reaction. A school nurse may use the school supply of epinephrine
17 auto-injectors for a student or school personnel authorized to self-administer that meet the
18 requirements of a prescription on file with the school.

19 (d) Nonmedical school personnel who have been trained in the administration of an
20 epinephrine auto-injector and who have been designated and authorized by the school to
21 administer the epinephrine auto-injector are authorized to administer an epinephrine auto-injector
22 to a student or school personnel during regular school hours or at a school function when the
23 authorized and designated nonmedical school personnel reasonably believes, based upon their
24 training, that the individual is experiencing an anaphylactic reaction. Nonmedical school personnel
25 may use the school supply of epinephrine auto-injectors for a student or school personnel
26 authorized to self-administer that meet the requirements of a prescription on file with the school.

27 (e) Prior notice to the parents of a student of the administration of the epinephrine auto-
28 injector is not required. Immediately following the administration of the epinephrine auto-injector,
29 the school shall provide notice to the parent of a student who received an auto-injection.

30 (f) A school nurse or trained and authorized nonmedical school personnel who administer
31 an epinephrine auto-injection to a student or to school personnel as provided in this section is
32 immune from liability for any civil action arising out of an act or omission resulting from the
33 administration of the epinephrine auto-injection unless the act or omission was the result of the
34 school nurse or trained and authorized nonmedical school personnel's gross negligence or willful
35 misconduct.

36 (g) For the purposes of this section, all ~~county~~ school district boards of education may
37 participate in free or discounted drug programs from pharmaceutical manufacturers to provide
38 epinephrine auto-injectors to schools in their ~~counties~~ school districts who choose to stock auto-
39 injectors.

40 (h) All ~~county~~ school district boards of education are required to collect and compile

41 aggregate data on incidents of anaphylactic reactions resulting in the administration of school
42 maintained epinephrine auto-injectors in their ~~county~~ school district during a school year and
43 forward the data to State Superintendent of Schools. The State Superintendent of Schools shall
44 prepare an annual report to be presented to the Joint Committee on Government and Finance as
45 set forth in article three, chapter four of this code, by December 31 of each year.

46 (i) The State Board of Education, as defined in article two of this chapter, shall consult with
47 the State Health Officer, as defined in section four, article three, chapter thirty of this code, and
48 promulgate rules necessary to effectuate the provisions of this section in accordance with the
49 provisions of article three-b, chapter twenty-nine-a of this code. The rules shall provide, at a
50 minimum, for:

51 (1) The criteria for selection and minimum requirements of nonmedical school personnel
52 who may administer epinephrine auto-injectors following the necessary training;

53 (2) The training requirements necessary for nonmedical school personnel to be authorized
54 to administer an epinephrine auto-injection;

55 (3) Training on anaphylaxis and allergy awareness for food service workers in the school
56 system, if easily available locally;

57 (4) Storage requirements for maintaining the epinephrine auto-injectors within the schools;

58 (5) Comprehensive notice requirements to the parents of a student who was administered
59 a school maintained epinephrine auto-injection including who administered the injection, the
60 rational for administering the injection, the approximate time of the injection and any other
61 necessary elements to make the students' parents fully aware of the circumstances surrounding
62 the administration of the injection;

63 (6) Any and all necessary documentation to be kept and maintained regarding receipt,
64 inventory, storage and usage of all epinephrine auto-injectors;

65 (7) Detailed reporting requirements for ~~county~~ school district boards of education on
66 incidents of use of school maintained epinephrine auto-injectors during a school year; and

67 (8) Any other requirements necessary to fully implement this section.

§18-5-24. Purchase and display of United States flag; penalty for failure to display.

1 Boards of education shall purchase United States flags, four by six feet, of regulation
2 bunting, for schools in its district, and require the flags to be displayed from the schools during
3 the time the school is in session, except in inclement weather. The teacher, custodian or other
4 person in charge of the building during the session is responsible for this flag being displayed at
5 the school.

6 Any United States flag or flag of the State of West Virginia purchased out of the ~~county~~
7 school district board building fund must be manufactured in the United States.

§18-5-25. Duties of superintendent as secretary of board.

1 The ~~county~~ school district superintendent as secretary of the board shall:

2 (1) Take the oath prescribed in the Constitution before performing any of the duties of his
3 or her office;

4 (2) Attend all board meetings and record its official proceedings in a book kept for that
5 purpose;

6 (3) Record the number of each order issued, the name of the payee, the purpose for which
7 the order was issued, and the amount thereof. Every order shall be signed by the secretary and
8 the president of the board;

9 (4) Care for and keep all papers belonging to the board, including evidences of title,
10 contracts and obligations. They shall be kept in the secretary's office, accessibly arranged for
11 reference;

12 (5) Record and keep on file all papers and documents pertaining to the business of the
13 board;

14 (6) Keep the accounts and certify the reports required by law or requested by the board;

15 (7) Administer oaths to school officers, teachers and others making reports;

16 (8) Deliver in proper condition to his or her successor all records and property pertaining

17 to his or her office; and

18 (9) Exercise such other duties as are prescribed by law.

§18-5-26. School buildings as child care facilities.

1 The Legislature finds that school facilities are suitable for the provision of child day care
2 and that such day care centers are needed by school personnel and other parents in the school
3 and the community. Therefore, on or before April 1 of each year, each ~~county~~ school district board
4 of education shall compile a list of facilities under the jurisdiction of the ~~county~~ school district board
5 of education which would have space available for child day care for the benefit of school
6 employees and others during the next ensuing school year. Such space shall be made available
7 thereafter for use as a child day care facility upon the decision of the ~~county~~ school district board
8 or upon written request therefor by a duly authorized representative of the local membership of a
9 statewide association of school personnel, a parent-teacher association or any other entity
10 recognized by the ~~county~~ school district board as suitably responsible for the implementation of
11 such program in the ~~county~~ school district until such time as the space is deleted from the list for
12 good cause shown.

13 The child care facility shall be operated in accordance with guidelines to be adopted by a
14 committee appointed by the state superintendent which shall include representatives of the
15 Legislature, the department of human services, at least two individuals active in statewide
16 associations of school personnel, at least two individuals active in parent-teacher associations,
17 and at least two ~~county~~ school district administrators. Such guidelines may provide that the child
18 day care facility be funded by the parents, the school personnel or parent-teacher associations,
19 the ~~county~~ school district board of education or any combination of funding, including independent
20 or federal funding sources. Within such guidelines and dependent upon adequate facilities and
21 personnel, any ~~county~~ school district board of education may extend use of the child day care
22 facility to other than school personnel.

23 Upon decision by the ~~county~~ school district board and in accordance with state law, any

24 child care facility operated pursuant to the provisions of this section may be deemed operated by
25 the ~~county~~ school district for purposes of liability and insurance. Personnel hired therefor may be
26 deemed ~~county~~ school district personnel or may be independent contractors pursuant to a
27 management contract entered into between the ~~county~~ school district board and the child care
28 providers. Any parent-teacher association, school personnel association or other entity involved
29 in implementation of the program may also be party to such contract.

30 Schools need not be open for any other purpose for such day care centers to operate.

§18-5-32. Assistant superintendents; directors and supervisors of instruction and other educational activities.

1 (a) The ~~county~~ school district board, upon the recommendation of the ~~county~~ school district
2 superintendent, may employ an assistant whose term of employment may be not less than one
3 nor more than four years: *Provided*, That his or her term may not extend beyond that of the
4 incumbent ~~county~~ school district superintendent.

5 (b) The board may not employ more than one assistant for each two hundred teachers or
6 major fraction thereof.

7 (c) The ~~county~~ school district board, upon the recommendation of the ~~county~~ school district
8 superintendent, is authorized to employ general and special supervisors or directors of instruction
9 and of other educational activities as may be considered necessary.

10 (d) The employment of the assistant superintendent shall be on a twelve-month basis. The
11 period of employment for all others named herein shall be at the discretion of the ~~county~~ school
12 district board.

13 (e) Rules for qualifications of assistant superintendents, and directors and supervisors of
14 instruction and of other educational activities shall be fixed by the state board: *Provided*, That the
15 qualifications required for any assistant superintendent may not be higher than those required for
16 the ~~county~~ school district superintendent: *Provided, however*, That the rules do not affect the
17 status of any incumbent nor his or her right to succeed himself or herself in his or her assigned

18 position.

19 (f) The ~~county~~ school district board is authorized to reimburse the employees for their
20 necessary traveling expenses upon presentation of a monthly, itemized, sworn statement
21 approved by the ~~county~~ school district superintendent.

22 (g) Any person employed under the foregoing provision of this section, provided he or she
23 holds a valid teacher's certificate, shall be given continuing contract status as a teacher and shall
24 hold that status unless dismissed for statutory reasons.

25 (h) The job duties of a professional educator employed under the provisions of this section,
26 including a professional educator employed as a "supervisor" or "central office administrator" as
27 defined in section one, article one, chapter eighteen-a of this code, shall include substitute
28 teaching on at least three instructional days each school year: *Provided*, That the substitute
29 teaching requirement of this subsection does not apply to the superintendent and those who have
30 never held a teaching certificate or an administrative certificate.

31 (i) All acts or parts of acts inconsistent with this section are hereby repealed.

§18-5-35. Group insurance.

1 Whenever a majority of the full-time instructional and administrative employees of a ~~county~~
2 school district board of education, or a majority of the full-time nonteaching employees of said
3 board shall indicate in writing to the board of Education that it has subscribed to an automobile, a
4 life, health and accident, hospitalization or surgery insurance, or death benefit plan on a group
5 basis, and such majority has selected a licensed insurance agent or a company duly licensed to
6 do business in this state to write or provide for any one or more of such group insurance, or death
7 benefit coverages, the board may make proper periodical premium deductions from the regular
8 salary of any such employee as specified in a written assignment furnished it by each such
9 employee subscribing thereto, and pay the aggregate of such salary deductions over to the

10 insurance company or companies or voluntary association so selected.

11 For the purpose of this section when an employee shall have attained the age of eighteen
12 years, the said employee may be eligible to participate in the defined group plans.

§18-5-35. Group insurance.

1 Whenever a majority of the full-time instructional and administrative employees of a ~~county~~
2 school district board of education, or a majority of the full-time nonteaching employees of said
3 board shall indicate in writing to the board of Education that it has subscribed to an automobile, a
4 life, health and accident, hospitalization or surgery insurance, or death benefit plan on a group
5 basis, and such majority has selected a licensed insurance agent or a company duly licensed to
6 do business in this state to write or provide for any one or more of such group insurance, or death
7 benefit coverages, the board may make proper periodical premium deductions from the regular
8 salary of any such employee as specified in a written assignment furnished it by each such
9 employee subscribing thereto, and pay the aggregate of such salary deductions over to the
10 insurance company or companies or voluntary association so selected.

11 For the purpose of this section when an employee shall have attained the age of eighteen
12 years, the said employee may be eligible to participate in the defined group plans.

§18-5-36. Payment for fire services on public school property.

1 Where a fire company or fire department necessarily renders service in preventing or
2 extinguishing fires upon public school property situated beyond their legal sphere of operation,
3 the ~~county~~ school district board of education may pay, as a consideration for said services, a
4 reasonable compensation to such fire company or fire department and such expenditures therefor
5 shall be made from the general current expense fund as an incidental expense.

§18-5-36a. Authority to offer rewards.

1 A ~~county~~ school district board of education shall have the authority to offer a reward for

2 information leading to the arrest and/or conviction of any person or persons who damage or
3 destroy school property, or who threaten, offer or attempt to do so.

§18-5-39. Establishment of summer school programs; tuition.

1 (a) Inasmuch as the present ~~county~~ school district facilities for the most part lie dormant
2 and unused during the summer months, and inasmuch as there are many students who are in
3 need of remedial instruction and others who desire accelerated instruction, it is the purpose of
4 this section to provide for the establishment of a summer school program, which is to be separate
5 and apart from the full school term as established by each ~~county~~ school district.

6 (b) The board of any ~~county~~ school district has the authority to establish a summer school
7 program utilizing the public school facilities and to charge tuition for students who attend the
8 summer school. The tuition may not exceed in any case the actual cost of operation of the summer
9 school program: *Provided*, That any deserving pupil whose parents, in the judgment of the board,
10 are unable to pay the tuition, may attend the summer school program at a reduced charge or
11 without charge. The ~~county~~ school district board may determine the term and curriculum of the
12 summer schools based upon the particular needs of the individual ~~county~~ school district. The
13 curriculum may include, but is not limited to, remedial instruction, accelerated instruction and the
14 teaching of manual arts. The term of the summer school program may not be established in such
15 a manner as to interfere with the regular school term.

16 (c) The ~~county~~ school district boards may employ any certified teacher as teachers for this
17 summer school program. Certified teachers employed by the ~~county~~ school district board to teach
18 in the summer school program shall be paid an amount to be determined by the ~~county~~ school
19 district board and shall enter into a contract of employment in such form as is prescribed by the
20 ~~county~~ school district board: *Provided*, That teachers who teach summer courses of instruction
21 which are offered for credit and which are taught during the regular school year shall be paid at

22 the same daily rate they would receive if paid in accordance with the then current minimum
23 monthly salary in effect for teachers in that ~~county~~ school district.

24 (d) Any funds accruing from the tuitions shall be credited to and expended within the
25 existing framework of the general current expense fund of the ~~county~~ school district board.

26 (e) Notwithstanding any other provision of this code to the contrary, the board shall fill
27 professional positions established pursuant to the provisions of this section on the basis of
28 certification and length of time the professional has been employed in the ~~county's~~ school district's
29 summer school program. In the event that no employee who has been previously employed in
30 the summer school program holds a valid certification or licensure, a board shall fill the position
31 as a classroom teaching position in accordance with section seven-a, article four, chapter
32 eighteen-a of this code.

33 (f) Notwithstanding any other provision of the code to the contrary, the ~~county~~ school
34 district board may employ school service personnel to perform any related duties outside the
35 regular school term as defined in section eight, article four, chapter eighteen-a of this code. An
36 employee who was employed in any service personnel job or position during the previous summer
37 shall have the option of retaining the job or position if the job or position exists during any
38 succeeding summer. If the employee is unavailable or if the position is newly created, the position
39 shall be filled pursuant to section eight-b, article four, chapter eighteen-a of this code. When any
40 summer employee is absent, qualified regular employees within the same classification category
41 who are not working because their employment term for the school year has ended or has not yet
42 begun the succeeding school employment term, shall be given first opportunity to substitute for
43 the absent summer employee on a rotating and seniority basis. When any summer employee who
44 is employed in a summer position is granted a leave of absence for the summer months, the board
45 shall give regular employment status to the employee for that summer position which shall be
46 filled under the procedure set forth in section eight-b, article four, chapter eighteen-a of this code.
47 The summer employee on leave of absence has the option of returning to that summer position if

48 the position exists the succeeding summer or whenever the position is reestablished if it were
49 abolished. The salary of a summer employee shall be in accordance with the salary schedule of
50 persons regularly employed in the same position in the ~~county~~ school district where employed
51 and persons employed in those positions are entitled to all rights, privileges and benefits provided
52 in sections five-b, eight, eight-a, ten and fourteen, article four, chapter eighteen-a of this code:
53 *Provided*, That those persons are not entitled to a minimum employment term of two hundred
54 days for their summer position.

55 (g) If a ~~county~~ school district board reduces in force the number of employees to be
56 employed in a particular summer program or classification from the number employed in that
57 position in previous summers, the reductions in force and priority in reemployment to that summer
58 position shall be based upon the length of service time in the particular summer program or
59 classification.

60 (h) For the purpose of this section, summer employment for service personnel includes,
61 but is not limited to, filling jobs and positions as defined in section eight, article four, chapter
62 eighteen-a of this code and especially established for and which are to be predominantly
63 performed during the summer months to meet the needs of a ~~county~~ school district board.

§18-5-41. Content based censorship of American history prohibited.

1 (a) No ~~county~~ school district board of education shall prohibit the use as an educational
2 resource or teaching device any historical document related to the founding of the United States
3 of America or any government publication solely because the document contains a religious
4 reference or references: *Provided*, That the use of such materials must serve a bona fide secular
5 educational purpose which does not advance or inhibit a religion or particular religious belief.

6 (b) (1) As used in subsection (a) of this section, the term "historical document related to
7 the founding of the United States of America" shall include, but not be limited to, such documents
8 as the declaration of independence and the United States Constitution.

9 (2) As used in subsection (a) of this section, the term "government publication" shall

10 include, but not be limited to, such documents as decisions of the United States supreme court
11 and acts of Congress.

12 (c) In determining the purpose of the use of a document containing a reference to a deity
13 or a religion, consideration shall be given to the overall context of the document's use.

§18-5-44. Early childhood education programs.

1 (a) For the purposes of this section, an “early childhood education program” means a
2 program created under this section for children who have attained the age of four prior to
3 September 1 of the school year in which the children enter the program.

4 (b) *Findings.* –

5 (1) Among other positive outcomes, early childhood education programs have been
6 determined to:

7 (A) Improve overall readiness when children enter school;

8 (B) Decrease behavioral problems;

9 (C) Improve student attendance;

10 (D) Increase scores on achievement tests;

11 (E) Decrease the percentage of students repeating a grade; and

12 (F) Decrease the number of students placed in special education programs;

13 (2) Quality early childhood education programs improve school performance and low-
14 quality early childhood education programs may have negative effects, especially for at-risk
15 children;

16 (3) West Virginia has the lowest percentage of its adult population twenty-five years of age
17 or older with a bachelor’s degree and the education level of parents is a strong indicator of how
18 their children will perform in school;

19 (4) During the 2006-2007 school year, West Virginia ranked thirty-ninth among the fifty
20 states in the percentage of school children eligible for free and reduced lunches and this
21 percentage is a strong indicator of how the children will perform in school;

22 (5) For the school year 2008-2009, 13,135 students were enrolled in prekindergarten, a
23 number equal to approximately sixty-three percent of the number of students enrolled in
24 kindergarten;

25 (6) Excluding projected increases due to increases in enrollment in the early childhood
26 education program, projections indicate that total student enrollment in West Virginia will decline
27 by one percent, or by approximately 2,704 students, by the school year 2012-2013;

28 (7) In part, because of the dynamics of the state aid formula, county boards will continue
29 to enroll four-year-old students to offset the declining enrollments;

30 (8) West Virginia has a comprehensive kindergarten program for five-year-olds, but the
31 program was established in a manner that resulted in unequal implementation among the
32 counties, which helped create deficit financial situations for several county boards;

33 (9) Expansion of current efforts to implement a comprehensive early childhood education
34 program should avoid the problems encountered in kindergarten implementation;

35 (10) Because of the dynamics of the state aid formula, counties experiencing growth are
36 at a disadvantage in implementing comprehensive early childhood education programs; and

37 (11) West Virginia citizens will benefit from the establishment of quality comprehensive
38 early childhood education programs.

39 (c) Beginning no later than the school year 2012-2013 and continuing thereafter, ~~county~~
40 school district boards shall provide early childhood education programs for all children who have
41 attained the age of four prior to September 1 of the school year in which the children enter the
42 early childhood education program. Beginning no later than the school year 2016-2017 and
43 continuing thereafter, these early childhood education programs shall provide at least forty-eight
44 thousand minutes annually and no less than fifteen hundred minutes of instruction per week.

45 (d) The program shall meet the following criteria:

46 (1) It shall be voluntary, except that, upon enrollment, the provisions of section one-a,
47 article eight of this chapter apply to an enrolled student, subject to subdivision (4) of this

48 subsection;

49 (2) It shall be open to all children meeting the age requirement set forth in this section;

50 (3) It shall provide no less than fifteen hundred minutes of instruction per week, in a full
51 day program with at least forty-eight thousand minutes of instruction annually; and

52 (4) It shall permit a parent of an enrolled child to withdraw the child from that program by
53 notifying the district in writing. A child withdrawn under this section is not subject to the attendance
54 provisions of this chapter until that child again enrolls in a public school in this state.

55 (e) Enrollment of students in Head Start, or in any other program approved by the state
56 superintendent as provided in this section, may be counted toward satisfying the requirement of
57 subsection (c) of this section.

58 (f) For the purposes of implementation financing, all ~~counties~~ school districts are
59 encouraged to make use of funds from existing sources, including:

60 (1) Federal funds provided under the Elementary and Secondary Education Act pursuant
61 to 20 U. S. C. §6301, *et seq.*;

62 (2) Federal funds provided for Head Start pursuant to 42 U. S. C. §9831, *et seq.*;

63 (3) Federal funds for temporary assistance to needy families pursuant to 42 U. S. C. §601,
64 *et seq.*;

65 (4) Funds provided by the School Building Authority pursuant to article nine-d of this
66 chapter;

67 (5) In the case of ~~counties~~ school districts with declining enrollments, funds from the state
68 aid formula above the amount indicated for the number of students actually enrolled in any school
69 year; and

70 (6) Any other public or private funds.

71 (g) Each ~~county~~ school district board shall develop a plan for implementing the program
72 required by this section. The plan shall include the following elements:

73 (1) An analysis of the demographics of the ~~county~~ school district related to early childhood

74 education program implementation;

75 (2) An analysis of facility and personnel needs;

76 (3) Financial requirements for implementation and potential sources of funding to assist
77 implementation;

78 (4) Details of how the ~~county~~ school district board will cooperate and collaborate with other
79 early childhood education programs including, but not limited to, Head Start, to maximize federal
80 and other sources of revenue;

81 (5) Specific time lines for implementation; and

82 (6) Any other items the state board may require by policy.

83 (h) A ~~county~~ school district board shall submit its plan to the Secretary of the Department
84 of Health and Human Resources. The secretary shall approve the plan if the following conditions
85 are met:

86 (1) The ~~county~~ school district board has maximized the use of federal and other available
87 funds for early childhood programs; and

88 (2) The ~~county~~ school district board has provided for the maximum implementation of
89 Head Start programs and other public and private programs approved by the state superintendent
90 pursuant to the terms of this section; or

91 (3) The secretary finds that, if the ~~county~~ school district board has not met one or more of
92 the requirements of this subsection, the ~~county~~ school district board has acted in good faith and
93 the failure to comply was not the primary fault of the ~~county~~ school district board. Any denial by
94 the secretary may be appealed to the circuit court of the county in which the ~~county~~ school district
95 board is located.

96 (i) The ~~county~~ school district board shall submit its plan for approval to the state board.
97 The state board shall approve the plan if the ~~county~~ school district board has complied
98 substantially with the requirements of subsection (g) of this section and has obtained the approval
99 required in subsection (h) of this section.

100 (j) Every ~~county~~ school district board shall submit its plan for reapproval by the Secretary
101 of the Department of Health and Human Resources and by the state board at least every two
102 years after the initial approval of the plan and until full implementation of the early childhood
103 education program in the ~~county~~ school district. As part of the submission, the ~~county~~ school
104 district board shall provide a detailed statement of the progress made in implementing its plan.
105 The standards and procedures provided for the original approval of the plan apply to any
106 reapproval.

107 (k) A ~~county~~ school district board may not increase the total number of students enrolled
108 in the ~~county~~ school district in an early childhood program until its program is approved by the
109 Secretary of the Department of Health and Human Resources and the state board.

110 (l) The state board annually may grant a ~~county~~ school district board a waiver for total or
111 partial implementation if the state board finds that all of the following conditions exist:

112 (1) The ~~county~~ school district board is unable to comply either because:

113 (A) It does not have sufficient facilities available; or

114 (B) It does not and has not had available funds sufficient to implement the program;

115 (2) The ~~county~~ school district has not experienced a decline in enrollment at least equal
116 to the total number of students to be enrolled; and

117 (3) Other agencies of government have not made sufficient funds or facilities available to
118 assist in implementation.

119 Any ~~county~~ school district board seeking a waiver shall apply with the supporting data to
120 meet the criteria for which they are eligible on or before March 25 for the following school year.
121 The state superintendent shall grant or deny the requested waiver on or before April 15 of that
122 same year.

123 (m) The provisions of subsections (b), (c) and (d), section eighteen of this article relating
124 to kindergarten apply to early childhood education programs in the same manner in which they
125 apply to kindergarten programs.

126 (n) Except as required by federal law or regulation, no ~~county~~ school district board may
127 enroll students who will be less than four years of age prior to September 1 for the year they enter
128 school.

129 (o) Neither the state board nor the state department may provide any funds to any ~~county~~
130 school district board for the purpose of implementing this section unless the ~~county~~ school district
131 board has a plan approved pursuant to subsections (h), (i) and (j) of this section.

132 (p) The state board shall promulgate a rule in accordance with the provisions of article
133 three-b, chapter twenty-nine-a of this code for the purposes of implementing the provisions of this
134 section. The state board shall consult with the Secretary of the Department of Health and Human
135 Resources in the preparation of the rule. The rule shall contain the following:

136 (1) Standards for curriculum;

137 (2) Standards for preparing students;

138 (3) Attendance requirements;

139 (4) Standards for personnel; and

140 (5) Any other terms necessary to implement the provisions of this section.

141 (q) The rule shall include the following elements relating to curriculum standards:

142 (1) A requirement that the curriculum be designed to address the developmental needs of
143 four-year-old children consistent with prevailing research on how children learn;

144 (2) A requirement that the curriculum be designed to achieve long-range goals for the
145 social, emotional, physical and academic development of young children;

146 (3) A method for including a broad range of content that is relevant, engaging and
147 meaningful to young children;

148 (4) A requirement that the curriculum incorporate a wide variety of learning experiences,
149 materials and equipment, and instructional strategies to respond to differences in prior
150 experience, maturation rates and learning styles that young children bring to the classroom;

151 (5) A requirement that the curriculum be designed to build on what children already know

152 in order to consolidate their learning and foster their acquisition of new concepts and skills;

153 (6) A requirement that the curriculum meet the recognized standards of the relevant
154 subject matter disciplines;

155 (7) A requirement that the curriculum engage children actively in the learning process and
156 provide them with opportunities to make meaningful choices;

157 (8) A requirement that the curriculum emphasize the development of thinking, reasoning,
158 decision-making and problem-solving skills;

159 (9) A set of clear guidelines for communicating with parents and involving them in
160 decisions about the instructional needs of their children; and

161 (10) A systematic plan for evaluating program success in meeting the needs of young
162 children and for helping them to be ready to succeed in school.

163 (r) After the school year 2012-2013, on or before July 1 of each year, each ~~county~~ school
164 district board shall report the following information to the Secretary of the Department of Health
165 and Human Resources and the state superintendent:

166 (1) Documentation indicating the extent to which ~~county~~ school district boards are
167 maximizing resources by using the existing capacity of community-based programs, including,
168 but not limited to, Head Start and child care; and

169 (2) For those ~~county~~ school district boards that are including eligible children attending
170 approved, contracted community-based programs in their net enrollment for the purposes of
171 calculating state aid pursuant to article nine-a of this chapter, documentation that the ~~county~~
172 school district board is equitably distributing funding for all children regardless of setting.

§18-5-45. School calendar.

1 (a) As used in this section:

2 (1) "Instructional day" means a day within the instructional term which meets the following
3 criteria:

4 (A) Instruction is offered to students for at least the minimum amount of hours provided by

5 state board rule;

6 (B) Instructional time is used for instruction and cocurricular activities; and

7 (C) Other criteria as the state board determines appropriate.

8 (2) "Cocurricular activities" are activities that are closely related to identifiable academic
9 programs or areas of study that serve to complement academic curricula as further defined by
10 the state board.

11 (b) *Findings.* –

12 (1) The primary purpose of the school system is to provide instruction for students.

13 (2) The school calendar, as defined in this section, is designed to define the school term
14 both for employees and for instruction.

15 (3) The school calendar shall provide for one hundred eighty separate instructional days.

16 (c) The ~~county~~ school district board shall provide a school term for its schools that contains
17 the following:

18 (1) An employment term that excludes Saturdays and Sundays and consists of at least
19 two hundred days, which need not be successive. The beginning and closing dates of the
20 employment term may not exceed forty-eight weeks;

21 (2) Within the employment term, an instructional term for students of no less than one
22 hundred eighty separate instructional days, which includes an inclement weather and
23 emergencies plan designed to guarantee an instructional term for students of no less than one
24 hundred eighty separate instructional days;

25 (3) Within the employment term, noninstructional days shall total twenty and shall be
26 comprised of the following:

27 (A) Seven paid holidays;

28 (B) Election day as specified in section two, article five, chapter eighteen-a of this code;

29 (C) Six days to be designated by the ~~county~~ school district board to be used by the
30 employees outside the school environment, with at least four outside the school environment days

31 scheduled to occur after the one hundred and thirtieth instructional day of the school calendar;
32 and

33 (D) The remaining days to be designated by the ~~county~~ school district board for purposes
34 to include, but not be limited to:

35 (i) Curriculum development;

36 (ii) Preparation for opening and closing school;

37 (iii) Professional development;

38 (iv) Teacher-pupil-parent conferences;

39 (v) Professional meetings;

40 (vi) Making up days when instruction was scheduled but not conducted; and

41 (vii) At least four two-hour blocks of time for faculty senate meetings with each two-hour
42 block of time scheduled once at least every forty-five instructional days; and

43 (4) Scheduled out-of-calendar days that are to be used for instructional days in the event
44 school is canceled for any reason.

45 (d) A ~~county~~ school district board of education shall develop a policy that requires
46 additional minutes of instruction in the school day or additional days of instruction to recover time
47 lost due to late arrivals and early dismissals.

48 (e) If it is not possible to complete one hundred eighty separate instructional days with the
49 current school calendar, the ~~county~~ school district board shall schedule instruction on any
50 available noninstructional day, regardless of the purpose for which the day originally was
51 scheduled, or an out-of-calendar day and the day will be used for instruction of students: *Provided,*
52 That the provisions of this subsection do not apply to:

53 (A) Holidays;

54 (B) Election day;

55 (C) Saturdays and Sundays.

56 (f) The instructional term shall commence and terminate on a date selected by the ~~county~~

57 school district board.

58 (g) The state board may not schedule the primary statewide assessment program more
59 than thirty days prior to the end of the instructional year unless the state board determines that
60 the nature of the test mandates an earlier testing date.

61 (h) The following applies to cocurricular activities:

62 (1) The state board shall determine what activities may be considered cocurricular;

63 (2) The state board shall determine the amount of instructional time that may be consumed
64 by cocurricular activities; and

65 (3) Other requirements or restrictions the state board may provide in the rule required to
66 be promulgated by this section.

67 (i) Extracurricular activities may not be used for instructional time.

68 (j) Noninstructional interruptions to the instructional day shall be minimized to allow the
69 classroom teacher to teach.

70 (k) Prior to implementing the school calendar, the ~~county~~ school district board shall secure
71 approval of its proposed calendar from the state board or, if so designated by the state board,
72 from the state superintendent.

73 (l) In formulation of a school's calendar, a ~~county~~ school district school board shall hold at
74 least two public meetings that allow parents, teachers, teacher organizations, businesses and
75 other interested parties within the county to discuss the school calendar. The public notice of the
76 date, time and place of the public hearing must be published in a local newspaper of general
77 circulation in the area as a Class II legal advertisement, in accordance with the provisions of
78 article three, chapter fifty-nine of this code.

79 (m) The ~~county~~ school district board may contract with all or part of the personnel for a
80 longer term of employment.

81 (n) The minimum instructional term may be decreased by order of the state superintendent
82 in any ~~county~~ school district declared a federal disaster area and where the event causing the

83 declaration is substantially related to a reduction of instructional days.

84 (o) Notwithstanding any provision of this code to the contrary, the state board may grant
85 a waiver to a ~~county~~ school district board for its noncompliance with provisions of chapter
86 eighteen, eighteen-a, eighteen-b and eighteen-c of this code to maintain compliance in reaching
87 the mandatory one hundred eighty separate instructional days established in this section.

88 (p) The state board shall promulgate a rule in accordance with the provisions of article
89 three-b, chapter twenty-nine-a of this code for the purpose of implementing the provisions of this
90 section.

91 (q) The amendments to this section during the 2013 regular session of the Legislature
92 shall be effective for school years beginning on or after July 1, 2014, and the provisions of this
93 section existing immediately prior to the 2013 regular session of the Legislature remain in effect
94 for school years beginning prior to July 1, 2014.

§18-5-47. ~~County~~ School district board flood insurance requirements.

1 (a) Each ~~county~~ school district board shall maintain flood insurance on each insurable
2 building that it owns and that meets one or both of the following requirements:

3 (1) The building is within the identified special flood hazard area which is the area on a
4 flood hazard boundary map or a flood insurance rate map that is identified as an "A zone", a
5 numbered "A zone" or an "AE zone" or regulatory one hundred year floodplain and the building
6 has a replacement value that is greater than \$300,000; or

7 (2) The building has been damaged in a previous flood and flood insurance is required by
8 the Federal Emergency Management Agency.

9 (b) Each ~~county~~ school district board also shall maintain flood insurance on the contents
10 of each insurable building that it owns and that meets one or both of the requirements set forth in
11 subsection (a) of this section.

12 (c) The buildings and the contents of those buildings required to be insured by this section
13 shall be insured at the maximum amounts available through the National Flood Insurance

14 Program or the estimated replacement value of the structure and contents, whichever is less.

ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.

§18-5A-1. Intent and purpose of article.

1 The intent of this article is to facilitate and encourage the involvement of the school
2 community in the operation of the local schools to improve educational quality. This article is
3 intended to establish processes at each school which provide opportunities for involvement of the
4 school community in the operation of the local schools and to support local initiatives to improve
5 school performance. It is not the intent of this article to restrict the ability of the ~~county~~ school
6 district board of education in its efforts to effect ~~county~~ school district -wide ~~school~~ improvements.

§18-5A-2. Local school improvement councils; election.

1 (a) A local school improvement council shall be established at every school consisting of
2 the following:

3 (1) The principal, who serves as an ex officio member of the council and is entitled to vote;

4 (2) Three teachers elected by the faculty Senate of the school;

5 (3) One bus operator who transports students enrolled at the school and one school
6 service person, each elected by the school service personnel employed at the school;

7 (4) Three parent(s), guardian(s) or custodian(s) of students enrolled at the school elected
8 by the parent(s), guardian(s) or custodian(s) members of the school's parent teacher organization.

9 If there is no parent teacher organization, the parent(s), guardian(s) or custodian(s) members
10 shall be elected by the parent(s), guardian(s) or custodian(s) of students enrolled at the school in
11 such manner as may be determined by the principal;

12 (5) Two at-large members appointed by the principal, one of whom resides in the school's
13 attendance area and one of whom represents business or industry, neither of whom is eligible for
14 membership under any of the other elected classes of members;

15 (6) In the case of vocational-technical schools, the vocational director. If there is no
16 vocational director, then the principal may appoint no more than two additional representatives,

17 one of whom represents business and one of whom represents industry;

18 (7) In the case of a school with students in grade seven or higher, the student body
19 president or other student in grade seven or higher elected by the student body in those grades.

20 (b) Under no circumstances may more than one parent member of the council be then
21 employed at that school in any capacity.

22 (c) The principal shall arrange for such elections to be held prior to September 15, of each
23 school year to elect a council and shall give notice of the elections at least one week prior to the
24 elections being held. To the extent practicable, all elections to select council members shall be
25 held within the same week.

26 (d) Parent(s), guardian(s) or custodian(s), teachers and service personnel elected to the
27 council shall serve a two-year term and elections shall be arranged in such a manner that no more
28 than two teachers, no more than two parent(s), guardian(s) or custodian(s) and no more than one
29 service person are elected in a given year. All other nonex officio members shall serve one-year
30 terms.

31 (e) Council members may only be replaced upon death, resignation, failure to appear at
32 three consecutive meetings of the council for which notice was given, or a change in personal
33 circumstances so that the person is no longer representative of the class of members from which
34 appointed. In the case of a vacancy in an elected position, the chair of the council shall appoint
35 another qualified person to serve the unexpired term of the person being replaced or, in the case
36 of an appointed member of the council, the principal shall appoint a replacement as soon as
37 practicable.

38 (f) As soon as practicable after the election of council members, and no later than October
39 1, of each school year, the principal shall convene an organizational meeting of the school
40 improvement council. The principal shall notify each member in writing at least two employment
41 days in advance of the organizational meeting. At this meeting, the principal shall provide each
42 member with the following:

43 (1) A copy of the current applicable sections of this code;

44 (2) Any state board rule or regulation promulgated pursuant to the operation of these
45 councils; and

46 (3) Any information as may be developed by the Department of Education on the operation
47 and powers of local school improvement councils and their important role in improving student
48 and school performance and progress.

49 (g) The council shall elect from its membership a chair and two members to assist the
50 chair in setting the agenda for each council meeting. The chair shall serve a term of one year and
51 a person may not serve as chair for more than two consecutive terms. If the chair's position
52 becomes vacant for any reason, the principal shall call a meeting of the council to elect another
53 qualified person to serve the unexpired term. Once elected, the chair is responsible for notifying
54 each member of the school improvement council in writing two employment days in advance of
55 any council meeting.

56 (h) School improvement councils shall meet at least once every nine weeks or equivalent
57 grading period at the call of the chair or by three fourths of its members.

58 (1) The school improvement council shall schedule any meeting that involves the issue of
59 student discipline pursuant to subdivision (2), subsection (l) of this section, outside the regularly
60 scheduled working hours of any school employee member of the council.

61 (2) The school improvement council annually shall conduct a meeting to engage parents,
62 students, school employees and other interested parties in a positive and interactive dialogue
63 regarding effective discipline policies. The meeting shall afford ample time for the dialogue and
64 comply with any applicable provision of state, federal or ~~county~~ school district board policy, rule
65 or law, as appropriate, regarding student privacy rights.

66 (i) The local school improvement council shall meet at least annually with the ~~county~~
67 school district board, in accordance with the provisions in section fourteen, article five of this
68 chapter. At this annual meeting, the local school improvement council chair, or another member

69 designated by the chair, shall be prepared to address any matters as may be requested by the
70 ~~county~~ school district board as specified in the meeting agenda provided to the council and may
71 further provide any other information, comments or suggestions the local school improvement
72 council wishes to bring to the ~~county~~ school district board's attention. Anything presented under
73 this subsection shall be submitted to the ~~county~~ school district board in writing.

74 (j) School improvement councils shall be considered for the receipt of school of excellence
75 awards under section three of this article and competitive grant awards under section twenty-nine,
76 article two of this chapter and may receive and expend such grants for the purposes provided in
77 such section. In any and all matters which may fall within the scope of both the school
78 improvement councils and the school curriculum teams authorized in section five of this article,
79 the school curriculum teams have jurisdiction.

80 (k) In order to promote innovations and improvements in the environment for teaching and
81 learning at the school, a school improvement council shall receive cooperation from the school in
82 implementing policies and programs it may adopt to:

83 (1) Encourage the involvement of parent(s), guardian(s) or custodian(s) in their child's
84 educational process and in the school;

85 (2) Encourage businesses to provide time for their employees who are parent(s),
86 guardian(s) or custodian(s) to meet with teachers concerning their child's education;

87 (3) Encourage advice and suggestions from the business community;

88 (4) Encourage school volunteer programs and mentorship programs; and

89 (5) Foster utilization of the school facilities and grounds for public community activities.

90 (l) Each local school improvement council annually shall develop and deliver a report to
91 the ~~countywide~~ council on productive and safe schools. The report shall include:

92 (1) Guidelines for the instruction and rehabilitation of students who have been excluded
93 from the classroom, suspended from the school or expelled from the school, the description and
94 recommendation of in-school suspension programs, a description of possible alternative settings,

95 schedules for instruction and alternative education programs and an implementation schedule for
96 such guidelines. The guidelines shall include the following:

97 (A) A system to provide for effective communication and coordination between school and
98 local emergency services agencies;

99 (B) A preventive discipline program which may include the responsible students program
100 devised by the West Virginia Board of Education as adopted by the ~~county~~ school district board,
101 pursuant to the provisions of subsection (e), section one, article five, chapter eighteen-a of this
102 code; and

103 (C) A student involvement program, which may include the peer mediation program or
104 programs devised by the West Virginia Board of Education as adopted by the ~~county~~ school
105 district board, pursuant to the provisions of subsection (e), section one, article five, chapter
106 eighteen-a of this code; and

107 (2) The local school improvement council's findings regarding its examination of the
108 following, which also shall be reported to the ~~county~~ school district superintendent:

109 (A) Disciplinary measures at the school; and

110 (B) The fairness and consistency of disciplinary actions at the school. If the council
111 believes that student discipline at the school is not enforced fairly or consistently, it shall transmit
112 that determination in writing, along with supporting information, to the ~~county~~ school district
113 superintendent. Within ten days of receiving the report, the superintendent, or designee, shall
114 respond in writing to the council. The ~~county~~ school district board shall retain and file all such
115 correspondence and maintain it for public review.

116 (C) Any report or communication made as required by this subdivision shall comply with
117 any applicable provision of state, federal or ~~county~~ school district board policy, rule or law, as
118 appropriate, regarding student privacy rights.

119 (m) The council may include in its report to the ~~county~~ school district -wide council on
120 productive and safe schools provisions of the state Board of Education policy 4373, student code

121 of conduct, or any expansion of such policy which increases the safety of students in schools in
122 this state and is consistent with the policies and other laws of this state.

123 (n) Councils may adopt their own guidelines established under this section. In addition,
124 the councils may adopt all or any part of the guidelines proposed by other local school
125 improvement councils, as developed under this section, which are not inconsistent with the laws
126 of this state, the policies of the West Virginia Board of Education or the policies of the ~~county~~
127 school district board.

128 (o) The State Board of Education shall provide assistance to a local school improvement
129 council upon receipt of a reasonable request for that assistance. The state board also may solicit
130 proposals from other parties or entities to provide orientation training for local school improvement
131 council members and may enter into contracts or agreements for that purpose. Any training for
132 members shall meet the guidelines established by the state board.

**§18-5A-3. Authority and procedures for local school improvement councils to request
waivers of certain rules, policies and interpretations.**

1 The intent of this section is to establish a mechanism which allows local school level
2 initiatives to be designed and implemented to meet local school needs and circumstances. In
3 accordance with this intent, a local school improvement council established under the provisions
4 of this article may propose alternatives to the operation of the public school which alternatives will
5 meet or exceed the high quality standards established by the state board and will increase
6 administrative efficiency, enhance the delivery of instructional programs, promote community
7 involvement in the local school system or improve the educational performance of the school
8 generally. The proposal of the council shall set forth the objective or objectives to be accomplished
9 under the proposal, how the accomplishment of such objective or objectives will meet or exceed
10 the standards established by the state board, the indicators upon which the meeting of such
11 standards should be judged and a projection of any funds to be saved by the proposal and how
12 such funds will be reallocated within the school. The alternatives proposed by the council may

13 include matters which require the waiver of policies or rules promulgated by the state or ~~county~~
14 school district board and state superintendent interpretations: *Provided*, That such request for
15 waiver be submitted to the appropriate board adopting said rule or policy and that board may
16 approve the waiver. When a ~~county~~ school district board does not act within two months after
17 receiving a request for waiver of a ~~county~~ school district board policy or rule or disapproves such
18 a request, the local school improvement council may seek an advisory opinion from the state
19 board regarding the waiver request. The ~~county~~ school district board shall furnish the state board
20 with copies of all waiver requests together with their response thereto: *Provided, however*, That
21 when a local school improvement council votes to waive a state superintendent's interpretation,
22 the state superintendent need only be notified that the local council intends to waive the state
23 superintendent's interpretation: *Provided further*, That notwithstanding any other provisions of the
24 law to the contrary, council is not prohibited from permitting off-site classrooms to be developed
25 in conjunction with local businesses if those sites have met the requirements established by the
26 local board and if sites are located off campus. For an alternative to be proposed, at least two
27 thirds of the members must vote in favor thereof: *And provided further*, That if the alternative to
28 be proposed relates to a waiver of policies or rules promulgated by the state or ~~county~~ school
29 district board and state superintendent interpretations affecting employees, then prior to the
30 proposal of the alternative, a majority of the local affected employee group involved must agree.

31 A council may also submit a written statement, with supporting reasons, to the Legislative
32 Oversight commission on education accountability recommending a waiver of a statute or
33 legislative rule, which the commission shall review and determine whether a recommendation
34 should be made to the Legislature to waive such statute or rule.

35 When a council decides to propose an alternative, it shall forward a copy of the proposal
36 to the state board and the affected local board. The state board shall acknowledge receipt of the
37 proposed alternative, promptly review the proposed alternative in consultation with the ~~county~~
38 school district board or their agents and, in its discretion, approve implementation of the

39 alternative or reply to the council within a reasonable time as to its reasons for not approving the
40 proposed alternative. If the state board approves a proposed alternative, the state board shall
41 provide appropriate notice to the local school improvement council and the ~~county~~ school district
42 board and shall establish a process for evaluation of the operation of the alternative. Approval for
43 the operation of the alternative may be continued or revoked at any time based on the results and
44 findings of the evaluation.

45 The state board shall submit a report to the Legislative Oversight commission on
46 education accountability and the Governor on September 1, of each year summarizing the
47 proposed alternatives received, approved or rejected, continued or revoked during the preceding
48 school year and the results and findings of the evaluations. The report shall specifically identify
49 all policy, rule, and interpretation waiver requests including those requests made to ~~county~~ school
50 district boards by local school improvement councils received during the preceding year and the
51 disposition of each.

**§18-5A-3a. Waivers of statutes granted to public schools pursuant to recommendations
submitted by local school improvement councils; limitations.**

1 (a) The Legislature hereby grants a waiver from the statute or statutes indicated for the
2 following school or schools pursuant to and for the purposes enumerated in the written statement
3 recommending the waiver, with supporting reasons, approved by the local school improvement
4 council of the respective schools and recommended by the Legislative Oversight Commission on
5 Education Accountability in accordance with the provisions of section three of this article. The
6 grant of a waiver to a statute means that the school or schools granted the waiver may implement
7 the actions as specifically described in their written statement notwithstanding the provisions of
8 this code from which they are specifically waived. These waivers are limited to the purposes as
9 specifically described in the statement upon which the Legislative Oversight Commission on
10 Education Accountability made its recommendation for a waiver to the Legislature and are
11 expressly repealed for any modification or implementation of the described actions which changes

12 those purposes. However, nothing in this section prohibits a local school improvement council
13 school that has been granted a waiver from submitting a request to the Legislative Oversight
14 Commission on Education Accountability for modifications, subject to approval in accordance with
15 section three of this article.

16 (b) The following waivers are granted:

17 (1) Section two-b, article three, chapter eighteen-a of this code is waived for the schools
18 of Cabell County for the purpose of implementing a comprehensive new teacher induction
19 program, which purposes are as more specifically described in the schools written statement
20 approved by the county board and submitted to the Legislative Oversight Commission on
21 Education Accountability on February 24, 2011.

22 (2) Section one-a, article eight, chapter eighteen of this code is waived for the schools of
23 Marshall County for the purpose of increasing the compulsory school attendance age in Marshall
24 County from seventeen to eighteen years of age as a part of its countywide dropout prevention
25 initiative as requested by letter dated January 4, 2016, and recommended by the Legislative
26 Oversight Commission on Education Accountability on January 18, 2016.

27 (3) Section one-a, article eight, chapter eighteen of this code is waived for the schools of
28 Wyoming County for the purpose of increasing the compulsory school attendance age in
29 Wyoming County from seventeen to eighteen years of age as a part of its countywide dropout
30 prevention initiative as requested by letter dated February 25, 2016 and recommended by the
31 Legislative Oversight Commission on Education Accountability on February 25, 2016.

**§18-5A-5. Public school faculty senates established; election of officers; powers and
duties.**

1 (a) There is established at every public school in this state a faculty senate which is
2 comprised of all permanent, full-time professional educators employed at the school who shall all
3 be voting members. Professional educators, as used in this section, means "professional
4 educators" as defined in chapter eighteen-a of this code. A quorum of more than one half of the

5 voting members of the faculty shall be present at any meeting of the faculty senate at which official
6 business is conducted. Prior to the beginning of the instructional term each year, but within the
7 employment term, the principal shall convene a meeting of the faculty senate to elect a chair, vice
8 chair and secretary and discuss matters relevant to the beginning of the school year. The vice
9 chair shall preside at meetings when the chair is absent. Meetings of the faculty senate shall be
10 held during the times provided in accordance with subdivision (12), subsection (b) of this section
11 as determined by the faculty senate. Emergency meetings may be held during noninstructional
12 time at the call of the chair or a majority of the voting members by petition submitted to the chair
13 and vice chair. An agenda of matters to be considered at a scheduled meeting of the faculty
14 senate shall be available to the members at least two employment days prior to the meeting. For
15 emergency meetings the agenda shall be available as soon as possible prior to the meeting. The
16 chair of the faculty senate may appoint such committees as may be desirable to study and submit
17 recommendations to the full faculty senate, but the acts of the faculty senate shall be voted upon
18 by the full body.

19 (b) In addition to any other powers and duties conferred by law, or authorized by policies
20 adopted by the state or ~~county~~ school district board or bylaws which may be adopted by the faculty
21 senate not inconsistent with law, the powers and duties listed in this subsection are specifically
22 reserved for the faculty senate. The intent of these provisions is neither to restrict nor to require
23 the activities of every faculty senate to the enumerated items except as otherwise stated. Each
24 faculty senate shall organize its activities as it considers most effective and efficient based on
25 school size, departmental structure and other relevant factors.

26 (1) Each faculty senate shall control funds allocated to the school from legislative
27 appropriations pursuant to section nine, article nine-a of this chapter. From those funds, each
28 classroom teacher and librarian shall be allotted \$100 for expenditure during the instructional year
29 for academic materials, supplies or equipment which, in the judgment of the teacher or librarian,
30 will assist him or her in providing instruction in his or her assigned academic subjects or shall be

31 returned to the faculty senate: *Provided*, That nothing contained herein prohibits the funds from
32 being used for programs and materials that, in the opinion of the teacher, enhance student
33 behavior, increase academic achievement, improve self esteem and address the problems of
34 students at risk. The remainder of funds shall be expended for academic materials, supplies or
35 equipment in accordance with a budget approved by the faculty senate. Notwithstanding any other
36 provisions of the law to the contrary, funds not expended in one school year are available for
37 expenditure in the next school year: *Provided, however*, That the amount of ~~county~~ school district
38 funds budgeted in a fiscal year may not be reduced throughout the year as a result of the faculty
39 appropriations in the same fiscal year for such materials, supplies and equipment. Accounts shall
40 be maintained of the allocations and expenditures of such funds for the purpose of financial audit.
41 Academic materials, supplies or equipment shall be interpreted broadly, but does not include
42 materials, supplies or equipment which will be used in or connected with interscholastic athletic
43 events.

44 (2) A faculty senate may establish a process for members to interview or otherwise obtain
45 information regarding applicants for classroom teaching vacancies that will enable the faculty
46 senate to submit recommendations regarding employment to the principal. To facilitate the
47 establishment of a process that is timely, effective, consistent among schools and ~~counties~~ school
48 districts, and designed to avoid litigation or grievance, the state board shall promulgate a rule
49 pursuant to article three-b, chapter twenty-nine-a of this code to implement the provisions of this
50 subdivision. The rule may include the following:

51 (A) A process or alternative processes that a faculty senate may adopt;

52 (B) If determined necessary, a requirement and procedure for training for principals and
53 faculty senate members or their designees who may participate in interviews and provisions that
54 may provide for the compensation based on the appropriate daily rate of a classroom teacher
55 who directly participates in the training for periods beyond his or her individual contract;

56 (C) Time lines that will assure the timely completion of the recommendation or the

57 forfeiture of the right to make a recommendation upon the failure to complete a recommendation
58 within a reasonable time;

59 (D) The authorization of the faculty senate to delegate the process for making a
60 recommendation to a committee of no less than three members of the faculty senate; and

61 (E) Such other provisions as the state board determines are necessary or beneficial for
62 the process to be established by the faculty senate.

63 (3) A faculty senate may nominate teachers for recognition as outstanding teachers under
64 state and local teacher recognition programs and other personnel at the school, including parents,
65 for recognition under other appropriate recognition programs and may establish such programs
66 for operation at the school.

67 (4) A faculty senate may submit recommendations to the principal regarding the
68 assignment scheduling of secretaries, clerks, aides and paraprofessionals at the school.

69 (5) A faculty senate may submit recommendations to the principal regarding establishment
70 of the master curriculum schedule for the next ensuing school year.

71 (6) A faculty senate may establish a process for the review and comment on sabbatical
72 leave requests submitted by employees at the school pursuant to section eleven, article two of
73 this chapter.

74 (7) Each faculty senate shall elect three faculty representatives to the local school
75 improvement council established pursuant to section two of this article.

76 (8) Each faculty senate may nominate a member for election to the ~~county~~ school district
77 staff development council pursuant to section eight, article three, chapter eighteen-a of this code.

78 (9) Each faculty senate shall have an opportunity to make recommendations on the
79 selection of faculty to serve as mentors for beginning teachers under beginning teacher internship
80 programs at the school.

81 (10) A faculty senate may solicit, accept and expend any grants, gifts, bequests, donations
82 and any other funds made available to the faculty senate: *Provided*, That the faculty senate shall

83 select a member who has the duty of maintaining a record of all funds received and expended by
84 the faculty senate, which record shall be kept in the school office and is subject to normal auditing
85 procedures.

86 (11) Any faculty senate may review the evaluation procedure as conducted in their school
87 to ascertain whether the evaluations were conducted in accordance with the written system
88 required pursuant to section twelve, article two, chapter eighteen-a of this code or pursuant to
89 section two, article three-c, chapter eighteen-a of this code, as applicable, and the general intent
90 of this Legislature regarding meaningful performance evaluations of school personnel. If a
91 majority of members of the faculty senate determine that such evaluations were not so conducted,
92 they shall submit a report in writing to the State Board of Education: *Provided*, That nothing herein
93 creates any new right of access to or review of any individual's evaluations.

94 (12) A local board shall provide to each faculty senate a two-hour block of time for a faculty
95 senate meeting on a day scheduled for the opening of school prior to the beginning of the
96 instructional term and at least four additional two-hour blocks of time during noninstructional days,
97 with each two-hour block of time scheduled once at least every forty-five instructional days. A
98 faculty senate may meet for an unlimited block of time during noninstructional days to discuss
99 and plan strategies to improve student instruction and to conduct other faculty senate business.
100 A faculty senate meeting scheduled on a noninstructional day shall be considered as part of the
101 purpose for which the noninstructional day is scheduled. This time may be used and determined
102 at the local school level and includes, but is not limited to, faculty senate meetings.

103 (13) Each faculty senate shall develop a strategic plan to manage the integration of special
104 needs students into the regular classroom at their respective schools and submit the strategic
105 plan to the superintendent of the ~~county~~ school district board periodically pursuant to guidelines
106 developed by the State Department of Education. Each faculty senate shall encourage the
107 participation of local school improvement councils, parents and the community at large in
108 developing the strategic plan for each school.

109 Each strategic plan developed by the faculty senate shall include at least: (A) A mission
110 statement; (B) goals; (C) needs; (D) objectives and activities to implement plans relating to each
111 goal; (E) work in progress to implement the strategic plan; (F) guidelines for placing additional
112 staff into integrated classrooms to meet the needs of exceptional needs students without
113 diminishing the services rendered to the other students in integrated classrooms; (G) guidelines
114 for implementation of collaborative planning and instruction; and (H) training for all regular
115 classroom teachers who serve students with exceptional needs in integrated classrooms.

**§18-5A-6. Establishment of school curriculum teams; process for teacher collaboration to
improve learning.**

1 (a) There shall be established at each school in the state a school curriculum team
2 composed of the school principal, the counselor designated to serve that school and no fewer
3 than three teachers representative of the grades taught at the school and chosen by the faculty
4 senate: In instances where the counselor is assigned to an elementary school or a combination
5 elementary and middle school on less than a one-half time basis, a school curriculum team
6 established at that school may meet on days when the counselor is not at the school and the
7 principal shall consult with the counselor on the issues relevant to the meeting agenda.

8 (b) The purposes of this section are to implement the following goals:

9 (1) Provide professional opportunities for teachers, administrators and other school
10 personnel that allow them to have a direct voice in the operation of their schools and to create a
11 culture of shared decision-making focused on the ultimate goal of raising student achievement;

12 (2) Encourage the use of different, high-quality models of teaching, scheduling and other
13 aspects of educational delivery that meet a variety of student needs;

14 (3) Increase high-quality educational opportunities for all students that close achievement
15 gaps between high-performing and low-performing groups of public school students; and

16 (4) Provide public schools with increased school-level freedom and flexibility to achieve
17 these purposes when they have achieved exceptional levels of results-driven accountability.

18 (c) Powers and duties of the school curriculum team. --

19 (1) Establish for use at the school the programs and methods to be used to implement a
20 curriculum based on state-approved content standards that meet the needs of students at the
21 individual school.

22 (A) The curriculum shall focus on reading, composition, mathematics, science and
23 technology.

24 (B) The curriculum thus established shall be submitted to the ~~county~~ school district board
25 which may approve for implementation at the school or may return to the curriculum team for
26 reconsideration.

27 (2) Review the list of other, non-required testing and assessment instruments provided by
28 the state board through the statewide assessment program as provided in section five, article two-
29 e of this chapter. The curriculum team may select one or more tests or assessment instruments
30 that are applicable to the grade levels at the school for use at the school to improve student
31 learning.

32 (3) Establish for use at the school the assessments, instructional strategies and programs
33 that it determines are best suited to promote student achievement and to achieve content
34 standards for courses required by the state board. The curriculum team shall submit the
35 established assessments, instructional strategies and programs to the ~~county~~ school district board
36 which shall approve the recommendations for implementation at the school or shall return them
37 to the curriculum team for reconsideration.

38 (d) Notwithstanding subsection (c) of this section, the school curriculum team established
39 at a school that has achieved adequate yearly progress or has achieved an accreditation status
40 of distinction or exemplary in accordance with section five, article two-e of this chapter, may use
41 the assessments and implement the instructional strategies and programs consistent with the
42 approved curriculum that it determines are best suited to promote student achievement at the
43 school.

44 (1) The school may not be required to assess students using any specific assessment
45 except the state summative assessment known as the WESTEST2 or any successor tests, the
46 Alternative Performance Task Assessment, the Online Writing Assessment, and the National
47 Assessment of Educational Progress (NAEP); and

48 (2) The school may not be required to employ any specific instructional strategy or
49 program to achieve content standards for courses required by the state board, except as
50 approved by the school curriculum team.

51 (e) If a school fails to achieve adequate yearly progress or if it receives any school
52 approval level other than distinction or exemplary as set forth in section five, article two-e of this
53 chapter, the curriculum team may not exercise the options provided in subsections (d) and (i) of
54 this article until the school has regained one or more of these credentials.

55 (f) Nothing in this section exempts a school from assessments required by statute or state
56 board policy including, but not limited to, the state summative assessment known as the
57 WESTEST2 or any successor tests, the Alternative Performance Task Assessment, the Online
58 Writing Assessment, and the National Assessment of Educational Progress (NAEP).

59 (g) The school curriculum team may apply for a waiver for instructional resources
60 approved and adopted pursuant to article two-a of this chapter if, in the judgment of the team, the
61 instructional resources necessary for the implementation of the instructional strategies and
62 programs best suited to teach the school's curriculum are not available through the normal
63 adoption process.

64 (h) The school curriculum team may apply for a grant from the state board to develop
65 and/or implement remedial and accelerated programs to meet the needs of the students at the
66 individual school.

67 (i) *Process for teacher collaboration.* --

68 (1) Notwithstanding the application and approval process established by article five-c of
69 this chapter, at a school that has achieved adequate yearly progress or has achieved a school

70 accreditation status of distinction or exemplary in accordance with section five, article two-e of
71 this chapter, the faculty senate, with approval of the principal, may establish a process for teacher
72 collaboration to improve instruction and learning.

73 (A) The collaborative process may be established in addition to, or as an alternative to,
74 the school curriculum team provided for in subsection (a) of this section.

75 (B) The mission of the collaboration process is to review student academic performance
76 based on multiple measures, to identify strategies to improve student performance and make
77 recommendations for improvement to be implemented subject to approval of the principal.

78 (C) The teacher collaborative includes members the faculty senate determines are
79 necessary to address the needed improvements in the academic performance of students at the
80 school. If applicable, the collaborative may consist of multiple subject area subcommittees which
81 may meet independently.

82 (2) If a collaborative process is established as an alternative to the school curriculum team,
83 the teacher collaborative has all the powers and duties assigned to school curriculum teams.

84 (A) The collaborative process also may incorporate the functions of the Strategic Planning
85 Committee, the Technology Team, and/or the School Support Team.

86 (B) When the functions of any or all of these committees are incorporated into the
87 collaborative process, the school is not required to establish a separate committee for any one
88 whose functions have been assumed by the collaborative.

ARTICLE 5B. SCHOOL INNOVATION ZONES ACT.

§18-5B-3. School innovation zones; application for designation; state board rule.

1 (a) A school, a group of schools, a subdivision or department of a group of schools, or a
2 subdivision or department of a school may be designated as an innovation zone in accordance
3 with this article.

4 (b) The state board shall promulgate a rule, including an emergency rule if necessary, in
5 accordance with article three-b, chapter twenty-nine-a of this code to implement the provisions of

6 this article. The rule shall include provisions for at least the following:

7 (1) A process for a school, a group of schools, a subdivision or department of a group of
8 schools or a subdivision or department of a school to apply for designation as an innovation zone
9 that encompasses at least the following:

10 (A) The manner, time and process for the submission of an innovation zone application;

11 (B) The contents of the application, which must include a general description of the
12 innovations the school or schools seek to institute and an estimation of the employees who may
13 be affected by the implementation of the innovations; and

14 (C) Factors to be considered by the state board when evaluating an application, which
15 shall include, but are not limited to, the following factors:

16 (i) The level of staff commitment to apply for designation as an innovation zone as
17 determined by a vote by secret ballot at a special meeting of employees eligible to vote on the
18 plan, as provided in section six of this article;

19 (ii) Support from parents, students, the ~~county~~ school district board of education, the local
20 school improvement council and school business partners; and

21 (iii) The potential for an applicant to be successful as an innovation zone; and

22 (2) Standards for the state board to review applications for designation as innovation
23 zones and to make determinations on the designation of innovation zones.

24 (c) The state board shall review innovation zone applications in accordance with the
25 standards adopted by the board and shall determine whether to designate the applicant as an
26 innovation zone. The state board shall notify an applicant of the board's determination within sixty
27 days of receipt of an innovation zone application.

28 When initially designating innovation zones after the enactment of this article by the first
29 extraordinary session of the 2009 Legislature, the state board shall consider applicants for
30 designation in the following order: (1) A school and groups of schools; (2) a group of schools
31 seeking designation across the same subdivision or department of the schools; and (3) a school

32 seeking designation of a subdivision or a department.

33 (d) When designating innovation zones under these provisions following the amendment
34 and reenactment of this section by the Legislature at its regular session 2014, and for each of the
35 four succeeding school years, the state board shall establish a priority for applications that include
36 the establishment of entrepreneurship education programs as a curricular offering for students.
37 To qualify under this priority, the program strategy must include the active involvement of one or
38 more partners from the business community in program delivery. Nothing in this subsection
39 requires the state board to designate all applicants that include the establishment of
40 entrepreneurship education programs as innovation zones, or to exclude other qualified
41 applicants for innovations in other areas from designation.

§18-5B-4. Innovation zones; required plans; plan approval; state board rule.

1 (a) The rule promulgated by the state board pursuant to section three of this article also
2 shall include at least the following:

3 (1) Each school, group of schools, subdivision or department of a group of schools or
4 subdivision or department of a school designated as an innovation zone or seeking designation
5 as an innovation zone in accordance with this article shall develop an innovation zone plan;

6 (2) The innovation zone plan shall contain:

7 (A) A description of the programs, policies or initiatives the school, group of schools,
8 subdivision or department of a group of schools or subdivision or department of a school intends
9 to implement as an innovative strategy to improve student learning if the plan is approved in
10 accordance with section five of this article;

11 (B) A list of all ~~county~~ school district and state board rules, policies and interpretations,
12 and all statutes, if any, identified as prohibiting or constraining the implementation of the plan,
13 including an explanation of the specific exceptions to the rules, policies and interpretations and
14 statutes required for plan implementation. A school, a group of schools, a subdivision or
15 department of a group of schools or a subdivision or department of a school may not request an

16 exception nor may an exception be granted from any of the following:

17 (i) An assessment program administered by the West Virginia Department of Education;

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

20 (iii) Section seven, article two and sections seven-a, seven-b, eight and eight-b, article
21 four, chapter eighteen-a of this code, except as provided in section eight of this article; and

22 (C) Any other information the state board requires.

23 (3) The innovation zone plan may include:

24 (A) An emphasis in the early childhood through intermediate grade levels on ensuring that
25 each student is prepared fully at each grade level, including additional intervention strategies at
26 grade levels three and eight to reinforce the preparation of students who are not prepared fully
27 for promotion, or an emphasis in the secondary grade levels on ensuring that each student is
28 prepared fully for college or other post-secondary education, as applicable for the school; and

29 (B) An emphasis on innovative strategies that allows academically advanced students to
30 pursue academic learning above grade level or not available through the normal curriculum at the
31 school.

32 (b) Each school, group of schools, subdivision or department of a group of schools or
33 subdivision or department of a school designated or seeking designation as an innovation zone
34 shall submit its innovation zone plan to the school's employees, the ~~county~~ school district
35 superintendent and ~~county~~ school district board having jurisdiction over the school, the state
36 board, and the state superintendent in accordance with section five of this article.

**§18-5B-5. Approval of innovation zone plans; waiver of statutes, policies, rules or
interpretations.**

1 (a) Each school, group of schools, subdivision or department of a group of schools or
2 subdivision or department of a school designated or seeking designation as an innovation zone
3 shall:

4 (1) Submit its innovation zone plan to each employee regularly employed at the school if
5 the employee's primary job duties would be affected by the implementation of the plan. An
6 innovation zone plan is approved by school employees when approved by a vote by secret ballot
7 as provided in section six of this article;

8 (2) Submit its innovation zone plan as approved by vote of school employees to the ~~county~~
9 school district superintendent and board for review. The ~~county~~ school district board shall within
10 sixty days of receipt of the plan review the plan and with recommendations from the ~~county~~ school
11 district superintendent report its support or concerns, or both, and return the plan and report to
12 the school principal, faculty Senate and local school improvement council; and

13 (3) Submit its innovation zone plan as approved by vote of the school employees eligible
14 to vote on the plan along with the report of the ~~county~~ school district board to the state board and
15 state superintendent for review. The ~~county~~ school district board shall be given an opportunity to
16 present its concerns with the plan, if any, to the state board during its review. Except as provided
17 in subsection (c) of this section, the state board and state superintendent shall approve or
18 disapprove the plan within sixty days of receipt, subject to the following:

19 (A) No exceptions to ~~county~~ school district or state board rules, policies or interpretations
20 are granted unless both the state superintendent and the state board approve the plan at least
21 conditionally pursuant to subsections (b) and (c) of this section; and

22 (B) If the plan is disapproved, the state superintendent, the state board or both, as
23 applicable, shall communicate the reasons for the disapproval to the school, the group of schools,
24 the subdivision or department of a group of schools or the subdivision or department of a school
25 and shall make recommendations for improving the plan. The school, the group of schools, the
26 subdivision or department of a group of schools or the subdivision or department of a school may
27 amend the plan pursuant to subsection (d) of this section.

28 (b) Upon the approval of an innovation zone plan by the state board and state
29 superintendent, all exceptions to ~~county~~ school district and state board rules, policies and

30 interpretations listed within the plan are granted, subject to the limitations contained in subdivision
31 (B), subparagraph (2), subsection (a) of section four of this article.

32 (c) If an innovation zone plan, or a part thereof, may not be implemented unless an
33 exception to a statute is granted by Act of the Legislature, the state board and state
34 superintendent may approve the plan, or the part thereof, only upon the condition that the
35 Legislature acts to grant the exception. If the state board and state superintendent approve a plan
36 on that condition, the state board and state superintendent shall submit the plan with the request
37 for an exception to a statute, along with supporting reasons, to the Legislative Oversight
38 Commission on Education Accountability. The commission shall review the plan and exemption
39 request and make a recommendation to the Legislature regarding the exception requested.

40 (d) The rule promulgated by the state board pursuant to section three of this article shall
41 include a process for amending or revising an innovation zone plan. The process shall require
42 that any amendments or revisions to an innovation zone plan are subject to the approval
43 requirements of subsection (a) of this section.

§18-5B-6. Employee approval of innovation plan application and plan; transfer of employees.

1 (a) An employee shall be eligible to vote in accordance with the provisions of this section
2 if: (1) The employee is regularly employed at the school; and (2) the employee's primary job duties
3 will be affected by the implementation of the innovation zone plan. The panel created in
4 subsection (c) of this section and the principal shall determine which employees are eligible to
5 vote in accordance with this subsection. No employee may be eligible to vote unless both the
6 panel and the principal determine that the employee is eligible to vote.

7 (b) A secret ballot vote at a special meeting of all employees regularly employed at the
8 school who are eligible to vote in accordance with this section shall be conducted to determine
9 the following:

10 (1) The level of employee commitment to apply for designation as an innovation zone in

11 accordance with section three of this article; and

12 (2) The approval of an innovation zone plan as required by section five of this article.

13 (c) A panel consisting of the elected officers of the faculty Senate of the school or schools,
14 one representative of the service personnel employed at the school and three parent members
15 appointed by the local school improvement council shall call the meeting required in subsection
16 (b) of this section, conduct the votes and certify the results to the principal, the ~~county~~ school
17 district superintendent and the president of the ~~county~~ school district board. The panel shall
18 provide notice of the special meeting to all employees eligible to vote at least two weeks prior to
19 the meeting and shall provide an absentee ballot to each employee eligible to vote who cannot
20 attend the meeting to vote.

21 (d) At least eighty percent of the employees who are eligible to vote in accordance with
22 this section must vote to apply for designation as an innovation zone and to approve the school's
23 innovation zone plan before the level of staff commitment at the school is sufficient for the school
24 to apply for designation and before the plan is approved by the school.

25 (e) An employee regularly employed at a school applying for or designated as an
26 innovation zone whose job duties may be affected by implementation of the innovation zone plan
27 or proposed plan may request a transfer to another school in the school district. The ~~county~~ school
28 district board shall make every reasonable effort to accommodate the transfer.

§18-5B-8. Teacher vacancies in an innovation zone; job postings exceeding certain qualifications and requirements; approval of postings.

1 A school, group of schools, subdivision or department of a group of schools, or a
2 subdivision or department of a school whose school innovation zone plan has been approved in
3 accordance with section five of this article may make a job posting for a teacher vacancy at the
4 school, the group of schools, the subdivision or department of a group of schools, or the
5 subdivision or department of a school designated as an innovation zone that sets forth standards
6 or qualifications that exceed the standards and qualifications provided in section seven-a, article

7 four, chapter eighteen-a of this code: *Provided*, That teachers in the ~~county~~ school district approve
8 the job posting by majority vote: *Provided, however*, That the ~~county~~ school district superintendent
9 administers the vote and the record of the vote remains on file in the personnel office of the ~~county~~
10 school district board until the school group of schools, subdivision or department of a group of
11 schools, or a subdivision or department of a school is no longer designated as an innovation zone.

**§18-5B-9. Establishment of new innovation zone schools by state institutions of higher
education.**

1 (a) A state institution of higher education may establish a new innovation zone school
2 subject to the following:

3 (1) The school will be under the jurisdiction of the state institution of higher education;

4 (2) The ~~county~~ school district board with jurisdiction over the school district in which the
5 new school is planned to be located must approve the establishment of the new innovation zone
6 school;

7 (3) The state institution of higher education must enter into cooperative agreements with
8 the ~~county~~ school district board or ~~county~~ school district boards whose students attend the new
9 innovation zone school. The agreements shall include at least required reporting on student
10 attendance, academic progress and any other matters relating to the administration, operation
11 and support of the school agreed to by institution and the board or boards;

12 (4) Students attending the school shall be enrolled in a school in their ~~county~~ school district
13 of residence subject to the policies of the ~~county~~ school district. The students may participate in
14 extracurricular and cocurricular activities at the ~~county~~ school district school in which they are
15 enrolled and, subject to the cooperative agreement with the state institution of higher education,
16 participate in curricular activities at the ~~county~~ school district school in which they are enrolled;

17 (5) No funds provided to support the planning and implementation of school innovation
18 zones pursuant to this article may be used for a state institution of higher education to establish
19 a new innovation zone school; and

20 (6) A school established in accordance with this section may not be funded with: (1)
21 Moneys appropriated by the Legislature to fund the innovation zone program; or (2) state or
22 ~~county~~ school district moneys that result from the school aid formula.

23 (b) The state board shall promulgate a rule, including an emergency rule if necessary, in
24 accordance with article three-b, chapter twenty-nine-a of this code for a state institution of higher
25 education to establish a new innovation zone school. The rule shall include provisions for at least
26 the following:

27 (1) A process for a state institution of higher education in accordance with this section to
28 apply for designation as innovation zone and for approval of its innovation zone plan that
29 encompasses at least the following:

30 (A) The manner, time and process for the submission of an application for innovation zone
31 designation and for approval of its innovation zone plan;

32 (B) The contents of the application; and

33 (C) Factors to be considered by the state board when evaluating an application and plan,
34 which shall include, but are not limited to, support from parents, students, ~~county~~ school district
35 board or boards of education, the local school improvement council or councils and school
36 business partners and the potential for a school to be successful as an innovation zone.

37 (2) A school created by state institution of higher education designated as an innovation
38 zone or seeking designation as an innovation zone in accordance with this section shall develop
39 an innovation zone plan that includes at least the following:

40 (A) A description of the programs, policies or initiatives the state institution of higher
41 education intends to implement as an innovative strategy to improve student learning if the plan
42 is approved;

43 (B) The approval of the ~~county~~ school district board of education with jurisdiction over the
44 school district in which the new school is planned to be or is located and the cooperative
45 agreements with the ~~county~~ school district board or ~~county~~ school district boards whose students

46 attend the new innovation zone school;

47 (C) A list of all ~~county~~ school district and state board rules, policies and interpretations,
48 and all statutes, if any, identified as prohibiting or constraining the implementation of the plan,
49 including an explanation of the specific exceptions to the rules, policies and interpretations and
50 statutes required for plan implementation;

51 (D) A policy under which the state institution of higher education and participating ~~county~~
52 school district board or boards of education agree to meet the accountability requirements for
53 student assessment under all applicable assessment programs administered by the West Virginia
54 Department of Education and provisions of law or policy required by the No Child Left Behind Act
55 of 2001, Public Law No. 107-110 or other federal law; and

56 (E) Any other information the state board requires.

57 (3) Standards for the state board to review applications for designation as innovation
58 zones and to make determinations on the approval of innovation zone plans.

59 (c) The state board and state superintendent shall review innovation zone applications
60 and plans of a school created by a state institution of higher education in accordance with the
61 standards adopted by the board and shall determine whether to designate it as an innovation
62 zone or approve it plan, as applicable. The state board and state superintendent shall notify an
63 applicant of the board's determination within sixty days of receipt of an innovation zone application
64 and receipt of an innovation zone plan. If the plan is disapproved, the state board and state
65 superintendent shall communicate the reasons for the disapproval to the school and make
66 recommendations for improving the plan. The school may amend and resubmit the plan to the
67 state board.

68 (d) Upon the approval of an innovation zone plan by the state board and state
69 superintendent, all exceptions to ~~county~~ school district and state board rules, policies and
70 interpretations listed within the plan are granted. If an innovation zone plan, or a part thereof, may
71 not be implemented unless an exception to a statute is granted by Act of the Legislature, the state

72 board and state superintendent may approve the plan, or the part thereof, only upon the condition
73 that the Legislature acts to grant the exception. If the state board and state superintendent
74 approve a plan on that condition, the state board and state superintendent shall submit the plan
75 with the request for an exception to a statute, along with supporting reasons, to the Legislative
76 Oversight Commission on Education Accountability. The commission shall review the plan and
77 request and make a recommendation to the Legislature on the exception requested.

§18-5B-10. Exceptions to statutes granted to innovation zones; limitations.

1 (a) The Legislature hereby grants an exception to the statute or statutes indicated for the
2 following schools pursuant to and for the purposes enumerated in their innovation zone plans
3 approved by the state board at its meeting on the date specified. The grant of an exception to a
4 statute means that the school or schools granted the exception may implement the actions as
5 specifically described in their approved innovation zone plan notwithstanding the provisions of
6 this code from which they are specifically excepted. These exceptions are limited to the purposes
7 as specifically described in the plan approved on the date indicated and are expressly repealed
8 for any plan modification or plan implementation which changes those purposes. However,
9 nothing in this section prohibits a school or schools with an approved innovation zone plan from
10 requesting plan modifications, subject to approval of the state board, and if the modifications
11 change the purposes for which an exception to a statute was granted, the state board shall
12 request an exception to achieve the new purposes in the manner provided in section five of this
13 article for requesting exceptions to a statute. If the approved innovation zone plan of a school or
14 schools is withdrawn by the state board, or the innovation zone designation of a school or schools
15 is revoked by the state board, the exception granted to that school or those schools is expressly
16 repealed.

17 (b) The following exceptions are granted:

18 (1) Piedmont Elementary School, Kanawha County, is excepted from subsection (3),
19 section fourteen, article four, chapter eighteen-a of this code for the purpose of allowing specialist

20 teachers to take their planning period before and after school totaling one hour, three days per
21 week, and from section eighteen-a, article five of this chapter for the purpose of permitting a
22 number of students in music and physical education classes in excess of the class size limits to
23 provide the time and structure for teams to meet in professional learning communities, which
24 purposes are as more specifically described in the school's innovation zone plan approved by the
25 state board on January 13, 2010;

26 (2) Putnam County High Schools Consortium comprised of Buffalo High School, Hurricane
27 High School, Poca High School, Winfield High School and Putnam Career and Technical Center,
28 Putnam County, is excepted from section forty-five, article five of this chapter only to the extent
29 necessary for the purpose of establishing a structured transition program for freshman only one
30 day prior to the beginning of the regular instructional term, and for the purpose of permitting the
31 creation of not more than three hours each month during the school term of structured, regularly
32 scheduled time for all teachers to work in professional learning communities, which purposes are
33 as more specifically described in the schools' innovation zone plan approved by the state board
34 on January 13, 2010;

35 (3) Nellis Elementary School, Boone County, is excepted from subsection (a), section two,
36 article five-a of this chapter, for the purpose of expanding the membership of its local school
37 improvement council, which purpose is as more specifically described in the school's innovation
38 zone plan approved by the state board on January 13, 2010;

39 (4) Cabell County Secondary School Consortium comprised of Cabell County Career
40 Technical Center, Cabell Midland High School and Huntington High School, Cabell County, is
41 excepted from sections one and one-a, article eight of this chapter for the purpose of raising the
42 compulsory school attendance age to eighteen years old, and from section two-b, article three,
43 chapter eighteen-a of this code for the purpose of providing a customized high quality beginning
44 teacher induction program developed at the county level, which purposes are as more specifically
45 described in the schools' innovation zone plan approved by the state board on January 13, 2010;

46 (5) Clay County Schools is excepted from section fifteen, article five of this chapter for the
47 purpose of allowing persons over the age of twenty-one years to enroll without charge of fees in
48 the Clay County Schools "iREAD" program and upon, successful completion, be awarded a Clay
49 County High School Diploma, which purposes are more specifically described in the Clay County
50 School's innovation zone plan approved by the state board on January 12, 2011. The grant of this
51 exception does not abrogate the authority of the state board to determine the minimum standards
52 for granting diplomas pursuant to section six, article two of this chapter and does not permit
53 persons over the age of twenty-one who reenter the public schools to be included in net enrollment
54 for the purposes of funding pursuant to article nine-a of this chapter, except as otherwise provided
55 by law;

56 (6) Monroe County Schools is excepted from subdivision (3), subsection (a), section one-
57 a, article eight of this chapter for the purpose of allowing the school district to increase the
58 compulsory school attendance age from seventeen years of age to eighteen years of age as part
59 of its county-wide dropout prevention initiative as more specifically described in the Monroe
60 County School's Local Solutions Dropout Prevention and Recovery Innovation Zone plan
61 approved by the state board on November 14, 2012; and

62 (7) Nicholas County Schools is excepted from sections four, eight and eleven, article eight
63 of this chapter only to the extent necessary to permit up to two unexcused absences per semester
64 on regular instructional days to be erased from a student's attendance record and not used toward
65 the initiation of the attendance enforcement actions as set-forth in those sections, if the student
66 successfully completes the county's Saturday instruction program operated as part of the county's
67 county-wide Attendance Recovery dropout prevention initiative as more specifically described in
68 the Nicholas County School's Local Solutions Dropout Prevention and Recovery Innovation Zone
69 plan approved by the state board on October 3, 2012.

§18-5B-11. Local Solution Dropout Prevention and Recovery Innovation Zone Act.

1 (a) *Legislative findings, intent and purpose.*

2 The Legislature finds that:

3 (1) High school graduation is an essential milestone for all West Virginia students and
4 impacts the future success of the individual, community and state;

5 (2) There are significant correlations between educational attainment and labor market
6 outcomes, greater labor force participation rate, increased employment rates, improved health,
7 and decreased levels of poverty and crime. The negative impact on these linkages is most evident
8 in the absence of high school completion;

9 (3) Dropping out of school is a process, not an event, with factors building and
10 compounding over time;

11 (4) Students at risk of not completing high school can be identified as early as sixth grade
12 using the indicators of attendance, behavior and course failures. Therefore, a comprehensive
13 graduation plan must include a comprehensive systemic approach that emphasizes early
14 interventions;

15 (5) Research identifies a number of effective strategies for engaging students that have
16 the most positive impact on improving high school graduation rates. Some of these strategies are
17 school-community collaboration, safe learning environments, family engagement, early literacy
18 development, mentoring and tutoring services, service learning opportunities, alternative and
19 nontraditional schooling, offering multiple pathways and settings for attaining high school
20 diplomas, after-school opportunities, individualized instruction and career and technical
21 education;

22 (6) Schools cannot solve the dropout problem alone. Research shows when educators,
23 parents, elected officials, business leaders, faith-based leaders, human service personnel, judicial
24 personnel and civic leaders collectively work together they are often able to find innovative
25 solutions to address school and community problems; and

26 (7) Increasing high school graduation rates is an important factor in preparing a college
27 and career-ready citizenry. Higher education institutions, including community and technical

28 colleges, are essential partners in creating local and statewide solutions.

29 (b) Therefore, the intent of the Legislature is to provide a separate category of innovation
30 zones designated "Local Solution Dropout Prevention and Recovery Innovation Zones" intended
31 to achieve the following purposes:

32 (1) Provide for the establishment of Local Solution Dropout Prevention and Recovery
33 Innovation Zones to increase graduation rates and reduce the number of dropouts from West
34 Virginia schools;

35 (2) Provide schools and communities with opportunities for greater collaboration to plan
36 and implement systemic approaches that include evidence-based solutions for increasing
37 graduation rates and reducing the number of dropouts;

38 (3) Provide a testing ground for innovative graduation programs, incentives and
39 approaches to reducing the number of dropouts;

40 (4) Provide information regarding the effects of specific innovations, collaborations and
41 policies on graduation rates and dropout prevention and recovery; and

42 (5) Document educational strategies that increase graduation rates, prevent dropouts and
43 enhance student success.

44 (c) *Local Solution Dropout Prevention and Recovery Innovation Zones.*

45 A school, a group of schools or a school district may be designated as a Local Solution
46 Dropout Prevention and Recovery Innovation Zone in accordance with the provisions of this
47 article, subject to the provisions of this section. The state board shall propose rules for legislative
48 promulgation, including an emergency rule if necessary, in accordance with article three-b chapter
49 twenty-nine of this code to implement the provisions of this section. All provisions of this article
50 apply to Local Solution Dropout Prevention and Recovery Innovation Zones, including, but not
51 limited to, the designation, application, approval, waiver of statutes, policies, rule and
52 interpretations, employee approval, employee transfers, progress reviews, reports and
53 revocations, and job postings, subject to the following:

54 (1) For purposes of this section, a "school, a group of schools or a school district" means
55 a high school, a group of schools comprised of a high school and any of the elementary and
56 middle schools whose students will attend the high school, or a school district whose graduation
57 rate in the year in which an application is made is less than ninety percent based on the latest
58 available school year data published by the Department of Education;

59 (2) The contents of the application for designation as a Local Solution Dropout Prevention
60 and Recovery Innovation Zone must include a description of the dropout prevention and recovery
61 strategies and that the school, group of schools or school district plans to implement if designated
62 as a Local Solution Dropout Prevention and Recovery Innovation Zone, and any other information
63 the state board requires. The application also shall include a list of all ~~county~~ school district and
64 state board rules, policies and interpretations, and all statutes, if any, identified as prohibiting or
65 constraining the implementation of the plan, including an explanation of the specific exceptions to
66 the rules, policies and interpretations and statutes required for plan implementation. A school, a
67 group of schools, or school district may not request an exception nor may an exception be granted
68 from any of the following:

- 69 (i) An assessment program administered by the West Virginia Department of Education;
70 (ii) Any provision of law or policy required by the No Child Left Behind Act of 2001, Public
71 Law No. 107-110 or other federal law; and
72 (iii) Section seven, article two and sections seven-a, seven-b, eight and eight-b, article
73 four, chapter eighteen-a of this code, except as provided in section eight of this article;

74 (3) The factors to be considered by the state board when evaluating an application shall
75 include, but are not limited to, the following:

76 (A) Evidence that other individuals or entities and community organizations are involved
77 as partners to collectively work with the applicant to achieve the purposes as outlined in the
78 dropout prevention and recovery plan. These individuals or entities and community organizations
79 may include, but are not limited to, individuals or entities and community organizations such as

80 parents, local elected officials, business leaders, faith-based leaders, human service personnel,
81 judicial personnel, civic leaders community and technical colleges Higher education institutions;

82 (B) The level of commitment and support of staff, parents, students, the ~~county~~ school
83 district board of education, the local school improvement council and the school's business
84 partners as determined in accordance with this article apply to become a Local Solutions Dropout
85 Prevention and Recovery Innovation Zone;

86 (C) The potential for an applicant to be successful in building community awareness of the
87 high school dropout problem and developing and implementing its dropout prevention and
88 recovery plan; and

89 (D) Implementation of the statewide system of easily identifiable early warning indicators
90 of students at risk of not completing high school developed by the state board in accordance with
91 section six, article eight of this chapter, known as The High School Graduation Improvement Act,
92 along with a plan of interventions to increase the number of students earning a high school
93 diploma;

94 (4) The rule shall provide standards for the state board to review applications for
95 designation as a Local Solutions Dropout Prevention and Recovery Innovation Zones;

96 (5) The application for designation as a Local Solutions Dropout Prevention and Recovery
97 Innovation Zone under this section is subject to approval in accordance with sections five and six
98 of this article. In addition to those approval stages, the application, if approved by the school
99 employees, shall be presented to the local school improvement council for approval prior to
100 submission to ~~county~~ school district superintendent and board. Approval by the local school
101 improvement council is obtain when at least eighty percent of the local school improvement
102 council members present and voting after a quorum is established vote in favor of the application;
103 and

104 (6) Upon approval by the state board and state superintendent of the application, all
105 exceptions to ~~county~~ school district and state board rules, policies and interpretations listed within

106 the plan are granted. The applicant school, group of schools or school district shall proceed to
107 implement the plan as set forth in the approved application and no further plan submissions or
108 approval are required, except that if an innovation zone plan, or a part thereof, may not be
109 implemented unless an exception to a statute is granted by Act of the Legislature, the state board
110 and state superintendent may approve the plan, or the part thereof, only upon the condition that
111 the Legislature acts to grant the exception as provided in this article.

112 (d) *Local solutions dropout prevention and recovery fund.*

113 There is hereby created in the State Treasury a special revenue fund to be known as the
114 "Local Solutions Dropout Prevention and Recovery Fund." The fund shall consist of all moneys
115 received from whatever source to further the purpose of this article. The fund shall be
116 administered by the state board solely for the purposes of this section. Any moneys remaining in
117 the fund at the close of a fiscal year shall be carried forward for use in the next fiscal year. Fund
118 balances shall be invested with the state's consolidated investment fund and any and all interest
119 earnings on these investments shall be used solely for the purposes that moneys deposited in
120 the fund may be used pursuant to this section.

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

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

2 (1) The Legislature created a performance-based accreditation system in 1988 and has
3 amended these provisions several times, significantly in 1998 to set forth a process for improving
4 education consisting of four elements: (i) High quality education standards; (ii) an assessment of
5 the performance and progress of schools and school systems in achieving these standards with
6 a primary focus on student learning; (iii) holding schools and school systems accountable for
7 performance and progress to provide assurances that a thorough and efficient education is being

8 provided; and (iv) a process for targeting resources strategically to improve teaching and learning.
9 These provisions include a process for the state board to declare a state of emergency and
10 intervene in the operation of a school system when its educational program does not meet the
11 standards and it fails to implement an improvement plan or meet the plan's deadlines and improve
12 within a reasonable time. Since the inception of these provisions, the state board has declared a
13 state of emergency in nine ~~county~~ school district school systems and intervened, including
14 delegating decision-making authority to the state superintendent or his or her designee for system
15 operations. Of these nine school systems, three improved sufficiently over a period of time for the
16 state of emergency to be rescinded, the longest of which took ten years and six months. Of the
17 six systems remaining under state board intervention, although most are fairly recent, one school
18 system has been under state intervention for more than ten years and its improvement is
19 progressing slowly;

20 (2) School systems do not exist in a vacuum and external circumstances and events can
21 have a significant impact on them and the students they serve, as well as on the system's capacity
22 to deliver the thorough and efficient education to which those students are entitled. For example,
23 the McDowell County school system which in the 1950's at its height of employment in coal
24 production had a total population of about 100,000 residents, faced much different challenges
25 than it does today with that county's total population now at 22,113 based on the 2010 census.
26 This school system has lost nearly 70 percent of its enrollment in the past 30 years, declining
27 from 11,715 students in 1981-82 to 3,535 in 2011-12. Along with the steep decline in the historical
28 bedrock of employment in the county in the coal industry and the large number of middle class
29 workers and services it supported, including housing, utilities and medical care, the county's
30 rugged mountainous topography contributes to its vulnerability to natural disasters such as the
31 devastating floods in 2001 and 2002 that swept away many homes and much of the infrastructure
32 along the creek beds throughout the county. This topography also significantly limits the amount
33 of land suitable for development and transportation networks, and makes planning for future

34 economic development alternatives difficult. The social and economic byproducts of these
35 external circumstances and events leave a school system with many atypical challenges for
36 addressing the needs of its students and making the improvements in performance and progress
37 needed to assure a thorough and efficient education;

38 (3) Among the findings, intent and purposes of this article are that: (i) Allowing exceptions
39 from certain statutes, policies, rules and interpretations through the creation of innovation zones
40 will enable greater local control over the important educational factors that impact student
41 achievement and the delivery of educational services to improve student learning; and (ii)
42 innovation zones will provide greater flexibility and local control to meet the needs of a diverse
43 population of students. In addition, among the findings of the Local Solution Dropout Prevention
44 and Recovery Innovation Zone Act as set forth in section eleven of this article are findings that
45 when educators, parents, elected officials, business leaders, faith-based leaders, human service
46 personnel, judicial personnel and civic leaders collectively work together they are often able to
47 find innovative solutions to address school and community problems. Since the creation of this
48 article, forty-five innovation zone projects have been approved by the state board, nine of which
49 were Dropout Prevention and Recovery Innovation Zone projects. Twenty-seven policy waivers
50 and five statutory waivers have been granted to enable implementation of these projects. In one
51 county, an innovation zone project was expanded to all of the remaining schools in the county
52 when the schools used the Local School Improvement Council waiver process to request and
53 receive a statutory waiver to implement a comprehensive new teacher induction process
54 countywide. Collectively, these projects illustrate how local schools, and in some cases school
55 systems, have increased their capacity by using the innovation zone process to collaboratively
56 plan and implement a variety of changes to increase student engagement, develop more flexible
57 schedules, enhance student and teacher ownership of the learning process and increase student
58 achievement;

59 (4) Choosing one county school system under a declared state of emergency due to

60 nonapproval status to designate as an innovation zone would allow the testing of innovations that
61 could be replicated in other school systems facing similar circumstances across the state, nation
62 and world;

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

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

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

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

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

76 (7) This section is intended as an additional tool for an eligible school system in
77 collaboration with community and business partners to plan and implement new approaches to
78 improve the performance and progress of the students, schools and system to achieve full
79 approval at the earliest possible date. It is further the intent of the Legislature that the process for
80 an eligible school system to apply for exceptions under this section should allow multiple
81 opportunities to apply for additional exceptions as the system moves forward with its partners
82 toward fulfillment of its improvement goals; and

83 (8) In accordance with the intent of this section as an additional tool for planning and
84 implementing new approaches to improve the performance and progress of the students, schools
85 and school system to achieve full approval at the earliest possible date, the state board shall

86 rescind the state of emergency and nonapproval status of a school system designated as a school
87 system collaborative innovation zone as soon as the requisite conditions are met as provided in
88 section five, article two-e of this chapter, notwithstanding the designation. If a school system that
89 has been designated as a school system collaborative innovation zone is subsequently issued a
90 school system approval status that would make it ineligible for the designation, the designation
91 shall remain in effect as provided in this section.

92 (b) The state board is authorized to choose one county school system currently under a
93 declared state of emergency by the state board due to nonapproval status to participate in a
94 program to test the effectiveness of allowing such county school systems to be considered school
95 system collaborative innovation zones. Due to the reasons set forth in subsection (a) of this
96 section, the McDowell County Board of Education shall be provided the first opportunity to submit
97 a school system collaborative innovation zone application under this article. If the McDowell
98 County Board of Education has not submitted an application by April 1, 2013 or less than fifty
99 percent cast ballots in an election to approve a school system collaborative innovation zone plan,
100 the state board may accept applications from other county boards under a declared state of
101 emergency by the state board due to nonapproval status.

102 (c) The Legislature finds that an emergency exists and, therefore, no later than April 16,
103 2012, the state board shall promulgate an emergency rule in accordance with section ten, article
104 three-b, chapter twenty-nine-a of this code, to implement the provisions of this section. The state
105 board also shall promulgate a legislative rule, in accordance with article three-b, chapter twenty-
106 nine-a of this code, to implement this section. Both rules shall include, but not be limited to, the
107 following provisions:

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

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

112 (3) Factors to be considered by the state board when evaluating an application, which
113 shall include, but are not limited to, the following factors:

114 (A) Support from teachers, staff, parents, students, the ~~county~~ school district board of
115 education, the local school improvement council and school business partners; and

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

118 (4) Standards for the state board to review applications for designation as a school system
119 collaborative innovation zone and to make determinations on the designation of a school system
120 collaborative innovation zone.

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

125 (e) Prior to designation by the state board as a school system collaborative innovation
126 zone, ~~county~~ school district systems submitting applications shall develop school system
127 collaborative innovation zone plans. The school system collaborative innovation zone plan may
128 include, but is not limited to, the following proposals:

129 (1) Allowing increased collaborative site-based decision-making powers over the
130 budgeting for and spending on programs and services for students;

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

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

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

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

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

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

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

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

148 (1) The school system in collaboration with its public-private partnership shall conduct
149 public town hall meetings in at least two schools in the ~~county~~ school district for the purpose of
150 soliciting input from those in attendance on the challenges affecting the quality of education in the
151 ~~county~~ school district and the potential strategies and priorities for addressing them. The two
152 meetings shall occur within ten days of each other;

153 (2) Within fifteen days after the last town hall meeting, the ~~county~~ school district
154 superintendent shall hold a meeting for the purpose of reviewing the input gathered at the public
155 town hall meetings and developing the school system collaborative innovation zone plan. The
156 meeting shall include the principals employed within the ~~county~~ school district, the chairs of the
157 faculty senates of each school in the ~~county~~ school district, employee organization
158 representatives, a school service person from each work site, parents and other stakeholders;

159 (3) Within fifteen days after the meeting to develop the school system collaborative
160 innovation zone plan, the ~~county~~ school district superintendent shall hold a meeting of all regularly
161 employed school employees for the purpose of educating those employees about the plan and
162 for the purpose of providing the employees an opportunity to examine and discuss the school
163 system collaborative innovation zone plan; and

164 (4) At the meeting required by subdivision (3) of this section, the ~~county~~ school district
165 superintendent shall direct that a vote of all regularly employed school employees in the ~~county~~
166 school district be conducted to determine the level of school employee support for the school
167 system collaborative innovation zone plan. The vote shall be completed within fifteen days after
168 the meeting required by subdivision (3) of this subsection. The vote shall be by secret ballot
169 administered by the panels created in subsection (c), section six of this article for each school
170 and shall be administered in accordance with that subsection. For the vote to be valid, ballots
171 must be cast by at least fifty percent of all regularly employed school employees in the ~~county~~
172 school district. The plan may not be submitted to the state board and the state board may not
173 designate the school system as a school system collaborative innovation zone unless at least
174 two-thirds of the employees voting vote to submit the plan.

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

178 (h) The plan is intended to serve as the basis for the innovation zone activities of the
179 school system and to provide a vision for the school improvement goals it will work to accomplish
180 in collaboration with its school and community partners. The plan is not intended as a limit on the
181 normal school improvement activities that all school systems are expected to pursue, nor is the
182 plan intended as a restriction on the ability of the school system or its schools to pursue other
183 innovative strategies in accordance with the other provisions of this article, specifically the
184 designation as a Local Solution Dropout Prevention and Recovery Innovation Zone in accordance
185 with section eleven of this article.

186 (i) The designation as a school system collaborative innovation zone authorizes the school
187 system to submit requests as provided in subsection (j) of this section to the state board for
188 exceptions to statutes, policies, rules and interpretations that are required to permit
189 implementation by the school system of the innovative strategies contemplated in its school

190 system collaborative innovation zone plan. The designation shall be for a period of five years,
191 during which the school system may submit multiple individual requests for exceptions to permit
192 implementation of different strategies contemplated in the plan as the strategies are developed.
193 Each request for an exception shall be submitted and may be approved by the state board in
194 accordance with subsection (j) of this section.

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

198 (A) A description of the program or initiative the school system intends to implement as an
199 innovative strategy to improve student achievement if the request is approved by the state board;

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

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

205 (D) A certification by the ~~county~~ school district superintendent that the request for an
206 exception was approved by a vote of the eligible employees in accordance with the process for
207 voting as set forth in section six of this article, except that notwithstanding subsection (d) of said
208 section six, at least two-thirds of the eligible employees voting must vote to request the exception
209 for it to be approved for submission to the state board: *Provided*, That for the vote to be valid,
210 ballots must be cast by at least fifty percent of the eligible employees; and

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

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

216 requirement not contained within this section does not apply.

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

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

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

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

227 (5) If a request, or a part thereof, may not be implemented unless an exception to a statute
228 is granted by an Act of the Legislature, the state board may approve the request, or the part
229 thereof, only upon the condition that the Legislature acts to grant the exception. If the state board
230 approves a request on that condition, the state board shall submit the request for an exception to
231 a statute, along with supporting reasons, to the Legislative Oversight Commission of Education
232 Accountability. The commission shall review the request and make a recommendation to the
233 Legislature regarding the exception requested.

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

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

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

240 (C) Sections two and seven, article two, chapter eighteen-a of this code and sections
241 seven-a, seven-b, eight and eight-b, article four, chapter eighteen-a of this code, except that a

242 school system collaborative innovation zone may make a job posting for a teacher vacancy in
243 accordance with the procedures and the approval by a vote of the teachers as provided in section
244 eight of this article.

245 (l) A ~~county~~ school district board designated as a school system collaborative innovation
246 zone pursuant to this section that has an approved innovation zone plan may revise its plan and
247 resubmit its plan to the state board for approval after conducting the vote pursuant to subdivision
248 (4), subsection (f) of this section and complying with all other applicable plan requirements set
249 forth in this section except for holding the public town hall meetings required by subdivision (1),
250 subsection (f) of this section.

251 (m) The designation of a ~~county~~ school district school system as a school system
252 collaborative innovation zone shall be for a period of five years. The state board, upon request of
253 the school system, may extend the designation for an additional two years if the school system
254 has outstanding items in its school system collaborative innovation zone plan that it still wants to
255 pursue and only for the purpose of pursuing those outstanding items. The expiration of the
256 designation does not negate any exceptions to statutes, policies, rules or interpretations granted
257 to the school system, unless and until specifically revoked, repealed or modified by the state board
258 or by the Legislature, as applicable.

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

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

264 (p) For any ~~county~~ school district that is designated as a school system collaborative
265 innovation zone under the provisions of this section and to the extent the following provisions are
266 applicable:

267 (1) The county commissions of in the designated ~~county~~ school districts shall collaborate

268 with the Office of Coalfield Community Development in including any land and infrastructure
269 needs in the land use master plan provided for in section nine, article two-a, chapter five-b of this
270 code. These needs may include, but are not limited to, advancement of public education,
271 economic development, highway development, recreational amenities and housing development;

272 (2) An area health organization, such as Tug River Health Association, Inc., is authorized
273 to work with the ~~county~~ school district board to address the health, wellness and fitness needs of
274 students, parents, school personnel and all others in the ~~county~~ school district. Tug River Health
275 Association may partner with the Robert C. Byrd Center for Rural Health and the Marshall
276 University Medical School in addressing these needs. In addressing the health, wellness and
277 fitness needs, the following should be considered:

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

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

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

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

287 (E) Disease-specific data may be used to address common barriers to health as perceived
288 by a specific population and tailor interventions to these specific populations;

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

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

293 (H) Assessments and interventions should be developed and implemented using

294 community-based participatory research models; and

295 (l) Assessments and interventions should be multidisciplinary, collaborative efforts with
 296 existing organizations and programs; and

297 (3) Area institutions of higher education, such as Concord University and the June Harless
 298 Center at Marshall University, are authorized to work with the ~~county~~ school district board on
 299 innovative strategies to address challenges facing the school system and community, including,
 300 but not limited to, the areas of critical need and shortage in the teaching force, educator
 301 professional development and improving the college-going rate. In addressing the areas of critical
 302 need shortage in the teaching force, consideration should be given to the implementation of an
 303 intensively supervised and mentored teacher-in-residence program for prospective teachers
 304 during their senior year in lieu of student teaching.

§18-5B-13. Innovation school district Act; legislative findings, intent and purpose; eligibility; application; innovation plan and plan approval; designation; waiver of statutes, policies, rules or interpretations; exceptions; progress reviews and annual reports; state board rule.

1 (a) *Legislative findings:*

2 (1) High school completion is an essential milestone for all West Virginia students and
 3 impacts the future success of the individual, community and state as well as providing the pathway
 4 to and appreciation for life-long learning endeavors;

5 (2) There are significant correlations between educational attainment and labor market
 6 outcomes, greater labor force participation rate, increased employment rates, improved health,
 7 and decreased levels of poverty and crime. The negative impact on these linkages is most evident
 8 in the absence of high school completion;

9 (3) West Virginia as a state must improve in areas of student achievement, graduation
 10 rate, attendance, the college going rate and other indicators of academic success in public
 11 schools;

12 (4) Research identifies a number of effective strategies for engaging students that have
13 the most positive impact on improving student success and high school graduation. Some of these
14 strategies are school-community collaboration, safe learning environments, family engagement,
15 early literacy development, mentoring and tutoring services, service learning opportunities,
16 alternative and nontraditional schooling, offering multiple pathways and settings for attaining high
17 school diplomas, after-school opportunities, individualized instruction and career and technical
18 education;

19 (5) Among the major issues raised by the Efficiency Audit of West Virginia's Primary and
20 Secondary Education System conducted by Public Works, LLC, is a description of West Virginia's
21 system of schools as heavily regulated. The report expresses the advantages of more local
22 autonomy to better meet the needs of students, elevate their aspirations, and prepare them for
23 post-secondary education and careers. Among its general conclusions is the need to drive more
24 educational decision-making to the level closest to the students, to the classroom and building
25 level - allowing principals to lead and teachers to deliver the most effective curriculum for their
26 students - and then holding them accountable for student success;

27 (6) The Goals for Education, Vision 2020: An Education Blueprint for Two Thousand
28 Twenty include policy-oriented objectives for restoring the autonomy, authority, flexibility, and
29 capacity of local schools and ~~county~~ school district boards to improve student learning to meet or
30 exceed the expectations established by the state board and Legislature;

31 (7) Allowing exceptions from certain statutes, policies, rules and interpretations through
32 the creation of innovation school districts will restore the autonomy, authority, flexibility, and
33 capacity of local schools and ~~county~~ school district boards to enable greater local autonomy and
34 encourage innovation over the important factors that impact student achievement and the delivery
35 of educational services to improve student learning; and

36 (8) When educators, parents, elected officials, business leaders, faith-based leaders,
37 human service personnel, judicial personnel and civic leaders collectively work together, they are

38 often able to find innovative solutions to address school and community problems and implement
39 a variety of innovative improvements that increase student engagement, develop more flexible
40 schedules, enhance student and teacher ownership of the learning process and increase student
41 achievement.

42 (b) *Legislative intent and purpose of section:*

43 In light of the foregoing findings, it is the intent of the Legislature through this section to
44 create a special category of innovation zones entitled "Innovation School Districts" to provide an
45 additional tool for school systems in collaboration with community and business partners to plan
46 and implement new approaches to improve the performance and progress of the students,
47 schools and school system. This section is intended to establish a process that includes:

48 (1) Broad participation and collaboration in the establishment of an innovation school
49 district plan that includes approaches to build the capacity of the district to improve the
50 performance and progress of its students, schools and school system; and

51 (2) Provides multiple opportunities over a period of five years for a school system
52 designated as an innovation school district to seek and receive exceptions to certain statutes,
53 policies, rules and interpretations applicable throughout the ~~county~~ school district or at certain
54 schools within the ~~county~~ school district as needed to best meet the needs of its students as the
55 system moves forward with its partners toward fulfillment of its innovation school district plan.

56 (c) *School System Eligibility:*

57 All ~~county~~ school district boards are eligible to apply for designation as an innovation
58 school district: *Provided*, That a district that has expended funds or incurred obligations in violation
59 of section twenty-six, article eight, chapter eleven of this code is not eligible to apply for
60 designation as an innovation school district, unless otherwise determined by the state board. The
61 applications shall be taken in four categories: Sparse Density County; Low Density County;
62 Medium Density County; and High Density County, as those terms are defined in section two,
63 article nine-a of this chapter. The state board is authorized to designate no more than one county

64 from each category as an innovation school district beginning July 1, 2015: *Provided*, That the
65 State Board, after July 1, 2016, may designate one additional county from each category as an
66 innovation school district as long as the number of counties designated at any one time does not
67 exceed two counties from each category as innovation school districts, subject to other
68 considerations included herein. The designation of counties as innovation school districts shall be
69 on a competitive basis.

70 (d) *Application for designation as Innovation School District:*

71 The rule promulgated by the state board to implement this section shall include an
72 application and approval process for innovation school district plans that includes, but is not
73 limited to, the following provisions:

74 (1) The manner, time and process for the submission of innovation school district
75 applications. The initial application deadline may not be prior to January 2015. If after
76 consideration of the applications submitted to it during an application period, the state board in its
77 sole discretion does not designate the allotted number of school systems in each density category
78 as innovation school districts, the state board may establish another application period to permit
79 county boards in a density category not filled to reapply. In addition, at any time the number of
80 designated innovation school districts in a density category is less than the maximum number
81 allowed by subsection (c) of this section due to the revocation or expiration of a designation, the
82 state board may establish an application period and may select on a competitive basis new school
83 systems to achieve the maximum number allowed by subsection (c) of this section per density
84 category;

85 (2) The contents of the application, which must include:

86 (A) The innovation school district plan approved in accordance with subsection (f) of this
87 section; and

88 (B) A general description of the innovations the school district seeks to institute as
89 proposed in its innovation school district plan;

90 (3) Factors to be considered by the state board when evaluating an application, which
91 shall include, but are not limited to, the following factors:

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

94 (B) The potential for an applicant to be successful in raising student achievement as an
95 innovation school district;

96 (4) Standards for the state board to review applications for designation as an innovation
97 school district and to make determinations on the designation of a school system as an innovation
98 school district; and

99 (5) An innovation zone application review committee and recommendation process which
100 shall be the same committee and process as used for all other innovation zones under this article.

101 (e) *Innovation School District Plan:*

102 The innovation school district plan is intended to serve as the basis for the innovative
103 activities of the school system and to provide a vision for the school improvement goals it will work
104 to accomplish in collaboration with its school and community partners. The plan is not intended
105 as a limit on the normal school improvement activities that all school systems are expected to
106 pursue, nor is the plan intended as a restriction on the ability of the school system or its schools
107 to pursue other innovative strategies in accordance with the other provisions of this article. The
108 innovation school district plan may include, but are not limited to, the following proposals:

109 (1) Methods for providing schools and communities with opportunities for greater
110 collaboration to plan and implement systemic approaches that include evidence-based solutions
111 for increasing graduation rates, increasing achievement and educational outcomes and reducing
112 the number of dropouts;

113 (2) Innovative approaches to revitalize vocational and technical education, an essential
114 mission of county boards;

115 (3) Increased collaborative site-based decision-making powers over the budgeting for and

116 spending on programs and services for students;

117 (4) Increased collaborative site-based decision-making powers over teacher recruitment;

118 (5) Improved site-based mentoring, collaboration and support for strengthening the
119 professional practices of new and emerging teachers, including recognizing and supporting
120 school-based teacher leaders that perform these duties;

121 (6) Allowing a collaborative process which ensures accountability and transparency to all
122 stakeholders, provides information and additional measures of the effects of specific innovations
123 upon which the success of the plan may be judged, and documents student, school and school
124 system success;

125 (7) Allows input and demonstrative buy-in from education personnel regarding appropriate
126 professional development, supports, resources and working conditions.

127 (8) Allowing a collaborative site-based process to reduce certain requirements to allow
128 staff to meet the school's mission;

129 (9) Allowing, through a collaborative site-based process, flexibility to the alternative
130 teacher certification programs;

131 (10) Utilizing virtual school courses aligned with the Southern Regional Education Board's
132 Standards for Quality Online Courses;

133 (11) Providing for greater autonomy for county board, and through the board's
134 innovation's, for local schools; and

135 (12) Other innovation zone plans approved under the provisions of this article and being
136 implemented in other schools and school systems throughout the state.

137 The innovation school district plan shall include a general description of the innovations
138 the county school district seeks to institute, a proposed time line for implementation and measures
139 for judging the success of the innovation school district plan.

140 (f) *Innovation School District Plan - District Level Approval:*

141 Prior to submitting an innovation school district plan to the state board, the county board

142 shall:

143 (1) Form a broad based innovation school district stakeholders committee which may
144 include, but is not limited to, educators, parents, elected officials, business leaders, faith-based
145 leaders, human service personnel, judicial personnel and civic leaders, but at a minimum shall
146 include the principals employed within the county, the chairs of the faculty senates of each school
147 in the county, employee organization representatives, a school service person from each work
148 site and parent representatives. The stakeholder committee shall compose a conceptual proposal
149 for the purpose of soliciting input on a variety of approaches that may be undertaken within the
150 county if designated as an innovation school district and to guide development of an innovation
151 school district plan;

152 (2) Direct the county superintendent to hold a meeting of all regularly employed school
153 employees to provide them an opportunity to examine and discuss the conceptual proposal. The
154 superintendent shall direct that a vote of all regularly employed school employees in the county
155 be conducted within fifteen days of the meeting to determine the level of school employee support
156 for the conceptual proposal. The vote shall be by secret ballot administered by the panels created
157 in subsection (c), section six of this article for each school and shall be administered in accordance
158 with that subsection. For the vote to be valid, ballots must be cast by at least fifty percent of all
159 regularly employed school employees in the county. Before proceeding with the succeeding
160 subdivisions of this subsection, the conceptual proposal must be approved by at least two-thirds
161 ballots cast voting to approve it. If not approved, the stakeholder committee may revise the
162 conceptual proposal and, subject to direction of the county board, the superintendent shall repeat
163 the steps set forth in this subdivision for a revote;

164 (3) Make its conceptual proposal for an innovation school district available to the public at
165 least 20 days prior to the public town hall meetings required under subdivision (4) of this
166 subsection. In order to comply with this public notice requirement, the proposed plan shall be
167 posted on the county board's web site, as well as hard copies of the proposed plan being made

168 available at all county school sites and the county's central office, for public viewing and copying;

169 (4) After the closure of the 20 day public review period, conduct public town hall meetings
170 in at least three schools in the county, including at least one each at schools with separate
171 secondary, middle and elementary programmatic levels, or as near as possible considering the
172 county's facility infrastructure, for the purpose of soliciting input from those in attendance on the
173 challenges affecting the quality of education in the county and the potential strategies and
174 priorities for addressing them;

175 (5) Direct the county superintendent to hold a meeting of the innovation school district
176 stakeholders committee following the public town hall meetings for the purpose of reviewing the
177 input gathered at the meetings and developing an innovation school district plan;

178 (6) Direct the county superintendent to hold a meeting of all regularly employed school
179 employees to provide them an opportunity to examine and discuss the innovation school district
180 plan. The superintendent shall direct that a vote of all regularly employed school employees in
181 the county be conducted within fifteen days of the meeting to determine the level of school
182 employee support for the innovation school district plan. The vote shall be conducted as provided
183 in subdivision (2) of this subsection, except that for the vote to be valid, ballots must be cast by at
184 least sixty percent of all regularly employed school employees in the county and the innovation
185 school district plan must be approved by at least two-thirds of the ballots cast voting to approve
186 it. If not approved, the stakeholder committee may revise the plan and, subject to direction of the
187 county board, the superintendent shall repeat the steps set forth in this subdivision for a revote;
188 and

189 (7) The plan may then be submitted by the county superintendent to the county board for
190 a vote to submit the plan to the state board. The authority of a county board to vote to submit an
191 innovation school district plan and the right to submit the plan and be designated as an innovation
192 school district, if selected, in accordance with this section are not subject to or affected by the

193 approval status of the school system or intervention in the authority of county board for school
194 system operation pursuant to section five, article two-e of this chapter.

195 (g) *State Board Designation of Innovation School Districts:*

196 The state board shall review the innovation school district applications in accordance with
197 the standards adopted by the board, shall determine the highest rated applicants in each category
198 and shall determine whether to designate those applicants as innovation school districts. The
199 designation of an applicant as an innovation school district is at the sole discretion of the state
200 board. The state board shall notify each applicant of the board's determination within thirty days
201 of the final determinations.

202 (h) *Innovation School Districts:*

203 The designation of a school system as an innovation school district authorizes the county
204 board to submit requests to the state board for exceptions to statutes, policies, rules and
205 interpretations that are required to permit implementation of the innovative strategies
206 contemplated in its innovation school district plan. The designation as an innovation school district
207 authorizes the county board to submit to submit multiple individual requests for exceptions to
208 permit implementation of different strategies contemplated in the plan as the strategies are
209 developed. Each request for an exception shall be submitted and may be approved by the state
210 board subject to the following:

211 (1) The county board of a school system designated as an innovation school district may
212 request an exception to a statute, policy, rule or interpretation by submitting an application to the
213 state board that contains the following information:

214 (A) A description of the program or initiative the school system intends to implement at a
215 school, group of schools or district-wide as an innovative strategy to improve student achievement
216 if the request is approved by the state board;

217 (B) An explanation of the specific exception to a statute, policy, rule or interpretation, in
218 the singular or plural, that the school system has identified as prohibiting or constraining the

219 implementation of the program or initiative and why the exception is necessary;

220 (C) An explanation of how the program or initiative furthers the activities contemplated in
221 the innovation school district plan;

222 (D) A certification by the county superintendent that the request for an exception was
223 approved by a vote of the eligible employees in accordance with the process for voting as set
224 forth in section six of this article; and

225 (E) Any other information the state board requires as set forth in its rule to implement this
226 section.

227 (2) The state board shall review the request in accordance with the standards in its rule
228 and shall determine whether to approve or disapprove the request. The approval or disapproval
229 of a request is at the sole discretion of the state board in accordance with the requirements of this
230 section.

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

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

236 (B) If the request is disapproved, the state board shall communicate its reasons for the
237 disapproval to the county board and shall make recommendations for improving the request. The
238 county board may amend and resubmit the request.

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

241 (5) If a request, or a part thereof, may not be implemented unless an exception to a statute
242 is granted by an Act of the Legislature, the state board may approve the request, or the part
243 thereof, only upon the condition that the Legislature acts to grant the exception. If the state board
244 approves a request on that condition, the state board shall submit the request for an exception to

245 a statute, along with supporting reasons, to the Legislative Oversight Commission of Education
246 Accountability. The commission shall review the request and make a recommendation to the
247 Legislature regarding the exception requested; and

248 (6) An innovation school district may not request an exception nor may an exception be
249 granted from any of the following:

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

252 (B) Any provision of law or policy required by Public Law 94-142, Public Law No. 107-110
253 or other federal law;

254 (C) Sections two and seven, article two, chapter eighteen-a of this code and sections
255 seven-a, seven-b, eight and eight-b, article four, chapter eighteen-a of this code, except that an
256 innovation school district may make a job posting for a teacher vacancy in accordance with the
257 procedures and the approval by a vote of the teachers as provided in section eight of this article;
258 and

259 (D) Any statute, policy, rule or other requirements of the state board or other agency
260 related to the health and safety of students or employees, any requirements imposed by ethics
261 laws or opinions, any requirements imposed by open records or open meetings laws, any
262 requirements related to financial or academic reporting or transparency, or any requirements
263 designed to protect the civil rights of students or employees.

264 (i) *Revision, Extension and Revocation of Innovation School District Plan:*

265 (1) The county board of a school system designated as an innovation school district
266 pursuant to this section may revise its innovation school district plan and resubmit its plan to the
267 state board for approval after complying with all other applicable plan requirements set forth in
268 this section for initial plan approval.

269 (2) The designation of a school system as an innovation school district shall be for a period
270 of five years. The state board, upon request of the county board, may extend the designation for

271 an additional two years if the school system has outstanding items in its school system
272 collaborative innovation zone plan that it still wants to pursue and only for the purpose of pursuing
273 those outstanding items.

274 (3) The state board after periodic review of an established innovation school district may,
275 upon recommendation of the innovation zone application review committee, revoke the school
276 district's designation as an innovation school district for noncompliance or nonperformance.

277 (j) *Affect of Plan Expiration on Innovations:*

278 The expiration of a school system's designation as an innovation school district does not
279 negate any exceptions to statutes, policies, rules or interpretations granted to the school system
280 unless and until specifically revoked, repealed or modified by the state board or by the Legislature,
281 as applicable.

282 (k) *State Board Rule and Annual Reviews:*

283 The state board shall adopt, in accordance with article three-b, chapter twenty-nine-a of
284 this code, a rule for the implementation of this section. The state board or its designated
285 committee shall perform annual performance reviews and provide annual reports in accordance
286 with section seven of this article.

ARTICLE 5C. COMMITTEE REORGANIZATION AND COLLABORATIVE TEAM WAIVERS.

§18-5C-1. Purpose.

1 The purposes of this article are as follows:

2 (1) To facilitate and encourage teacher collaboration by empowering schools to create
3 alternative decision-making processes that address school and classroom improvement. The
4 intent is to authorize reorganization or consolidation of certain school committees and teams
5 required by state board rules, including the Strategic Planning Committee, the Technology Team
6 and the School Support Team; and

7 (2) To recognize that schools in this state differ greatly in enrollment, grade configuration,
8 demographics and student needs and to provide teachers and principals with flexibility to
9 determine the types of committees and teams that are needed to move the school forward.

§18-5C-2. Application to create or augment existing collaborative teams; contents and approval of application; grant of rule waivers for certain school-level committees required by state board rule.

1 (a) *Request for reorganization.* -- A school may submit an application to the state board to
2 create collaborative teams that replace, or to augment its existing collaborative teams by
3 replacing, any or all of the following school-level committees required by state board rule: The
4 Strategic Planning Committee, the Technology Team and the School Support Team.
5 Reorganization under this article may not replace the Local School Improvement Council, the
6 School Curriculum Team, the Student Assistance Team or the Faculty Senate. Reorganization
7 under this article does not supercede the authorization of the faculty senate with approval of the
8 principal to form a collaborative team as an alternative to the school curriculum team pursuant to
9 section six, article five-a of this chapter.

10 (b) *Contents of application.* -- The application shall include:

11 (1) A description of the collaborative teams, which shall address all of the following:

12 (A) An emphasis on teacher collaboration and leadership;

13 (B) School and classroom effectiveness;

14 (C) Involvement and support of stakeholders; and

15 (D) A coherent learner-focused improvement plan;

16 (2) A list of the school-level committees that will be replaced by the collaborative teams,
17 an explanation of how the existing membership of the committees replaced will have
18 representation in the reorganization, and how the roles, responsibilities and tasks of the
19 committees replaced will be instituted in the reorganization;

20 (3) Evidence that the employees and stakeholders who are involved in restructured

21 collaborative teams have, or will enter into, a process of professional learning that develops the
22 necessary knowledge and skills to enhance learner-focused collaboration; and

23 (4) Evidence that employees and stakeholders have researched viable improvement
24 structures and processes and have proposed an effective structure that addresses the particular
25 needs of the school, its students and employees.

26 (c) *Local-level approval.* -- Before submitting the waiver application to the state board, a
27 school shall take the following steps:

28 (1) Present to the faculty senate a detailed explanation of the proposed structure, roles
29 and responsibilities addressed by the reorganization plan;

30 (2) Provide for the chair of the faculty senate to conduct a vote by secret ballot on the
31 issues addressed in the reorganization plan;

32 (3) Obtain a favorable vote for the reorganization plan from at least eighty percent of the
33 faculty senate members present and voting after a quorum is established;

34 (4) Present to the local school improvement council a detailed explanation of the proposed
35 structure, roles and responsibilities addressed by the reorganization plan;

36 (5) If the faculty senate vote is favorable and if it meets the percentage threshold
37 established in subdivision (3) of this subsection, within one week of the vote taken by the faculty
38 senate, provide for the chair of the council to conduct a vote on the issues addressed in the
39 reorganization;

40 (6) Obtain a favorable vote for the reorganization plan from at least eighty percent of the
41 local school improvement council members present and voting after a quorum is established; and

42 (7) Obtain approval for the reorganization plan from the ~~county~~ school district
43 superintendent and the ~~county~~ school district board.

44 (d) *State board approval.* -- After meeting the requirements of subsection (c) of this
45 section, the school shall submit its application to the state board. After review of the waiver
46 application, the state board may approve the waiver of rules requiring the Strategic Planning

47 Committee, the Technology Team or the School Support Team. After the state board has
48 reviewed and approved a school's reorganization plan, the school may institute the plan as
49 presented in its application.

§18-5C-3. Rulemaking.

1 By October 1, 2010, the state board shall promulgate a legislative rule in accordance with
2 article three-b, chapter twenty-nine-a of this code to implement the provisions of this article. The
3 rule shall include a process for schools to appeal to the state board for approval of an application
4 under this article for which approval has been denied by the ~~county~~ school district superintendent
5 or ~~county~~ school district board, or both.

ARTICLE 5D. WEST VIRGINIA FEED TO ACHIEVE ACT.

§18-5D-3. School nutrition programs.

1 (a) Each ~~county~~ school district board of education shall establish and operate school
2 nutrition programs under which, at a minimum, a nutritious breakfast and lunch are made
3 effectively available to all students enrolled in the schools of the ~~county~~ school district in
4 accordance with the State Board of Education standards. The standards shall include guidelines
5 for determining the eligibility of students for paid, free and reduced meals. The standards shall
6 also establish procedures and guidelines for the Feed to Achieve initiative to allow for the
7 provision of healthy, nutritious meals to all elementary school students, without cost to students,
8 where schools find it practical to do so.

9 (b) The Feed to Achieve initiative will be phased in for all elementary schools as sufficient
10 funds become available, through donations, contributions and payments made by individuals,
11 communities, businesses, organizations and parents or guardians on behalf of students. Nothing
12 in this article prohibits any school from providing free meals to all of its students.

13 (c) Each ~~county~~ school district board of education shall:

14 (1) Require all schools to adopt a delivery system approved by the state Office of Child
15 Nutrition, no later than the 2015 school year, that ensures all students are given an adequate

16 opportunity to eat breakfast. These approved systems shall include, but are not limited to, Grab-
17 And-Go Breakfasts, Breakfast in the Classroom or Breakfast After First Period; and

18 (2) Collaborate with the state Office of Child Nutrition to develop strategies and methods
19 to increase the percentage of children participating in the school breakfast and lunch nutrition
20 programs.

21 (d) In addition to other statistics, the ~~county~~ school district boards of education, in
22 consultation with the state Office of Child Nutrition, shall determine the number of children in each
23 school who are participating in each meal offered by the school; the number of children who are
24 not eating each meal offered by the school; and the total daily attendance.

25 (e) The state Office of Child Nutrition shall report to the Joint Committee on Government
26 and Finance, the Select Committee on Children and Poverty and the Legislative Oversight
27 Commission on Education Accountability on or before December 31, 2015, and each year
28 thereafter, on the impacts of the Feed to Achieve Act and any recommendations for legislation.

29 (f) ~~County~~ School district boards of education may utilize the nonprofit funds or foundations
30 established in section four of this article or other available funds to offset the costs of providing
31 free meals, after school and summer nutrition programs to elementary students.

32 (g) If at any time federal financial appropriations to this state for school nutrition programs
33 are terminated, ~~county~~ school district boards of education are hereby authorized, but not required,
34 to continue the programs at their own expense.

35 (h) Classroom teachers may not be required to participate in the operation of the school
36 breakfast program as part of their regular duties.

**§18-5D-4. Creating public-private partnerships; creating nonprofit foundation or fund;
audit.**

1 (a) The Department of Education and each ~~county~~ school district board of education shall
2 promptly establish a fund that is restricted solely for the receipt and expenditure of gifts, grants
3 and bequests for the purposes of this article and may establish in lieu thereof a nonprofit

4 foundation for this purpose. The purpose of the fund or nonprofit foundation is to provide
5 supplemental or matching funds to increase participation in the nutrition programs in the Feed to
6 Achieve initiative set forth in subsection (c) of this section. The Department of Education shall
7 utilize its fund or nonprofit foundation to assist ~~county~~ school district boards of education in
8 counties whose fund or foundation lacks sufficient business, industry and individual contributors
9 to fund the Feed to Achieve nutrition programs.

10 (b) Financial support for the fund or foundation may come from either public or private
11 gifts, grants, contributions, bequests and endowments.

12 (c) Expenditures from the state or ~~county~~ school district funds or by the foundations shall
13 be used for provision of food to students through any of the programs or initiatives approved by
14 the Office of Child Nutrition, including the following programs: School Breakfast Program, National
15 School Lunch Program, the Summer Food Service Program, the Fresh Fruit and Vegetable
16 Program, the Child and Adult Care Food Program, the farm-to-school initiative and community
17 gardens. Expenditures may also be made for initiatives developed with the Department of Health
18 and Human Resources and public-private partnerships to provide outreach and nutritional meals
19 when students are not in school.

20 (d) No administrative expenses or personnel expenses for any of the state departments
21 implementing this act, the State Board of Education, any ~~county~~ school district board of education,
22 school or program may be paid from the funds or by the foundations.

23 (e) Individuals or businesses that contribute to the funds or foundations may specify
24 schools or nutrition programs for which the contribution is to be used.

25 (f) The Department of Education and ~~county~~ school district boards of education may
26 establish public-private partnerships to enhance current or advance additional nutrition programs
27 that provide nutritious food for children to take home for weekend meals.

28 (g) The Department of Education and ~~county~~ school district boards of education shall form
29 or expand existing partnerships with the federal and state departments of agriculture, Department

30 of Health and Human Resources, local master gardeners, county extension agents or other
31 experts in the field of agriculture or gardening to develop community gardens, farm-to-school
32 programs and other such programs that teach students how to grow and produce healthy food
33 and provide healthy food to the students.

34 (h) The Department of Education shall collaborate with the Department of Health and
35 Human Resources to develop effective strategies and programs such as after school nutrition
36 outreach and programs that improve the healthy lifestyle of all students in pre-kindergarten
37 through twelfth grade. The Department of Health and Human Resources may propose rules for
38 promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code
39 to effectuate any programs so developed.

40 (i) All moneys contributed to a fund or foundation established pursuant to this section and
41 all expenditures made therefrom shall be audited as part of the annual independent audit of the
42 State Board of Education and the ~~county~~ school district boards of education.

ARTICLE 5E. INNOVATION

§18-5E-2. Innovation in Education school defined.

1 (a) An Innovation in Education school is a public school in this state that applies to and is
2 designated by the state board in accordance with this article as an Innovation in Education School
3 with a principal focus in one of the following areas:

- 4 (1) Science, technology, engineering and math (STEM);
- 5 (2) Community school partnership;
- 6 (3) Entrepreneurship;
- 7 (4) Career pathways; and
- 8 (5) The arts.

9 (b) Nothing in this article prohibits an Innovation in Education school from incorporating
10 more than one of the attributes of STEM education, community school partnerships,

11 entrepreneurship, career pathways or the arts into its program design, notwithstanding the
12 primary designation under which it applies or is subsequently designated.

13 (c) An Innovation in Education school:

14 (1) Shall provide a program of public education that includes one or more of the grade
15 levels prekindergarten to grade twelve, including any associated post-secondary dual credit,
16 advanced placement and industry or workforce credential programs;

17 (2) Shall design its educational program to meet or exceed the student performance
18 standards required under section five, article two-e of this chapter and is subject to all student
19 assessment, accreditation and federal accountability requirements applicable to other public
20 schools in this state. However, nothing shall prohibit an Innovation in Education school from
21 establishing additional student assessment measures or implementing competency-based course
22 completion strategies that go beyond state requirements;

23 (3) Shall operate according to an Innovation in Education plan developed by the school's
24 principal and faculty with input from its local school improvement council, the ~~county~~ school district
25 board, the ~~county~~ school district superintendent and, if the school is a high school, the students
26 of the school;

27 (4) Shall, if designated by the state board as an Innovation in Education Demonstration
28 School, host visits and tours of its facility and programs to provide information and an opportunity
29 to observe any successful innovations which may be replicated in other schools. The school may
30 require the payment of a fee to off-set the cost of hosting such visits and tours; and

31 (5) May solicit and accept gifts, donations or grants for school purposes from public or
32 private sources in any manner that is available to a local school district and expend or use such
33 gifts, donations or grants in accordance with the conditions prescribed by the donor except that a
34 gift, donation or grant may not be accepted if subject to a condition that is contrary to any provision
35 of law or term of the school's Innovation in Education plan. Any monies received by an Innovation
36 in Education school from any source remaining in the school's accounts at the end of a fiscal year

37 shall remain in its accounts for use during subsequent fiscal years.

§18-5E-3. Application for Innovation in Education school designation; application review and approval; state board rule.

1 (a) The state board may designate a school as a STEM, community school partnership,
2 entrepreneurship, career pathways or the arts Innovation in Education school in accordance with
3 this article and shall promulgate a rule, including an emergency rule if necessary, in accordance
4 with article three-b, chapter twenty-nine-a of this code to implement the provisions of this article.
5 The rule shall include at least the following:

6 (1) A process for a school to apply for designation as an Innovation in Education school in
7 STEM, community school partnership, entrepreneurship, career pathways or the arts;

8 (2) Clear and concise application evaluation factors in rubric form, including standards for
9 the state board to review and make a determination of whether to designate an applicant as an
10 Innovation in Education school;

11 (3) The manner, time and process for application submission;

12 (4) The form and necessary contents of the application, including but not limited to, the
13 following:

14 (A) The proposed mission and vision of the school as it pertains to becoming an Innovation
15 in Education school, including identification of the designation it seeks to obtain as a primary focus
16 on which may include: (i) Science, technology, engineering and math (STEM); (ii) community
17 school partnership; (iii) entrepreneurship; (iv) career pathways; or (v) the arts;

18 (B) An executive summary;

19 (C) The school's proposed academic program, including a description of the school's
20 instructional design, learning environment, class structure, curriculum overview, teaching
21 methods, research basis and other elements required in the school's Innovation in Education plan
22 pursuant to section four of this article;

23 (D) A clear articulation of the areas of autonomy and flexibility in curriculum, budget, school

24 schedule and calendar, professional development, and staffing policies and procedures which
25 would require a waiver of policy or code; and

26 (E) The school's Innovation in Education plan; and

27 (7) Following the initial evaluation of Innovation in Education schools as provided in
28 section six of this article, the process by which the state board will periodically review the
29 performance and student success of Innovation in Education schools, reaffirm or reconsider the
30 designation of a school, and identify exemplary schools to serve as demonstration sites.

31 (b) The state board may provide for the West Virginia Department of Education to
32 independently assess applicants based on the evaluation factors rubric and provide the state
33 board with this assessment. The state board shall consider the evaluation factors in rubric form
34 in making any Innovation in Education school designation determination. In making a designation
35 determination, the state board shall:

36 (1) Grant a designation only to applicants who have demonstrated competence in each
37 element of the evaluation factors and who have demonstrated their capacity to operate an
38 Innovation in Education school that will increase student achievement;

39 (2) Base determinations on documented evidence collected through the application review
40 process;

41 (3) If appropriate, include in a designation determination reasonable conditions that the
42 applicant must meet before commencing operation under the designation, including resubmission
43 of the application;

44 (4) Decline weak or inadequate applications and clearly state its reasons for denial;

45 (5) Make and announce all designations of Innovation in Education schools in a meeting
46 open to the public and clearly state in a resolution the reasons for the decisions. A copy of the
47 resolution shall be submitted to Legislative Oversight Commission on Education Accountability;
48 and

49 (6) Convey its determination on an application in writing to the applicant.

50 (c) An Innovation in Education school may not commence or continue operations without
51 a signed operational agreement as provided in section five of this article between the ~~county~~
52 school district board and the school principal.

§18-5E-4. Innovation in Education Plan; required contents; measurable annual performance goals; uses.

1 The Innovation in Education Plan for a STEM, community school partnership,
2 entrepreneurship, career pathways or the arts Innovation in Education school shall include each
3 of the following:

4 (1) A description of how the school will address the overall climate and culture of the school
5 as a high performing learning environment in which every child may succeed to the best of his or
6 her ability, including but not limited to measurable annual goals to:

7 (A) Increase overall student achievement;

8 (B) Address dropout prevention; and

9 (C) Transform school culture;

10 (2) A curriculum plan that includes a detailed description of the curriculum and related
11 programs for the proposed school and how the curriculum is expected to improve school
12 performance and student achievement;

13 (3) Measurable annual performance goals to assess the school's performance and student
14 success across multiple measures and that will serve as the basis evaluating the Innovation in
15 Education school, including but not limited to, goals relating to the following:

16 (A) Student attendance;

17 (B) Student safety and discipline;

18 (C) Student promotion and graduation and dropout rates;

19 (D) Student performance on the state-wide summative assessment and other assessment
20 required by the state board;

21 (E) Progress in areas of academic underperformance;

22 (F) Progress among subgroups of students, including, but not limited to, low-income
23 students and students receiving special education;

24 (G) With respect to high school, postsecondary readiness, including the percentage of
25 graduates submitting applications to postsecondary institutions, and postsecondary enrollment or
26 employment; and

27 (H) Parent and community engagement; and

28 (4) A budget plan that includes a detailed description of how funds will be used in the
29 proposed school to support school performance and student achievement that is or may be
30 different than how funds are used in other public schools in the district;

31 (5) A school schedule plan that includes a detailed description of the ways the program or
32 calendar of the proposed school may be enhanced or expanded;

33 (6) A staffing plan and professional development plan that includes a detailed description
34 of how the school may provide professional development to its administrators, teachers and other
35 staff;

36 (7) A policies and procedures plan that includes:

37 (A) A detailed description of the unique operational policies and procedures to be used by
38 the school seeking designation and how the procedures will support school performance and
39 student achievement; and

40 (B) Any exemptions to rule, policy or statute the school is seeking: *Provided*, That a school
41 may not request an exemption nor may an exemption be granted from any assessment program
42 required by the state board or any provision of law or policy required by the Every Student
43 Succeeds Act of 2015 or other federal law;

44 (8) The school's plan, if any, for using additional internal and external metrics of the
45 performance agreed to by the school and the ~~county~~ school district board to measure the school's
46 performance and student success;

47 (9) Opportunities and expectations for parent involvement; and

48 (8) Any other information the state board requires.

**§18-5E-5. Operational agreement between Innovation in Education school and ~~county~~
school district board.**

1 An Innovation in Education school designated by the state board may not commence or
2 continue operations without a signed operational agreement between the ~~county~~ school district
3 board and the school principal which sets forth at least the following:

4 (1) Any conditions which must be met before the Innovation in Education school may begin
5 full operations. If necessary, the full implementation of an Innovation in Education school may be
6 postponed for up to one school year following its initial designation to enable all conditions
7 necessary for full operation to be met;

8 (2) Any material term of the school's Innovation in Education Plan concerning curriculum,
9 budget, school schedule, calendar, staffing, professional development and policies and
10 procedures to be adhered to by both the ~~county~~ school district board and the school;

11 (3) An agreed-upon process for amending or refining the school's Innovation in Education
12 Plan to improve the school's performance and student success, including but not limited to, the
13 request for additional waivers of rules, policies, interpretations and statutes through the local
14 school improvement council process;

15 (4) The annual performance targets set by the ~~county~~ school district board and the school
16 to assess and evaluate the school's progress in achieving its annual measureable goals as set
17 forth in its Innovation in Education Plan, including any additional internal and external metrics of
18 performance agreed to by the school and the ~~county~~ school district board to measure the school's
19 performance and student success. The annual performance targets may be refined or amended
20 by mutual agreement of the ~~county~~ school district board and the school after the school has been
21 fully operational for one year and has collected baseline performance data;

22 (5) The process and criteria that the ~~county~~ school district board will use to annually
23 monitor and evaluate the overall performance and student success of the school, including a
24 process to conduct annual site visits;

25 (6) Any information needed by the ~~county~~ school district board from the school for the
26 purposes of accountability and reporting by the school on the implementation of its mission as an
27 Innovation in Education school;

28 (7) The process the ~~county~~ school district board will use to notify the school of any
29 deficiencies and the process by which the school may submit an improvement plan; and

30 (8) In the event that an Innovation in Education school's performance appears
31 unsatisfactory, specific provisions addressing the parameters under which the ~~county~~ school
32 district board may promptly notify the school in writing of perceived problems and provide
33 reasonable opportunity for the school to remedy the problems, or if not remedied, may intervene
34 or recommend to the state board that it place the school's designation on probationary status,
35 require a remedial action plan and potentially revoke the designation. At a minimum, these
36 parameters shall include the circumstances of poor fiscal management and a lack of academic
37 progress.

§18-5E-6. Evaluation of Innovation in Education designated schools.

1 (a) During its third full year of operation the ~~county~~ school district superintendent shall
2 issue a performance report on the Innovation in Education school. The performance report shall
3 summarize the school's performance record to date based on the data collected under school's
4 Innovation in Education Plan and operational agreement and shall provide notice of any
5 weaknesses or concerns perceived by the superintendent concerning the school that may
6 jeopardize its designation if not timely rectified. The school and the superintendent shall mutually
7 agree to a reasonable time period for the school to respond to the performance report and submit
8 any corrections to the report.

9 (b) After its fourth full year of operation, and periodically thereafter as may be provided by

10 the state board, the Innovation in Education school shall be evaluated by the ~~county~~ school district
11 superintendent. The ~~county~~ school district superintendent shall submit the evaluation to the
12 ~~county~~ school district board and the state board. The evaluation shall determine whether the
13 school has met the annual goals outlined in its Innovation in Education Plan and operational
14 agreement and assess the implementation of the Innovation in Education plan at the school.

15 (c) The ~~county~~ school district superintendent may recommend to the ~~county~~ school district
16 board and state board in the evaluation:

17 (1) To amend or suspend one or more components of the Innovation in Education Plan
18 and operational agreement if the ~~county~~ school district superintendent determines an amendment
19 or suspension is necessary to improve the performance and student success of the school;

20 (2) To amend or suspend one or more components of the Innovation in Education Plan
21 and operational agreement if the ~~county~~ school district superintendent determines an amendment
22 or suspension is necessary because of subsequent changes in the district that affect one or more
23 components of such Innovation in Education Plan;

24 (3) To support continued operation of the Innovation in Education school in accordance
25 with its Innovation in Education Plan and operational agreement; or

26 (4) To recommend to the state board that the school be designated as an Innovation in
27 Education demonstration school based on its exemplary performance and student success.

28 (d) Based on the ~~county~~ school district superintendent's evaluation and a data analysis
29 conducted by the West Virginia Department of Education the state board may:

30 (1) Amend or recommend an amendment to one or more components of the school's
31 Innovation in Education Plan and operational agreement;

32 (2) Suspend one or more components of the school's Innovation in Education Plan and
33 operational agreement;

34 (3) Affirm continuation of the Innovation in Education school under its current Innovation
35 in Education Plan and operational agreement; or

36 (4) If it is determined that the school has substantially failed to meet the goals outlined in
37 its Innovation in Education Plan and operational agreement, terminate the Innovation in Education
38 designation of the school.

39 (e) An amendment, suspension or termination may not take place before the completion
40 of the school year.

ARTICLE 6. DRIVER EDUCATION.

§18-6-2. Where provided; permit or certificate for persons who are not professional educators to teach course.

1 (a) There shall be offered in all public secondary schools within the state, without charge
2 to students, an approved, comprehensive course in driver education. The course may be offered
3 in summer school in addition to the regular instructional term.(b) In those ~~counties~~ school district
4 where sufficient public secondary school driver education courses are not available to meet all
5 requests for the course, ~~county~~ school district boards of education shall, as quickly as possible,
6 make sufficient courses available to fill those requests.

7 (c) Under the authority and subject to the conditions provided in section two-a, article
8 three, chapter eighteen-a of this code, the State Superintendent may issue a permit or other
9 certificate to persons who do not qualify for the professional certificate for the purpose of providing
10 instruction in driver education subject to the following:

11 (1) The applicant for the permit or certificate is subject to the criminal history check of
12 applicants for licensure provided in section ten, article three, chapter eighteen-a of this code;

13 (2) The permit or certificate may not be given permanent status, but may be renewed in
14 accordance with rules adopted by the State Department of Education;

15 (3) The duties of a person who has a valid permit or certificate under this subsection may
16 include the supervision of students;

17 (4) The person, when providing instruction in the public schools, may only be employed
18 under a contract with the respective ~~county~~ school district board of education that specifies the

19 duties to be performed, a rate of pay that is equivalent to the rate of pay for professional educators
20 in the district who accept similar duties as extra duty assignments and provides for liability
21 insurance associated with the activity;

22 (5) The person may not be considered an employee of the board for salary and benefit
23 purposes other than as specified in the contract;

24 (6) The person completes an orientation program designed and approved in accordance
25 with State Department of Education rules; and

26 (7) The position is posted annually and a professional educator fully certified for the
27 position has not applied.

§18-6-6. Expenditure of school funds for driver education courses; appropriations.

1 ~~County~~ School district boards of education, subject to the rules and regulations of the state
2 board, may expend school funds to maintain and repair vehicles used for instructional purposes,
3 to purchase fuel, lubricants, parts and accessories therefor, to pay the compensation of teachers
4 or instructors and to procure automobile insurance, where the expenditures are for the purpose
5 of establishing or maintaining driver education courses in public secondary schools pursuant to
6 this article. These expenditures, including compensation of teachers or instructors, may be made
7 over a period of twelve months.

8 Each ~~county~~ school district board of education shall receive from funds specially
9 appropriated for the driver education courses provided in public secondary schools a sum which
10 shall be proportionate to the total amount available for distribution for that purpose to all ~~county~~
11 school district boards in the state in the ratio which the number of pupils who are enrolled in driver
12 education courses in public secondary schools in the ~~county~~ school district bears to the total
13 number of pupils who are enrolled in driver education courses in all public secondary schools
14 within the state, but the payment shall not exceed the sum of \$35 for each such pupil per school
15 year.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-3. Definitions.

1 As used in this article, unless the context clearly requires a different meaning:

2 (1) "Accumulated contributions" means all deposits and all deductions from the gross
3 salary of a contributor plus regular interest.

4 (2) "Accumulated net benefit" means the aggregate amount of all benefits paid to or on
5 behalf of a retired member.

6 (3) "Actuarially equivalent" or "of equal actuarial value" means a benefit of equal value
7 computed upon the basis of the mortality table and interest rates as set and adopted by the
8 retirement board in accordance with the provisions of this article: *Provided*, That when used in
9 the context of compliance with the federal maximum benefit requirements of Section 415 of the
10 Internal Revenue Code, "actuarially equivalent" shall be computed using the mortality tables and
11 interest rates required to comply with those requirements.

12 (4) "Annuities" means the annual retirement payments for life granted beneficiaries in
13 accordance with this article.

14 (5) "Average final salary" means the average of the five highest fiscal year salaries earned
15 as a member within the last fifteen fiscal years of total service credit, including military service as
16 provided in this article, or if total service is less than fifteen years, the average annual salary for
17 the period on which contributions were made: *Provided*, That salaries for determining benefits
18 during any determination period may not exceed the maximum compensation allowed as adjusted
19 for cost of living in accordance with section seven, article ten-d, chapter five of this code and
20 Section 401(a)(17) of the Internal Revenue Code.

21 (6) "Beneficiary" means the recipient of annuity payments made under the retirement
22 system.

23 (7) "Contributor" means a member of the retirement system who has an account in the
24 teachers accumulation fund.

25 (8) "Deposit" means a voluntary payment to his or her account by a member.

26 (9) "Employer" means the agency of and within the state which has employed or employs
27 a member.

28 (10) "Employer error" means an omission, misrepresentation or violation of relevant
29 provisions of the West Virginia Code or of the West Virginia Code of State Regulations or the
30 relevant provisions of both the West Virginia Code and of the West Virginia Code of State
31 Regulations by the participating public employer that has resulted in an underpayment or
32 overpayment of contributions required. A deliberate act contrary to the provisions of this section
33 by a participating public employer does not constitute employer error.

34 (11) "Employment term" means employment for at least ten months, a month being
35 defined as twenty employment days.

36 (12) "Gross salary" means the fixed annual or periodic cash wages paid by a participating
37 public employer to a member for performing duties for the participating public employer for which
38 the member was hired. Gross salary shall be allocated and reported in the fiscal year in which the
39 work was done. Gross salary also includes retroactive payments made to a member to correct a
40 clerical error, or made pursuant to a court order or final order of an administrative agency charged
41 with enforcing federal or state law pertaining to the member's rights to employment or wages, with
42 all retroactive salary payments to be allocated to and considered paid in the periods in which the
43 work was or would have been done. Gross salary does not include lump sum payments for
44 bonuses, early retirement incentives, severance pay or any other fringe benefit of any kind
45 including, but not limited to, transportation allowances, automobiles or automobile allowances, or
46 lump sum payments for unused, accrued leave of any type or character.

47 (13) "Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been
48 amended.

49 (14) "Member" means any person who has accumulated contributions standing to his or
50 her credit in the state Teachers Retirement System. A member shall remain a member until the
51 benefits to which he or she is entitled under this article are paid or forfeited, or until cessation of

52 membership pursuant to section thirteen of this article.

53 (15) "Members of the administrative staff of the public schools" means deans of instruction,
54 deans of men, deans of women, and financial and administrative secretaries.

55 (16) "Members of the extension staff of the public schools" means every agricultural agent,
56 boys' and girls' club agent and every member of the agricultural extension staff whose work is not
57 primarily stenographic, clerical or secretarial.

58 (17) "New entrant" means a teacher who is not a present teacher.

59 (18) "Nonteaching member" means any person, except a teacher member, who is
60 regularly employed for full-time service by: (A) Any ~~county~~ school district board of education; (B)
61 the State Board of Education; (C) the Higher Education Policy Commission; (D) the West Virginia
62 Council for Community and Technical College Education; or (E) a governing board, as defined in
63 section two, article one, chapter eighteen-b of this code: *Provided*, That any person whose
64 employment with the Higher Education Policy Commission, the West Virginia Council for
65 Community and Technical College Education or a governing board commences on or after July
66 1, 1991, is not considered a nonteaching member.

67 (19) "Plan year" means the twelve-month period commencing on July 1 and ending the
68 following June 30 of any designated year.

69 (20) "Present member" means a present teacher or nonteacher who is a member of the
70 retirement system.

71 (21) "Present teacher" means any person who was a teacher within the thirty-five years
72 beginning July 1, 1934, and whose membership in the retirement system is currently active.

73 (22) "Prior service" means all service as a teacher completed prior to July 1, 1941, and all
74 service of a present member who was employed as a teacher, and did not contribute to a
75 retirement account because he or she was legally ineligible for membership during the service.

76 (23) "Public schools" means all publicly supported schools, including colleges and
77 universities in this state.

78 (24) "Refund beneficiary" means the estate of a deceased contributor or a person he or
79 she has nominated as beneficiary of his or her contributions by written designation duly executed
80 and filed with the retirement board.

81 (25) "Regular interest" means interest at four percent compounded annually, or a higher
82 earnable rate if set forth in the formula established in legislative rules, series seven of the
83 Consolidated Public Retirement Board, 162 CSR 7.

84 (26) "Regularly employed for full-time service" means employment in a regular position or
85 job throughout the employment term regardless of the number of hours worked or the method of
86 pay.

87 (27) "Required beginning date" means April 1 of the calendar year following the later of:
88 (A) The calendar year in which the member attains age seventy and one-half years; or (B) the
89 calendar year in which the member retires or ceases covered employment under the system after
90 having attained the age of seventy and one-half years.

91 (28) "Retirant" means any member who commences an annuity payable by the retirement
92 system.

93 (29) "Retirement board" means the Consolidated Public Retirement Board created
94 pursuant to article ten-d, chapter five of this code.

95 (30) "Retirement system" means the state Teachers Retirement System established by
96 this article.

97 (31) "Teacher member" means the following persons, if regularly employed for full-time
98 service: (A) Any person employed for instructional service in the public schools of West Virginia;
99 (B) principals; (C) public school librarians; (D) superintendents of schools and assistant ~~county~~
100 school district superintendents of schools; (E) any ~~county~~ school district school attendance
101 director holding a West Virginia teacher's certificate; (F) members of the research, extension,
102 administrative or library staffs of the public schools;(G) the State Superintendent of Schools,
103 heads and assistant heads of the divisions under his or her supervision, or any other employee

104 under the state superintendent performing services of an educational nature;(H) employees of
 105 the State Board of Education who are performing services of an educational nature;(I) any person
 106 employed in a nonteaching capacity by the State Board of Education, any ~~county~~ school district
 107 board of education, the State Department of Education or the State Teachers Retirement Board,
 108 if that person was formerly employed as a teacher in the public schools;(J) all classroom teachers,
 109 principals and educational administrators in schools under the supervision of the Division of
 110 Corrections, the Division of Health or the Division of Human Services;(K) an employee of the
 111 State Board of School Finance, if that person was formerly employed as a teacher in the public
 112 schools; and(L) any person designated as a 21st Century Learner Fellow pursuant to section
 113 eleven, article three, chapter eighteen-a of this code who elects to remain a member of the State
 114 Teachers Retirement System provided in this article.

115 (32) "Total service" means all service as a teacher or nonteacher while a member of the
 116 retirement system since last becoming a member and, in addition thereto, credit for prior service,
 117 if any.

118 Age in excess of seventy years shall be considered to be seventy years.

**§18-7A-13. Membership in retirement system; cessation of membership; reinstatement of
 withdrawn service.**

1 The membership of the retirement system shall consist of the following:

2 (a) New entrants, whose membership in the system is compulsory upon employment as
 3 teachers and nonteachers: *Provided*, That any teaching member or nonteaching member, as
 4 defined in section three of this article, who has concurrent employment in an additional job or jobs
 5 which would require the teaching member or nonteaching member to be a member of the West
 6 Virginia Deputy Sheriff Retirement System, the West Virginia Municipal Police Officers and
 7 Firefighters Retirement System or the West Virginia Emergency Medical Services Retirement
 8 System shall abide by the concurrent employment statutory provisions of said retirement system
 9 and shall participate in only one retirement system administered by the retirement board.

10 (b) The membership of the retirement system shall not include any person who is an active
11 member of or who has been retired by the West Virginia Public Employees Retirement System,
12 the judge's retirement system, or the retirement system of the West Virginia State Police or the
13 supplemental retirement system as provided in section four-a, article twenty-three of this chapter.
14 The membership of any person in the retirement system ceases: (1) Upon the withdrawal of
15 accumulated contributions after the cessation of service; (2) upon effective retirement date; (3) at
16 death; or (4) upon the date, if any, when after the cessation of service, the outstanding balance
17 of any loan obtained by the member pursuant to section thirty-four of this article or section five,
18 article seven-d of this chapter, plus accrued interest, equals or exceeds the member's
19 accumulated contributions.

20 (c) Any former member of the retirement system who has withdrawn accumulated
21 contributions but subsequently reenters the retirement system may repay to the retirement fund
22 the amount withdrawn, plus interest at a rate set by the board, compounded annually from the
23 date of withdrawal to the date of repayment: *Provided*, That no repayment may be made until the
24 former member has completed two years of contributory service after reentry; and the member
25 shall be accorded all the rights to prior service and experience as were held at the time of
26 withdrawal of the accumulated contributions: *Provided, however*, That no withdrawn service may
27 be reinstated that has been transferred to another retirement system from which the member is
28 currently or will in the future draw benefits based on the same service. The interest paid shall be
29 deposited in the reserve fund.

30 (d) No member is eligible for prior service credit unless he or she is eligible for prior service
31 pension, as prescribed by section twenty-two of this article; however, a new entrant who becomes
32 a present teacher as provided in this subdivision shall be considered eligible for prior service
33 pension upon retirement.

34 (e) Any individual who is a leased employee is not eligible to participate in the system. For
35 purposes of this system, a "leased employee" means any individual who performs services as an

36 independent contractor or pursuant to an agreement with an employee leasing organization or
37 other similar organization. If a question arises regarding the status of an individual as a leased
38 employee, the board has final power to decide the question.

§18-7A-15. Collection of membership contributions.

1 Each employer shall each month deduct six percent from the salary of each employee
2 who is a member of the retirement system, in an amount not to exceed the amount named in
3 section fourteen of this article, and shall at the end of each month remit to the retirement board
4 the amounts so deducted, and shall transmit therewith a list of all new members employed and
5 the name and number of members transferring from another ~~county~~ school district. At such times
6 as the retirement board may deem advisable each employer shall report to the retirement board
7 the total amount so deducted from the salary of each employee. The monthly payments which
8 members would receive from employers as compensation for service in the absence of this article
9 shall be decreased by the amount of the contribution due hereunder.

10 Each employer shall be held accountable for the sum composing the contributions made
11 by its member employees. Whenever any ~~county~~ school district board of education shall fail to
12 make timely remittance of the member contributions deducted as provided in this section, the
13 board of school finance shall, upon request of the retirement board, deduct from the next allotment
14 of state aid for schools made to such ~~county~~ school district board, and shall transfer to the
15 retirement board, the amount so in default.

§18-7A-35. Coverage for nonteaching employees; prior service credit.

1 (a) Nonteaching employees shall mean all persons, except teachers, regularly employed
2 for full-time service by the following educational agencies: (a) Any ~~county~~ school district board of
3 education, (b) the state Board of Education, (c) the West Virginia board of regents, and (d) the
4 Teachers' Retirement Board.

5 (b) Such nonteaching employees shall be entitled to all the rights, privileges and benefits
6 provided for teachers by this article, upon the same terms and conditions as are herein prescribed

7 for teachers. Any member who was employed as a regular full-time employee in a nonteaching
8 capacity by a Board of Education, school principal or school administrator, prior to the time he or
9 she became eligible for membership in the state Teachers Retirement System, shall be granted
10 prior service credit for such service upon making application to the retirement board and providing
11 satisfactory evidence of such service.

12 (c) Except as provided in section thirteen-b of this article, employees of the cooperative
13 extension service and its predecessors in title, (agriculture extension division, West Virginia
14 extension agency, and West Virginia University cooperative extension service) shall be entitled
15 to all the rights, privileges and benefits provided for teachers by this article, upon the same terms
16 and conditions as are herein prescribed for teachers. Any member of the extension service or its
17 predecessors in title, who was employed for thirty hours or more per week, prior to the time he or
18 she became eligible for membership in the state Teachers Retirement System, shall be granted
19 service credit for such service upon making application to the retirement board and providing
20 satisfactory evidence of such service. When the prior service is credited, each member of the
21 retirement system so credited shall contribute an amount equal to the amount he or she would
22 have contributed had he or she been a member of the retirement system during the period
23 credited.

§18-7A-35b. Temporary early retirement incentives program; legislative declarations and findings; termination date.

1 Under the prior enactment of this section, the Legislature found and declared that a
2 compelling state interest existed in providing a temporary, early retirement incentives program for
3 encouraging the early, voluntary retirement of those public employees who were current, active,
4 contributing members of this retirement system on April 1, 1988, in the reduction of the number
5 of the employees and in reduction of governmental costs for the employees. The Legislature
6 further found that maintaining an actuarially sound retirement fund is essential and that the
7 reemployment in any manner, including reemployment on a contract basis, by the state of any

8 person who retired under this section is contrary to the intent of the early retirement program and
9 severely threatens the fiscal integrity of the retirement fund. The early retirement program under
10 the prior enactment of this section, offered employees three retirement incentive options. Any
11 person who retired under the provisions of the prior enactment of this section are subject to the
12 restrictions contained in this section.

13 (a) For the purposes of this section: (1) "Contract" means any personal service agreement,
14 not involving the sale of commodities, that cannot be performed within sixty days or for which the
15 total compensation exceeds \$7,500 in any twelve-month period. The term "contract" does not
16 include any agreement obtained by a retirant through a bidding process and which is for the
17 furnishing of any commodity to a government agency; (2) "governmental entity" means the State
18 of West Virginia; a Constitutional branch or office of the state government, or any subdivision of
19 state government; a county, city or town in the state; a ~~county~~ school district board of education;
20 a separate corporation or instrumentality established pursuant to a state statute; any other entity
21 currently permitted to participate in any state public retirement system or the Public Employees
22 Insurance Agency; or any officer or official of any entity listed in this subsection who is acting in
23 his or her official capacity; (3) "substitute teacher" means a teacher, public school librarian,
24 registered professional nurse employed by the ~~county~~ school district board of education or any
25 other person employed for counselling or instructional purposes in a public school in this state
26 who is temporarily fulfilling the duties of an existing person employed in a specific position who is
27 temporarily absent from that specific position; and (4) "part-time elected or appointed office"
28 means any elected or appointed office that compensates its members in an amount less than
29 \$2,500 or requires less than sixty days of service in any twelve-month period.

30 (b) Any member who participated in the retirement incentive program under the prior
31 enactment of this section is not eligible to accept further employment or accept, directly or
32 indirectly, work on a contract basis from a governmental entity: *Provided*, That the executive
33 director may approve, upon written request for good cause shown, an exception allowing a retirant

34 to perform work on a contract basis: *Provided, however,* That a person may retire under this
35 section and thereafter serve in an elective office: *Provided further,* That he or she shall not receive
36 the incentive option he or she elected under the prior enactment of this section during the term of
37 service in that office for which the total compensation exceeds \$7,500, but shall receive his or her
38 annuity calculated on regular basis, as if originally taken not under the prior enactment of this
39 section but on a regular basis. At the end of the term and cessation of service in the office, the
40 incentive option resumes. In respect of an appointive office, as distinguished from an elective
41 office, any person retiring under this section and thereafter serving in the appointive office for
42 which the total compensation exceeds \$7,500 shall not receive the incentive option he or she
43 elected under the prior enactment of this section during the term of service in that office, but the
44 incentive option resumes during that period: *And provided further,* That at the end of the term and
45 cessation of service in the appointive office the incentive option provided for under the prior
46 enactment of this section resumes: *And provided further,* That any person elected or appointed
47 to office by the state or any of its political subdivisions who waives whatever salary, wage or per
48 diem compensation he or she may be entitled to by virtue of service in that office and who does
49 not receive any income from service in that office except the reimbursement of out-of-pocket costs
50 and expenses that are permitted by the statutes governing the office shall continue to receive the
51 incentive option he or she elected under this section. The service may not be counted as
52 contributed or credited service for purposes of computing retirement benefits.

53 (c) If the elected or appointed office is a part-time elected or appointed office, a person
54 electing retirement under this section may serve in the elective or appointive office with no loss of
55 the benefits provided under the prior enactment of this section.

56 (d) Prior to the initiation or renewal of any contract for which the total compensation
57 exceeds \$7,500 and entered into pursuant to this section or the acceptance of any elective or
58 appointive office for which the total compensation exceeds \$7,500, a person who has elected to
59 retire under the early retirement provisions of the prior enactment of this section shall complete a

60 disclosure and waiver statement executed under oath and acknowledged by a notary public. The
61 board shall propose rules for promulgation, pursuant to article three, chapter twenty-nine-a of this
62 code, regarding the form and contents of the waiver and disclosure statement. The disclosure
63 and waiver statement shall be forwarded to the appropriate state public retirement system
64 administrator who shall take action to ensure that the early retirement incentive option benefit is
65 reduced in accordance with the provisions of this section. The administrator shall then certify that
66 action in writing to the appropriate governmental entity.

67 (e) In any event, an eligible member who retired under the prior enactment of this section
68 may continue to receive his or her incentive annuity and be employed as a substitute teacher, as
69 adjunct faculty, as a school service personnel substitute, or as a part-time member of the faculty
70 of southern West Virginia community college or West Virginia northern community college:
71 *Provided*, That the board of directors determines that the part-time employment is in accordance
72 with policies to be adopted by the board regarding adjunct faculty. For purposes of this section, a
73 "part-time member of the faculty" means an individual employed solely to provide instruction for
74 not more than twelve college credits per semester.

75 (f) Any incentive retirants, under the prior enactment of this section, may not receive an
76 annuity and enter or reenter any governmental retirement system established or authorized to be
77 established by the state, notwithstanding any provision of the code to the contrary, unless required
78 by Constitutional provision.

79 (g) The additional annuity allowed for temporary early retirement is intended to be paid
80 from the retirement incentive account created as a special account in the State Treasury and from
81 the funds in the special account established with moneys required to be applied or transferred by
82 heads of spending units from the unused portion of salary and fringe benefits in their budgets
83 accruing in respect to the positions vacated and subsequently canceled under this temporary
84 early retirement program. Salary and fringe benefit moneys actually saved in a particular fiscal
85 year constitute the fund source. No additional annuity shall be disallowed even though initial

86 receipts may not be sufficient, with funds of the system to be applied for the purpose, as for the
87 base annuity.

88 (h) The executive secretary of the retirement system shall file a quarterly report to the
89 Legislature detailing the number of retirees who have elected to accept early retirement incentive
90 options, the dollar cost to date by option selected, and the projected annual cost through the year
91 2000.

92 (i) *Termination of temporary retirement incentives program.* -- The right to retire under this
93 section terminated on June 30, 1989.

ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§18-7B-2. Definitions.

1 As used in this article, unless the context clearly requires a different meaning:

2 (1) "Annual addition" means, for purposes of the limitations under Section 415(c) of the
3 Internal Revenue Code, the sum credited to a member's account for any limitation year of: (A)
4 Employer contributions; (B) employee contributions; and (C) forfeitures. Repayment of cashouts
5 or contributions as described in Section 415(k)(3) of the Internal Revenue Code, rollover
6 contributions and picked-up employee contributions to a defined benefit plan shall not be treated
7 as annual additions, consistent with the requirements of Treasury Regulation §1.415(c)-1;

8 (2) "Annuity account" or "annuity" means an account established for each member to
9 record the deposit of member contributions and employer contributions and interest, dividends or
10 other accumulations credited on behalf of the member;

11 (3) "Compensation" means the full compensation actually received by members for
12 service whether or not a part of the compensation is received from other funds, federal or
13 otherwise, than those provided by the state or its subdivisions: *Provided*, That annual
14 compensation for determining contributions during any determination period may not exceed the
15 maximum compensation allowed as adjusted for cost of living in accordance with section seven,
16 article ten-d, chapter five of this code and Section 401(a)(17) of the Internal Revenue Code:

17 *Provided, however,* That solely for purposes of applying the limitations of Section 415 of the
18 Internal Revenue Code to any annual addition, "compensation" has the meaning given it in
19 subsection (d), section thirteen of this article;

20 (4) "Consolidated board" or "board" means the Consolidated Public Retirement Board
21 created and established pursuant to article ten-d, chapter five of this code;

22 (5) "Defined contribution system" or "system" means the Teachers' Defined Contribution
23 Retirement System created and established by this article;

24 (6) "Employer" means the agency of and within the State of West Virginia which has
25 employed or employs a member;

26 (7) "Employer contribution" means an amount deposited into the member's individual
27 annuity account on a periodic basis coinciding with the employee's regular pay period by an
28 employer from its own funds;

29 (8) "Employment term" means employment for at least ten months in any plan year with a
30 month being defined as twenty employment days;

31 (9) "Existing employer" means any employer who employed or employs a member of the
32 system;

33 (10) "Existing retirement system" means the State Teachers Retirement System
34 established in article seven-a of this chapter;

35 (11) "Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been
36 amended;

37 (12) "Member" or "employee" means the following persons, if regularly employed for full-
38 time service: (A) Any person employed for instructional service in the public schools of West
39 Virginia; (B) principals; (C) public school librarians; (D) superintendents of schools and assistant
40 ~~county school district~~ superintendents of schools; (E) any ~~county school district~~ school attendance
41 director holding a West Virginia teacher's certificate; (F) members of the research, extension,
42 administrative or library staffs of the public schools; (G) the State Superintendent of Schools,

43 heads and assistant heads of the divisions under his or her supervision or any other employee
44 under the state superintendent performing services of an educational nature; (H) employees of
45 the State Board of Education who are performing services of an educational nature; (I) any person
46 employed in a nonteaching capacity by the State Board of Education, any ~~county~~ school district
47 board of education or the State Department of Education, if that person was formerly employed
48 as a teacher in the public schools; (J) all classroom teachers, principals and educational
49 administrators in schools under the supervision of the Division of Corrections and the Department
50 of Health and Human Resources; (K) any person who is regularly employed for full-time service
51 by any ~~county~~ school district board of education or the State Board of Education; (L) the
52 administrative staff of the public schools including deans of instruction, deans of men and deans
53 of women, and financial and administrative secretaries; and (M) any person designated as a 21st
54 Century Learner Fellow pursuant to section eleven, article three, chapter eighteen-a of this code
55 who elects to remain a member of the Teachers' Defined Contribution Retirement System
56 established by this article;

57 (13) "Member contribution" means an amount reduced from the employee's regular pay
58 periods, and deposited into the member's individual annuity account within the Teachers' Defined
59 Contribution Retirement System;

60 (14) "Permanent, total disability" means a mental or physical incapacity requiring absence
61 from employment service for at least six months: *Provided*, That the incapacity is shown by an
62 examination by a physician or physicians selected by the board: *Provided, however*, That for
63 employees hired on or after July 1, 2005, "permanent, total disability" means an inability to engage
64 in substantial gainful activity by reason of any medically determinable physical or mental
65 impairment that can be expected to result in death, or has lasted or can be expected to last for a
66 continuous period of not less than twelve months and the incapacity is so severe that the member
67 is likely to be permanently unable to perform the duties of the position the member occupied
68 immediately prior to his or her disabling injury or illness;

69 (15) "Plan year" means the twelve-month period commencing on July 1 of any designated
70 year and ending on the following June 30;

71 (16) "Public schools" means all publicly supported schools, including normal schools,
72 colleges and universities in this state;

73 (17) "Regularly employed for full-time service" means employment in a regular position or
74 job throughout the employment term regardless of the number of hours worked or the method of
75 pay;

76 (18) "Required beginning date" means April 1 of the calendar year following the later of:
77 (A) The calendar year in which the member attains age seventy and one-half years; or (B) the
78 calendar year in which the member retires or otherwise ceases employment with a participating
79 employer after having attained the age of seventy and one-half years;

80 (19) "Retirement" means a member's withdrawal from the active employment of a
81 participating employer and completion of all conditions precedent to retirement;

82 (20) "Year of employment service" means employment for at least ten months, with a
83 month being defined as twenty employment days: *Provided*, That no more than one year of
84 service may be accumulated in any twelve-month period.

§18-7B-17. Deposits to the members' annuity accounts.

1 Beginning on July 1, 1991 and thereafter, each ~~county~~ school district board of education
2 shall deposit in the member's annuity account created pursuant to section nine of this article an
3 amount equal to seven and one-half percent of all compensation paid to members of the defined
4 contribution system in excess of that authorized for minimum salaries in sections two and eight-
5 a, article four, chapter eighteen-a of this code to the extent that the excess exceeds the amount
6 distributed for salary equity to the ~~county~~ school district.

**ARTICLE 7D. VOLUNTARY TRANSFER FROM TEACHERS' DEFINED
CONTRIBUTION RETIREMENT SYSTEM TO STATE TEACHERS**

RETIREMENT SYSTEM.**§18-7D-4. Notice, education, record-keeping requirements.**

1 (a) Commencing not later than April 1, two thousand eight, the board shall begin an
2 educational program with respect to the voluntary transfer of actively contributing members of the
3 Teachers' Defined Contribution Retirement System and their assets to the state Teachers
4 Retirement System.

5 (1) This educational program shall address, at a minimum:

6 (A) The law providing for the transfer;

7 (B) The mechanics of the transfer;

8 (C) The process by which an actively contributing member may affirmatively elect to
9 transfer;

10 (D) Relevant dates and time periods;

11 (E) The benefits, potential advantages and potential disadvantages if members fail or
12 refuse to affirmatively elect to transfer;

13 (F) The benefits, potential advantages and potential disadvantages of becoming a
14 member of the state Teachers Retirement System;

15 (G) Potential state and federal tax implications attendant to the various options available
16 to the members;

17 (H) For each member, a summary to include his or her most recent account balance; the
18 average rate of return of the Standard and Poor's and the Lehman U.S. Corporate/Government
19 Index for the previous ten years; the average rate of return of an indexed balanced fund for the
20 previous ten years; the member's projected account balance if he or she retires at age sixty and

21 age sixty-five; the current cost of purchasing a monthly annuity under the Teachers' Defined
22 Contribution Retirement System; the monthly annuity that the member would receive under the
23 Teachers Retirement System if the member chooses to purchase the full service credit and retire

24 at age sixty and age sixty-five; the monthly annuity under the Teachers Retirement System if the
25 participant chooses not to purchase the full service credit and retires at age sixty and age sixty-
26 five, and the potential cost to the member of purchasing the Actuarial Reserve or the one and
27 one-half percent contribution plus accrued interest, as the case may be, not including the cost of
28 obtaining a loan under section five of this article.

29 (l) Any other pertinent information considered relevant by the board.

30 (2) The board shall disseminate the information through:

31 (A) Its website;

32 (B) Computer programs;

33 (C) Written or electronic materials, or both;

34 (D) Classes or seminars, pursuant to subdivision (3) of this subsection;

35 (E) At the discretion of the board, through a program of individual counseling which is
36 optional on the part of the member; and

37 (F) Through any other educational program considered necessary by the board.

38 (3) The Consolidated Public Retirement Board shall provide the information set forth in
39 subdivision (1) of this subsection through classes or seminars in accordance with the following:

40 (A) The Consolidated Public Retirement Board shall provide training for conducting the
41 classes or seminars for employees of ~~county~~ school district boards, for employees of state
42 institutions of higher education or for any other person that the ~~county~~ school district board or the
43 institution of higher learning determines, with the approval of the Consolidated Public Retirement
44 Board, would be appropriate to conduct the classes or seminars;

45 (B) Each ~~county~~ school district board shall require at least two representatives to attend
46 the training. The representatives must be approved by the Consolidated Public Retirement Board
47 prior to attending the board's training class;

48 (C) Each ~~county~~ school district board shall ensure that each employee of that ~~county~~
49 school district board who is a member of the Teachers' Defined Contribution Retirement System

50 has had an opportunity to attend a class or a seminar on the topics set forth in subdivision (1) of
51 this subsection at his or her work site during his or her workday;

52 (D) The class or seminar shall be conducted by any person who attended the training or
53 by a representative of a school personnel organization that the Consolidated Public Retirement
54 Board considers qualified to conduct the class or seminar;

55 (E) The classes or seminars may be conducted at the time allocated for professional
56 activities for teachers on instructional support and enhancement days, before school, after school
57 and at any other time during an employee's work day: *Provided*, That the classes or seminars
58 may interfere with instructional time only if no other time is available to conduct the classes or
59 seminars;

60 (F) Each ~~county~~ school district board shall ensure that informational booths are set up at
61 each work site under the jurisdiction of the ~~county~~ school district board and that the booths are
62 attended on a rotating basis by an person trained to conduct the classes or seminars or by a
63 representative of a school personnel organization that the Consolidated Public Retirement Board
64 considers qualified to attend the booth;

65 (G) During the period provided by this section for the educational program, each ~~county~~
66 school district board and its superintendent shall allow representatives of the Consolidated Public
67 Retirement Board entry upon the premises of each school in this state where the Consolidated
68 Public Retirement Board determines appropriate on at least one occasion for the duration of at
69 least sixty minutes during regular school hours to provide educational programs as the
70 Consolidated Public Retirement Board determines appropriate for members of the Teachers'
71 Defined Contribution Retirement System;

72 (b) The board shall provide each actively contributing member with a copy of the written
73 or electronic educational materials and with a copy of the notice of the opportunity to affirmatively
74 elect to transfer, to the extent deliverable, by mailing a copy thereof, first class postage prepaid,
75 through the United States mails to the most current mailing address provided by the member to

76 the board. The board is not required to deliver, nor is any member entitled to delivery of, these
77 materials by any other means. The notice shall provide full and appropriate disclosure regarding
78 the process by which a member may affirmatively elect to transfer, including the period of the
79 opportunity to affirmatively elect to transfer.

80 (c) It is the responsibility of each member of the Teachers' Defined Contribution
81 Retirement System to keep the board informed of his or her current address. A member who does
82 not is considered to have waived his or her right to receive any information from the board with
83 respect to the purposes of this article.

84 (d) Once the board has complied with the provisions of this section, each actively
85 contributing member of the Teachers' Defined Contribution Retirement System is considered to
86 have actual notice of the opportunity to affirmatively elect to transfer and all matters pertinent
87 thereto.

88 (e) The executive director of the Consolidated Public Retirement Board shall report to the
89 Governor, the President of the Senate, and the Speaker of the House of Delegates no later than
90 April, 1, two thousand eight, a plan for the execution of the education and outreach requirements
91 set forth in this section.

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-1. Compulsory school attendance; exemptions.

1 (a) Exemption from the requirements of compulsory public school attendance established
2 in section one-a of this article shall be made on behalf of any child for the causes or conditions
3 set forth in this section. Each cause or condition set forth in this section is subject to confirmation
4 by the attendance authority of the ~~county~~ school district. A child who is exempt from compulsory
5 school attendance under this section is not subject to prosecution under section two of this article,
6 nor is such a child a status offender as defined by section two hundred two, article one, chapter
7 forty-nine of this code.

8 (b) A child is exempt from the compulsory school attendance requirement set forth in

9 section one-a of this article if the requirements of this subsection, relating to instruction in a
10 private, parochial or other approved school, are met. The instruction shall be in a school approved
11 by the county school district board and for a time equal to the instructional term set forth in section
12 forty-five, article five of this chapter. In all private, parochial or other schools approved pursuant
13 to this subsection it is the duty of the principal or other person in control, upon the request of the
14 county school district superintendent, to furnish to the county school district board such
15 information and records as may be required with respect to attendance, instruction and progress
16 of students enrolled.

17 (c) A child is exempt from the compulsory school attendance requirement set forth in
18 section one-a of this article if the requirements of either subdivision (1) or subdivision (2) of this
19 subsection, both relating to home instruction, are met.

20 (1) The instruction shall be in the home of the child or children or at some other place
21 approved by the county school district board and for a time equal to the instructional term set forth
22 in section forty-five, article five of this chapter. If the request for home instruction is denied by the
23 county school district board, good and reasonable justification for the denial shall be furnished in
24 writing to the applicant by the county school district board. The instruction shall be conducted by
25 a person or persons who, in the judgment of the county school district superintendent and county
26 school district board, are qualified to give instruction in subjects required to be taught in public
27 elementary schools in the state. The person or persons providing the instruction, upon request of
28 the county school district superintendent, shall furnish to the county school district board
29 information and records as may be required periodically with respect to attendance, instruction
30 and progress of students receiving the instruction. The state board shall develop guidelines for
31 the home schooling of special education students including alternative assessment measures to
32 assure that satisfactory academic progress is achieved.

33 (2) The child meets the requirements set forth in this subdivision: *Provided*, That the
34 county school district superintendent may, after a showing of probable cause, seek from the circuit

35 court of the ~~county~~ school district an order denying home instruction of the child. The order may
36 be granted upon a showing of clear and convincing evidence that the child will suffer neglect in
37 his or her education or that there are other compelling reasons to deny home instruction.

38 (A) Upon commencing home instruction under this section the parent of a child receiving
39 home instruction shall present to the ~~county~~ school district superintendent or ~~county~~ school district
40 board a notice of intent to provide home instruction that includes the name, address, and age of
41 any child of compulsory school age to be instructed and assurance that the child shall receive
42 instruction in reading, language, mathematics, science and social studies and that the child shall
43 be assessed annually in accordance with this subdivision. The person providing home instruction
44 shall notify the ~~county~~ school district superintendent upon termination of home instruction for a
45 child who is of compulsory attendance age. Upon establishing residence in a new ~~county~~ school
46 district, the person providing home instruction shall notify the previous ~~county~~ school district
47 superintendent and submit a new notice of intent to the superintendent of the new ~~county~~ school
48 district of residence: *Provided*, That if a child is enrolled in a public school, notice of intent to
49 provide home instruction shall be given on or before the date home instruction is to begin.

50 (B) The person or persons providing home instruction shall submit satisfactory evidence
51 of a high school diploma or equivalent, or a post-secondary degree or certificate from a regionally
52 accredited institution or from an institution of higher education that has been authorized to confer
53 a post-secondary degree or certificate in West Virginia by the West Virginia Council for
54 Community and Technical College Education or by the West Virginia Higher Education Policy
55 Commission.

56 (C) Annually, the person or persons providing home instruction shall obtain an academic
57 assessment of the child for the previous school year in one of the following ways:

58 (i) The child receiving home instruction takes a nationally normed standardized
59 achievement test published or normed not more than ten years from the date of administration
60 and administered under the conditions as set forth by the published instructions of the selected

61 test and by a person qualified in accordance with the test's published guidelines in the subjects
62 of reading, language, mathematics, science and social studies. The child is considered to have
63 made acceptable progress when the mean of the child's test results in the required subject areas
64 for any single year is within or above the fourth stanine or, if below the fourth stanine, shows
65 improvement from the previous year's results;

66 (ii) The child participates in the testing program currently in use in the state's public
67 schools. The test shall be administered to the child at a public school in the ~~county~~ school district
68 of residence. Determination of acceptable progress shall be based on current guidelines of the
69 state testing program;

70 (iii) A portfolio of samples of the child's work is reviewed by a certified teacher who
71 determines whether the child's academic progress for the year is in accordance with the child's
72 abilities. The teacher shall provide a written narrative about the child's progress in the areas of
73 reading, language, mathematics, science and social studies and shall note any areas which, in
74 the professional opinion of the reviewer, show need for improvement or remediation. If the
75 narrative indicates that the child's academic progress for the year is in accordance with the child's
76 abilities, the child is considered to have made acceptable progress; or

77 (iv) The child completes an alternative academic assessment of proficiency that is
78 mutually agreed upon by the parent or legal guardian and the ~~county~~ school district
79 superintendent.

80 (D) A parent or legal guardian shall maintain copies of each student's Academic
81 Assessment for three years. When the annual assessment fails to show acceptable progress, the
82 person or persons providing home instruction shall initiate a remedial program to foster
83 acceptable progress. The ~~county~~ school district board upon request shall notify the parents or
84 legal guardian of the child, in writing, of the services available to assist in the assessment of the
85 child's eligibility for special education services. Identification of a disability does not preclude the
86 continuation of home schooling. In the event that the child does not achieve acceptable progress

87 for a second consecutive year, the person or persons providing instruction shall submit to the
88 ~~county~~ school district superintendent additional evidence that appropriate instruction is being
89 provided.

90 (E) The parent or legal guardian shall submit to the ~~county~~ school district superintendent
91 the results of the academic assessment of the child at grade levels three, five, eight and eleven,
92 as applicable, by June 30 of the year in which the assessment was administered.

93 (3) This subdivision applies to both home instruction exemptions set forth in subdivisions
94 (1) and (2) of this subsection. The ~~county~~ school district superintendent or a designee shall offer
95 such assistance, including textbooks, other teaching materials and available resources, all subject
96 to availability, as may assist the person or persons providing home instruction. Any child receiving
97 home instruction may upon approval of the ~~county~~ school district board exercise the option to
98 attend any class offered by the ~~county~~ school district board as the person or persons providing
99 home instruction may consider appropriate subject to normal registration and attendance
100 requirements.

101 (d) A child is exempt from the compulsory school attendance requirement set forth in
102 section one-a of this article if the requirements of this subsection, relating to physical or mental
103 incapacity, are met. Physical or mental incapacity consists of incapacity for school attendance
104 and the performance of school work. In all cases of prolonged absence from school due to
105 incapacity of the child to attend, the written statement of a licensed physician or authorized school
106 nurse is required. Incapacity shall be narrowly defined and in any case the provisions of this article
107 may not allow for the exclusion of the mentally, physically, emotionally or behaviorally
108 handicapped child otherwise entitled to a free appropriate education.

109 (e) A child is exempt from the compulsory school attendance requirement set forth in
110 section one-a of this article if conditions rendering school attendance impossible or hazardous to
111 the life, health or safety of the child exist.

112 (f) A child is exempt from the compulsory school attendance requirement set forth in

113 section one-a of this article upon regular graduation from a standard senior high school or
114 alternate secondary program completion as determined by the state board.

115 (g) A child is exempt from the compulsory school attendance requirement set forth in
116 section one-a of this article if the child is granted a work permit pursuant to the subsection. After
117 due investigation the ~~county~~ school district superintendent may grant work permits to youths
118 under the termination age designated in section one-a of this article, subject to state and federal
119 labor laws and regulations. A work permit may not be granted on behalf of any youth who has not
120 completed the eighth grade of school.

121 (h) A child is exempt from the compulsory school attendance requirement set forth in
122 section one-a of this article if a serious illness or death in the immediate family of the child has
123 occurred. It is expected that the ~~county~~ school district attendance director will ascertain the facts
124 in all cases of such absences about which information is inadequate and report the facts to the
125 ~~county~~ school district superintendent.

126 (i) A child is exempt from the compulsory school attendance requirement set forth in
127 section one-a of this article if the requirements of this subsection, relating to destitution in the
128 home, are met. Exemption based on a condition of extreme destitution in the home may be
129 granted only upon the written recommendation of the ~~county~~ school district attendance director to
130 the ~~county~~ school district superintendent following careful investigation of the case. A copy of the
131 report confirming the condition and school exemption shall be placed with the ~~county~~ school
132 district director of public assistance. This enactment contemplates every reasonable effort that
133 may properly be taken on the part of both school and public assistance authorities for the relief of
134 home conditions officially recognized as being so destitute as to deprive children of the privilege
135 of school attendance. Exemption for this cause is not allowed when the destitution is relieved
136 through public or private means.

137 (j) A child is exempt from the compulsory school attendance requirement set forth in
138 section one-a of this article if the requirements of this subsection, relating to church ordinances

139 and observances of regular church ordinances, are met. The ~~county~~ school district board may
140 approve exemption for religious instruction upon written request of the person having legal or
141 actual charge of a child or children. This exemption is subject to the rules prescribed by the ~~county~~
142 school district superintendent and approved by the ~~county~~ school district board.

143 (k) A child is exempt from the compulsory school attendance requirement set forth in
144 section one-a of this article if the requirements of this subsection, relating to alternative private,
145 parochial, church or religious school instruction, are met. Exemption shall be made for any child
146 attending any private school, parochial school, church school, school operated by a religious order
147 or other nonpublic school which elects to comply with the provisions of article twenty-eight of this
148 chapter.

149 (l) Completion of the eighth grade does not exempt any child under the termination age
150 designated in section one-a of this article from the compulsory attendance provision of this article.

**§18-8-1a. Commencement and termination of compulsory school attendance; public
school entrance requirements; exceptions.**

1 (a) Notwithstanding the provisions of section one of this article, compulsory school
2 attendance begins with the school year in which the sixth birthday is reached prior to September
3 1 of such year or upon enrolling in a publicly supported kindergarten program and, subject to
4 subdivision (3) of this subsection, continues to the sixteenth birthday or for as long as the student
5 continues to be enrolled in a school system after the sixteenth birthday.

6 (1) A child may be removed from such kindergarten program when the principal, teacher
7 and parent or guardian concur that the best interest of the child would not be served by requiring
8 further attendance: *Provided*, That the principal shall make the final determination with regard to
9 compulsory school attendance in a publicly supported kindergarten program.

10 (2) The compulsory school attendance provision of this article shall be enforced against a
11 person eighteen years of age or older for as long as the person continues to be enrolled in a
12 school system, and may not be enforced against the parent, guardian, or custodian of the person.

13 (3) Beginning with the 2011-2012 high school freshman cohort class of students, and
14 notwithstanding the provisions of section one of this article, compulsory school attendance begins
15 with the school year in which the sixth birthday is reached prior to September 1 of such year or
16 upon enrolling in a publicly supported kindergarten program and continues to the seventeenth
17 birthday or for as long as the student continues to be enrolled in a school system after the
18 seventeenth birthday.

19 (b) Attendance at a state-approved or Montessori kindergarten, as provided in section
20 eighteen, article five of this chapter, is deemed school attendance for purposes of this section.
21 Prior to entrance into the first grade in accordance with section five, article two of this chapter,
22 each child must have either:

23 (1) Successfully completed such publicly or privately supported, state-approved
24 kindergarten program or Montessori kindergarten program; or

25 (2) Successfully completed an entrance test of basic readiness skills approved by the
26 ~~county~~ school district in which the school is located. The test may be administered in lieu of
27 kindergarten attendance only under extraordinary circumstances to be determined by the ~~county~~
28 school district board.

29 (c) Notwithstanding the provisions of this section and of section five, article two of this
30 chapter and section eighteen, article five of this chapter, a ~~county~~ school district board may
31 provide for advanced entrance or placement under policies adopted by said board for any child
32 who has demonstrated sufficient mental and physical competency for such entrance or
33 placement.

34 (d) This section does not prevent a student from another state from enrolling in the same
35 grade in a public school in West Virginia as the student was enrolled at the school from which the
36 student transferred.

§18-8-2. Offenses; penalties; cost of prosecution; jurisdiction.

1 (a) Any person who, after receiving due notice, shall fail to cause a child or children under

2 eighteen years of age in that person's legal or actual charge to attend school in violation of this
3 article or without just cause, shall be guilty of a misdemeanor and, shall, upon conviction of a first
4 offense, be fined not less than fifty nor more than \$100 together with the costs of prosecution, or
5 required to accompany the child to school and remain through the school day for so long as the
6 magistrate or judge may determine is appropriate. The magistrate or judge, upon conviction and
7 pronouncing sentence, may delay the sentence for a period of sixty school days provided the child
8 is in attendance everyday during said sixty-day period. Following the sixty-day period, if said child
9 was present at school for every school day, the delayed sentence may be suspended and not
10 enacted. Upon conviction of a second offense, a fine may be imposed of not less than \$50 nor
11 more than \$100 together with the costs of prosecution and the person may be required to
12 accompany the child to school and remain throughout the school day until such time as the
13 magistrate or judge may determine is appropriate or confined in jail not less than five nor more
14 than twenty days. Every day a child is out of school contrary to this article shall constitute a
15 separate offense. Magistrates shall have concurrent jurisdiction with circuit courts for the trial of
16 offenses arising under this section.

17 (b) Any person eighteen years of age or older who is enrolled in school who, after receiving
18 due notice, fails to attend school in violation of this article or without just cause, shall be guilty of
19 a misdemeanor and, shall, upon conviction of a first offense, be fined not less than \$50 nor more
20 than \$100 together with the costs of prosecution and required to attend school and remain
21 throughout the school day. The magistrate or judge, upon conviction and pronouncing sentence,
22 may delay the imposition of a fine for a period of sixty school days provided the person is in
23 attendance every day during said sixty-day period. Following the sixty-day period, if said student
24 was present at school everyday, the delayed sentence may be suspended and not enacted. Upon
25 conviction of a second offense, a fine may be imposed of not less than \$50 nor more than \$100
26 together with the costs of prosecution and the person may be required to go to school and remain
27 throughout the school day until such time as the person graduates or withdraws from school or

28 confined in jail not less than five nor more than twenty days. Every day a student is out of school
29 contrary to this article shall constitute a separate offense. Magistrates shall have concurrent
30 jurisdiction with circuit courts for the trial of offenses arising under this section.

31 (c) Upon conviction of a third offense, any person eighteen years of age or older who is
32 enrolled in school shall be withdrawn from school during the remainder of that school year.
33 Enrollment of that person in school during the next school year or years thereafter shall be
34 conditional upon all absences being excused as defined in law, state board policy and ~~county~~
35 school district board of education policy. More than one unexcused absence of such a student
36 shall be grounds for the director of attendance to authorize the school to withdraw the person for
37 the remainder of the school year. Magistrates shall have concurrent jurisdiction with circuit courts
38 for the trial of offenses arising under this section.

39 (d) Jurisdiction to enforce compulsory school attendance laws lies in the ~~county~~ school
40 district in which a student resides and in the ~~county~~ school district where the school at which the
41 student is enrolled is located. When the ~~county~~ school district of residence and enrollment are
42 different, an action to enforce compulsory school attendance may be brought in either ~~county~~
43 school district and the magistrates and circuit courts of either county have concurrent jurisdiction
44 for the trial of offenses arising under this section.

**§18-8-3. Employment of ~~county~~ school district director of school attendance and
assistants; qualifications; salary and traveling expenses; removal.**

1 (a) The ~~county~~ school district board of education of every ~~county~~ school district, not later
2 than August 1, of each year, shall employ the equivalent of a full-time ~~county~~ school district
3 director of school attendance if such ~~county~~ school district has a net enrollment of more than four
4 thousand pupils, at least a half-time director of school attendance if such ~~county~~ school district
5 has a net enrollment equal to or less than four thousand pupils and such assistant attendance
6 directors as deemed necessary. All persons to be employed as attendance directors shall have
7 the written recommendation of the ~~county~~ school district superintendent.

8 (b) The ~~county~~ school district board of education may establish special and professional
9 qualifications for attendance directors and assistants as are deemed expedient and proper and
10 are consistent with regulations of the state Board of Education relating thereto: *Provided*, That if
11 the position of attendance director has been posted and no fully certified applicant applies, the
12 ~~county~~ school district may employ a person who holds a professional administrative certificate
13 and meets the special and professional qualifications established by the ~~county~~ school district
14 board as attendance director and that person shall not be required to obtain attendance director
15 certification.

16 (c) The attendance director or assistant director shall be paid a monthly salary as fixed by
17 the ~~county~~ school district board. The attendance director or assistant director shall prepare
18 attendance reports, and such other reports as the ~~county~~ school district superintendent may
19 request.

20 (d) The ~~county~~ school district board of education shall reimburse the attendance directors
21 or assistant directors for their necessary traveling expenses upon presentation of a monthly,
22 itemized, sworn statement approved by the ~~county~~ school district superintendent.

**§18-8-4. Duties of attendance director and assistant directors; complaints, warrants and
hearings.**

1 (a) The ~~county~~ school district attendance director and the assistants shall diligently
2 promote regular school attendance. The director and assistants shall:

3 (1) Ascertain reasons for unexcused absences from school of students of compulsory
4 school age and students who remain enrolled beyond the compulsory school age as defined
5 under section one-a of this article;

6 (2) Take such steps as are, in their discretion, best calculated to encourage the attendance
7 of students and to impart upon the parents and guardians the importance of attendance and the
8 seriousness of failing to do so; and

9 (3) For the purposes of this article, the following definitions shall apply:

- 10 (A) "Excused absence" shall be defined to include:
- 11 (i) Personal illness or injury of the student or in the family;
- 12 (ii) Medical or dental appointment with written excuse from physician or dentist;
- 13 (iii) Chronic medical condition or disability that impacts attendance;
- 14 (iv) Participation in home or hospital instruction due to an illness or injury or other
- 15 extraordinary circumstance that warrants home or hospital confinement;
- 16 (v) Calamity, such as a fire or flood;
- 17 (vi) Death in the family;
- 18 (vii) School-approved or ~~county~~ school district-approved curricular or extra-curricular
- 19 activities;
- 20 (viii) Judicial obligation or court appearance involving the student;
- 21 (ix) Military requirement for students enlisted or enlisting in the military;
- 22 (x) Personal or academic circumstances approved by the principal; and
- 23 (xi) Such other situations as may be further determined by the ~~county~~ school district board:
- 24 *Provided*, That absences of students with disabilities shall be in accordance with the Individuals
- 25 with Disabilities Education Improvement Act of 2004 and the federal and state regulations adopted
- 26 in compliance therewith.
- 27 (B) "Unexcused absence" shall be any absence not specifically included in the definition
- 28 of "excused absence".
- 29 (b) In the case of three total unexcused absences of a student during a school year, the
- 30 attendance director or assistant shall serve written notice to the parent, guardian or custodian of
- 31 the student that the attendance of the student at school is required and that if the student has five
- 32 unexcused absences, a conference with the principal or other designated representative will be
- 33 required.
- 34 (c) In the case of five total unexcused absences, the attendance director or assistant shall
- 35 serve written notice to the parent, guardian or custodian of the student that within five days of

36 receipt of the notice the parent, guardian or custodian, accompanied by the student, shall report
37 in person to the school the student attends for a conference with the principal or other designated
38 representative of the school in order to discuss and correct the circumstances causing the
39 unexcused absences of the student, including the adjustment of unexcused absences based upon
40 such meeting.

41 (d) In the case of ten total unexcused absences of a student during a school year, the
42 attendance director or assistant shall make complaint against the parent, guardian or custodian
43 before a magistrate of the county. If it appears from the complaint that there is probable cause to
44 believe that an offense has been committed and that the accused has committed it, a summons
45 or a warrant for the arrest of the accused shall issue to any officer authorized by law to serve the
46 summons or to arrest persons charged with offenses against the state. More than one parent,
47 guardian or custodian may be charged in a complaint. Initial service of a summons or warrant
48 issued pursuant to the provisions of this section shall be attempted within ten calendar days of
49 receipt of the summons or warrant and subsequent attempts at service shall continue until the
50 summons or warrant is executed or until the end of the school term during which the complaint is
51 made, whichever is later.

52 (e) The magistrate court clerk, or the clerk of the circuit court performing the duties of the
53 magistrate court as authorized in section eight, article one, chapter fifty of this code, shall assign
54 the case to a magistrate within ten days of execution of the summons or warrant. The hearing
55 shall be held within twenty days of the assignment to the magistrate, subject to lawful continuance.
56 The magistrate shall provide to the accused at least ten days' advance notice of the date, time
57 and place of the hearing.

58 (f) When any doubt exists as to the age of a student absent from school, the attendance
59 director and assistants have authority to require a properly attested birth certificate or an affidavit
60 from the parent, guardian or custodian of the student, stating age of the student. In the
61 performance of his or her duties, the ~~county~~ school district attendance director and assistants

62 have authority to take without warrant any student absent from school in violation of the provisions
63 of this article and to place the student in the school in which he or she is or should be enrolled.

64 (g) The ~~county~~ school district attendance director and assistants shall devote such time
65 as is required by section three of this article to the duties of attendance director in accordance
66 with this section during the instructional term and at such other times as the duties of an
67 attendance director are required. All attendance directors and assistants hired for more than two
68 hundred days may be assigned other duties determined by the superintendent during the period
69 in excess of two hundred days. The ~~county~~ school district attendance director is responsible under
70 direction of the ~~county~~ school district superintendent for efficiently administering school
71 attendance in the ~~county~~ school district.

72 (h) In addition to those duties directly relating to the administration of attendance, the
73 ~~county~~ school district attendance director and assistant directors also shall perform the following
74 duties:

75 (1) Assist in directing the taking of the school census to see that it is taken at the time and
76 in the manner provided by law;

77 (2) Confer with principals and teachers on the comparison of school census and
78 enrollment for the detection of possible nonenrollees;

79 (3) Cooperate with existing state and federal agencies charged with enforcing child labor
80 laws;

81 (4) Prepare a report for submission by the ~~county~~ school district superintendent to the
82 State Superintendent of Schools on school attendance, at such times and in such detail as may
83 be required. The state board shall promulgate a legislative rule pursuant to article three-b, chapter
84 twenty-nine-a of this code that sets forth student absences that are excluded for accountability
85 purposes. The absences that are excluded by the rule include, but are not limited to, excused
86 student absences, students not in attendance due to disciplinary measures and absent students
87 for whom the attendance director has pursued judicial remedies to compel attendance to the

88 extent of his or her authority. The attendance director shall file with the ~~county~~ school district
89 superintendent and ~~county~~ school district board at the close of each month a report showing
90 activities of the school attendance office and the status of attendance in the ~~county~~ school district
91 at the time;

92 (5) Promote attendance in the ~~county~~ school district by compiling data for schools and by
93 furnishing suggestions and recommendations for publication through school bulletins and the
94 press, or in such manner as the ~~county~~ school district superintendent may direct;

95 (6) Participate in school teachers' conferences with parents and students;

96 (7) Assist in such other ways as the ~~county~~ school district superintendent may direct for
97 improving school attendance;

98 (8) Make home visits of students who have excessive unexcused absences, as provided
99 above, or if requested by the chief administrator, principal or assistant principal; and

100 (9) Serve as the liaison for homeless children and youth.

§18-8-5a. Home visitations.

1 If approved by the principal, administrative head or other chief administrator, a teacher
2 may use one noninstructional day during an employment term for the purpose of home visitations
3 with the parent, guardian or custodian of any pupil or pupils designated by the principal,
4 administrative head or other chief administrator. Priority shall be given to those pupils identified
5 as potential school dropouts or whose school attendance is otherwise jeopardized.

6 Such home visitations shall be deemed the equivalent of one day of continuing education
7 in accordance with rules and regulations of the state board requiring such education.

8 The ~~county~~ school district board may adopt rules and regulations regarding such home
9 visitations and shall reimburse a teacher for the necessary traveling expenses upon presentation
10 of an itemized, sworn statement.

§18-8-6. The High School Graduation Improvement Act.

1 (a) This section is known and may be cited as "The High School Graduation Improvement

2 Act."

3 (b) The Legislature makes the following findings:

4 (1) West Virginia has a dire need to implement a comprehensive approach to addressing
5 the high school drop-out crisis, and to develop policies and strategies that successfully assist at-
6 risk students to stay in school, earn a high school diploma, and ultimately become productively
7 contributing members of society;

8 (2) The current demands for a highly skilled workforce require a high school diploma at
9 the very minimum;

10 (3) The state has several dynamic programs that are capable of actively engaging
11 students in learning, providing students with a sense of relevancy in academics, and motivating
12 students to succeed in school and ultimately earn a high school diploma;

13 (4) Raising the compulsory school attendance age alone will neither increase the
14 graduation rate nor decrease the drop-out rate. It is imperative that the state shift the focus from
15 merely compelling students to attend school to instead providing vibrant and engaging programs
16 that allow students to recognize the value of a high school diploma or workforce credential and
17 inspire students to graduate from high school, especially those students who are at risk of
18 dropping out of school;

19 (5) Investing financially in this focus shift will result in the need for fewer resources to be
20 committed to enforcing compulsory attendance laws and fewer incidents of disruptive student
21 behavior;

22 (6) Absenteeism is proven to be the highest predictor of course failure. Truant students
23 face low self-confidence in their ability to succeed in school because their absences cause them
24 to fall behind their classmates, and the students find dropping out easier than catching up;

25 (7) There is a strong relationship between truancy and dropping out of high school.
26 Frequent absences are one of the most common indicators that a student is disengaging from the
27 learning process and likely to drop out of school early. Intervention after fewer absences is likely

28 to have a positive impact on a student's persistence to graduation;

29 (8) Students cite many reasons for dropping out of school, some of which include engaging
30 in drug culture, lack of positive influence, role model or parental involvement, absence of
31 boundaries and direction, lack of a positive home environment, peer pressure, and poor
32 community expectations;

33 (9) Dropping out of school has a profound negative impact on an individual's future,
34 resulting in limited job choices, substantially lower wages and less earned over a life-time than
35 high school graduates, and a greater likelihood of depending on public assistance and engaging
36 in criminal activity;

37 (10) Career-technical education is a dynamic system in West Virginia which offers
38 numerous concentrations that provide students with industry-recognized credentials, while also
39 preparing them for post-secondary education;

40 (11) All career-technical education students in the state have an opportunity to earn free
41 college credit through the Earn a Degree-Graduate Early (EDGE) program;

42 (12) The current high school graduation rate for secondary career-technical education
43 completers is significantly higher than the state graduation rate;

44 (13) Students involved in career-technical education learn a marketable skill, are likely to
45 find jobs, and become prepared for post-secondary education;

46 (14) A significant number of students who could benefit from participating in a career-
47 technical program are denied access due to a number of factors, such as dropping out of high
48 school prior to enrolling in career-technical education, requirements that students repeat
49 academic courses that they have failed, and scheduling conflicts with the high schools;

50 (15) There has been a dramatic change over the years from vocational education, which
51 was very basic and lacked high level skills, to the career-technical programs of today which are
52 computer based, require national tests and certification, and often result in jobs with high salaries;

53 (16) West Virginia's employers and technical education job placement rates show that the

54 state needs graduates with technical skills to compete in the current and future job markets;

55 (17) The job placement rate for students graduating from career-technical programs
56 statewide is greater than ninety-five percent;

57 (18) Among the reasons students cite for dropping out of school are feelings of
58 hopelessness when they have failed classes and can not recover credits in order to graduate;

59 (19) The state offers full-day programs consisting of credit recovery, hands on experiences
60 in career-technical programs and basic education, which are valuable resources for re-engaging
61 students who have dropped out of school, or have a potential for or are at risk of dropping out;

62 (20) A student is significantly more likely to graduate from high school if he or she
63 completes four units of training in technical education;

64 (21) Learning is increased and retained at a higher level if the content is taught through a
65 relevant and applied experience, and students who are able to experience academics through
66 real life projects have a higher probability of mastering the appropriate concepts;

67 (22) Programs such as "GED Option" and "Techademics" are valuable resources for
68 providing relevant and applied experience for students;

69 (23) The Techademics programs administered by the department of education has
70 embedded math competencies in career-technical program curricula whereby students
71 simultaneously earn credit for mastery of math competencies and career-technical courses;

72 (24) Students would greatly benefit if West Virginia were designated as a "GED Option"
73 state. Currently a student is ineligible to take the General Educational Development (GED) exam
74 if he or she is enrolled in school, which requires the student to drop out of high school in order to
75 participate in a GED preparation program or take the exam, even if the student desires to remain
76 enrolled;

77 (25) A GED Option state designation by the American Council on Education would allow
78 students in this state to remain enrolled in school and continue acquiring academic and career-
79 technical credits while pursuing a GED diploma. The GED Option would be blended with the West

80 Virginia virtual schools or a career-technical education pathway. Upon completion, rather than
81 being a dropout, the student would have a GED diploma and a certification in the chosen career-
82 technical or virtual school pathway;

83 (26) The Mountaineer Challenge Academy is a positive option for students at risk of
84 dropping out of school, as it provides students with structure, stability, and a focus on positive
85 change, all in an environment where negative influences and distractions can be left behind;

86 (27) Students attending the Mountaineer Challenge Academy would greatly benefit if the
87 GED Option were implemented at the Academy;

88 (28) The Health Sciences and Technology Academy (HSTA) program prepares rural,
89 minority and economically disadvantaged students for college and careers in the health sciences,
90 and demonstrates tremendous success in its high percentage of students who graduate from high
91 school and participate in post-secondary education.

92 (29) The West Virginia GEAR UP (Gaining Early Awareness and Readiness for
93 Undergraduate Programs) program is aimed at increasing the academic performance and
94 rigorous preparation of students, increasing the number of high-poverty, at-risk students who are
95 prepared to enter and succeed in post-secondary education, and increasing the high school
96 graduation rate;

97 (30) The GEAR UP program successfully aids students in planning, applying and paying
98 for education and training beyond high school;

99 (31) Each dropout involved in drugs or crime or dependent on public assistance creates a
100 huge fiscal burden on society;

101 (32) The intense treatment and individual monitoring provided through the state's juvenile
102 drug courts have proven to be highly effective in treating drug addictions, and rehabilitating drug-
103 addicted youth and improving their educational outcomes;

104 (33) Services provided by juvenile drug courts include substance abuse treatment,
105 intervention, assessment, juvenile and family counseling, heavy supervision by probation officers

106 including school-based probation officers who provide early intervention and diversion services,
107 and addressing some of the underlying reasons why students are not successful in school;

108 (34) School participation and attendance are required for students participating in juvenile
109 drug courts, and along with academic progress are closely monitored by the courts;

110 (35) Juvenile drug courts are an important strategy to improve substance abuse treatment
111 outcomes, and serve to save the state significant cost on incarceration of the juveniles, along with
112 the future costs to society of individuals who remain substance abusers;

113 (36) Juvenile drug courts produce greater cost benefits than other strategies that address
114 criminal activity related to substance abuse and addiction that bring individuals into the criminal
115 justice system;

116 (37) Funding for the increased number of students enrolled in school during the 2010-
117 2011 school year due to the compulsory school attendance age increase established by this act
118 will not be reflected in the state aid formula allocation until the 2011-2012 school year, which will
119 require additional funds to be provided to county boards for the 2010-2011 school year to
120 accommodate the increased enrollment;

121 (38) The state will benefit both fiscally and through improved quality of life if scarce state
122 resources are targeted toward programs that result in providing a competitive advantage as adults
123 for those students who are at risk of dropping out of school;

124 (39) Funds invested toward education and ensuring that students complete high school
125 pay tremendous dividends through the moneys saved on incarceration, unemployment and
126 underemployment as those students reach adulthood;

127 (40) Increasing the compulsory school attendance age will have little effect in aiding
128 students to complete high school if additional resources, both fiscal and programmatic, are not
129 dedicated to supporting student achievement, providing real-life relevancy in curriculum, and
130 engaging students in learning, particularly for those students who have become so disengaged
131 from school and learning that they are at risk of dropping out of school; and

132 (41) Schools cannot solve the dropout problem alone. Research shows when educators,
133 parents, elected officials, business leaders, faith-based leaders, human service personnel, judicial
134 personnel and civic leaders collectively work together they are often able to find innovative
135 solutions to address school and community problems. (c) The Legislature intends as follows:

136 (1) The state will continue to explore diverse instructional delivery strategies to
137 accommodate various learning styles and will focus on a state-wide dropout intervention and
138 prevention program to provide support for students having academic difficulty;

139 (2) A general credit recovery program shall be implemented statewide, including delivery
140 through West Virginia virtual schools;

141 (3) The state board will continue to improve the way career-technical education is offered,
142 including expansion of the Techademics program;

143 (4) Up to five additional juvenile drug courts shall be established by January 1, 2012;

144 (5) The state will invest additional state funds and other resources in strategies and
145 programs that engage disconnected and discouraged students in a positive learning environment
146 as a critical first step to ensuring that students persist and graduate;

147 (6) ~~County~~ School district boards will develop plans to demonstrate how they will use
148 available funds to implement the intent of this section; and

149 (7) The state board shall develop a statewide system in electronic format that will provide
150 schools with easily identifiable early warning indicators of students at risk of not graduating from
151 high school. The system shall be delivered through the uniform integrated regional computer
152 information system (commonly known as the West Virginia Education Information System) and
153 shall at a minimum incorporate data on the attendance, academic performance and disciplinary
154 infractions of individual students. The state board shall require implementation of the system in
155 Local Solution Dropout Prevention and Recovery Innovation Zones along with a plan of
156 interventions to increase the number of students earning a high school diploma, and may utilize
157 the zones as a pilot test of the system.

158 (d) Each ~~county~~ school district board shall include in its alternative education program plan
159 required by section six, article two, of this chapter a plan to improve student retention and increase
160 the graduation rate in the ~~county~~ school district. The plan is subject to approval of the state board,
161 and shall include strategies the ~~county~~ school district board will implement to achieve the following
162 goals:

163 (1) Increasing the graduation rate for the ~~county~~ school district;

164 (2) Identifying at the earliest age possible those students who are at risk of dropping out
165 of school prior to graduation; and

166 (3) Providing additional options for delivering to at-risk students academic credentials and
167 career-technical training if appropriate or desired by the student. The options may include such
168 programs as Techademics, Earn a Degree-Graduate Early (EDGE), Health Sciences and
169 Technology Academy (HSTA), Gaining Early Awareness and Readiness for Undergraduate
170 Programs (GEAR UP), truancy diversion, early intervention, dropout prevention, prevention
171 resource officers, GED option, credit recovery, alternative learning environments, or any other
172 program or strategy approved by the state board.

173 (e) As soon as is practicable the state superintendent or his or her designee shall pursue
174 designation of West Virginia as a "GED Option" state by the American Council on Education. If
175 so designated, the state board shall:

176 (1) Develop and implement a program whereby a student may pursue a GED diploma
177 while remaining enrolled in high school; and

178 (2) Ensure that the GED Option is offered to students attending the Mountaineer
179 Challenge Academy.

180 (f) The state board shall continue to expand:

181 (1) The Techademics program to include each major academic subject and increase the
182 academic credit available through the program to students; and

183 (2) The Health Sciences and Technology Academy to ensure that the program is available

184 for any school containing any of the grade levels of eligible students.

185 (g) The state board shall ensure that the dropout information required by section twenty-
186 four, article one-b, chapter fifteen of this code is provided annually to the Mountaineer Challenge
187 Academy.

188 (h) Some career and technical education programs only accept students in certain upper
189 high school grade levels due to lack of capacity to accept the students in the lower high school
190 grade levels. This can be detrimental to efforts to keep students identified as at risk of dropping
191 out of school prior to graduation in school. Therefore, those career and technical education
192 programs that limit enrollment to students in certain upper high school grade levels may make
193 exceptions for those at risk students and enroll any of those at risk students who are in grades
194 nine and above.

§18-8-6a. Incentive for ~~county~~ school district board participation in circuit court juvenile probation truancy programs.

1 A ~~county~~ school district board that enters into a truancy program agreement with the circuit
2 court of the county that (1) provides for the referral of truant juveniles for supervision by the court's
3 probation office pursuant to section eleven, article five, chapter forty-nine of this code and (2)
4 requires the ~~county~~ school district board to pay for the costs of the probation officer or officers
5 assigned to supervise truant juveniles, shall be reimbursed for one-half of the costs of the
6 probation officer or officers, subject to appropriation of the Legislature for this purpose to the West
7 Virginia Department of Education. For any year in which the funds appropriated are insufficient to
8 cover the reimbursement costs, the county's costs shall be reimbursed pro rata.

§18-8-8. Child suspended for failure to comply with requirements and regulations treated as unlawfully absent.

1 If a child be suspended from school because of improper conduct or refusal of such child
2 to comply with the requirements of the school, the school shall immediately notify the ~~county~~
3 school district superintendent of such suspension, and specify the time or conditions of such

4 suspension. Further admission of the child to school may be refused until such requirements and
5 regulations be complied with. Any such child shall be treated by the school as being unlawfully
6 absent from the school during the time he or she refuses to comply with such requirements and
7 regulations, and any person having legal or actual control of such child shall be liable to
8 prosecution under the provisions of this article for the absence of such child from school: *Provided,*
9 That the ~~county~~ school district board of education does not exclude or expel the suspended child
10 from school.

§18-8-9. Report and disposition of fines collected.

1 All fines collected under the provisions of this article shall be paid on or before the last day
2 of each calendar month by the magistrate, or other proper official having jurisdiction in the case,
3 to the sheriff and by him or her credited to the ~~county~~ school district school fund; and the
4 magistrate shall file with the ~~county~~ school district superintendent on the last day of each month
5 an itemized statement of all fines paid over to the sheriff.

ARTICLE 9. SCHOOL FINANCES.

§18-9-2a. Levies.

1 The board, as provided by section nine, article eight of chapter eleven, shall impose a levy
2 for the maintenance and operation of all schools in the ~~county~~ school district. This levy shall be
3 uniform throughout the ~~county~~ school district and the funds shall be distributed and expended
4 without regard to the locality from which collected: *Provided, however,* That if a majority of the
5 voters of any political subdivision of the county shall file with the board of Education of the ~~county~~
6 school district of which such political subdivision is a part, at their budget session as provided by
7 section nine, article eight of chapter eleven, a petition praying for increased salaries, funds for the
8 support and maintenance of libraries, medical and dental clinics, supervision and/or an extension
9 of the school term therein for a given number of months, the board shall extend the term of school
10 for the number of months requested in such petition and shall lay levies sufficiently high on each
11 \$100' valuation of taxable property within such political subdivision according to the last

12 assessment thereof for such purpose or purposes as specified in the petition, which levies shall
13 be separated and designated as a special maintenance fund levy and special teachers' fund levy
14 of the political unit for which such levies are laid.

15 All additional levies so authorized shall be made as provided by law and shall in no case
16 exceed the statutory limitation or maximum for the various classes of property of the political
17 subdivision authorizing the same.

18 Upon a petition of one hundred taxpayers of any political subdivision of a ~~county~~ school
19 district to the board of Education of the ~~county~~ school district of which such political subdivision is
20 a part, the board of Education shall call an election within said political subdivision for the purpose
21 of authorizing the ~~county~~ school district board of education to lay special increased rates of levy
22 on the property of said political subdivision, as provided by law, for educational purposes as may
23 be set forth in the petition and in the call for the election.

24 The bonded indebtedness incurred by former magisterial school district boards and
25 independent district boards shall remain the debt of the property originally pledged as security for
26 the payment of the obligation.

27 The ~~county~~ school district board shall impose separate levies in the manner provided by
28 sections nine and thirteen, article eight, chapter eleven, upon the property in former magisterial
29 districts and independent districts for the payment of current requirements of principal and interest
30 of bonded indebtedness incurred prior to the creation of the ~~county~~ school district school districts.

§18-9-2c. Transfer of funds remaining after retirement of school bonds; use of funds.

1 The treasurers of the ~~county~~ school district boards of education are hereby authorized and
2 directed to transfer to the credit of the school current fund of the boards of education of their
3 respective ~~counties~~ school districts, all remaining funds collected for the retirement of school
4 bonds after such bonds shall have been retired, if the fact of such retirement has been certified
5 by the state sinking fund commission.

6 When such bonds have been retired the state sinking fund commission shall certify the

7 fact of the retirement of such bonds to the treasurer of the board of Education of the ~~county~~ school
8 district. Such funds shall be used in the same manner as other funds now to the credit of, or which
9 may hereafter be placed to the credit of, the school current fund by the respective ~~county~~ school
10 district boards of education.

§18-9-2d. Transfer of funds for investment.

1 Any funds of a ~~county~~ school district board of education raised by levy or by the sale of
2 bonds which cannot be used within a reasonable time may be transferred to the state sinking fund
3 commission for investment, except as otherwise provided in this chapter.

**§18-9-3. Collection and disbursement of school money by sheriff; signing of orders for
payment of money; forgery of signatures; penalties.**

1 The sheriff shall receive, collect and disburse all levies, and any other school moneys he
2 or she may receive to the treasurer of the ~~county~~ school district board of education unless the
3 sheriff has been designated treasurer of the ~~county~~ school district board pursuant to section six,
4 article nine, chapter eighteen of this code. He or she shall keep accounts of the money belonging
5 to the several funds and shall credit and charge every amount to the fund to which it belongs. The
6 treasurer of the board of Education shall pay money only upon the order of the board. The order
7 shall specify the amount to be paid, the purpose for which it is paid, and the fund to which it shall
8 be charged. The order shall be signed by the president and shall be countersigned by the
9 secretary: *Provided*, That such signatures authorizing the payment of such orders may be made
10 by means of such mechanical or electrical device as the board may select. Such mechanical or
11 electrical device for the making of the signatures of the president and secretary shall be safely
12 kept so that no one shall have access thereto except the president and the secretary of the board
13 and such of their respective employees as may be authorized to have access thereto. If any
14 person shall sign the names of the president or secretary of the board of Education, without having
15 authority so to do, by the use of any mechanical or electrical device, or otherwise, or use the
16 facsimile of the signature of either of them on any order, he or she shall be guilty of forgery; and

17 if any person shall utter or attempt to employ as true such forged order, knowing the same to be
18 forged, he or she shall, in either event, be guilty of a felony, and, upon conviction, shall be confined
19 in the penitentiary not less than two nor more than ten years.

**§18-9-3a. Preparation, publication and disposition of financial statements by ~~county~~
school district boards of education.**

1 The ~~county~~ school district board of every ~~county~~ school district, within ninety days after
2 the beginning of each fiscal year, shall prepare on a form to be prescribed by the State Tax
3 Commissioner and the state superintendent of free schools, and cause to be published a
4 statement revealing: (a) The receipts and expenditures of the board during the previous fiscal
5 year arranged under descriptive headings; (b) the name of each firm, corporation, and person
6 who received more than \$250 in the aggregate from all funds during the previous fiscal year,
7 together with the aggregate amount received from all funds and the purpose for which paid:
8 *Provided*, That such statement shall not include the name of any person who has entered into a
9 contract with this board pursuant to the provisions of sections two, three, four and five, article two,
10 chapter eighteen-a of this code; and (c) all debts of the board, the purpose for which each debt
11 was contracted, its due date, and to what date the interest thereon has been paid. Such statement
12 shall be published as a Class I-0 legal advertisement in compliance with the provisions of article
13 three, chapter fifty-nine of this code, and the publication area for such publication shall be the
14 ~~county~~ school district. The ~~county~~ school district board shall pay the cost of publishing such
15 statement from the maintenance fund of the board.

16 As soon as is practicable following the close of the fiscal year, a copy of the published
17 statement herein required shall be filed by the ~~county~~ school district board with the State Tax
18 Commissioner and with the state superintendent of free schools.

19 The ~~county~~ school district board shall transmit to any resident of the ~~county~~ school district
20 requesting the same a copy of the published statement for the fiscal year designated,
21 supplemented by a list of the names of all school personnel employed by the board during such

22 fiscal year showing the amount paid to each, and a list of the names of each firm, corporation,
23 and person who received less than \$500 from any fund during such fiscal year showing the
24 amount paid to each and the purpose for which paid.

§18-9-4. Nonpayment of order; liability of treasurer of ~~county~~ school district board.

1 If, when an order of any ~~county~~ school district board of education is presented to the
2 treasurer of the board, there are no funds to pay the same, the person entitled to receive the sum
3 of money specified in such order may require the treasurer to endorse thereon, or write across
4 the face thereof, the words "presented for payment," with the proper date, and sign the same; and
5 the order, if it was due at the time of presentment, shall in such case be payable with legal interest
6 from such date.

7 Any such order not paid when presented as aforesaid shall again be presented to the
8 treasurer of the ~~county~~ school district board for payment by the person entitled to receive the
9 money thereon not later than December 1, after such endorsement, and if not so presented, no
10 further interest shall be allowed or paid on such order thereafter, until such order shall be so
11 presented and endorsed as aforesaid a second time by the treasurer, and in no case shall interest
12 be allowed or paid on such order for the period of time elapsed from December 1, following the
13 first endorsement of such order by the treasurer and the date when such order is presented for
14 payment or endorsement by the treasurer a second time.

15 In no event shall any such order bear interest for a longer period than one year and six
16 months from date of its issue. But if the treasurer of the ~~county~~ school district board, having funds
17 to pay the same, fails to pay any proper order of any Board of Education of his or her ~~county~~
18 school district, properly endorsed, when presented to him or her during business hours by a
19 person entitled to receive the money therein specified, if the same be then due and payable, he
20 or she and his or her sureties, and the personal representatives of such of them as are dead,
21 shall be liable to the person entitled to receive the money due on said order for the whole amount
22 due thereon at the time of such presentation, with legal interest on such amount from that time

23 until payment, and ten percent on the same amount as damages.

§18-9-6. Transfer of moneys; appointment of treasurer; bonding of treasurer; approval of bank accounts; authority to invest; security for funds invested.

1 The sheriff of each ~~county~~ school district shall remit to the board of education all moneys
2 in his or her possession held on behalf of the ~~county~~ school district board of education, whether
3 or not deposited in a bank or depository, unless the sheriff has been designated treasurer of the
4 board of education as provided in this section. The transfer of funds shall be made as of the
5 balances on hand on June 30 of the year in which the board of education appoints a treasurer
6 other than the sheriff, and shall be completed no later than August 1 of that year. The transfer
7 shall be adjudged complete and final upon the approval of the sheriff's official settlement for the
8 fiscal year ending on June 30 of the year in which the board of education appoints a treasurer
9 other than the sheriff, and any minor adjustment made necessary by the actually known figures
10 shall also be made at that time. All balances in all ~~county~~ school district school funds at the end
11 of each month after June 30 of the year in which the board of Education appoints a treasurer other
12 than the sheriff shall be transferred by the sheriff to the ~~county~~ school district board of education
13 not later than the tenth day of the following month.

14 On or before the first Monday in May each ~~county~~ school district board of education shall
15 upon recommendation of the ~~county~~ school district superintendent appoint a treasurer for the
16 board. The treasurer is the fiscal officer of the board, or an employee commonly designated as
17 the person in charge of the financial affairs of the ~~county~~ school district board, or the county sheriff:
18 *Provided*, That once a board of education has appointed a treasurer other than the sheriff, the
19 sheriff may not be named treasurer of the board in a subsequent year. Upon appointment this
20 person shall be titled and referred to as treasurer of the board of education. For the faithful
21 performance of this duty, the treasurer shall execute a bond, to be approved by the board of
22 education, in the penalty to be fixed by the board of education, not to exceed the amount of school
23 funds which it is estimated the treasurer will handle within any period of two months. The premium

24 on the bond shall be paid by the board of education.

25 The board of education may open a bank account, or accounts, as required to adequately
26 and properly transact the business of the district in a depository, or banks, within the ~~county~~ school
27 district. The depositories, or banks, shall provide bond to cover the maximum amount to be
28 deposited at any one time. However, the ~~county~~ school district board of education may, in lieu of
29 such bond, accept as security for money deposited letters of credit from a federal home loan bank,
30 securities of the United States, or of a state, county, district or municipal corporation, or federal
31 agency securities: *Provided*, That a banking institution is not required to provide a bond or security
32 in lieu of bond if the deposits accepted are placed in certificates of deposit meeting the following
33 requirements: (1) The funds are invested through a designated state depository selected by the
34 ~~county~~ school district board of education; (2) the selected depository arranges for the deposit of
35 the funds in certificates of deposit in one or more banks or savings and loan associations wherever
36 located in the United States, for the account of the ~~county~~ school district board of education; (3)
37 the full amount of principal and accrued interest of each certificate of deposit is insured by the
38 Federal Deposit Insurance Corporation; (4) the selected depository acts as custodian for the
39 ~~county~~ school district board of education with respect to such certificates of deposit issued for the
40 ~~county's~~ school district's account; and (5) at the same time that the ~~county~~ school district board
41 of education's funds are deposited and the certificates of deposit are issued, the selected
42 depository receives an amount of deposits from customers of other financial institutions wherever
43 located in the United States equal to or greater than the amount of the funds invested by the
44 ~~county~~ school district board of education through the selected depository: *Provided, however*,
45 That a banking institution is not required to provide a bond or security in lieu of bond if the deposits
46 accepted are placed in a designated state depository that is selected and authorized by the ~~county~~
47 school district board of education to arrange for the redeposit of the funds through a deposit
48 placement program that meets the following conditions: (1) On or after the date that the ~~county~~
49 school district board of education funds are received the selected depository: (i) Arranges for the

50 redeposit of the funds into deposit accounts in one or more federally insured banks or savings
51 and loan associations that are located in the United States; and (ii) serves as custodian for the
52 ~~county~~ school district with respect to the money redeposited into such accounts. (2) ~~County~~
53 School district board of education funds deposited in a selected depository in accordance with
54 this section and held at the close of business in the selected depository in excess of the amount
55 insured by the Federal Deposit Insurance Corporation shall be secured in accordance with the
56 second and third sentences of this paragraph. (3) The full amount of the funds of the ~~county~~ school
57 district board of education redeposited by the selected depository into deposit accounts in banks
58 or savings and loan associations pursuant to this section (plus accrued interest, if any) shall be
59 insured by the Federal Deposit Insurance Corporation. (4) On the same date that the funds of the
60 ~~county~~ school district board of education are redeposited pursuant to this section, the selected
61 depository receives an amount of deposits from customers of other financial institutions through
62 the deposit placement program that are equal to the amount of the ~~county~~ school district board of
63 education funds redeposited by the selected depository.

64 One hundred ten percent of the face or par value of the securities may not be less than
65 the sum hereinbefore specified as the amount to be named in the bond in lieu of which the
66 securities are accepted, or the ~~county~~ school district board of education may accept the securities
67 as partial security to the extent of their face value for the money so deposited and require bond
68 for the remainder of the full amount hereinbefore specified, to be named in the bond, and, in the
69 bond so required, the acceptance of securities as partial security and the extent thereof shall be
70 set forth. The hypothecation of the securities shall be by proper legal transfer as collateral security
71 to protect and indemnify by trust any and all loss in case of any default on the part of the banking
72 institution in its capacity as depository as aforesaid. All such securities shall be delivered to or
73 deposited for the account of the ~~county~~ school district board of education, and withdrawal or
74 substitution thereof may be permitted from time to time upon approval by the ~~county~~ school district
75 board of education by order of record, but the collateral security shall be released only by order

76 of record of the ~~county~~ school district board of education when satisfied that full and faithful
77 accounting and payment of all the moneys has been made under the provisions hereof. If actual
78 possession of the hypothecated securities is delivered to the ~~county~~ school district board of
79 education, it shall make ample provision for the safekeeping thereof, and the interest thereon
80 when paid shall be turned over to the banking institution, so long as it is not in default as aforesaid.
81 The ~~county~~ school district board of education may permit the deposit under proper receipt of such
82 securities with one or more banking institutions within the State of West Virginia and may contract
83 with any such institution for safekeeping and exchange of any such hypothecated securities, and
84 may prescribe the rules for handling and protecting the same.

85 On and after July 1, 1973, all levies and any other school moneys received by the sheriff
86 and paid to the treasurer of the ~~county~~ school district board of education shall be deposited in
87 these accounts, and all proper payments from such funds shall be made by the designated
88 depository or bank upon order or draft presented for payment and signed by the duly authorized
89 signatories of the Board of Education: *Provided*, That in determining the depository for Board of
90 Education funds a board member who has a pecuniary interest in a bank within the ~~county~~ school
91 district shall not participate in the determination of the depository for such funds.

92 If it is considered that sufficient funds are on hand in any account at any one time which
93 may be more than are normally required for the payment of incurred expenses, the funds in the
94 amount so considered available may be invested by the treasurer of the ~~county~~ school district
95 board with the West Virginia Municipal Bond Commission, or in guaranteed certificates of deposit
96 issued by the depository or bank, or other guaranteed investments such as treasury bills, treasury
97 notes or certificates of deposit issued by either the United States government or a banking
98 institution in which federal or state guarantees are applicable. Interest earned in such investments
99 is to be credited to the fund from which the moneys were originally available.

**§18-9-6a. ~~County~~ School district Board of Education treasurer authorized to make funds
available to state Board of Investments; allocation of income.**

1 Notwithstanding any other provision of this code, when it appears to any of the various
 2 ~~county~~ school district boards of education that funds on deposit in its demand deposit account
 3 exceed the current requirements or demands, and it further be determined by the treasurer for
 4 such ~~county~~ school district board of education that the available interest rate offered by an
 5 acceptable depository in such treasurer's county be less than the interest rate, net of
 6 administrative fees referred to in article six, chapter twelve of this code, offered it through the state
 7 Board of Investments, the ~~county~~ school district board of education treasurer may, with the
 8 approval in writing of each ~~county~~ school district board of education whose funds are involved,
 9 make such funds available to the state Board of Investments for investment in accordance with
 10 the provisions of said article six, chapter twelve of the code. Any ~~county~~ school district board of
 11 education treasurer may enter into an agreement with any state agency from which they receive
 12 funds to allow such funds to be transferred to their investment account with the state Board of
 13 Investments.

14 Any income earned on such investment shall be allocated by such treasurer to the board
 15 of Education whose funds were made available, such allocation to be made in accordance with
 16 the accounting and allocation principles established by the board of Investments.

ARTICLE 9B. STATE BOARD OF SCHOOL FINANCE.

§18-9B-2. Definitions.

1 For the purposes of this article:

2 "Board of finance" means the state board of school finance.

3 "Budget" means the annual budget of school revenues and expenditures prepared and
 4 adopted by a ~~county~~ school district board of education in accordance with this article.

5 "Levy estimate" means the summary statement of the total budgeted school requirements
 6 prepared and adopted by a ~~county~~ school district board of education in accordance with law, in
 7 justification of the amount levied upon taxable property within the ~~county~~ school district for the
 8 support of the local schools.

9 "Appropriation" means an item, or the amount of an item, budgeted by a county school
 10 district board of education for expenditure during the fiscal year.

11 "Expenditure schedule" means a schedule for the expenditure of amounts budgeted
 12 throughout the fiscal year and adopted in conjunction with the annual budget.

13 "~~county school district~~ board" means a county school district board of education.

14 "Employment term" means ten months of employment as defined in section fifteen, article
 15 five of this chapter.

16 "Instructional term" shall be that as defined in section fifteen, article five of this chapter.

§18-9B-4. Powers and duties of board.

1 The board of finance, in addition to the specific powers and duties conferred upon it, shall
 2 advise and assist county school district boards of education and county school district
 3 superintendents in the planning and management of school finances to the end that the most
 4 effective program of public education be realized from the funds available for expenditure by the
 5 several county school district.

6 In the exercise of its powers under this article, the board of finance shall not substitute its
 7 discretion and judgment for that of a county school district board of education with respect to the
 8 desirability or reasonability of a lawful school expenditure if the provisions of law and the orders
 9 of the board of finance are complied with by the county school district board. If, however, a county
 10 school district board fails or refuses to provide for the support of the standard school term, to
 11 adhere to the budget and the expenditure schedule, or to comply with other provisions of this
 12 article, the board of finance may require such action on the part of the county school district board,
 13 not in violation of law, as the board of finance may find to be best calculated to restore the financial
 14 affairs of the county school district board to a proper and lawful basis.

§18-9B-5. School district budgeting.

1 The board of finance shall formulate and prescribe a uniform system of school district
 2 budgeting for the use of all county school district school districts to include, at least:

- 3 (1) Itemization schedules for estimating anticipated revenues and receipts of all kinds;
- 4 (2) Itemization schedules for estimating anticipated requirements for expenditure during
5 the fiscal year;
- 6 (3) The form, classification and itemization of budget items for appropriation purposes;
- 7 (4) Expenditure schedules for the allotment of amounts of proposed expenditures
8 throughout the fiscal year;
- 9 (5) A budget calendar fixing the dates by or upon which schedules shall be prepared,
10 budgets adopted, and reports made to the board of finance;
- 11 (6) Methods and procedures of budgeting to be followed in the use of the uniform system.

§18-9B-6. Submission and approval of budget.

1 A ~~county~~ school district board of education shall, on or before the day fixed by the budget
2 calendar, submit its proposed budget to the board of finance together with such supporting
3 schedules as the board may require.

4 A ~~county~~ school district board shall not finally adopt its budget until after the written
5 approval of the board of finance has been received, and the levy estimate has been approved by
6 the Tax Commissioner as required by law. If the Tax Commissioner finds that the levy estimate,
7 based upon the budget, does not conform to the requirements of law, the board shall authorize
8 and require such further revision of the budget as may be necessary for the correction of the levy
9 estimate as required by the Tax Commissioner.

10 A ~~county~~ school district board of education shall submit a preliminary budget upon
11 requirement of the board of finance, which approved budget shall be considered by the Tax
12 Commissioner when approving levy estimates.

§18-9B-6a. Delaying submission of budget.

1 Notwithstanding any other provisions of the code to the contrary, the ~~county~~ school district
2 board shall not be required to submit its budget for approval by the state Board of Education as
3 provided by section twelve-a, article eight, chapter eleven of this code and sections six and seven

4 of article nine-b, chapter eighteen of this code, until the tenth day next following the state board's
5 transmittal of final state aid computations following the adoption of the state budget, but no later
6 than May 30: *Provided*, That, in any year in which the state budget is not adopted on or before
7 May 1, the state board may require the ~~county~~ school district board to adopt a preliminary budget
8 and to submit it to the state board no later than May 30, and when final computations of state aid
9 are transmitted to the ~~county~~ school district board, the ~~county~~ school district board shall make
10 such adjustments as are necessary prior to final adoption of the budget.

§18-9B-8. Projected expenditures order of revision in budget.

1 If the board of finance finds that the proposed budget for a ~~county~~ school district will not
2 maintain the proposed educational program as well as other financial obligations of their ~~county~~
3 school district board of education, it may require that the budget be revised, but in no case shall
4 permit the reduction of the instructional term pursuant to the provisions contained in section
5 fifteen, article five of this chapter nor the employment term below two hundred days. Any required
6 revision in the budget for this purpose may be made in the following order:

7 (1) Postpone expenditures for permanent improvements and capital outlays except from
8 the permanent improvement fund;

9 (2) Reduce the amount budgeted for maintenance exclusive of service personnel so as to
10 guarantee the payment of salaries for the employment term; or

11 (3) Adjust amounts budgeted in any other way so as to assure the required employment
12 term of two hundred days and the required instructional term of one hundred eighty days under
13 the applicable provisions of law.

§18-9B-9. Uniform accounting systems for school districts.

1 The board of finance shall formulate the requirements of a uniform system of management
2 accounting for the use of ~~county~~ school districts. The requirements shall include at least:

3 (1) The accrual accounting of all revenues and other receipts from whatever source;

4 (2) The accounting of expenditures under the several items of appropriation in accordance

5 with the expenditure schedule;

6 (3) Monthly and quarterly reports of rate of expenditure, encumbrances, and free balances
7 under the several items of appropriation;

8 (4) Methods of accounting practice and procedures to be followed in the use of the uniform
9 system.

10 The accounting requirements so formulated shall be certified by the secretary of the board
11 to the Tax Commissioner. The Tax Commissioner shall then incorporate the requirements into a
12 uniform system of school district accounting and as chief inspector and supervisor of public
13 offices, shall prescribe the use of the uniform system by all ~~county~~ school districts by virtue of the
14 authority vested in him or her by section two, article nine, chapter six of this code.

§18-9B-12. Practices of fiscal administration.

1 The state board of school finance may formulate the requirements of adequate practices
2 of fiscal administration to be followed by ~~county~~ school districts. Such requirements may include:

3 (1) Procedures for the receipts, control and disbursement of ~~county~~ school district funds;

4 (2) Forms for requisitions, purchase orders, disbursements and other necessary
5 documents;

6 (3) Regulations for the performance of the powers and duties pertaining to school finance;

7 (4) Regulations for the exercise of the comptroller function;

8 (5) Other instructions and regulations for the proper procedures and practices of fiscal
9 administration in the ~~county~~ school district schools.

10 The requirements formulated by the board of finance shall be certified by the secretary of
11 the board to the Tax Commissioner. The Tax Commissioner as chief inspector and supervisor of
12 public offices shall incorporate the requirements so certified in his or her instructions with respect
13 to fiscal administration and shall prescribe their use by all ~~county~~ school districts by virtue of the
14 authority vested in him or her by section two, article nine, chapter six of this code.

§18-9B-13. Inspection and audit of school finance administration.

1 The board of finance may, through its duly authorized representatives, make inspections
2 and examinations of the fiscal administration of a ~~county~~ school district school district. The
3 inspection and examination may extend to any matter or practice subject to regulation by the state
4 board. Regular and special examinations may be made by a certified public accountant approved
5 pursuant to section seven, article nine, chapter six of this code selected by the ~~county~~ school
6 district board in accordance with nonemergency regulations submitted by the chief inspector, or
7 by the chief inspector himself or herself. All examinations shall be made as provided in section
8 seven, article nine, chapter six of this code. The board may make selective audits to determine
9 the accuracy of statements and reports made by a ~~county~~ school district board or superintendent.

10 The report of the examination shall be certified to the ~~county~~ school district board, which
11 should include the identification of procedures and practices found to not be in accordance with
12 the requirements of the state board. The ~~county~~ school district board shall comply with the
13 instructions forthwith.

14 The state board, through its duly authorized representatives, shall have full access to all
15 books, records, papers and documents of the ~~county~~ school district board.

§18-9B-14. Establishment of permanent improvement fund; contents and use of fund.

1 A ~~county~~ school district board of education may establish a special fund for ~~county~~ school
2 district school purposes to be known as the "permanent improvement fund." The fund shall consist
3 of:

4 (1) The proceeds of the levy allocated to that purpose by section six-c, article eight,
5 chapter eleven of the code, as amended;

6 (2) Unexpended balances of other funds transferred to the fund, with the approval of the
7 board of finance, at the end of the fiscal year;

8 (3) Any other moneys authorized by law to be used for the purposes of the fund.

9 The proceeds of the fund shall be used only for the support of building and permanent
10 improvement projects. The fund may be accumulated from year to year but moneys shall not be

11 paid into the fund so as to increase the assets of the fund to a total amount in excess of twenty-
 12 five percent of the amount of the foundation school program for that ~~county~~ school district for the
 13 same school year.

**§18-9B-15. Permanent improvement fund -- To be treated as separate fund; expenditures;
 limitation on accumulations and assets of fund.**

1 A ~~county~~ school district board shall treat the permanent improvement fund as a separate
 2 fund in the annual budget for ~~county~~ school district school purposes. Expenditures shall be made
 3 from the fund only in accordance with an appropriation made pursuant to the annual budget, or
 4 made otherwise in accordance with this article. If the board of finance finds, in its examination of
 5 the budget of a ~~county~~ school district school district, that a ~~county~~ school district board has
 6 accumulated, or with proposed additions to the fund in the fiscal year will accumulate, the fund of
 7 the ~~county~~ school district to an amount in excess of twenty-five percent of the amount of the
 8 foundation school program of the ~~county~~ school district for the same fiscal year, the board of
 9 finance shall order that no moneys in excess of the limitation be appropriated for or paid into the
 10 fund. If the board of finance finds that the assets of the fund of a ~~county~~ school district exceed
 11 twenty-five percent of the amount of the foundation school program for the ~~county~~ school district
 12 for the same year, the board may require that building and permanent improvement projects
 13 included in the annual budget, be paid for out of the fund.

14 The board of finance shall administer this section so as to keep the accumulated assets
 15 of the fund, as near as may be, within the limitation of twenty-five percent of the amount of the
 16 foundation school program.

**§18-9B-17. Duties of ~~county~~ school district board and ~~county~~ school district
 superintendent.**

1 A ~~county~~ school district board of education and a ~~county~~ school district superintendent
 2 shall comply with the instructions of the state board of school finance and shall perform the duties
 3 required of them in accordance with the provisions of this article.

§18-9B-18. Issuance and enforcement of orders.

1 The board of finance shall enforce the requirements of and its regulations issued under
2 this article. The board may issue orders to ~~county~~ school district boards of education requiring
3 specific compliance with its instructions. If a ~~county~~ school district board fails or refuses to comply,
4 the board may proceed to enforce its order by any appropriate remedy in any court of competent
5 jurisdiction.

§18-9B-19. Withholding of state aid for noncompliance by ~~county~~ school district board.

1 The board of finance may withhold payment of state aid from a ~~county~~ school district board
2 that fails or refuses to comply with the provisions of this article or the requirements of the state
3 board made in accordance therewith.

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.**§18-9D-2. Definitions.**

1 For the purposes of this article, unless a different meaning clearly appears from the
2 context:

3 (1) "Authority" means the School Building Authority of West Virginia;

4 (2) "Bonds" means bonds issued by the authority pursuant to this article;

5 (3) "Construction project" means a project in the furtherance of a facilities plan with a cost
6 greater than \$1 million for the new construction, expansion or major renovation of facilities,
7 buildings and structures for school purposes, including:

8 (A) The acquisition of land for current or future use in connection with the construction
9 project;

10 (B) New or substantial upgrading of existing equipment, machinery and furnishings;

11 (C) Installation of utilities and other similar items related to making the construction project
12 operational.

13 (D) Construction project does not include such items as books, computers or equipment
14 used for instructional purposes; fuel; supplies; routine utility services fees; routine maintenance

15 costs; ordinary course of business improvements; other items which are customarily considered
16 to result in a current or ordinary course of business operating charge or a major improvement
17 project;

18 (4) "Cost of project" means the cost of construction, expansion, renovation, repair and
19 safety upgrading of facilities, buildings and structures for school purposes; the cost of land,
20 equipment, machinery, furnishings, installation of utilities and other similar items related to making
21 the project operational; and the cost of financing, interest during construction, professional service
22 fees and all other charges or expenses necessary, appurtenant or incidental to the foregoing,
23 including the cost of administration of this article;

24 (5) "Facilities plan" means the ten-year ~~county~~ school district wide comprehensive
25 educational facilities plan established by a ~~county~~ school district board in accordance with
26 guidelines adopted by the authority to meet the goals and objectives of this article that:

27 (A) Addresses the existing school facilities and facility needs of the ~~county~~ school district
28 to provide a thorough and efficient education in accordance with the provisions of this code and
29 policies of the state board;

30 (B) Best serves the needs of individual students, the general school population and the
31 communities served by the facilities, including, but not limited to, providing for a facility
32 infrastructure that avoids excessive school bus transportation times for students consistent with
33 sound educational policy and within the budgetary constraints for staffing and operating the
34 schools of the ~~county~~ school district;

35 (C) Includes the school major improvement plan;

36 (D) Includes the ~~county~~ school district board's school access safety plan required by
37 section three, article nine-f of this chapter;

38 (E) Is updated annually to reflect projects completed, current enrollment projections and
39 new or continuing needs; and

40 (F) Is approved by the state board and the authority prior to the distribution of state funds

41 pursuant to this article to any ~~county~~ school district board or other entity applying for funds;

42 (6) "Project" means a construction project or a major improvement project;

43 (7) "Region" means the area encompassed within and serviced by a regional educational
44 service agency established pursuant to section twenty-six, article two of this chapter;

45 (8) "Revenue" or "revenues" means moneys:

46 (A) Deposited in the School Building Capital Improvements Fund pursuant to section ten,
47 article nine-a of this chapter;

48 (B) Deposited in the School Construction Fund pursuant to section thirty, article fifteen,
49 chapter eleven of this code and section eighteen, article twenty-two, chapter twenty-nine of this
50 code;

51 (C) Deposited in the School Building Debt Service Fund pursuant to section eighteen,
52 article twenty-two, chapter twenty-nine of this code;

53 (D) Deposited in the School Major Improvement Fund pursuant to section thirty, article
54 fifteen, chapter eleven of this code;

55 (E) Received, directly or indirectly, from any source for use in any project completed
56 pursuant to this article;

57 (F) Received by the authority for the purposes of this article; and

58 (G) Deposited in the Excess Lottery School Building Debt Services Fund pursuant to
59 section eighteen-a, article twenty-two, chapter twenty-nine of this code.

60 (9) "School major improvement plan" means a ten-year school maintenance plan that:

61 (A) Is prepared by a ~~county~~ school district board in accordance with the guidelines
62 established by the authority and incorporated in its ~~county~~ school district-wide Comprehensive
63 Educational Facilities Plan, or is prepared by the state board or the administrative council of an
64 area vocational educational center in accordance with the guidelines if the entities seek funding
65 from the authority for a major improvement project;

66 (B) Addresses the regularly scheduled maintenance for all school facilities of the ~~county~~

67 school district or under the jurisdiction of the entity seeking funding;

68 (C) Includes a projected repair and replacement schedule for all school facilities of the
69 ~~county~~ school district or of entity seeking funding;

70 (D) Addresses the major improvement needs of each school within the ~~county~~ school
71 district or under the jurisdiction of the entity seeking funding; and

72 (E) Is required prior to the distribution of state funds for a major improvement project
73 pursuant to this article to the ~~county~~ school district board, state board or administrative council;
74 and

75 (10) "School major improvement project" means a project with a cost greater than \$50,000
76 and less than \$1 million for the renovation, expansion, repair and safety upgrading of existing
77 school facilities, buildings and structures, including the substantial repair or upgrading of
78 equipment, machinery, building systems, utilities and other similar items related to the renovation,
79 repair or upgrading in the furtherance of a school major improvement plan. A major improvement
80 project does not include such items as books, computers or equipment used for instructional
81 purposes; fuel; supplies; routine utility services fees; routine maintenance costs; ordinary course
82 of business improvements; or other items which are customarily considered to result in a current
83 or ordinary course of business operating charge.

§18-9D-3. Powers of authority.

1 The School Building Authority has the power:

2 (1) To sue and be sued, plead and be impleaded;

3 (2) To have a seal and alter the same at pleasure;

4 (3) To contract to acquire and to acquire, in the name of the authority, by purchase, lease-
5 purchase not to exceed a term of twenty-five years, or otherwise, real property or rights or
6 easements necessary or convenient for its corporate purposes and to exercise the power of
7 eminent domain to accomplish those purposes;

8 (4) To acquire, hold and dispose of real and personal property for its corporate purposes;

9 (5) To make bylaws for the management and rule of its affairs;

10 (6) To appoint, contract with and employ attorneys, bond counsel, accountants,
11 construction and financial experts, underwriters, financial advisers, trustees, managers, officers
12 and such other employees and agents as may be necessary in the judgment of the authority and
13 to fix their compensation: *Provided*, That contracts entered into by the School Building Authority
14 in connection with the issuance of bonds under this article to provide professional and technical
15 services, including, without limitation, accounting, actuarial, underwriting, consulting, trustee,
16 bond counsel, legal services and contracts relating to the purchase or sale of bonds are subject
17 to the provisions of article three, chapter five-a of this code: *Provided, however*, That
18 notwithstanding any other provisions of this code, any authority of the Attorney General of this
19 state relating to the review of contracts and other documents to effectuate the issuance of bonds
20 under this article shall be exclusively limited to the form of the contract and document: *Provided*
21 *further*, That the Attorney General of this state shall complete all reviews of contracts and
22 documents relating to the issuance of bonds under this article within ten calendar days of receipt
23 of the contract and document for review;

24 (7) To make contracts and to execute all instruments necessary or convenient to
25 effectuate the intent of and to exercise the powers granted to it by this article;

26 (8) To renegotiate all contracts entered into by it whenever, due to a change in situation,
27 it appears to the authority that its interests will be best served;

28 (9) To acquire by purchase, eminent domain or otherwise all real property or interests in
29 the property necessary or convenient to accomplish the purposes of this article;

30 (10) To require proper maintenance and insurance of any project authorized under this
31 section, including flood insurance for any facility within the one hundred year flood plain at which
32 authority funds are expended;

33 (11) To charge rent for the use of all or any part of a project or buildings at any time
34 financed, constructed, acquired or improved, in whole or in part, with the revenues of the authority;

35 (12) To assist any ~~county~~ school district board of education that chooses to acquire land,
36 buildings and capital improvements to existing school buildings and property for use as public
37 school facilities, by lease from a private or public lessor for a term not to exceed twenty-five years
38 with an option to purchase pursuant to an investment contract with the lessor on such terms and
39 conditions as may be determined to be in the best interests of the authority, the state Board of
40 Education and the ~~county~~ school district board of education, consistent with the purposes of this
41 article, by transferring funds to the state Board of Education as provided in subsection (d), section
42 fifteen of this article for the use of the ~~county~~ school district board of education;

43 (13) To accept and expend any gift, grant, contribution, bequest or endowment of money
44 and equipment to, or for the benefit of, the authority or any project under this article, from the
45 State of West Virginia or any other source for any or all of the purposes specified in this article or
46 for any one or more of such purposes as may be specified in connection with the gift, grant,
47 contribution, bequest or endowment;

48 (14) To enter on any lands and premises for the purpose of making surveys, soundings
49 and examinations;

50 (15) To contract for architectural, engineering or other professional services considered
51 necessary or economical by the authority to provide consultative or other services to the authority
52 or to any regional educational service agency or ~~county~~ school district board requesting
53 professional services offered by the authority, to evaluate any facilities plan or any project
54 encompassed in the plan, to inspect existing facilities or any project that has received or may
55 receive funding from the authority or to perform any other service considered by the authority to
56 be necessary or economical. Assistance to the region or district may include the development of
57 preapproved systems, plans, designs, models or documents; advice or oversight on any plan or
58 project; or any other service that may be efficiently provided to regional educational service
59 agencies or ~~county~~ school district boards by the authority;

60 (16) To provide funds on an emergency basis to repair or replace property damaged by

61 fire, flood, wind, storm, earthquake or other natural occurrence, the funds to be made available in
62 accordance with guidelines of the School Building Authority;

63 (17) To transfer moneys to custodial accounts maintained by the School Building Authority
64 with a state financial institution from the school construction fund and the school improvement
65 fund created in the State Treasury pursuant to the provisions of section six of this article, as
66 necessary to the performance of any contracts executed by the School Building Authority in
67 accordance with the provisions of this article;

68 (18) To enter into agreements with ~~county~~ school district boards and persons, firms or
69 corporations to facilitate the development of ~~county~~ school district board projects and ~~county~~
70 school district board facilities plans. The ~~county~~ school district board participating in an agreement
71 shall pay at least twenty-five percent of the cost of the agreement. Nothing in this section shall be
72 construed to supersede, limit or impair the authority of ~~county~~ school district boards to develop
73 and prepare their projects or plans;

74 (19) To encourage any project or part thereof to provide opportunities for students to
75 participate in supervised, unpaid work-based learning experiences related to the student's
76 program of study approved by the ~~county~~ school district board. The work-based learning
77 experience must be conducted in accordance with a formal training plan approved by the
78 instructor, the employer and the student and which sets forth at a minimum the specific skills to
79 be learned, the required documentation of work-based learning experiences, the conditions of the
80 placement, including duration and safety provisions, and provisions for supervision and liability
81 insurance coverage as applicable. Projects involving the new construction and renovation of
82 vocational-technical and adult education facilities should provide opportunities for students to
83 participate in supervised work-based learning experiences, to the extent practical, which meet the
84 requirements of this subdivision. Nothing in this subdivision may be construed to affect registered
85 youth apprenticeship programs or the provisions governing those programs; and

86 (20) To do all things necessary or convenient to carry out the powers given in this article.

§18-9D-15. Legislative intent; allocation of money among categories of projects; lease-purchase options; limitation on time period for expenditure of project allocation; ~~county~~ school district maintenance budget requirements; project disbursements over period of years; preference for multicounty arrangements; submission of project designs; set-aside to encourage local participation.

1 (a) It is the intent of the Legislature to empower the School Building Authority to facilitate
2 and provide state funds and to administer all federal funds provided for the construction and major
3 improvement of school facilities so as to meet the educational needs of the people of this state in
4 an efficient and economical manner. The authority shall make funding determinations in
5 accordance with the provisions of this article and shall assess existing school facilities and each
6 facility's school major improvement plan in relation to the needs of the individual student, the
7 general school population, the communities served by the facilities and facility needs statewide.

8 (b) An amount that is not more than three percent of the sum of moneys that are
9 determined by the authority to be available for distribution during the then current fiscal year from:

10 (1) Moneys paid into the School Building Capital Improvements Fund pursuant to section
11 ten, article nine-a of this chapter;

12 (2) The issuance of revenue bonds for which moneys in the School Building Debt Service
13 Fund or the Excess Lottery School Building Debt Service Fund are pledged as security;

14 (3) Moneys paid into the School Construction Fund pursuant to section six of this article;
15 and

16 (4) Any other moneys received by the authority, except moneys paid into the School Major
17 Improvement Fund pursuant to section six of this article and moneys deposited into the School
18 Access Safety Fund pursuant to section five, article nine-f of this chapter, may be allocated and
19 may be expended by the authority for projects authorized in accordance with the provisions of
20 section sixteen of this article that service the educational community statewide or, upon
21 application by the state board, for educational programs that are under the jurisdiction of the state

22 board. In addition, upon application by the state board or the administrative council of an area
23 vocational educational center established pursuant to article two-b of this chapter, the authority
24 may allocate and expend under this subsection moneys for school major improvement projects
25 authorized in accordance with the provisions of section sixteen of this article proposed by the
26 state board or an administrative council for school facilities under the direct supervision of the
27 state board or an administrative council, respectively. Furthermore, upon application by a ~~county~~
28 school district board, the authority may allocate and expend under this subsection moneys for
29 school major improvement projects for vocational programs at comprehensive high schools,
30 vocational programs at comprehensive middle schools, vocational schools cooperating with
31 community and technical college programs, or any combination of the three. Each ~~county~~ school
32 district board is encouraged to cooperate with community and technical colleges in the use of
33 existing or development of new vocational technical facilities. All projects eligible for funds from
34 this subsection shall be submitted directly to the authority which shall be solely responsible for
35 the project's evaluation, subject to the following:

36 (A) The authority may not expend any moneys for a school major improvement project
37 proposed by the state board or the administrative council of an area vocational educational center
38 unless the state board or an administrative council has submitted a ten-year facilities plan; and

39 (B) The authority shall, before allocating any moneys to the state board or the
40 administrative council of an area vocational educational center for a school improvement project,
41 consider all other funding sources available for the project.

42 (c) An amount that is not more than two percent of the moneys that are determined by the
43 authority to be available for distribution during the current fiscal year from:

44 (1) Moneys paid into the School Building Capital Improvements Fund pursuant to section
45 ten, article nine-a of this chapter;

46 (2) The issuance of revenue bonds for which moneys in the School Building Debt Service
47 Fund or the Excess Lottery School Building Debt Service Fund are pledged as security;

48 (3) Moneys paid into the School Construction Fund pursuant to section six of this article;
49 and

50 (4) Any other moneys received by the authority, except moneys deposited into the School
51 Major Improvement Fund and moneys deposited into the School Access Safety Fund pursuant to
52 section five, article nine-f of this chapter, shall be set aside by the authority as an emergency fund
53 to be distributed in accordance with the guidelines adopted by the authority.

54 (d) An amount that is not more than five percent of the moneys that are determined by the
55 authority to be available for distribution during the current fiscal year from:

56 (1) Moneys paid into the School Building Capital Improvements Fund pursuant to section
57 ten, article nine-a of this chapter;

58 (2) The issuance of revenue bonds for which moneys in the School Building Debt Service
59 Fund or the Excess Lottery School Building Debt Service Fund are pledged as security;

60 (3) Moneys paid into the School Construction Fund pursuant to section six of this article;
61 and

62 (4) Any other moneys received by the authority, except moneys deposited into the School
63 Major Improvement Fund and moneys deposited into the School Access Safety Fund pursuant to
64 section five, article nine-f of this chapter, may be reserved by the authority for multiuse vocational-
65 technical education facilities projects that may include post-secondary programs as a first priority
66 use. The authority may allocate and expend under this subsection moneys for any purposes
67 authorized in this article on multiuse vocational-technical education facilities projects, including
68 equipment and equipment updates at the facilities, authorized in accordance with the provisions
69 of section sixteen of this article. If the projects approved under this subsection do not require the
70 full amount of moneys reserved, moneys above the amount required may be allocated and
71 expended in accordance with other provisions of this article. A ~~county~~ school district board, the
72 state board, an administrative council or the joint administrative board of a vocational-technical
73 education facility which includes post-secondary programs may propose projects for facilities or

74 equipment, or both, which are under the direct supervision of the respective body: *Provided*, That
75 the authority shall, before allocating any moneys for a project under this subsection, consider all
76 other funding sources available for the project.

77 (e) The remaining moneys determined by the authority to be available for distribution
78 during the then current fiscal year from:

79 (1) Moneys paid into the School Building Capital Improvements Fund pursuant to section
80 ten, article nine-a of this chapter;

81 (2) The issuance of revenue bonds for which moneys in the School Building Debt Service
82 Fund or the Excess Lottery School Building Debt Service Fund are pledged as security;

83 (3) Moneys paid into the School Construction Fund pursuant to section six of this article;
84 and

85 (4) Any other moneys received by the authority, except moneys deposited into the School
86 Major Improvement Fund and moneys deposited into the School Access Safety Fund pursuant to
87 section five, article nine-f of this chapter, shall be allocated and expended on the basis of need
88 and efficient use of resources for projects funded in accordance with the provisions of section
89 sixteen of this article.

90 (f) If a ~~county~~ school district board proposes to finance a project that is authorized in
91 accordance with section sixteen of this article through a lease with an option to purchase leased
92 premises upon the expiration of the total lease period pursuant to an investment contract, the
93 authority may not allocate moneys to the ~~county~~ school district board in connection with the
94 project: *Provided*, That the authority may transfer moneys to the state board which, with the
95 authority, shall lend the amount transferred to the ~~county~~ school district board to be used only for
96 a one-time payment due at the beginning of the lease term, made for the purpose of reducing
97 annual lease payments under the investment contract, subject to the following conditions:

98 (1) The loan shall be secured in the manner required by the authority, in consultation with
99 the state board, and shall be repaid in a period and bear interest at a rate as determined by the

100 state board and the authority and shall have any terms and conditions that are required by the
101 authority, all of which shall be set forth in a loan agreement among the authority, the state board
102 and the ~~county~~ school district board;

103 (2) The loan agreement shall provide for the state board and the authority to defer the
104 payment of principal and interest upon any loan made to the ~~county~~ school district board during
105 the term of the investment contract, and annual renewals of the investment contract, among the
106 state board, the authority, the ~~county~~ school district board and a lessor, subject to the following:

107 (A) In the event a ~~county~~ school district board which has received a loan from the authority
108 for a one-time payment at the beginning of the lease term does not renew the lease annually until
109 performance of the investment contract in its entirety is completed, the ~~county~~ school district board
110 is in default and the principal of the loan, together with all unpaid interest accrued to the date of
111 the default, shall, at the option of the authority, in consultation with the state board, become due
112 and payable immediately or subject to renegotiation among the state board, the authority and the
113 ~~county~~ school district board;

114 (B) If a ~~county~~ school district board renews the lease annually through the performance of
115 the investment contract in its entirety, the ~~county~~ school district board shall exercise its option to
116 purchase the leased premises;

117 (C) The failure of the ~~county~~ school district board to make a scheduled payment pursuant
118 to the investment contract constitutes an event of default under the loan agreement;

119 (D) Upon a default by a ~~county~~ school district board, the principal of the loan, together with
120 all unpaid interest accrued to the date of the default, shall, at the option of the authority, in
121 consultation with the state board, become due and payable immediately or subject to
122 renegotiation among the state board, the authority and the ~~county~~ school district board; and

123 (E) If the loan becomes due and payable immediately, the authority, in consultation with
124 the state board, shall use all means available under the loan agreement and law to collect the
125 outstanding principal balance of the loan, together with all unpaid interest accrued to the date of

126 payment of the outstanding principal balance; and

127 (3) The loan agreement shall provide for the state board and the authority to forgive all
128 principal and interest of the loan upon the ~~county~~ school district board purchasing the leased
129 premises pursuant to the investment contract and performance of the investment contract in its
130 entirety.

131 (g) To encourage ~~county~~ school district boards to proceed promptly with facilities planning
132 and to prepare for the expenditure of any state moneys derived from the sources described in this
133 section, any ~~county~~ school district board or other entity to whom moneys are allocated by the
134 authority that fails to expend the money within three years of the allocation shall forfeit the
135 allocation and thereafter is ineligible for further allocations pursuant to this section until it is ready
136 to expend funds in accordance with an approved facilities plan: *Provided*, That the authority may
137 authorize an extension beyond the three-year forfeiture period not to exceed an additional two
138 years. Any amount forfeited shall be added to the total funds available in the School Construction
139 Fund of the authority for future allocation and distribution. Funds may not be distributed for any
140 project under this article unless the responsible entity has a facilities plan approved by the state
141 board and the School Building Authority and is prepared to commence expenditure of the funds
142 during the fiscal year in which the moneys are distributed.

143 (h) The remaining moneys that are determined by the authority to be available for
144 distribution during the then current fiscal year from moneys paid into the School Major
145 Improvement Fund pursuant to section six of this article shall be allocated and distributed on the
146 basis of need and efficient use of resources for projects authorized in accordance with the
147 provisions of section sixteen of this article, subject to the following:

148 (1) The moneys may not be distributed for any project under this section unless the
149 responsible entity has a facilities plan approved by the state board and the authority and is to
150 commence expenditures of the funds during the fiscal year in which the moneys are distributed;

151 (2) Any moneys allocated to a project and not distributed for that project shall be deposited

152 in an account to the credit of the project, the principal amount to remain to the credit of and
153 available to the project for a period of two years; and

154 (3) Any moneys which are unexpended after a two-year period shall be redistributed on
155 the basis of need from the School Major Improvement Fund in that fiscal year.

156 (i) Local matching funds may not be required under the provisions of this section. However,
157 this article does not negate the responsibilities of the ~~county~~ school district boards to maintain
158 school facilities. Therefore, as a prerequisite for eligibility to receive an allocation of school major
159 improvement funds from the authority, a ~~county~~ school district board must provide annual school
160 facility maintenance expenditure data to the authority which shall be jointly reviewed by the
161 authority and the state Department of Education Office of School Facilities and Transportation to
162 assist the authority in its determination of the most meritorious projects to be funded through the
163 School Major Improvement Fund. The state board shall promulgate rules relating to ~~county~~ school
164 district boards' school facility maintenance budgets, including items which shall be included in
165 these budgets.

166 (j) Any ~~county~~ school district board may use moneys provided by the authority under this
167 article in conjunction with local funds derived from bonding, special levy or other sources.
168 Distribution to a ~~county~~ school district board, or to the state board or the administrative council of
169 an area vocational educational center pursuant to subsection (b) of this section, may be in a lump
170 sum or in accordance with a schedule of payments adopted by the authority pursuant to guidelines
171 adopted by the authority.

172 (k) Funds in the School Construction Fund shall first be transferred and expended as
173 follows:

174 (1) Any funds deposited in the School Construction Fund shall be expended first in
175 accordance with an appropriation by the Legislature.

176 (2) To the extent that funds are available in the School Construction Fund in excess of
177 that amount appropriated in any fiscal year, the excess funds may be expended for projects

178 authorized in accordance with the provisions of section sixteen of this article.

179 (l) It is the intent of the Legislature to encourage ~~county~~ school district boards to explore
180 and consider arrangements with other ~~county~~ school district that may facilitate the highest and
181 best use of all available funds, which may result in improved transportation arrangements for
182 students or which otherwise may create efficiencies for ~~county~~ school district boards and the
183 students. In order to address the intent of the Legislature contained in this subsection, the
184 authority shall grant preference to those projects which involve multi- ~~county~~ school district
185 arrangements as the authority shall determine reasonable and proper.

186 (m) ~~County~~ School district boards shall submit all designs for construction of new school
187 buildings to the School Building Authority for review and approval prior to preparation of final bid
188 documents. A vendor who has been debarred pursuant to the provisions of sections thirty-three-
189 a through thirty-three-f, inclusive, article three, chapter five-a of this code may not bid on or be
190 awarded a contract under this section.

191 (n) The authority may elect to disburse funds for approved construction projects over a
192 period of more than one year subject to the following:

193 (1) The authority may not approve the funding of a school construction project over a
194 period of more than three years;

195 (2) The authority may not approve the use of more than fifty percent of the revenue
196 available for distribution in any given fiscal year for projects that are to be funded over a period of
197 more than one year; and

198 (3) In order to encourage local participation in funding school construction projects, the
199 authority may set aside limited funding, not to exceed \$500,000, in reserve for one additional year
200 to provide a ~~county~~ school district the opportunity to complete financial planning for a project prior
201 to the allocation of construction funds. Any funding shall be on a reserve basis and converted to
202 a part of the construction grant only after all project budget funds have been secured and all
203 ~~county~~ school district commitments have been fulfilled. Failure of the ~~county~~ school district to

204 solidify the project budget and meet its obligations to the state within eighteen months of the date
205 the funding is set aside by the authority will result in expiration of the reserve and the funds shall
206 be reallocated by the authority in the succeeding funding cycle.

§18-9D-16. Authority to establish guidelines and procedures for facilities and major improvement plans; guidelines for modifications and updates, etc.; guidelines for project evaluation; submission of certified list of projects to be funded; department on-site inspection of facilities; enforcement of required changes or additions to project plans.

1 (a) The authority shall establish guidelines and procedures to promote the intent and
2 purposes of this article and assure the prudent and resourceful expenditure of state funds for
3 projects under this article including, but not limited to, the following:

4 (1) Guidelines and procedures for the facilities plans, school major improvement plans
5 and projects submitted in the furtherance of the plans that address, but are not limited to, the
6 following:

7 (A) All of the elements of the respective plans as defined in section two of this article;

8 (B) The procedures for a ~~county~~ school district to submit a preliminary plan, a plan outline
9 or a proposal for a plan to the authority prior to the submission of the facilities plan. The preliminary
10 plan, plan outline or proposal for a plan shall be the basis for a consultation meeting between
11 representatives of the ~~county~~ school district and members of the authority, including at least one
12 citizen member, which shall be held promptly following submission of the preliminary plan, plan
13 outline or proposal for a plan to assure understanding of the general goals of this article and the
14 objective criteria by which projects will be evaluated, to discuss ways the plan may be structured
15 to meet those goals, and to assure efficiency and productivity in the project approval process;

16 (C) The manner, time line and process for the submission of each plan and annual plan
17 updates to the authority;

18 (D) The requirements for public hearings, comments or other means of providing broad-

19 based input on plans and projects under this article within a reasonable time period as the
20 authority may consider appropriate. The submission of each plan must be accompanied by a
21 synopsis of all comments received and a formal comment by the ~~county~~ school district board, the
22 state board or the administrative council of an area vocational educational center submitting the
23 plan;

24 (E) Any project specifications and maintenance specifications considered appropriate by
25 the authority including, but not limited to, such matters as energy efficiency, preferred siting,
26 construction materials, maintenance plan and any other matter related to how the project is to
27 proceed;

28 (F) A prioritization by the ~~county~~ school district board, the state board or the administrative
29 council submitting the plan of each project contained in the plan. In prioritizing the projects, the
30 ~~county~~ school district board, the state board or the administrative council submitting the plan shall
31 make determinations in accordance with the objective criteria formulated by the School Building
32 Authority in accordance with this section. The priority list is one of the criteria that shall be
33 considered by the authority deciding how the available funds should be expended;

34 (G) The objective means to be set forth in the plan and used in evaluating implementation
35 of the overall plan and each project included in the plan. The evaluation must measure how the
36 plan addresses the goals of this article and any guidelines adopted under this article, and how
37 each project is in furtherance of the facilities plan and school major improvement plan, as
38 applicable, as well as the importance of the project to the overall success of the facilities plan or
39 school major improvement plan and the overall goals of the authority; and

40 (H) Any other matters considered by the authority to be important reflections of how a
41 construction project or a major improvement project or projects will further the overall goals of this
42 article.

43 (2) Guidelines and procedures which may be adopted by the authority for requiring that a
44 ~~county~~ school district board modify, update, supplement or otherwise submit changes or additions

45 to an approved facilities plan or for requiring that a ~~county~~ school district board, the state board
46 or the administrative council of an area vocational educational center modify, update, supplement
47 or otherwise submit changes or additions to an approved school major improvement plan. The
48 authority shall provide reasonable notification and sufficient time for the change or addition as
49 delineated in guidelines developed by the authority. The guidelines shall require an update of the
50 estimated duration of school bus transportation times for students associated with any
51 construction project under consideration by the authority that includes the closure, consolidation
52 or construction of a school or schools.

53 (3) Guidelines and procedures for evaluating project proposals that are submitted to the
54 authority that address, but are not limited to, the following:

55 (A) Any project funded by the authority must be in furtherance of the facilities plan or
56 school major improvement plan and in compliance with the guidelines established by the
57 authority;

58 (B) If a project is to benefit more than one ~~county in the region,~~ county school district, the
59 facilities plan must state the manner in which the cost and funding of the project will be
60 apportioned among the ~~counties~~ school districts;

61 (C) If a ~~county~~ school district board proposes to finance a construction project through a
62 lease with an option to purchase pursuant to an investment contract as described in subsection
63 (f), section fifteen of this article, the specifications for the project must include the term of the
64 lease, the amount of each lease payment, including the payment due upon exercise of the option
65 to purchase, and the terms and conditions of the proposed investment contract; and

66 (D) The objective criteria for the evaluation of projects which shall include, but are not
67 limited to, the following:

68 (i) How the current facilities do not meet and how the plan and any project under the plan
69 meets the following:

70 (l) Student health and safety including, but not limited to, critical health and safety needs;

71 (II) Economies of scale, including compatibility with similar schools that have achieved the
72 most economical organization, facility use and pupil-teacher ratios;

73 (III) Reasonable travel time and practical means of addressing other demographic
74 considerations. The authority may not approve a project after July 1, 2008, that includes a school
75 closure, consolidation or new construction for which a new bus route will be created for the
76 transportation of students in any of the grade levels prekindergarten through grade five to and
77 from any school included in the project, which new bus route exceeds by more than fifteen minutes
78 the recommended duration of the one-way school bus transportation time for elementary students
79 adopted by the state board as provided in section five-d, article two-e of this chapter, unless the
80 ~~county~~ school district has received the written permission of the state board to create the route in
81 accordance with said section five-d;

82 (IV) ~~Multicounty~~ Multidistrict and regional planning to achieve the most effective and
83 efficient instructional delivery system;

84 (V) Curriculum improvement and diversification, including the use of instructional
85 technology, distance learning and access to advanced courses in science, mathematics,
86 language arts and social studies;

87 (VI) Innovations in education;

88 (VII) Adequate space for projected student enrollments;

89 (VIII) The history of efforts taken by the ~~county~~ school district board to propose or adopt
90 local school bond issues or special levies to the extent Constitutionally permissible; and

91 (IX) Regularly scheduled preventive maintenance; and

92 (ii) How the project will assure the prudent and resourceful expenditure of state funds and
93 achieve the purposes of this article for constructing, expanding, renovating or otherwise improving
94 and maintaining school facilities for a thorough and efficient education.

95 (4) Guidelines and procedures for evaluating projects for funding that address, but are not
96 limited to, the following:

97 (A) Requiring each ~~county~~ school district board's facilities plan and school major
98 improvement plan to prioritize all the construction projects or major improvement projects,
99 respectively, within the ~~county~~ school district. A school major improvement plan submitted by the
100 state board or the administrative council of an area vocational educational center shall prioritize
101 all the school improvement projects contained in the plan. The priority list shall be one of the
102 criteria to be considered by the authority in determining how available funds shall be expended.
103 In prioritizing the projects, the ~~county~~ school district board, the state board or the administrative
104 council submitting a plan shall make determinations in accordance with the objective criteria
105 formulated by the School Building Authority;

106 (B) The return to each ~~county~~ school district submitting a project proposal an explanation
107 of the evaluative factors underlying the decision of the authority to fund or not to fund the project;
108 and

109 (C) The allocation and expenditure of funds in accordance with this article, subject to the
110 availability of funds.

111 (b) Prior to final action on approving projects for funding under this article, the authority
112 shall submit a certified list of the projects to the Joint Committee on Government and Finance.

113 (c) The State Department of Education shall conduct on-site inspections, at least annually,
114 of all facilities which have been funded wholly or in part by moneys from the authority or state
115 board to ensure compliance with the ~~county~~ school district board's facilities plan and school major
116 improvement plan as related to the facilities; to preserve the physical integrity of the facilities to
117 the extent possible; and to otherwise extend the useful life of the facilities: *Provided*, That the
118 state board shall submit reports regarding its on-site inspections of facilities to the authority within
119 thirty days of completion of the on-site inspections: *Provided, however*, That the state board shall
120 promulgate rules regarding the on-site inspections and matters relating thereto, in consultation
121 with the authority, as soon as practical and shall submit proposed rules for legislative review no
122 later than December 1, 1994.

123 (d) Based on its on-site inspection or notification by the authority to the state board that
124 the changes or additions to a ~~county's~~ school district's board facilities plan or school major
125 improvement plan required by the authority have not been implemented within the time period
126 prescribed by the authority, the state board shall restrict the use of the necessary funds or
127 otherwise allocate funds from moneys appropriated by the Legislature for those purposes set forth
128 in section nine, article nine-a of this chapter.

§18-9D-19. Comprehensive high schools.

1 (a) The Legislature finds the following:

2 (1) The decline in student enrollment over the last twenty years has necessitated
3 consolidation of schools in many counties;

4 (2) It is projected that the decline in student enrollment during the period 2002 through
5 2012 may be as great as eighteen percent and will continue the necessity to consolidate schools;

6 (3) The new consolidated school buildings now being built across the state provide an
7 opportunity for communities to have comprehensive high schools that include space for
8 vocational-technical courses, community college courses and other workforce-related courses for
9 the students and the public at large;

10 (4) Requiring students to be bused to remote vocational centers has sometimes deterred
11 student participation in vocational courses and has sometimes been considered a stigma upon
12 those students attending vocational courses;

13 (5) Offering vocational, community college and workforce programs in close proximity to
14 each other compliment the high school and the programs; and

15 (6) The change in the season for girls' basketball to coincide with boys' basketball has
16 placed significant pressures on the availability of gymnasium space and often has caused
17 practices to be scheduled late in the evenings and on weekends, interfering with time needed for
18 studying and rest.

19 (b) When planning the construction of a high school which has been approved by the

20 authority and which meets the required authority efficiencies, the authority shall provide funding
21 for comprehensive vocational facilities to be located, when feasible, on the same site as the high
22 school and may, in cooperation with the Higher Education Policy Commission, established in
23 section one, article one-b, chapter eighteen-b of this code, provide funding for facilities for
24 community and technical college education. When building in conjunction with the Higher
25 Education Policy Commission, an educational specification must be developed for the proposed
26 new facility by the appropriate institutional governing board as defined in section two, article one
27 of said chapter. The ~~county~~ school district board is the fiscal agent for construction. All planning,
28 design, bidding and construction must be completed with authority guidelines and under the
29 supervision of the authority.

30 (c) When planning the construction of a high school which has been approved by the
31 authority and meets the required authority efficiencies, the authority shall provide funding
32 sufficient for the construction of at least one auxiliary gymnasium. The authority may establish
33 standards for the auxiliary gymnasium.

34 (d) Upon application of a ~~county~~ school district board to construct comprehensive
35 vocational facilities at an existing high school, the authority will provide technical assistance to
36 the ~~county~~ school district in developing a plan for construction of the comprehensive vocational
37 facility. The facility may, in cooperation with the Higher Education Policy Commission in
38 accordance with the provisions of subsection (b) of this section, include facilities for community
39 and technical college education. Upon development of the plan, the authority shall consider
40 funding based on the following criteria:

41 (1) The distance of any existing vocational facilities from the high schools it serves;

42 (2) The time required to travel to and from the vocational facility to the high schools it
43 serves;

44 (3) The ability of the ~~county~~ school district board to provide local funds for the construction
45 of new comprehensive vocational facilities;

- 46 (4) The size of the existing high schools and the demand for vocational technical courses;
 47 (5) The age and physical condition of the existing vocational facilities; and
 48 (6) Such other criteria as the authority shall consider appropriate.

49 (e) When planning the construction of a high school in a ~~county~~ school district which is
 50 served by a multicounty vocational technical facility, the ~~county~~ school district may not be required
 51 to include the construction of a comprehensive vocational facility in the plan. If the ~~county~~ school
 52 district board elects to construct a comprehensive vocational facility pursuant to this section, the
 53 board shall include the multicounty center director and board in planning programs to be offered
 54 at the vocational facility which complement the programs offered at the multicounty center and
 55 may as part of the plan include facilities for community and technical college education at the
 56 multicounty center. The programs offered at the vocational facility may not replace the programs
 57 offered at the multicounty vocational technical center without the consent of the center board.

58 (f) Notwithstanding any other provisions of this section to the contrary, the ~~county~~ school
 59 district board in which there is an existing comprehensive vocational center, may eliminate any
 60 vocational offering from a new comprehensive high school if the ~~county~~ school district board:

- 61 (1) Completes a comprehensive vocational curriculum study, as required by the authority,
 62 including an evaluation of both the programmatic and physical facilities of the existing center and
 63 coordinates the ~~county~~ school district 's vocational curriculum; and
 64 (2) Submits the plan to the authority for review and obtains the authority's approval.

§18-9D-19a. Comprehensive middle schools.

1 (a) The Legislature finds the following:

2 (1) Students learn more through hands on, applied learning activities;

3 (2) Career technical education students have a much higher graduation rate than other
 4 students;

5 (3) Although thirty-seven percent of West Virginia middle and junior high school students
 6 are enrolled in a form of career technical education, the number has been dropping by

7 approximately three thousand students per year; and

8 (4) As the benefits of career technical education have increased as academics have
9 become more embedded in career technical education, it is important that career technical
10 education opportunities be increased at the middle and junior high school level.

11 (b) "Comprehensive middle school" means a middle or junior high school that meets the
12 definition of a comprehensive middle school established by the state board. The definition of a
13 comprehensive middle school shall be established by the state board in a legislative rule
14 promulgated in accordance with article three-b, chapter twenty-nine-a of this code. The definition
15 shall include at least the following:

16 (1) A comprehensive curriculum that:

17 (A) Includes the core subjects in English/language arts, mathematics, science, social
18 studies;

19 (B) Provides students with engaging learning opportunities where students are provided
20 connections between what they are learning and what they will learn in high school and beyond;

21 (C) Establishes the foundation for college and career readiness;

22 (D) Embeds career exploration and project based career activities where possible to
23 provide all student with comprehensive career development and counseling;

24 (E) Provides career technical options for students that are integrated with academic
25 course requirements where possible; and

26 (F) Provides authentic opportunities in the visual and performing arts, health and wellness,
27 physical education, world languages and career technical activities;

28 (2) Harnessing the power of technology to provide personalized learning twenty-four hours
29 per day and seven days per week and produce a digital individualized student portfolio of student
30 mastery and progression; and

31 (3) A seamless integration with the secondary school curriculum that enables students to
32 further explore their options and further pursue their career interests at the secondary and post-

33 secondary levels.

34 (c) When planning the construction of a middle or junior high school which has been
35 approved by the authority and which meets the required authority efficiencies, the authority shall
36 provide funding for a comprehensive middle school that includes comprehensive career technical
37 education facilities to be located, when feasible, on the same site as the middle or junior high
38 school.

39 (d) Upon application of a ~~county~~ school district board to construct comprehensive career
40 technical education facilities that would allow an existing middle or junior high school to become
41 a comprehensive middle school, the authority will provide technical assistance to the ~~county~~
42 school district in developing a plan for construction of the comprehensive career technical
43 education facility. Upon development of the plan, the authority shall consider funding based on
44 the following criteria:

45 (1) The ability of the ~~county~~ school district board to provide local funds for the construction
46 of the comprehensive career technical education facilities;

47 (2) The size of the existing middle and junior high schools;

48 (3) The age and physical condition of the existing career technical education facilities;

49 (4) The potential for improving in the graduation rate; and

50 (5) Such other criteria as the authority shall consider appropriate.

ARTICLE 9E. AIR QUALITY IN NEW SCHOOLS ACT.

§18-9E-3. Air quality in new schools.

1 (a) In an effort to create well-ventilated school environments and notwithstanding any
2 other provision of this code to the contrary, any new school building designed and constructed in
3 the state by a ~~county~~ school district board, regardless of the funding source, shall be designed
4 and constructed in compliance with the current standards of the American society of heating,
5 refrigerating and air conditioning engineers handbook (ASHRAE), the national fire protection
6 association code (NFPA) and the code of the building officials and code administrators (BOCA).

7 (b) Upon notice from the School Building Authority that a new public school building is
8 occupied, the division of health shall perform radon testing in the school within the first year after
9 occupancy and at least every five years thereafter. The ~~county~~ school district board shall provide
10 any reasonable assistance to the division of health that is necessary to perform the radon testing.
11 The radon testing shall include all major student-occupied areas at or below grade level. If it is
12 determined that radon is present in amounts greater than the amount determined to be acceptable
13 by the rules promulgated by the School Building Authority, pursuant to subsection (d) of this
14 section, any industry accepted mitigation technique shall be used to reduce the radon level to the
15 level or below the level determined acceptable by the School Building Authority.

16 (c) If the School Building Authority determines that it is feasible to test for radon prior to
17 the construction of a school building, the School Building Authority may cause preconstruction
18 site testing for radon to be performed.

19 (d) The School Building Authority shall promulgate rules pursuant to article three-a,
20 chapter twenty-nine-a of this code to ensure that any new school building designed after the
21 effective date of this article is designed and constructed in accordance with the current ASHRAE,
22 NFPA and BOCA standards. The School Building Authority shall promulgate rules, pursuant to
23 article three-a, chapter twenty-nine-a of this code, that establish standards for safe levels of radon
24 for public school buildings. The rules shall include the requirement that ~~county~~ school district
25 boards submit all new school designs to the School Building Authority for review and approval for
26 compliance with current education standards and design efficiencies prior to preparation of final
27 bid documents.

28 (e) On or before July 1, 2002, the School Building Authority shall promulgate rules to
29 establish a process for independent testing, adjusting and balancing (TABS) heating, ventilation
30 and air conditioning (HVAC) systems in new school buildings or renovated schools when the
31 HVAC system has been replaced prior to occupancy. The process shall be consistent with current
32 ASHRAE standards and shall include, but not be limited to, the following:

33 (1) Requiring HVAC designers to be professional engineers registered in this state in the
34 specific discipline associated with the system being designed;

35 (2) Requiring a process to ensure that the HVAC system has been installed in the
36 prescribed manner and will operate within the performance guidelines as designed;

37 (3) Requiring participation of the design engineer who designed the system to verify the
38 intent of the design;

39 (4) Requiring the TAB agent to be qualified to perform the desired services and perform
40 testing and balancing procedures, or qualified to perform other School Building Authority-
41 approved certification according to the procedures contained in the associated air balance council
42 (AABC) national standards, the national environmental balancing bureau (NEBB) procedural
43 standards and the environment engineering consultants (EEC) standards for testing, adjusting
44 and balancing of environmental systems;

45 (5) Requiring that the independent TAB agent directly represent the building owner and is
46 under contract with the building owner and paid from project funds;

47 (6) Requiring that sufficient documentation is provided to the owner to facilitate control
48 and maintenance of the systems in accordance with the manufacturer's requirements;

49 (7) Requiring that sufficient training is provided by the equipment manufacturer or an agent
50 of the manufacturer to those persons who will operate and maintain the systems prior to
51 occupation of the facility, including at least one full day follow-up training between six and eight
52 months after the facility has been occupied; and

53 (8) Requiring certification upon successful completion of the TAB process by the
54 independent TAB agent.

55 (f) To ensure proper maintenance and operation of new and replacement HVAC
56 equipment, the Department of Education, using existing staff, shall provide ~~county~~ school district
57 maintenance personnel additional training on the equipment and its controls at the site of the
58 installation. The training shall occur within one year after student occupation of any new school

59 facility or at any existing school facility where the HVAC system has been replaced or generally
60 rehabilitated. Additionally, the Department of Education's facility staff shall provide on-site training
61 to the ~~county~~ school district maintenance staff on the ~~county~~ school district's HVAC equipment at
62 any facility that has been determined to have problematic indoor air quality as identified through
63 the complaint procedure set forth in state board policy 6202.

64 (g) Upon completion of the required training, the Department of Education's facility staff
65 shall provide the ~~county~~ school district board a report summarizing the training that was completed
66 and a plan for continuing education of the ~~county~~ school district's HVAC staff. If sufficient staff is
67 not available to the ~~county~~ school district to perform maintenance on HVAC systems, the
68 Department of Education's staff shall assist the ~~county~~ school district in the development of an
69 immediate and long range maintenance plan to ensure that HVAC systems are maintained and
70 operated according to the manufacturer's recommendations.

71 (h) Beginning July 1, 2002, and every three months thereafter, the Department of
72 Education shall forward to the School Building Authority copies of any complaints received by the
73 Department of Education of indoor air quality problems which require system repair or
74 replacement and are identified through the complaint procedure established in state board policy
75 6202.

76 (i) The state board shall promulgate rules, pursuant to article three-b, chapter twenty-nine-
77 a of this code, in consultation with the division of health, that authorize the use of any appropriate
78 floor covering in public school buildings, based on user needs and performance specifications.

§18-9E-4. Heating, ventilation, and air-conditioning technicians.

1 (a) Subject to appropriation by the Legislature therefor, the state board, in consultation
2 with the division of health, shall promulgate rules pursuant to article three-b, chapter twenty-nine-
3 a of this code that will address servicing public school buildings by heating, ventilation and air-
4 conditioning (HVAC) technicians. The rules shall set forth a job description for the HVAC
5 technician. At the discretion of the state board, HVAC technicians may be employed by the ~~county~~

6 school district board of education, by the regional educational service agency servicing the ~~county~~
7 school district or by the Department of Education using the funds allocated pursuant to this
8 section. The hiring entity shall set a salary for the HVAC technician that is competitive with other
9 employers of HVAC technicians in the region after accounting for annual leave, sick leave,
10 insurance benefits, retirement benefits and any other benefits provided. Existing employees who
11 have advanced HVAC skills or existing employees who receive appropriate HVAC training may
12 be utilized as HVAC technicians. The rules also shall provide for sufficient continuing education
13 training for HVAC technicians to maintain proficiency in the changing technologies in the field.
14 The rules shall be submitted to the Legislative Oversight commission on educational
15 accountability prior to September 1, 1999.

16 (b) ~~County~~ School district boards, regional educational service agencies and the
17 Department of Education shall have the option to contract for HVAC services from prequalified
18 vendors if this option is more cost effective than using existing employees or creating a new
19 position: *Provided*, That an existing employee may not be displaced by contracting for HVAC
20 technician services: *Provided, however*, That HVAC services that have been performed in the
21 past or which require knowledge and experience the employer does not have access to, may be
22 contracted out to a prequalified vendor.

23 (c) Funds appropriated for the purpose of hiring HVAC technicians shall be appropriated
24 originally to the Department of Education. The Department of Education then may allocate the
25 funds to the regional educational service agencies or to the ~~counties~~ school districts, depending
26 upon which entity employs the HVAC technician as specified by rule.

**§18-9E-5. Investigation of indoor air quality complaints in existing schools and schools
subsequently constructed.**

1 (a) The state board, in consultation with the division of health, shall promulgate rules
2 pursuant to article three-b, chapter twenty-nine-a of this code which require each ~~county~~ school
3 district board to investigate all reports of indoor air quality problems within the ~~county~~ school

4 district. The rules shall set forth a designated official or officials within the ~~county~~ school district
5 school system to be responsible for addressing, pursuant to this section, any indoor air quality
6 complaints. The rules also shall set forth a procedure for any party to file a complaint with the
7 designated official or officials. Any indoor air quality complaint found to be valid by the designated
8 official or officials shall be addressed by forming a plan of correction. Any ~~county~~ school district
9 board that addresses an indoor air quality complaint is encouraged to seek any available
10 assistance from local, state and federal agencies in both investigating the complaint and in
11 forming the plan of correction. A ~~county~~ school district board shall consider any documented plans
12 of closure of a school building when forming any plan of correction for that school building. The
13 rules shall be submitted to the Legislative Oversight commission on education accountability prior
14 to September 1, 1999. Additionally, the rules shall set an appropriate cost for a plan of correction
15 over which all such plans of correction shall be reported to the Legislative Oversight commission
16 on education accountability. Based upon the Legislative Oversight commission on education
17 accountability's experience in receiving the complaints, the commission shall submit a
18 recommendation for funding the plans of correction.

19 (b) Furthermore, each plan of correction shall be incorporated into each ~~county~~ school
20 district board's ten-year ~~county~~ school district-wide major improvement plan set forth in section
21 sixteen, article nine-d of this chapter. Also pursuant to section sixteen, article nine-d of this
22 chapter, the state board may restrict the use of the necessary funds or otherwise allocate funds
23 from moneys appropriated by the Legislature for those purposes set forth in section nine, article
24 nine-a of this chapter: *Provided*, That nothing in this subsection shall be interpreted as requiring
25 that a ~~county~~ school district board make addressing an air quality complaint a priority over other
26 projects in the ~~county~~ school district board's ten-year ~~county~~ school district-wide major
27 improvement plan.

ARTICLE 9F. SCHOOL ACCESS SAFETY ACT.

§18-9F-2. Definitions.

1 As used in this article, these terms have the meanings ascribed unless the context clearly
2 indicates a different meaning:

3 (1) "Authority" means the School Building Authority of West Virginia;

4 (2) "Department of Education" means the West Virginia Department of Education;

5 (3) "New school building" means any public school in the state for educating students in
6 any of grades kindergarten through twelve, for which design and construction begin after July 1,
7 2007;

8 (4) "Project cost" means the cost of:

9 (A) Evaluating a school facility to ascertain its safety needs;

10 (B) Determining appropriate measures to address safety needs;

11 (C) Developing a safety plan;

12 (D) Administering a safety project;

13 (E) The design, construction, renovation, repair and safety upgrading of a school's means
14 of ingress and egress;

15 (F) Equipment, machinery, installation of utilities and other similar items necessary to
16 making the project operational;

17 (G) Effectively maintaining structural and equipment investments made pursuant to this
18 article, including, but not limited to, such provisions as maintenance contracts on security
19 equipment and video surveillance services; and

20 (H) All other charges necessary, appurtenant or incidental to the provisions of this
21 subdivision, including the cost of administering this article;

22 (5) "School Access Safety Fund" means the special account established in section five of
23 this article;

24 (6) "School access safety plan" or "safety plan" means the comprehensive ~~county~~ school
25 districtwide school access safety plan that:

26 (A) Is prepared by each ~~county~~ school district board seeking funding under this article and

27 incorporated into its comprehensive educational facilities plan in accordance with guidelines
 28 established by the authority;

29 (B) Addresses the access safety needs for all school facilities in the ~~county~~ school district;

30 (C) Includes a projected school access safety repair and renovation schedule for all school
 31 facilities of the ~~county~~ school district; and

32 (D) Is required prior to the disbursement of state funds for a school access safety project
 33 pursuant to this article; and

34 (7) "School access safety project" or "safety project" means a project administered in
 35 furtherance of a school access safety plan pursuant to the provisions of this article.

§18-9F-3. School access safety plan.

1 (a) To facilitate the goals of this article and to ensure the prudent and resourceful
 2 expenditure of state funds, each ~~county~~ school district board seeking funds for school access
 3 safety projects during a fiscal year shall submit to the authority a school access safety plan or
 4 annual plan update that addresses the school access safety needs of each school facility in the
 5 ~~county~~ school district. In developing its plan, the ~~county~~ school district board shall consult with the
 6 ~~County~~ School districtwide Council on Productive and Safe Schools in accordance with the
 7 provisions of this section and section forty-two, article five of this chapter.

8 (b) The safety plan shall include at least the following:

9 (1) A ~~county~~ school district-wide inventory of each school facility's means of ingress to and
 10 egress from the school for students, school employees, parents, visitors and emergency
 11 personnel including, but not limited to:

12 (A) The number of controlled points of ingress to the school facility;

13 (B) The number and placement of exterior doors;

14 (C) The use of monitoring systems on exterior doors;

15 (D) The use of timed, magnetic or other locks on exterior doors;

16 (E) The use of two-way communication systems between points of ingress and school

17 personnel;

18 (F) The use of functional panic or other alarm hardware on exterior doors; and

19 (G) The use of remote visitor access systems on points of ingress;

20 (2) The recommendations and guidelines developed by the ~~county~~ school district-wide
21 Council on Productive and Safe Schools pursuant to section forty-two, article five of this chapter,
22 together with the ~~county~~ school district board's assessment of the recommendations and
23 guidelines;

24 (3) Recommendations for effective communication and coordination between school
25 facilities, local law-enforcement agencies and local emergency services agencies in the ~~county~~
26 school district;

27 (4) An assessment of the current status of crime committed on school campuses and at
28 school-related functions;

29 (5) A projected school access safety repair and renovation schedule for all school facilities
30 in the ~~county~~ school district;

31 (6) A prioritized list of all projects contained in the plan, including the projected cost of
32 each project;

33 (7) A description of how:

34 (A) The plan addresses the goals of this article and guidelines established by the authority;

35 (B) Each project furthers the ~~county~~ school district board's safety plan, facilities plan and
36 school major improvement plan;

37 (8) Notation of the funds available for allocation and disbursement to the ~~county~~ school
38 district board pursuant to section six of this article;

39 (9) A description of any source of local funds that the ~~county~~ school district board intends
40 to contribute to the safety projects, or an approved financial hardship waiver, to satisfy the local
41 contribution requirements of section six of this article; and

42 (10) Any other element considered appropriate by the authority or required by the

43 guidelines established pursuant to section three of this article, including any project and
44 maintenance specification.

**§18-9F-4. Guidelines and procedures for school access safety plans; project evaluation;
on-site inspection of facilities.**

1 (a) By June 1, 2007, the authority shall establish and distribute to each county board
2 guidelines and procedures regarding school access safety plans and school access safety
3 projects, which shall address at least the following:

4 (1) All of the necessary elements of the school access safety plan required in accordance
5 with the provisions of section three of this article;

6 (2) The manner, time line and process for submission to the authority of each safety plan
7 and annual plan update, including guidelines for modification of an approved safety plan;

8 (3) Any project and maintenance specifications considered appropriate by the authority;

9 (4) Procedures for a county board to submit a preliminary plan, plan outline or plan
10 proposal to the authority prior to submitting the safety plan. The preliminary plan, plan outline or
11 plan proposal shall be the basis for a consultation meeting between representatives of the county
12 board and the authority. The meeting shall be held as soon as practicable following submission
13 in order to:

14 (A) Ensure understanding of the goals of this article;

15 (B) Discuss ways the plan may be structured to meet the goals of this article; and

16 (C) Ensure efficiency and productivity in the approval process; and

17 (5) Procedures for notifying county boards of the funds available for allocation and
18 disbursement during each fiscal year pursuant to section six of this article.

19 (b) By June 1, 2007, the authority shall establish and distribute to each county board
20 guidelines and procedures for evaluating safety plans and safety projects that address at least
21 the following:

22 (1) Whether the proposed safety project furthers the safety plan and complies with the

23 guidelines established by the authority;

24 (2) How the safety plan and safety project will ensure the prudent and resourceful
25 expenditure of state funds and achieve the purposes of this article;

26 (3) Whether the safety plan and safety project advance student health and safety needs,
27 including, but not limited to, critical health and safety needs;

28 (4) Whether the safety plan and safety project include regularly scheduled preventive
29 maintenance; and

30 (5) Consideration of the prioritized list of projects required by section three of this article.

31 (c) The authority shall establish guidelines and procedures for allocating and disbursing
32 funds in accordance with section six of this article, subject to the availability of funds.

33 (d) Each ~~county~~ school district board receiving funds pursuant to this article annually shall
34 conduct an on-site inspection and submit an audit review to the state board. The inspection shall
35 be conducted in accordance with the provisions of the Department of Education's Handbook on
36 Planning School Facilities.

§18-9F-6. Allocation of funds; eligibility for funding.

1 (a) On or before May 1 of each year, the authority shall determine the amount of funds
2 available in the School Access Safety Fund for allocation and disbursement during that fiscal year.

3 (b) The authority shall divide the amount of funds available pursuant to subsection (a) of
4 this section by the total net enrollment in public schools for the state as a whole. That quotient is
5 the per pupil amount. The authority shall allocate to each ~~county~~ school district board the per pupil
6 amount of funds for each student in net enrollment of that ~~county~~ school district, as defined in
7 section two, article nine-a of this chapter.

8 (c) The authority shall notify in writing each ~~county~~ school district board of education the
9 amount of funds available to that board as soon as practicable upon determining that amount
10 pursuant to subsection (b) of this section.

11 (d) Except as provided in subdivision (3) of this subsection, to be eligible to receive a

12 disbursement of funds pursuant to this article, a ~~county~~ school district board shall contribute local
13 funds derived from bonding, special levy or other identified sources to the school access safety
14 projects contained in the ~~county~~ school district board's school access safety plan.

15 (1) The amount of a ~~county~~ school district board's contribution shall equal at least fifteen
16 percent of the funds available to the ~~county~~ school district board pursuant to subsection (b) of this
17 section.

18 (2) A ~~county~~ school district board may submit a financial hardship waiver request to the
19 state board for consideration regarding the ~~county~~ school district board's inability to provide the
20 contribution required by this subsection. Upon review and approval of the request by the state
21 board, the authority shall waive the contribution requirement for that ~~county~~ school district board
22 and allocate and disburse funds pursuant to this article.

23 (e) The authority may disburse funds pursuant to this section only to a ~~county~~ school
24 district board that:

25 (1) Has a safety plan that has been approved by the authority; and

26 (2) Is prepared to commence expending the funds during the fiscal year in which the funds
27 are disbursed.

28 (f) The authority may disburse funds to a ~~county~~ school district board in a lump sum or
29 according to a schedule of payments adopted by the authority that is consistent with its guidelines.

30 (g) To encourage ~~county~~ school district boards to proceed promptly with school access
31 safety planning and to prepare for the expenditure of funds derived pursuant to this article, a
32 ~~county~~ school district board forfeits any funds that it fails to expend within one year of
33 disbursement by the authority. The ~~county~~ school district board is ineligible for any additional
34 allocation or disbursement pursuant to this article until it is prepared to expend funds according
35 to an approved school access safety plan.

36 (1) The authority may authorize an extension beyond the one-year forfeiture period not to
37 exceed an additional six months.

38 (2) Any forfeited funds shall be returned to the School Access Safety Fund and made
39 available for future allocation and disbursement.

§18-9F-7. School access safety requirements for new schools.

1 (a) Notwithstanding any other provision of this code to the contrary, and in an effort to
2 enhance school access safety, the design and construction of any new school building receiving
3 funds from the authority shall comply with the school access safety standards established by the
4 authority. Any new school building that does not comply with the school access safety standards
5 may not receive any funds from the authority pursuant to this article.

6 (b) The authority shall propose a rule for legislative approval in accordance with the
7 provisions of article three-a, chapter twenty-nine-a of this code that establishes standards for
8 school access safety in public school buildings. The rule shall require for any project that will
9 receive funding pursuant to this article that the ~~county~~ school district board shall submit any new
10 school design to the authority for review and approval for compliance with this section prior to
11 preparing final bid documents.

§18-9F-9. Crisis Response Plan.

1 (a) The state board in conjunction with the Division of Homeland Security and Emergency
2 Management shall promulgate by December 31, 2011, a legislative rule in accordance with article
3 three-b, chapter twenty-nine-a of this code, and if necessary may promulgate an emergency rule
4 in accordance with said article, for the establishment of an up-to-date, school specific crisis
5 response plan at every school in the state. In developing the rule, the state board shall consider
6 plans currently being developed as part of the safe schools initiative currently underway by the
7 School Building Authority and the Division of Homeland Security and Emergency Management.
8 In addition, those portions of a school's access safety plan created pursuant to section three of
9 this article may be used as a portion of the school's school specific crisis response plan if there
10 are any overlapping requirements. The rule shall provide for at least the following:

11 (1) A model school crisis response plan for use by each school in the state, including a

12 uniform template which shall be used by each school to file the plan, including at least the
13 following information, in a secure electronic system identified by the Division of Homeland
14 Security and Emergency Management:

15 (A) The school employee in charge during a crisis and a designated substitute;

16 (B) A communication plan to be used during a crisis;

17 (C) Protocols for responding to immediate physical harm of students, faculty or staff and
18 to traumatic events, including the period after the events have concluded;

19 (D) Disaster and emergency procedures to respond to earthquakes, fire, flood, other
20 natural disasters, explosions or other events or conditions in which death or serious injury is likely;

21 (E) Crisis procedures for safe entrance to and exit from the school by students, parents,
22 and employees, including an evacuation and lock down plan; and

23 (F) Policies and procedures for enforcing school discipline and maintaining a safe and
24 orderly environment during the crisis.

25 (2) A requirement that each school's school specific crisis response plan shall be in place
26 and filed with that school's ~~county~~ school district board, and included in a secure electronic system
27 identified by the Division of Homeland Security and Emergency Management, no later than
28 August 1, 2013, or soon after completion by the school, whichever occurs first;

29 (3) The necessary safeguards to protect information contained in each school specific
30 crisis response plan that may be considered protected critical infrastructure information, law
31 enforcement sensitive information or for official use only. These safeguards must have the
32 approval the Division of Homeland Security and Emergency Management. ~~County~~ School district
33 boards shall provide the same necessary safeguards for the information in the plan;

34 (4) The annual review and necessary update of the model plan and uniform template by
35 state board in conjunction with the Division of Homeland Security and Emergency Management
36 by December 31 of each year after 2011;

37 (5) The development by each school of a school specific crisis response plan by using the

38 state board's model plan as an example and with consultation from local social services agencies,
39 local first response agencies including police, fire, emergency medical services (EMS),
40 emergency management and any other local entities that the school's crisis response planning
41 team determines should be consulted;

42 (6) Procedures for the annual review and update if necessary by each school of its school
43 specific crisis response planning plan. Each school shall file either an updated crisis response
44 plan or a memorandum stating that no update to the crisis response plan was necessary with its
45 ~~county~~ school district board and the Division of Homeland Security and Emergency Management
46 no later than August 1 of each year after 2013.

47 (7) Procedures for each school within the state to form a crisis response planning team,
48 which team may consist of the school's Local School Improvement Council or a separate team
49 consisting of the principal, two teachers, one service person and two parents of children attending
50 the school. In addition the school may include on the team one member of the ~~county~~ school
51 district board, a school counselor, a member from local law-enforcement authorities, the local
52 county emergency services director and one student in grade ten or higher if the school has those
53 grades;

54 (8) Procedures for informing and training school personnel on any actions required of them
55 to effectuate the school's school specific crisis response plan;

56 (9) A model template for redacted copies of the school crisis response plan for the public
57 inspection and for the release and notice to parents of information related to the plan; and

58 (10) Procedures for non public schools to establish, file and update school crisis response
59 plans consistent with subdivision (1) subsection (a) of this section.

60 (b) The ~~county~~ school district board shall keep the current crisis response plan of each
61 school in the ~~county~~ school district on file and, unless otherwise provided for, provide a copy of
62 each school's crisis response plan to each local emergency response agency that has a role in
63 the plan. Local emergency response agencies that maintain a copy of the plan shall provide the

64 necessary safeguards for the information in the plan established pursuant to the state board rule
65 promulgated pursuant to subsection (a) of this section. Upon request, a redacted copy of a school
66 crisis response plan shall be made available for inspection by the public with any information
67 removed that is necessary for compliance with the necessary safeguards. Following the filing of
68 its school specific crisis response plan with the ~~county~~ school district board pursuant to
69 subdivision (2), subsection (a) of this section, each school shall annually send notice home to all
70 parents and guardians of students at the school alerting the parents and guardians to the
71 existence of the plan and the ability to review a redacted copy at the offices of the ~~county~~ school
72 district board.

ARTICLE 10. FEDERAL AID AND GIFTS FOR EDUCATIONAL PURPOSES.

§18-10-8. Acceptance and distribution of future federal funds available to state.

1 The state Board of Education is hereby authorized and empowered to accept for the State
2 of West Virginia, and expend for the purpose designated, any funds that may hereafter be made
3 available to the board out of the federal treasury by an act or acts of Congress and allocated to
4 this state for vocational education, or for the use or benefit of the state colleges and other state
5 institutions under the direct control and supervision of the board, or for any other educational
6 purpose.

7 The state superintendent of free schools is hereby authorized and empowered to accept
8 for the State of West Virginia any funds that may hereafter be made available to the state
9 Department of Education or to the state superintendent of free schools out of the federal treasury
10 by an act or acts of Congress for current expense, capital outlay, free textbooks, or any other
11 educational purpose in local public school units, or for any other educational purpose.

12 Subject to the provisions and conditions of applicable federal law with respect to the
13 allocation and distribution of any federal funds for current expense purposes in local public school
14 units, the state board of school finance is hereby authorized and empowered to allocate and
15 distribute said federal funds in accordance with the following provisions:

16 1. Of said federal funds received, seventy-one percent shall be allocated for teachers'
 17 salaries and the distribution to each ~~county~~ school district board of education shall be made on
 18 the basis of actual teachers employed at the end of the second month of the current school term
 19 and said allocated share of such funds shall be used in said ~~county~~ school district for the purpose
 20 of adding to the present minimum legal salaries the following increments:

21 (a) Ten dollars per month for all teachers holding emergency certificates based on less
 22 than two years of college training.

23 (b) Twenty-five dollars per month for all teachers holding regular certificates based on less
 24 than four years of college training and all teachers holding emergency certificates based on two
 25 or more years of college training.

26 (c) Sixty-five dollars per month for all teachers holding regular certificates based on college
 27 degrees.

28 All such increments may be reduced or increased on a proportionate basis in accordance
 29 with the amount of funds available under the seventy-one percent allocation.

30 2. The balance of said federal funds, the equivalent of twenty-nine percent of said funds,
 31 shall be distributed among the several ~~counties~~ school districts. Such distribution shall be based
 32 on the net enrollment for the fourth school month of the current year and determined on a ratio
 33 that said net enrollment of each ~~county~~ school district bears to the total net enrollment of the state.

ARTICLE 10A. REHABILITATION SERVICES.

§18-10A-2a. Rehabilitation teachers.

1 (a) Notwithstanding any other provision of this code to the contrary, beginning July 1,
 2 2012, rehabilitation teachers shall be paid at the equivalent rate of pay of teachers, pursuant to
 3 section two, article four, chapter eighteen-a of this code. Rehabilitation teachers shall be paid
 4 outside the public school support plan, defined in section one, article nine-a of this chapter, and
 5 shall receive the equivalent of the salary supplement paid to teachers employed by the ~~county~~
 6 school district board within the ~~county~~ school district where the administrative headquarters of the

7 division are located, pursuant to section five-a, article four, chapter eighteen-a of this code.

8 (b) For purposes of this section, the following words shall be construed as follows:

9 (1) "Rehabilitation teacher" means any person employed by the division and who meets
10 the certification requirements of section two-a, article three, chapter eighteen-a of this code, or
11 who has been certified to teach by a state or nationally recognized organization, as approved by
12 the office of the secretary of education and the arts. The teachers shall maintain current
13 certification in their teaching areas in order to remain employed and may teach only in the areas
14 in which they are certified: *Provided*, That teachers who were employed on or before April 1, 1995,
15 are exempt from the following requirements:

16 (A) Certification pursuant to section two-a, article three, chapter eighteen-a of this code;

17 (B) Maintenance of current certification in their teaching areas in order to remain
18 employed; and

19 (C) Teaching only in the areas in which they are certified.

20 (2) "Equivalent rate of pay" means an annualized rate based on a two hundred forty-day
21 teaching schedule and includes pay for vacation and legal state holidays.

ARTICLE 10F. DISABLED PERSONS AND PUBLIC USE BUILDINGS AND FACILITIES.

§18-10F-2. Enactment of Interstate Compact.

1 The Interstate Compact on Educational Opportunity for Military Children is hereby enacted
2 into law and entered into by the State of West Virginia with any and all states legally joining therein
3 in accordance with its terms, in the form substantially as follows:

4

5

INTERSTATE COMPACT ON EDUCATIONAL
OPPORTUNITY FOR MILITARY CHILDREN

6

7

ARTICLE I. PURPOSE

8

9 It is the purpose of this compact to remove barriers to educational success imposed on
10 children of military families because of frequent moves and deployment of their parents by:

11 (a) Facilitating the timely enrollment of children of military families and ensuring that they
12 are not placed at a disadvantage due to difficulty in the transfer of education records from a
13 previous school district or variations in entrance or age requirements;

14 (b) Facilitating the student placement process through which children of military families
15 are not disadvantaged by variations in attendance requirements, scheduling, sequencing,
16 grading, course content or assessment;

17 (c) Facilitating the qualification and eligibility for enrollment, educational programs, and
18 participation in extracurricular academic, athletic and social activities;

19 (d) Facilitating the on-time graduation of children of military families;

20 (e) Providing for the promulgation and enforcement of administrative rules implementing
21 the provisions of this compact;

22 (f) Providing for the uniform collection and sharing of information between and among
23 member states, schools and military families under this compact;

24 (g) Promoting coordination between this compact and other compacts affecting military
25 children; and

26 (h) Promoting flexibility and cooperation between the educational system, parents and
27 students in order to achieve educational success for students.

28 ARTICLE II. DEFINITIONS

29 As used in this article and compact, unless the context clearly requires a different meaning:

30 (a) "Active duty" means full-time duty status in any of the active uniformed services of the
31 United States, including service in the National Guard and Reserve pursuant to active duty orders
32 in accordance with 10 U.S.C. Sections 1209 and 1211;

33 (b) "Child of a military family" means any school-aged child enrolled in any of grades

34 kindergarten through twelfth who is in the household of an active duty uniformed services
35 member;

36 (c) "Compact commissioner" means the voting representative of a compacting state
37 appointed pursuant to Article VIII of this compact;

38 (d) "Deployment" means the time period beginning one month prior to a uniformed
39 services member's departure from his or her home station on military orders and ending six
40 months after return to his or her home station;

41 (e) "Education records" means all documents, files, data and official records directly
42 related to a student and maintained by a school or ~~county~~ school district board. This includes all
43 material kept in the student's cumulative file, such as but not limited to generally-identifying data,
44 attendance records, academic work completion records, achievement records, evaluative test
45 results, health data, disciplinary records, test protocols, and individualized education program or
46 service records;

47 (f) "Extracurricular activities" means voluntary activities sponsored by a school, a ~~county~~
48 school district board or an organization sanctioned by a ~~county~~ school district board or the state
49 board of education. Extracurricular activities include, but are not limited to, preparation for and
50 involvement in public performances, contests, athletic competitions, demonstrations, displays,
51 organizations and clubs;

52 (g) "Interstate Commission on Educational Opportunity for Military Children" or "Interstate
53 Commission" means the Commission that is created by Article IX of this compact;

54 (h) "~~County~~ School district board" means a ~~county~~ school district board of education, which
55 is the public entity legally constituted by this state as an administrative agency to provide control
56 of and direction for grades kindergarten through twelfth in the public schools in the ~~county~~ school
57 district in which it operates;

58 (i) "Member state" means a state that has enacted this compact;

59 (j) "Military installation" means a base, camp, post, station, yard, center, homeport facility

60 for any ship, or other facility under the jurisdiction of the Department of Defense, including any
61 leased facility, which is located within any of the several states, the District of Columbia, the
62 Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern
63 Marianas Islands or any other United States Territory. "Military installation" does not include any
64 facility used primarily for civil works, rivers and harbors projects, or flood control projects;

65 (k) "Non-member state" means a state that has not enacted this compact;

66 (l) "Receiving state" means a state to which a child of a military family is sent, brought, or
67 caused to be sent or brought;

68 (m) "Rule" means a written statement by the Interstate Commission which:

69 (1) Is promulgated pursuant to Article XII of this compact;

70 (2) Is of general applicability;

71 (3) Implements, interprets or prescribes a policy or provision of this compact, or an
72 organizational, procedural, or practice requirement of the Interstate Commission;

73 (4) Has the force and effect of statutory law in a member state; and

74 (5) May be amended, repealed, or suspended by act of the Interstate Commission;

75 (n) "Sending state" means a state from which a child of a military family is sent, brought,
76 or caused to be sent or brought;

77 (o) "State" means a state of the United States, the District of Columbia, the Commonwealth
78 of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands
79 and any other United States Territory;

80 (p) "Student" means a child of a military family who is formally enrolled in any of grades
81 kindergarten through twelfth and for whom a ~~county~~ school district board receives public funding;

82 (q) "Transition" means:

83 (1) The formal and physical process of transferring from one school to another; or

84 (2) The period of time during which a student moves from one school in a sending state
85 to another school in the receiving state;

86 (r) "Uniformed services" means the Army, Navy, Air Force, Marine Corps, Coast Guard,
87 and the Commissioned Corps of the National Oceanic and Atmospheric Administration, and
88 Public Health Services;

89 (s) "Veteran" means a person who performed active duty service and was discharged or
90 released therefrom under conditions other than dishonorable; and

91 (t) "The West Virginia Council for Educational Opportunity for Military Children" or "West
92 Virginia Council" means the state coordinating council established in Article VIII of this compact.

93 ARTICLE III. APPLICABILITY

94 (a) This compact applies to:

95 (1) Each ~~county~~ school district board of education; and

96 (2) The children of:

97 (A) Active duty members of the uniformed services as defined in this compact, including
98 members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. Sections
99 1209 and 1211;

100 (B) Members or veterans of the uniformed services who are severely injured and medically
101 discharged or retired for a period of one year after medical discharge or retirement; and

102 (C) Members of the uniformed services who die on active duty or as a result of injuries
103 sustained on active duty for a period of one (1) year after death.

104 (b) Except as provided in subsection (a) of this Article III, this compact does not apply to
105 the children of:

106 (1) Inactive members of the National Guard or military reserves;

107 (2) Retired members of the uniformed services;

108 (3) Veterans of the uniformed services;

109 (4) Other United States Department of Defense personnel; nor

110 (5) Any other federal agency civilian or contract employees not defined as active duty
111 members of the uniformed services.

112 ARTICLE IV. EDUCATIONAL RECORDS & ENROLLMENT

113 (a) *Unofficial or "hand-carried" education records C-*

114 In the event that official education records cannot be released to a student's parents or
115 legal guardians for the purpose of transfer, the custodian of the records in the sending state shall
116 prepare and furnish to the parents a complete set of unofficial educational records containing
117 uniform information as determined by the Interstate Commission. As quickly as possible upon
118 receipt of the unofficial education records by a school in the receiving state, the school shall enroll
119 and appropriately place the student based on the information provided in the unofficial records
120 pending validation by the official records.

121 (b) *Official education records/transcripts --*

122 Simultaneous with the enrollment and conditional placement of a student, the school in
123 the receiving state shall request the student's official education records from the school in the
124 sending state. Upon receipt of this request, the school in the sending state shall process and
125 furnish the official education records to the school in the receiving state within ten days or such
126 other time period as is determined reasonable under the rules promulgated by the Interstate
127 Commission.

128 (c) *Immunizations --*

129 (1) A ~~county~~ school district board shall allow a student thirty days from the date of
130 enrollment to obtain any required immunizations, or such other time period as is determined
131 reasonable under the rules promulgated by the Interstate Commission.

132 (2) In any case where a series of immunizations is required, the student shall obtain the
133 initial vaccination within thirty days of enrollment, or such other time period as is determined
134 reasonable under the rules promulgated by the Interstate Commission.

135 (d) *Enrollment at current grade level --*

136 (1) A student shall be permitted to enroll in the grade level in this state, including
137 kindergarten, which is commensurate with the grade level in which he or she was enrolled in the

138 sending state at the time of transition, regardless of his or her age.

139 (2) A student that has satisfactorily completed the prerequisite grade level in the sending
140 state is eligible for enrollment in the next highest grade level in this state, regardless of his or her
141 age.

142 ARTICLE V. PLACEMENT & ATTENDANCE

143 (a) *Course placement --*

144 (1) When a student transfers to this state before or during the school year, the school in
145 this state shall initially place the student in educational courses based on the courses in which he
146 or she was enrolled in the sending state, educational assessments conducted at the school in the
147 sending state, or both, if the courses are offered at the school to which the student is transferring.
148 This course placement provision includes, but is not limited to Honors, International
149 Baccalaureate, Advanced Placement, vocational, technical and career pathways courses.

150 (2) A school shall give paramount consideration to continuing a student's academic
151 program from the previous school, and promoting placement in academically and career-
152 challenging courses, when considering course placement.

153 (3) A school is not precluded from performing subsequent evaluations to ensure
154 appropriate placement and continued enrollment of the student in any course.

155 (b) *Educational program placement --*

156 When a student transfers to this state, the school shall initially place the student in
157 educational programs based on current educational assessments conducted at the school in the
158 sending state or participation or placement in like programs in the sending state. Such programs
159 include, but are not limited to gifted and talented programs and English as a second language
160 (ESL). A school is not precluded from performing subsequent evaluations to ensure appropriate
161 placement of the student.

162 (c) *Special education services --*

163 (1) In compliance with the federal requirements of the Individuals with Disabilities

164 Education Act (IDEA), 20 U.S.C.A. Section 1400 et seq, a school in this state shall initially provide
165 comparable services to a student with disabilities based on his or her current Individualized
166 Education Program (IEP); and

167 (2) In compliance with the requirements of Section 504 of the Rehabilitation Act, 29
168 U.S.C.A. Section 794 (Section 504), and with Title II of the Americans with Disabilities Act, 42
169 U.S.C.A. Sections 12131-12165 (Title II), any school in this state shall make reasonable
170 accommodations and modifications to address the needs of incoming students with disabilities,
171 subject to an existing Section 504 or Title II plan, to provide the student with equal access to
172 education. The school is not precluded from performing subsequent evaluations to ensure
173 appropriate placement of the student.

174 (d) *Placement flexibility* --

175 ~~County~~ School district board administrative officials have flexibility in waiving course and
176 program prerequisites, or other preconditions for placement in courses or programs offered under
177 the authority of the ~~county~~ school district board.

178 (e) *Absence as related to deployment activities* --

179 A student whose parent or legal guardian is an active duty member of the uniformed
180 services and has been called to duty for, is on leave from, or immediately returned from
181 deployment to a combat zone or combat support posting, shall be granted additional excused
182 absences at the discretion of the ~~county~~ school district superintendent to visit with his or her parent
183 or legal guardian relative to such leave or deployment of the parent or guardian.

184 ARTICLE VI. ELIGIBILITY

185 (a) *Eligibility for enrollment* --

186 (1) Special power of attorney, relative to the guardianship of a child of a military family and
187 executed under applicable law is sufficient for the purposes of enrollment and all other actions
188 requiring parental participation and consent.

189 (2) A ~~county~~ school district board may not charge local tuition to a transitioning military

190 child placed in the care of a noncustodial parent or other person standing in loco parentis who
191 lives in a school district other than that of the custodial parent.

192 (3) A transitioning military child, placed in the care of a noncustodial parent or other person
193 standing in loco parentis who lives in a school district other than that of the custodial parent, may
194 continue to attend the school in which he or she was enrolled while residing with the custodial
195 parent.

196 (b) *Eligibility for extracurricular participation --*

197 The State Board of Education and ~~county~~ school district boards shall facilitate the
198 opportunity for transitioning military children to be included in extracurricular activities, regardless
199 of application deadlines, to the extent the children are otherwise qualified.

200 ARTICLE VII. GRADUATION

201 In order to facilitate the on-time graduation of children of military families the State Board
202 of Education and each ~~county~~ school district board shall incorporate the following procedures:

203 (a) *Waiver requirements --*

204 ~~County~~ School district board administrative officials shall either waive specific courses
205 required for graduation if a student has satisfactorily completed similar course work in another
206 local education agency, or provide reasonable justification for denial. If a waiver is not granted to
207 a student who would qualify to graduate from the sending school, the ~~county~~ school district board
208 shall provide an alternative means of acquiring required coursework so that the student may
209 graduate on time.

210 (b) *Exit exams --*

211 Any school in this state shall accept:

212 (1) Exit or end-of-course exams required for graduation from the sending state;

213 (2) National norm-referenced achievement tests; or

214 (3) Alternative testing, in lieu of testing requirements for graduation in the receiving state.

215 In the event that the alternatives in this subsection cannot be accommodated by a school for a

216 student transferring in his or her senior year, then the provisions of subsection (c) of Article VII of
217 this compact apply.

218 (c) *Transfers during senior year* —

219 If a student transferring at the beginning of or during his or her senior year is ineligible to
220 graduate from a school in this state after all alternatives have been considered, the ~~county~~ school
221 district board and the local education agency in the sending state shall ensure that the student
222 receives a diploma from the sending state, if the student meets the graduation requirements of
223 the local education agency in the sending state. In the event that one of the states in question is
224 not a member of this compact, the member state shall use best efforts to facilitate the on-time
225 graduation of the student in accordance with subsections (a) and (b) of this Article VII.

226 ARTICLE VIII. STATE COORDINATION

227 (a) The West Virginia Council for Educational Opportunity for Military Children is hereby
228 established for the purpose of coordinating entities in this state regarding participation in the
229 Interstate Compact on Educational Opportunity for Military Children.

230 (b) Membership of the Council consists of at least six members as follows:

231 (1) The State Superintendent of Schools;

232 (2) The superintendent of a ~~county~~ school district board in the state which has a high
233 concentration of military children, appointed by the Governor. If the Governor determines there is
234 not a ~~county~~ school district that contains a high concentration of military children, he or she may
235 appoint a superintendent from any ~~county~~ school district to represent ~~county~~ school district boards
236 on the State Council;

237 (3) An individual representing a military installation in this state appointed by the Governor
238 by and with the advice and consent of the Senate. This member serves a term of four years,
239 except that the term of the individual initially appointed expires June 30, 2015. Each subsequent
240 term begins on July 1 in the year of appointment.

241 (4) An individual representing the executive branch of government, appointed by the

242 Governor;

243 (5) One member of the West Virginia Senate, appointed by the President of the West
244 Virginia Senate; and

245 (6) One member of the West Virginia House of Delegates, appointed by the Speaker of
246 the West Virginia House of Delegates.

247 (c) The Governor shall appoint a Compact Commissioner who is responsible for
248 administering and managing the state's participation in the compact. The Governor may select
249 the Commissioner from members appointed to the Council as provided in subsection (b) of this
250 Article VIII, or may appoint another individual to serve in this capacity. A individual who is not
251 already a full voting member of the Council becomes an ex officio member of the Council if
252 appointed as Commissioner.

253 (d) The West Virginia Council has and may exercise all powers necessary or appropriate
254 to carry out and effectuate the purpose and intent of this compact, including, but not limited to the
255 following:

256 (1) Facilitate coordination among state agencies and governmental entities of West
257 Virginia, including ~~county~~ school district boards and military installations, concerning the state's
258 participation in, and compliance with, this compact and Interstate Commission activities; and

259 (2) Appoint or designate a military family education liaison to assist military families and
260 the state in facilitating implementation of the compact. This individual becomes an ex officio
261 member of the West Virginia Council if he or she is not already a full voting member of the Council
262 when so appointed or designated.

263 ARTICLE IX. INTERSTATE COMMISSION ON EDUCATIONAL

264 OPPORTUNITY FOR MILITARY CHILDREN

265 (a) The member states hereby create the "Interstate Commission on Educational
266 Opportunity for Military Children." The activities of the Interstate Commission are the formation of
267 public policy and are a discretionary state function.

268 (b) The Interstate Commission:

269 (1) Is a body corporate and joint agency of the member states and has all the
270 responsibilities, powers and duties set forth herein, and such additional powers as may be
271 conferred upon it by a subsequent concurrent action of the respective Legislatures of the member
272 states in accordance with the terms of this compact;

273 (2) Consists of one Interstate Commission voting representative from each member state
274 who is that state's Compact Commissioner.

275 (A) Each member state represented at a meeting of the Interstate Commission is entitled
276 to one vote.

277 (B) A majority of the total member states constitutes a quorum for the transaction of
278 business, unless a larger quorum is required by the bylaws of the Interstate Commission.

279 (C) A representative may not delegate a vote to another member state. In the event a
280 Compact Commissioner is unable to attend a meeting of the Interstate Commission, the Governor
281 or State Council of the Compact Commissioner's state may delegate voting authority to another
282 person from that state for a specified meeting.

283 (D) The bylaws may provide for meetings of the Interstate Commission to be conducted
284 by telecommunication or electronic communication;

285 (3) Consists of ex-officio, nonvoting representatives who are members of interested
286 organizations. Such ex-officio members, as defined in the bylaws, may include, but are not limited
287 to, members of the representative organizations of military family advocates, local education
288 agency officials, parent and teacher groups, the United States Department of Defense, the
289 Education Commission of the States, the Interstate Agreement on the Qualification of Educational
290 Personnel, and other interstate compacts affecting the education of children of military members;

291 (4) Meets at least once each calendar year. The chairperson may call additional meetings
292 and, upon the request of a simple majority of the member states, shall call additional meetings;

293 (5) Establishes an executive committee, whose members shall include the officers of the

294 Interstate Commission and such other members of the Interstate Commission as established in
295 the bylaws. Each member of the executive committee serves a one year term. Each member of
296 the executive committee is entitled to one vote. The executive committee has the power to act on
297 behalf of the Interstate Commission, with the exception of rulemaking, during periods when the
298 Interstate Commission is not in session. The executive committee shall oversee the daily activities
299 of the administration of the compact, including enforcement and compliance with the provisions
300 of the compact, its bylaws and rules, and such other duties as it determines are necessary. A
301 representative of the United States Department of Defense serves as an ex-officio, nonvoting
302 member of the executive committee;

303 (6) Establishes bylaws and rules that provide for conditions and procedures under which
304 the Interstate Commission makes its information and official records available to the public for
305 inspection or copying. The Interstate Commission may exempt from disclosure information or
306 official records to the extent they would adversely affect personal privacy rights or proprietary
307 interests;

308 (7) Gives public notice of all meetings. All meetings shall be open to the public, except as
309 set forth in the rules or as otherwise provided in the compact. The Interstate Commission and its
310 committees may close a meeting, or portion thereof, where it determines by two-thirds vote that
311 an open meeting would be likely to:

312 (A) Relate solely to the Interstate Commission's internal personnel practices and
313 procedures;

314 (B) Disclose matters specifically exempted from disclosure by federal and state statute;

315 (C) Disclose trade secrets or commercial or financial information which is privileged or
316 confidential;

317 (D) Involve accusing a person of a crime, or formally censuring a person;

318 (E) Disclose information of a personal nature where disclosure would constitute a clearly
319 unwarranted invasion of personal privacy;

320 (F) Disclose investigative records compiled for law enforcement purposes; or

321 (G) Specifically relate to the Interstate Commission's participation in a civil action or other
322 legal proceeding;

323 (8) Causes its legal counsel or designee to certify that a meeting may be closed, and
324 reference each relevant exemptable provision for any meeting or portion of a meeting which is
325 closed pursuant to this provision. The Interstate Commission shall maintain a minute record of
326 each meeting which shall fully and clearly describe all matters discussed in the meeting. The
327 minute record shall provide a full and accurate summary of actions taken, and the reasons
328 therefore, including a description of the views expressed and the record of a roll call vote. All
329 documents considered in connection with an action shall be identified in the minute record. All
330 minutes and documents of a closed meeting shall remain under seal, subject to release by a
331 majority vote of the Interstate Commission.

332 (9) Collects standardized data concerning the educational transition of the children of
333 military families under this compact as directed through its rules. The rules shall specify the data
334 to be collected, the means of collection and data exchange and reporting requirements. Such
335 methods of data collection, exchange and reporting shall, in so far as is reasonably possible,
336 conform to current technology and coordinate its information functions with the appropriate
337 custodian of records as identified in the bylaws and rules; and

338 (10) Creates a process that permits military officials, education officials and parents to
339 inform the Interstate Commission if and when there are alleged violations of the compact or its
340 rules or when issues subject to the jurisdiction of the compact or its rules are not addressed by
341 the state or local education agency. This subdivision does not create a private right of action
342 against the Interstate Commission or any member state.

343 ARTICLE X. POWERS AND DUTIES OF THE INTERSTATE COMMISSION

344 The Interstate Commission has the following powers:

345 (a) To provide for dispute resolution among member states;

346 (b) To promulgate rules and take all necessary actions to effect the goals, purposes and
347 obligations as enumerated in this compact. The rules have the force and effect of statutory law
348 and are binding in the compact states to the extent and in the manner provided in this compact;

349 (c) To issue, upon request of a member state, advisory opinions concerning the meaning
350 or interpretation of the compact, its bylaws, rules and actions;

351 (d) To enforce compliance with the compact provisions, the rules promulgated by the
352 Interstate Commission, and the bylaws, using all necessary and proper means, including but not
353 limited to the use of judicial process;

354 (e) To establish and maintain offices which shall be located within one or more of the
355 member states;

356 (f) To purchase and maintain insurance and bonds;

357 (g) To borrow, accept, hire or contract for services of personnel;

358 (h) To establish and appoint committees including, but not limited to, an executive
359 committee as required by Article IX of this compact, which have the power to act on behalf of the
360 Interstate Commission in carrying out its powers and duties hereunder;

361 (i) To elect or appoint such officers, attorneys, employees, agents or consultants, and to
362 fix their compensation, define their duties and determine their qualifications; and to establish the
363 Interstate Commission's personnel policies and programs relating to conflicts of interest, rates of
364 compensation, and qualifications of personnel;

365 (j) To accept any and all donations and grants of money, equipment, supplies, materials,
366 and services, and to receive, utilize, and dispose of such;

367 (k) To lease, purchase, accept contributions or donations of, or otherwise to own, hold,
368 improve or use any property, real, personal, or mixed;

369 (l) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of
370 any property, real, personal or mixed;

371 (m) To establish a budget and make expenditures;

372 (n) To adopt a seal and bylaws governing the management and operation of the Interstate
373 Commission;

374 (o) To report annually to the Legislatures, Governors, judiciary, and state councils of the
375 member states concerning the activities of the Interstate Commission during the preceding year.
376 Such reports also shall include any recommendations that may have been adopted by the
377 Interstate Commission;

378 (p) To coordinate education, training and public awareness regarding the compact, its
379 implementation and operation for officials and parents involved in such activity;

380 (q) To establish uniform standards for reporting, collecting and exchanging data;

381 (r) To maintain corporate books and records in accordance with the bylaws;

382 (s) To perform such functions as may be necessary or appropriate to achieve the purposes
383 of this compact; and

384 (t) To provide for the uniform collection and sharing of information between and among
385 member states, schools and military families under this compact.

386 ARTICLE XI. ORGANIZATION AND OPERATION OF THE

387 INTERSTATE COMMISSION

388 (a) The Interstate Commission shall, by a majority of the members present and voting,
389 within twelve months after the first Interstate Commission meeting, adopt bylaws to govern its
390 conduct as may be necessary or appropriate to carry out the purposes of the compact, including,
391 but not limited to:

392 (1) Establishing the fiscal year of the Interstate Commission;

393 (2) Establishing an executive committee, and such other committees as may be
394 necessary;

395 (3) Providing for the establishment of committees and for governing any general or specific
396 delegation of authority or function of the Interstate Commission;

397 (4) Providing reasonable procedures for calling and conducting meetings of the Interstate

398 Commission, and ensuring reasonable notice of each meeting;

399 (5) Establishing the titles and responsibilities of the officers and staff of the Interstate
400 Commission;

401 (6) Providing a mechanism for concluding the operations of the Interstate Commission
402 and the returning surplus funds that may exist upon termination of the compact after the payment
403 and reserving of all of its debts and obligations; and

404 (7) Providing start-up rules for initial administration of the compact.

405 (b) The Interstate Commission shall, by a majority of the members, elect annually from
406 among its members a chairperson, a vice-chairperson, and a treasurer, each of whom shall have
407 such authority and duties as may be specified in the bylaws. The chairperson or, in the
408 chairperson's absence or disability, the vice-chairperson, shall preside at all meetings of the
409 Interstate Commission. The officers so elected serve without compensation or remuneration from
410 the Interstate Commission. Subject to the availability of budgeted funds, the officers shall be
411 reimbursed for ordinary and necessary costs and expenses incurred by them in the performance
412 of their responsibilities as officers of the Interstate Commission.

413 (c) *Executive Committee, Officers and Personnel* --

414 (1) The executive committee has such authority and duties as may be set forth in the
415 bylaws, including but not limited to:

416 (A) Managing the affairs of the Interstate Commission in a manner consistent with the
417 bylaws and purposes of the Interstate Commission;

418 (B) Overseeing an organizational structure within, and appropriate procedures for the
419 Interstate Commission to provide for the creation of rules, operating procedures, and
420 administrative and technical support functions; and

421 (C) Planning, implementing, and coordinating communications and activities with other
422 state, federal and local government organizations in order to advance the goals of the Interstate
423 Commission.

424 (2) The executive committee may, subject to the approval of the Interstate Commission,
425 appoint or retain an executive director for such period, upon such terms and conditions and for
426 such compensation, as the Interstate Commission may deem appropriate. The executive director
427 serves as secretary to the Interstate Commission, but is not a Member of the Interstate
428 Commission. The executive director shall hire and supervise such other persons as may be
429 authorized by the Interstate Commission.

430 (d) The Interstate Commission's executive director and its employees are immune from
431 suit and liability, either personally or in their official capacity, for a claim for damage to or loss of
432 property or personal injury or other civil liability caused or arising out of or relating to an actual or
433 alleged act, error, or omission that occurred, or that such person had a reasonable basis for
434 believing occurred, within the scope of Interstate Commission employment, duties, or
435 responsibilities. The executive director and employees are not protected from suit or liability for
436 damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such
437 person.

438 (1) The liability of the Interstate Commission's executive director and employees or
439 Interstate Commission representatives, acting within the scope of employment or duties for acts,
440 errors, or omissions occurring within his or her state may not exceed the limits of liability set forth
441 under the constitution and laws of that state for state officials, employees, and agents. The
442 Interstate Commission is considered to be an instrumentality of the states for the purposes of any
443 such action. This subsection does not protect the executive director or employees from suit or
444 liability for damage, loss, injury, or liability caused by his or her intentional or willful and wanton
445 misconduct.

446 (2) The Interstate Commission shall defend the executive director and its employees and,
447 subject to the approval of the Attorney General or other appropriate legal counsel of the member
448 state represented by an Interstate Commission representative, shall defend such Interstate
449 Commission representative in any civil action seeking to impose liability arising out of an actual

450 or alleged act, error or omission that occurred within the scope of Interstate Commission
451 employment, duties or responsibilities, or that the defendant had a reasonable basis for believing
452 occurred within the scope of Interstate Commission employment, duties, or responsibilities,
453 provided that the actual or alleged act, error, or omission did not result from intentional or willful
454 and wanton misconduct on the part of such person.

455 (3) To the extent not covered by the state involved, member state, or the Interstate
456 Commission, the representatives or employees of the Interstate Commission shall be held
457 harmless in the amount of a settlement or judgment, including attorney's fees and costs, obtained
458 against the individual arising out of an actual or alleged act, error, or omission that occurred within
459 the scope of Interstate Commission employment, duties, or responsibilities, or that the individual
460 had a reasonable basis for believing occurred within the scope of Interstate Commission
461 employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission
462 did not result from intentional or willful and wanton misconduct on the part of the individual.

463 ARTICLE XII. RULEMAKING FUNCTIONS

464 OF THE INTERSTATE COMMISSION

465 (a) *Rulemaking Authority* --

466 The Interstate Commission shall promulgate reasonable rules in order to effectively and
467 efficiently achieve the purposes of this compact. Notwithstanding the foregoing, in the event the
468 Interstate Commission exercises its rulemaking authority in a manner that is beyond the scope of
469 the purposes of this Act, or the powers granted hereunder, then such an action by the Interstate
470 Commission is invalid and has no force nor effect.

471 (b) *Rulemaking Procedure* --

472 Rules shall be made pursuant to a rulemaking process that substantially conforms to the
473 "Model State Administrative Procedure Act," of 1981 Act, Uniform Laws Annotated, Vol. 15, p.1
474 (2000) as amended, as may be appropriate to the operations of the Interstate Commission.

475 (c) Not later than thirty days after a rule is promulgated, any person may file a petition for

476 judicial review of the rule. Filing such a petition does not stay or otherwise prevent the rule from
477 becoming effective unless the court finds that the petitioner has a substantial likelihood of
478 success. The court shall give deference to the actions of the Interstate Commission consistent
479 with applicable law and may not find the rule to be unlawful if the rule represents a reasonable
480 exercise of the Interstate Commission's authority.

481 (d) If a majority of the Legislatures of the compacting states rejects a rule by enactment of
482 a statute or resolution in the same manner used to adopt the compact, then that rule has no further
483 force nor effect in any compacting state.

484 ARTICLE XIII. OVERSIGHT, ENFORCEMENT,
485 AND DISPUTE RESOLUTION

486 (a) *Oversight* --

487 (1) The executive, legislative and judicial branches of state government in each member
488 state shall enforce this compact and shall take all actions necessary and appropriate to effectuate
489 the compact's purposes and intent. The provisions of this compact and the rules promulgated
490 hereunder shall have standing as statutory law.

491 (2) All courts shall take judicial notice of this compact and the rules in any judicial or
492 administrative proceeding in a member state pertaining to the subject matter of this compact
493 which may affect the powers, responsibilities or actions of the Interstate Commission.

494 (3) The Interstate Commission is entitled to receive all service of process in any such
495 proceeding, and has standing to intervene in the proceeding for all purposes. Failure to provide
496 service of process to the Interstate Commission renders a judgment or order void as to the
497 Interstate Commission, this compact or promulgated rules.

498 (b) *Default, Technical Assistance, Suspension and Termination* --

499 If the Interstate Commission determines that a member state has defaulted in the
500 performance of its obligations or responsibilities under this compact, or the bylaws or promulgated
501 rules, the Interstate Commission shall:

502 (1) Provide written notice to the defaulting state and other member states, of the nature of
503 the default, the means of curing the default and any action taken by the Interstate Commission.
504 The Interstate Commission shall specify the conditions by which the defaulting state must cure its
505 default; and

506 (2) Provide remedial training and specific technical assistance regarding the default.

507 (3) If the defaulting state fails to cure the default, the defaulting state shall be terminated
508 from the compact upon an affirmative vote of a majority of the member states and all rights,
509 privileges and benefits conferred by this compact shall be terminated from the effective date of
510 termination. A cure of the default does not relieve the offending state of obligations or liabilities
511 incurred during the period of the default.

512 (4) Suspension or termination of membership in the compact may be imposed only after
513 all other means of securing compliance have been exhausted. Notice of intent to suspend or
514 terminate shall be given by the Interstate Commission to the Governor, the majority and minority
515 leaders of the defaulting state's Legislature, and each of the member states.

516 (5) The state which has been suspended or terminated is responsible for all assessments,
517 obligations and liabilities incurred through the effective date of suspension or termination including
518 obligations, the performance of which extends beyond the effective date of suspension or
519 termination.

520 (6) The Interstate Commission does not bear any costs relating to any state that has been
521 found to be in default or which has been suspended or terminated from the compact, unless
522 otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting
523 state.

524 (7) The defaulting state may appeal the action of the Interstate Commission by petitioning
525 the U.S. District Court for the District of Columbia or the federal district where the Interstate
526 Commission has its principal offices. The prevailing party shall be awarded all costs of such
527 litigation including reasonable attorney's fees.

528 (c) *Dispute Resolution* --

529 (1) The Interstate Commission shall attempt, upon the request of a member state, to
530 resolve disputes which are subject to the compact and which may arise among member states
531 and between member and nonmember states.

532 (2) The Interstate Commission shall promulgate a rule providing for both mediation and
533 binding dispute resolution for disputes as appropriate.

534 (d) *Enforcement* --

535 (1) The Interstate Commission, in the reasonable exercise of its discretion, shall enforce
536 the provisions and rules of this compact.

537 (2) The Interstate Commission may by majority vote of the members initiate legal action
538 in the United State District Court for the District of Columbia or, at the discretion of the Interstate
539 Commission, in the federal district where the Interstate Commission has its principal offices, to
540 enforce compliance with the provisions of the compact, its promulgated rules and bylaws, against
541 a member state in default. The relief sought may include both injunctive relief and damages. In
542 the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such
543 litigation including reasonable attorney's fees.

544 (3) The remedies herein are not the exclusive remedies of the Interstate Commission. The
545 Interstate Commission may avail itself of any other remedies available under state law or the
546 regulation of a profession.

547 ARTICLE XIV. FINANCING OF THE INTERSTATE COMMISSION

548 (a) The Interstate Commission shall pay, or provide for the payment of the reasonable
549 expenses of its establishment, organization and ongoing activities.

550 (b) The Interstate Commission may levy on and collect an annual assessment from each
551 member state to cover the cost of the operations and activities of the Interstate Commission and
552 its staff which must be in a total amount sufficient to cover the Interstate Commission's annual
553 budget as approved each year. The aggregate annual assessment amount shall be allocated

554 based upon a formula to be determined by the Interstate Commission, which shall promulgate a
555 rule binding upon all member states.

556 (c) The Interstate Commission may not incur obligations of any kind prior to securing the
557 funds adequate to meet the same; nor may the Interstate Commission pledge the credit of any of
558 the member states, except by and with the authority of the member state.

559 (d) The Interstate Commission shall keep accurate accounts of all receipts and
560 disbursements. The receipts and disbursements of the Interstate Commission are subject to the
561 audit and accounting procedures established under its bylaws. However, all receipts and
562 disbursements of funds handled by the Interstate Commission shall be audited annually by a
563 certified or licensed public accountant and the report of the audit shall be included in and become
564 part of the annual report of the Interstate Commission.

565 ARTICLE XV. MEMBER STATES, EFFECTIVE DATE AND AMENDMENT

566 (a) Any state is eligible to become a member state.

567 (b) This compact became effective and binding upon legislative enactment of the compact
568 into law by ten states in July 2008. It becomes effective and binding as to any other member state
569 upon enactment of the compact into law by that state. The Governors of nonmember states or
570 their designees shall be invited to participate in the activities of the Interstate Commission on a
571 nonvoting basis prior to adoption of the compact by all states.

572 (c) The Interstate Commission may propose amendments to the compact for enactment
573 by the member states. An amendment does not become effective and binding upon the Interstate
574 Commission and the member states unless and until it is enacted into law by unanimous consent
575 of the member states.

576 AND ARTICLE XVI. WITHDRAWAL DISSOLUTION

577 (a) *Withdrawal*—

578 (1) Once effective, the compact continues in force and remains binding upon each
579 member state. A member state may withdraw from the compact upon repealing the specific

580 statute that enacted the compact into law.

581 (2) Withdrawal from the compact occurs by repeal of the enacting statute, but withdrawal
582 does not take effect until one year after the effective date of the repealing legislation and until
583 written notice of the withdrawal has been given by the withdrawing state to the Governor of each
584 other member state.

585 (3) The withdrawing state shall immediately notify the chairperson of the Interstate
586 Commission in writing upon the introduction of any legislation to repeal this compact in the
587 withdrawing state. The Interstate Commission shall notify the other member states of the
588 withdrawing state's potential to withdraw within sixty days of receiving notice.

589 (4) The withdrawing state is responsible for all assessments, obligations and liabilities
590 incurred through the effective date of withdrawal, including obligations, the performance of which
591 extend beyond the effective date of withdrawal.

592 (5) Reinstatement following withdrawal of a member state shall occur if the withdrawing
593 state reenacts the compact or upon such later date as may be determined by the Interstate
594 Commission.

595 (b) *Dissolution of Compact* —

596 (1) This compact shall dissolve effective upon the date of the withdrawal or default of any
597 member state which reduces the membership in the compact to one member state.

598 (2) Upon the dissolution of this compact, the compact becomes null and void and is of no
599 further force or effect, and the business and affairs of the Interstate Commission shall be
600 concluded and surplus funds shall be distributed in accordance with the bylaws.

601

602 ARTICLE XVII. SEVERABILITY AND CONSTRUCTION

603

604 (a) The provisions of this compact are severable, and if any phrase, clause, sentence or
605 provision is deemed unenforceable, the remaining provisions of the compact are enforceable.

606 (b) The provisions of this compact shall be liberally construed to effectuate its purposes.

607 (c) Nothing in this compact prohibits the applicability of any other interstate compact to
608 which the states are members.

609

610 ARTICLE XVIII. BINDING EFFECT OF COMPACT AND OTHER LAWS

611

612 (a) *Other Laws --*

613 (1) Nothing in this compact prevents the enforcement of any other law of a member state
614 that is not inconsistent with this compact.

615 (2) All member states' laws conflicting with this compact are superseded to the extent of
616 the conflict.

617 (b) *Binding Effect of the Compact --*

618 (1) All lawful actions of the Interstate Commission, including all rules and bylaws
619 promulgated by the Interstate Commission, are binding upon the member states.

620 (2) All agreements between the Interstate Commission and the member states are binding
621 in accordance with their terms.

622 (3) In the event any provision of this compact exceeds the constitutional limits imposed on
623 the Legislature of any member state, that provision is ineffective to the extent of the conflict with
624 the constitutional provision in question in that member state.

**ARTICLE 10H. ALBERT YANNI PROGRAMS OF EXCELLENCE IN VOCATIONAL-
TECHNICAL EDUCATION.**

§18-10H-6. Effective schools program in vocational-technical education.

1 The state Board of Education shall establish and operate an effective schools program for
2 vocational-technical education, including introductory vocational-technical courses in middle
3 school grades as appropriate. The purpose of the program is to provide vocational-technical

4 education personnel with resources and staff development for school program improvement
5 based on application of the effective schools research, including components such as instructional
6 leadership, school climate, high student expectations, emphasis on academic and occupational
7 achievement and community and parental involvement. The program shall be coordinated by the
8 bureau of vocational, technical and adult education with the advisement from a committee
9 composed of two vocational administrators, two vocational teachers, one vocational guidance
10 counselor, one educator of vocational teachers, one ~~county~~ school district superintendent, one
11 comprehensive high school principal, one academic teacher, two business/industry
12 representatives, one labor representative and one vocational education program completer.

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

§18-20-1. Establishment of special programs and teaching services for exceptional children; modified diploma graduation.

1 (a) In accordance with the following provisions, ~~county~~ school district boards of education
2 throughout the state shall establish and maintain for all exceptional children between five and
3 twenty-one years of age special educational programs, including, but not limited to, special
4 schools or classes, regular classroom programs, home-teaching or visiting-teacher services for
5 any type or classification as the state board shall approve. Special educational programs shall
6 continue to be provided to those children who are at least twenty-one years of age and enrolled
7 in the above-mentioned special education program prior to September 1, 1991, until they reach
8 twenty-three years of age. Provisions shall be made for educating exceptional children (including
9 the handicapped and the gifted) who differ from the average or normal in physical, mental or
10 emotional characteristics, or in communicative or intellectual deviation characteristics, or in both
11 communicative and intellectual deviation characteristics, to the extent that they cannot be
12 educated safely or profitably in the regular classes of the public schools or to the extent that they
13 need special educational provisions within the regular classroom in order to educate them in
14 accordance with their capacities, limitations and needs: *Provided*, That for the school year

15 beginning on July 1, 1990, provisions shall be made for educating exceptional children, including
16 the handicapped, the gifted in grades one through eight, the pupils enrolled on July 1, 1989, in
17 the gifted program in grades nine through twelve and the exceptional gifted in grades nine through
18 twelve. The term "exceptional gifted" means those students in grades nine through twelve
19 identified as gifted and at least one of the following: Behavior disorder, specific learning
20 disabilities, psychological adjustment disorder, underachieving or economically disadvantaged.
21 Exceptional gifted children shall be referred for identification pursuant to recommendation by a
22 school psychologist, school counselor, principal, teacher, parent or by self-referral, at which time
23 the placement process, including development of an individualized education program, and
24 attendant due-process rights, shall commence. Exceptional gifted children, for purposes of
25 calculating adjusted enrollment pursuant to section two, article nine-a of this chapter, shall not
26 exceed one percent of net enrollment in grades nine through twelve. Nothing herein shall be
27 construed to limit the number of students identified as exceptional gifted and who receive
28 appropriate services. Each ~~county~~ school district board of education is mandated to provide gifted
29 education to its students according to guidelines promulgated by the state board and consistent
30 with the provisions of this chapter. Upon the recommendation of a principal, counselor, teacher
31 and parent, a student who does not meet the gifted eligibility criteria may participate in any school
32 program deemed appropriate for the student provided that classroom space is available. In
33 addition, ~~county~~ school district boards of education may establish and maintain other educational
34 services for exceptional children as the State Superintendent of Schools may approve.

35 (b) ~~County~~ School district boards of education shall establish and maintain these special
36 educational programs, including, but not limited to, special schools classes, regular class
37 programs, home-teaching and visiting-teacher services. The special education programs shall
38 include home-teaching or visiting-teacher services for children who are homebound due to injury
39 or who for any other reason as certified by a licensed physician are homebound for a period that
40 has lasted or will last more than three weeks. The state board shall adopt rules to advance and

41 accomplish this program and to assure that all exceptional children in the state, including children
42 in mental health facilities, residential institutions and private schools, will receive an education in
43 accordance with the mandates of state and federal laws: *Provided*, That commencing with the
44 school year beginning on July 1, 1991, all exceptional children in the state in foster care and
45 correctional facilities will receive an education in accordance with the mandates of state and
46 federal laws.

47 (c) Each ~~county~~ school district board of education shall adopt a policy that allows a student
48 with disabilities whose individualized education program provides for a modified diploma to
49 participate in the graduation ceremony of his or her same grade classmates if requested in writing
50 by his or her parent or legal guardian. The ~~county~~ school district board shall also permit the
51 student to continue receiving his or her special education services after the graduation ceremony.
52 The ~~county~~ school district board may not terminate, deny or declare the student ineligible for post-
53 graduation ceremony special education services due to his or her participation in the graduation
54 ceremony.

§18-20-1a. Preschool programs for severely disabled children; rules and regulations.

1 (a) During the school year beginning on July 1, 1985, each ~~county~~ school district board of
2 education shall develop a coordinated service delivery plan in accordance with standards for
3 preschool programs for severely disabled children to be developed by the state Board of
4 Education and begin services where plans are already developed.

5 (b) Only in any year in which funds are made available by legislative appropriation, and
6 only to the extent of such funding, each ~~county~~ school district board of education shall establish
7 and maintain a special educational program, including, but not limited to, special classes and
8 home-teaching and visiting-teacher services for all severely disabled children between the ages
9 of three and five according to the following schedule:

10 (1) By the school year beginning on July 1, 1986, and thereafter, for severely disabled
11 children who are age four before September 1, 1986;

12 (2) By the school year beginning on July 1, 1987, and thereafter, for severely disabled
13 children who are age three before September 1, 1987.

14 As used in this section, the term "severely disabled children" means those children who
15 fall in any one of the following categories as defined or to be defined in the state Board of
16 Education standards for the education of exceptional children: Severe behavioral disorders,
17 severely speech and language impaired, deaf-blind, hearing impaired, autistic, physically,
18 disabled profoundly intellectually disabled, trainable intellectually disabled or visually impaired.

19 Before August 1, 1985, the state Board of Education shall adopt rules and regulations to
20 advance and accomplish this program and to assure that an appropriate educational program is
21 available to all such children in the state, including children in mental health facilities, residential
22 institutions and private schools.

23 This section does not prevent ~~county~~ school district boards of education from providing
24 special education programs, including, but not limited to, special schools, classes, regular class
25 programs and home-teaching or visiting-teacher services for severely disabled preschool children
26 prior to such times as are required by this section. In addition, ~~county~~ school district boards of
27 education may provide these services to preschool exceptional children in disability categories
28 other than those listed above.

§18-20-1b. Preschool programs for handicapped children; rules and regulations.

1 (a) During the school year beginning on July 1, 1991, each ~~county~~ school district board of
2 education shall develop a coordinated service delivery plan in accordance with standards for
3 preschool programs for handicapped children to be developed by the state Board of Education
4 and begin services where plans are already developed.

5 (b) Each ~~county~~ school district board of education shall establish and maintain special
6 education programs, including, but not limited to, special classes, regular classes and home-
7 teaching and visiting-teacher services for all handicapped children ages three through five,
8 inclusive.

9 As used in this section, the term "handicapped children" means those children who fall in
10 any one of the following categories as defined or to be defined in the state Board of Education
11 standards for the education of exceptional children: Severe behavioral disorders, communication
12 disordered, deaf-blind, developmentally delayed, hearing impaired, other health impaired
13 including autism, physically handicapped, mentally impaired or visually impaired.

14 Before August 1, 1991, the state Board of Education shall adopt rules to advance and
15 accomplish this program and to assure that an appropriate educational program is available to all
16 such children in the state, including children in mental health facilities, residential institutions,
17 foster care, correctional facilities and private schools.

18 This section does not prevent ~~county~~ school district boards of education from providing
19 special education programs, including, but not limited to, special schools or classes, regular class
20 programs and home-teaching or visiting-teacher services for severely handicapped preschool
21 children prior to such times as are required by this section.

§18-20-2. Providing suitable educational facilities, equipment and services.

1 (a) Each ~~county~~ school district board shall provide suitable educational facilities, special
2 equipment and special services that are necessary. Special services include provisions and
3 procedures for finding and enumerating exceptional children of each type, diagnosis by
4 appropriate specialists who will certify the child's need and eligibility for special education and
5 make recommendations for treatment and prosthesis as may alleviate the disability, special
6 teaching by qualified and specially trained teachers, transportation, lunches and remedial
7 therapeutic services. Qualifications of teachers and therapists shall be in accordance with
8 standards prescribed or approved by the state board.

9 (b) A ~~county~~ school district board may provide for educating resident exceptional children
10 by contracting with other ~~counties~~ school districts or other educational agencies which maintain
11 special education facilities. Fiscal matters shall follow policies approved by the state board.

12 (c) The ~~county~~ school district board shall provide a four-clock-hour program of training for

13 any teacher aide employed to assist teachers in providing services to exceptional children under
14 this article prior to the assignment. The program shall consist of training in areas specifically
15 related to the education of exceptional children, pursuant to rules of the state board. The training
16 shall occur during normal working hours and an opportunity to be trained shall be provided to a
17 service person prior to filling a vacancy in accordance with the provisions of section eight-b, article
18 four, chapter eighteen-a of this code.

19 (d) The ~~county~~ school district board annually shall make available during normal working
20 hours to all regularly employed teachers' aides twelve hours of training that satisfies the continuing
21 education requirements for the aides regarding:

22 (1) Providing services to children who have displayed violent behavior or have
23 demonstrated the potential for violent behavior; and

24 (2) Providing services to children diagnosed as autistic or with autism spectrum disorder.

25 This training shall be structured to permit the employee to qualify as an autism mentor after a
26 minimum of four years of training. The ~~county~~ school district board shall:

27 (A) Notify in writing all teachers' aides of the location, date and time when training will be
28 offered for qualification as an autism mentor; and

29 (B) Reimburse any regularly employed or substitute teacher's aide who elects to attend
30 this training for one half of the cost of the tuition.

31 (e) For any student whose individualized education plan (IEP) or education plan
32 established pursuant to Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C.
33 §794, requires the services of a sign support specialist or an educational sign language interpreter
34 I or II:

35 (1) Any educational sign language interpreter I or II assigned to assist that student is a
36 related service provider member of the education team who participates in IEP meetings and
37 works with the team to implement the IEP;

38 (2) A sign support specialist may be assigned to a student with an exceptionality other

39 than deaf or hard of hearing if it is determined that the student needs signs to support his or her
40 expressive communication; and

41 (3) A sign support specialist may be assigned to a student who is deaf or hard of hearing
42 in lieu of an interpreter only if an educational sign language interpreter I or II is unavailable, and
43 the sign support specialist is executing a professional development plan while actively seeking
44 certification as an educational sign language interpreter I or II. After two years the sign support
45 specialist may remain in the assignment only if an educational sign language interpreter I or II
46 remains unavailable, and with an approved waiver by the West Virginia Department of Education.
47 An employee in this situation is entitled to full payment of the costs of certification acquisition or
48 renewal pursuant to the certification renewal provisions of section four, article two, chapter
49 eighteen-a of this code.

50 (f) Every teacher of a student for whom a school or ~~county~~ school district board of
51 education prepares a plan of accommodation pursuant to Section 504 of the Rehabilitation Act of
52 1973, as amended, 29 U.S.C. §794, shall receive specific instruction from the school regarding
53 the contents and requirements of the plan and, if the plan is prepared in writing, the teacher shall
54 receive a copy of the written plan and every update thereto and the teacher shall sign an
55 acknowledgment of receipt of each plan and update.

§18-20-5. Powers and duties of state superintendent.

1 (a) The State Superintendent of Schools shall organize, promote, administer and be
2 responsible for:

3 (1) Stimulating and assisting ~~county~~ school district boards of education in establishing,
4 organizing and maintaining special schools, classes, regular class programs, home-teaching and
5 visiting-teacher services.

6 (2) Cooperating with all other public and private agencies engaged in relieving, caring for,
7 curing, educating and rehabilitating exceptional children, and in helping coordinate the services
8 of such agencies.

9 (3) (A) Preparing the necessary rules, policies, formula for distribution of available
10 appropriated funds, reporting forms and procedures necessary to define minimum standards in
11 providing suitable facilities for education of exceptional children and ensuring the employment,
12 certification and approval of qualified teachers and therapists subject to approval by the State
13 Board of Education: *Provided*, That no state rule, policy or standard under this article or any
14 ~~county~~ school district board rule, policy or standard governing special education may exceed the
15 requirements of federal law or regulation.

16 (B) An appropriation shall be made to the Department of Education to be distributed to
17 ~~county~~ school district boards to support children with high acuity needs that exceed the capacity
18 of ~~county~~ school district to provide with funds available. Each ~~county~~ school district board shall
19 apply to the state superintendent for receipt of this funding in a manner set forth by the state
20 superintendent that assesses and takes into account varying acuity levels of the exceptional
21 students. Any remaining funds at the end of a fiscal year from the appropriation shall be carried
22 over to the next fiscal year. When possible, federal funds shall be distributed to ~~county~~ school
23 district boards for this purpose before any of the state appropriation is distributed. The state board
24 shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-
25 a of this code that implements the provisions of this subdivision relating to distributing the funds
26 to the ~~county~~ school district boards. The rule at least shall include a definition for “children with
27 high acuity needs”.

28 (4) Receiving from ~~county~~ school district boards of education their applications, annual
29 reports and claims for reimbursement from such moneys as are appropriated by the Legislature,
30 auditing such claims and preparing vouchers to reimburse said ~~counties~~ school districts the
31 amounts reimbursable to them.

32 (5) Assuring that all exceptional children in the state, including children in mental health
33 facilities, residential institutions, private schools and correctional facilities as provided in section
34 thirteen-f, article two of this chapter receive an education in accordance with state and federal

35 laws: *Provided*, That the state superintendent shall also assure that adults in correctional facilities
 36 and regional jails receive an education to the extent funds are provided therefor.

37 (6) Performing other duties and assuming other responsibilities in connection with this
 38 program as needed.

39 (7) Receive the county plan for integrated classroom submitted by the county boards of
 40 education and submit a state plan, approved by the State Board of Education, to the Legislative
 41 Oversight Commission on Education Accountability no later than December 1, 1995.

42 (b) Nothing contained in this section shall be construed to prevent any ~~county~~ school
 43 district board of education from establishing and maintaining special schools, classes, regular
 44 class programs, home-teaching or visiting-teacher services out of funds available from local
 45 revenue.

§18-20-7. Exceptional children program compliance review teams.

1 The state board shall establish exceptional children program compliance review teams to
 2 conduct random unannounced on-site reviews of such programs at least every four years in each
 3 ~~county~~ school district for the purpose of reviewing identification procedures, complying with any
 4 or all applicable laws and policies, delivering services, verifying enrollment and attendance
 5 reports, recommending changes, and fulfilling such other duties as may be established by the
 6 state board.

7 Each review team unit shall consist of five members including one member of an
 8 exceptional children advocacy group who is not an employee of any ~~county~~ school district or state
 9 government agency, one teacher of exceptional children in the specific category or categories to
 10 be reviewed, one person certified to interpret psycho-educational assessments, one school
 11 finance official and one financial Auditor who shall not be an employee of any ~~county~~ school
 12 district board, all appointed by the state superintendent.

ARTICLE 25. TAX DEFERRED INVESTMENTS FOR TEACHERS AND OTHER

EMPLOYEES.

§18-25-1. Authority to make tax deferred investments for teachers and other employees.

1 A ~~county~~ school district board of education, the Teachers' Retirement Board, the West
 2 Virginia Board of Education and the Department of Education and the arts and their agencies may
 3 provide by written agreement between the department, any such board or agency and any teacher
 4 or other employee to reduce the cash salary payable to the teacher or other employee, and, in
 5 consideration thereof, to pay an amount equal to the amount of the reduction as premiums on an
 6 annuity contract or investments into a custodial account or other investment owned by the teacher
 7 or other employee. The annuity contract, custodial account or other investment shall be in such
 8 form and upon such terms as will qualify the payments thereon for tax deferral under the United
 9 States Internal Revenue Code. The amount of the reduction may not exceed the amount
 10 excludable from income under Section 403(b) of the United States Internal Revenue Code, and
 11 amendments and successor provisions thereto, and shall be considered a part of the teachers or
 12 employees salary for all purposes other than federal and state income tax.

13 The transaction of making the tax deferred investment for a teacher or other employee by
 14 a Board of Education, the Teachers' Retirement Board, the West Virginia Board of Education and
 15 the Department of Education and the arts and their agencies imposes no liability nor responsibility
 16 whatsoever on the boards, department or members thereof except to show that the payments
 17 have been remitted for the purposes for which deducted.

ARTICLE 28. PRIVATE, PAROCHIAL OR CHURCH SCHOOLS, OR SCHOOLS OF A RELIGIOUS ORDER.

§18-28-2. Attendance; health and safety regulations.

1 The following is applicable to private, parochial or church schools or schools of a religious
 2 order:

3 (a) Each school shall observe a minimum instructional term of one hundred eighty days

4 with an average of five hours of instruction per day;

5 (b) Each school shall make and maintain annual attendance and disease immunization
6 records for each pupil enrolled and regularly attending classes. The attendance records shall be
7 made available to the parents or legal guardians;

8 (c) Upon the request of the ~~county~~ school district superintendent, a school (or a parents
9 organization composed of the parents or guardians of children enrolled in the school) shall furnish
10 to the ~~county~~ school district board a list of the names and addresses of all children enrolled in the
11 school between the ages of seven and sixteen years;

12 (d) Attendance by a child at any school which complies with this article satisfies the
13 requirements of compulsory school attendance;

14 (e) Each school is subject to reasonable fire, health and safety inspections by state, county
15 and municipal authorities as required by law, and is required to comply with the West Virginia
16 school bus safety regulations; and

17 (f) Each school shall establish, file and update a school specific crisis response plan which
18 complies with the requirements established for it by the state board and the Division of Homeland
19 Security and Emergency Management pursuant to section nine, article nine-f of this chapter.

CHAPTER 18A. SCHOOL PERSONNEL.

§18A-1-1. Definitions.

1 The definitions contained in section one, article one, chapter eighteen of this code apply
2 to this chapter. In addition, the following words used in this chapter and in any proceedings
3 pursuant to this chapter have the meanings ascribed to them unless the context clearly indicates
4 a different meaning:

5 (a) "School personnel" means all personnel employed by a ~~county~~ school district board
6 whether employed on a regular full-time basis, an hourly basis or otherwise. "School personnel"
7 is comprised of two categories: Professional personnel and service personnel;

8 (b) "Professional person" or "professional personnel" means those persons or employees
9 who meet the certification requirements of the state, licensing requirements of the state, or both,
10 and includes a professional educator and other professional employee;

11 (c) "Professional educator" has the same meaning as "teacher" as defined in section one,
12 article one, chapter eighteen of this code. Professional educators are classified as follows:

13 (1) "Classroom teacher" means a professional educator who has a direct instructional or
14 counseling relationship with students and who spends the majority of his or her time in this
15 capacity;

16 (2) "Principal" means a professional educator who functions as an agent of the ~~county~~
17 school district board and has responsibility for the supervision, management and control of a
18 school or schools within the guidelines established by the ~~county~~ school district board. The
19 principal's major area of responsibility is the general supervision of all the schools and all school
20 activities involving students, teachers and other school personnel;

21 (3) "Supervisor" means a professional educator who is responsible for working primarily
22 in the field with professional and other personnel in instructional and other school improvement.
23 This category includes other appropriate titles or positions with duties that fit within this definition;
24 and

25 (4) "Central office administrator" means a superintendent, associate superintendent,
26 assistant superintendent and other professional educators who are charged with administering
27 and supervising the whole or some assigned part of the total program of the ~~countywide~~
28 district system. This category includes other appropriate titles or positions with duties that fit within
29 this definition;

30 (d) "Other professional employee" means a person from another profession who is
31 properly licensed and who is employed to serve the public schools. This definition includes a
32 registered professional nurse, licensed by the West Virginia Board of Examiners for Registered
33 Professional Nurses, who is employed by a ~~county~~ school district board and has completed either

34 a two-year (sixty-four semester hours) or a three-year (ninety-six semester hours) nursing
35 program;

36 (e) "Service person" or "service personnel", whether singular or plural, means a
37 nonteaching school employee who is not included in the meaning of "teacher" as defined in
38 section one, article one, chapter eighteen of this code and who serves the school or schools as a
39 whole, in a nonprofessional capacity, including such areas as secretarial, custodial, maintenance,
40 transportation, school lunch and aides. Any reference to "service employee" or "service
41 employees" in this chapter or chapter eighteen of this code means service person or service
42 personnel as defined in this section;

43 (f) "Principals Academy" or "academy" means the academy created pursuant to section
44 two-b, article three-a of this chapter;

45 (g) "Center for Professional Development" means the center created pursuant to section
46 one, article three-a of this chapter;

47 (h) "Job-sharing arrangement" means a formal, written agreement voluntarily entered into
48 by a ~~county~~ school district board with two or more of its employees who wish to divide between
49 them the duties and responsibilities of one authorized full-time position;

50 (i) "Prospective employable professional person", whether singular or plural, means a
51 certified professional educator who:

52 (1) Has been recruited on a reserve list of a ~~county~~ school district board;

53 (2) Has been recruited at a job fair or as a result of contact made at a job fair;

54 (3) Has not obtained regular employee status through the job posting process provided in
55 section seven-a, article four of this chapter; and

56 (4) Has obtained a baccalaureate degree from an accredited institution of higher education
57 within the past year;

58 (j) "Dangerous student" means a student who is substantially likely to cause serious bodily
59 injury to himself or herself, herself or another individual within that student's educational

60 environment, which may include any alternative education environment, as evidenced by a
 61 pattern or series of violent behavior exhibited by the student, and documented in writing by the
 62 school, with the documentation provided to the student and parent or guardian at the time of any
 63 offense;

64 (k) "Alternative education" means an authorized departure from the regular school
 65 program designed to provide educational and social development for students whose disruptive
 66 behavior places them at risk of not succeeding in the traditional school structures and in adult life
 67 without positive interventions; and

68 (l) "Long-term substitute" means a substitute employee who fills a vacant position:

69 That the ~~county~~ school district superintendent expects to extend for at least thirty
 70 consecutive days, and is either:

71 (A) Listed in the job posting as a long-term substitute position of over thirty days; or

72 (B) Listed in a job posting as a regular, full-time position and:

73 (i) Is not filled by a regular, full-time employee; and

74 (ii) Is filled by a substitute employee.

75 For the purposes of section two, article sixteen, chapter five of this code, long-term
 76 substitute does not include a retired employee hired to fill the vacant position.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-1. Employment in general.

1 (a) The employment of professional personnel shall be made by the board only upon
 2 nomination and recommendation of the superintendent, subject to the following:

3 (1) The superintendent shall provide the principal at the school at which the professional
 4 educator or paraprofessional employee is to be employed an opportunity to interview all qualified
 5 applicants and make recommendations to the ~~county~~ school district superintendent regarding
 6 their employment;

7 (2) The principal may not recommend for employment an individual who is related to him

8 or her as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece,
9 husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-
10 law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother or half
11 sister;

12 (3) Nothing shall prohibit the timely employment of persons to perform necessary duties;

13 (4) In case the board refuses to employ any or all of the persons nominated, the
14 superintendent shall nominate others and submit the same to the board at such time as the board
15 may direct;

16 (5) All personnel so nominated and recommended for employment and for subsequent
17 assignment shall meet the certification, licensing, training and other eligibility classifications as
18 may be required by provisions of this chapter and by state board rule. In addition to any other
19 information required, the application for any certification or licensing shall include the applicant's
20 Social Security number.

21 (b) Professional personnel employed as deputy, associate or assistant superintendents
22 by the board in offices, departments or divisions at locations other than a school and who are
23 directly answerable to the superintendent shall serve at the will and pleasure of the superintendent
24 and may be removed by the superintendent upon approval of the board. Such professional
25 personnel shall retain seniority rights only in the area or areas in which they hold valid certification
26 or licensure.

§18A-2-1a. Employment of other personnel.

1 A ~~county~~ school district board is authorized to employ athletic directors to work in the
2 public schools under the supervision of a school principal and in accordance with the rules of the
3 ~~county~~ school district board.

4 (a) The athletic director is responsible for planning, management, operation and
5 evaluation of the athletic program for the school or schools to which he or she is assigned.

6 (b) The responsibilities of an athletic director may include, but are not limited to the

7 following:

8 (1) Supervising athletic games;

9 (2) Overseeing the athletic budget;

10 (3) Hiring game officials;

11 (4) Scheduling athletic contests;

12 (5) Knowing and upholding all ~~county~~ school district, West Virginia Secondary Schools

13 Activities Commission (WVSSAC) and league rules;

14 (6) Maintaining proper records as required by West Virginia Secondary Schools Activities

15 Commission (WVSSAC) for school participation;

16 (7) Scheduling transportation for athletic teams;

17 (8) Preparing and verifying athletic eligibility lists;

18 (9) Supervising coaches and, if appropriately certified, observing and evaluating coaches;

19 (10) Securing all needed personnel for basic athletic event operations;

20 (11) Procuring and caring for athletic equipment; and

21 (12) Performing other duties involving athletics as assigned by the principal or as a part of

22 a ~~county~~ school district job description for athletic directors.

§18A-2-2. Employment of teachers; contracts; continuing contract status; how terminated; dismissal for lack of need; released time; failure of teacher to perform contract or violation thereof; written notice bonus for teachers and professional personnel.

1 (a) Before entering upon their duties, all teachers shall execute a contract with their ~~county~~

2 school district boards, which shall state the salary to be paid and shall be in the form prescribed

3 by the state superintendent. Each contract shall be signed by the teacher and by the president

4 and secretary of the ~~county~~ school district board and shall be filed, together with the certificate of

5 the teacher, by the secretary of the office of the ~~county~~ school district board. When necessary to

6 facilitate the employment of employable professional personnel and prospective and recent

7 graduates of teacher education programs who have not yet attained certification, the contract may

8 be signed upon the condition that the certificate is issued to the employee prior to the beginning
9 of the employment term in which the employee enters upon his or her duties.

10 (b) Each teacher's contract, under this section, shall be designated as a probationary or
11 continuing contract. A probationary teachers contract shall be for a term of not less than one nor
12 more than three years, one of which shall be for completion of a beginning teacher internship
13 pursuant to the provisions of section two-b, article three of this chapter, if applicable. If, after three
14 years of such employment, the teacher who holds a professional certificate, based on at least a
15 bachelor's degree, has met the qualifications for a bachelors degree and the ~~county~~ school district
16 board enter into a new contract of employment, it shall be a continuing contract, subject to the
17 following:

18 (1) Any teacher with less than a bachelor's degree who holds a valid certificate and is
19 employed in a ~~county~~ school district beyond the three-year probationary period shall be granted
20 continuing contract status upon qualifying for the professional certificate based upon a bachelor's
21 degree, if the teacher becomes reemployed; and

22 (2) A teacher holding continuing contract status with one ~~county~~ school district shall be
23 granted continuing contract status with any other ~~county~~ school district upon completion of one
24 year of acceptable employment if the employment is during the next succeeding school year or
25 immediately following an approved leave of absence extending no more than one year.

26 (c) The continuing contract of any teacher shall remain in full force and effect except as
27 modified by mutual consent of the school board and the teacher, unless and until terminated,
28 subject to the following:

29 (1) A continuing contract may not be terminated except:

30 (A) By a majority vote of the full membership of the ~~county~~ school district board on or
31 before May 1 of the then current year, after written notice, served upon the teacher, return receipt
32 requested, stating cause or causes and an opportunity to be heard at a meeting of the board prior
33 to the board's action on the termination issue; or

34 (B) By written resignation of the teacher on or before May 1 to initiate termination of a
35 continuing contract;

36 (2) The termination shall take effect at the close of the school year in which the contract
37 is terminated;

38 (3) The contract may be terminated at any time by mutual consent of the school board and
39 the teacher;

40 (4) This section does not affect the powers of the school board to suspend or dismiss a
41 principal or teacher pursuant to section eight of this article;

42 (5) A continuing contract for any teacher holding a certificate valid for more than one year
43 and in full force and effect during the school year 1984-1985 shall remain in full force and effect;

44 (6) A continuing contract does not operate to prevent a teacher's dismissal based upon
45 the lack of need for the teacher's services pursuant to the provisions of law relating to the
46 allocation to teachers and pupil-teacher ratios. The written notification of teachers being
47 considered for dismissal for lack of need shall be limited to only those teachers whose
48 consideration for dismissal is based upon known or expected circumstances which will require
49 dismissal for lack of need. An employee who was not provided notice and an opportunity for a
50 hearing pursuant to this subsection may not be included on the list. In case of dismissal for lack
51 of need, a dismissed teacher shall be placed upon a preferred list in the order of their length of
52 service with that board. A teacher may not be employed by the board until each qualified teacher
53 on the preferred list, in order, has been offered the opportunity for reemployment in a position for
54 which he or she is qualified, not including a teacher who has accepted a teaching position
55 elsewhere. The reemployment shall be upon a teacher's preexisting continuing contract and has
56 the same effect as though the contract had been suspended during the time the teacher was not
57 employed.

58 (d) In the assignment of position or duties of a teacher under a continuing contract, the
59 board may provide for released time of a teacher for any special professional or governmental

60 assignment without jeopardizing the contractual rights of the teacher or any other rights, privileges
61 or benefits under the provisions of this chapter. Released time shall be provided for any
62 professional educator while serving as a member of the Legislature during any duly constituted
63 session of that body and its interim and statutory committees and commissions without
64 jeopardizing his or her contractual rights or any other rights, privileges, benefits or accrual of
65 experience for placement on the state minimum salary schedule in the following school year under
66 the provisions of this chapter, board policy and law.

67 (e) A teacher is disqualified to teach in any public school in the state for the duration of
68 the next ensuing school year, if that teacher:

69 (1) Fails to fulfill his or her contract with the board, unless prevented from doing so by
70 personal illness or other just cause or unless released from his or her contract by the board, or

71 (2) Violates any lawful provision of his or her contract: *Provided*, That the marriage of a
72 teacher is not considered a failure to fulfill, or violation of, the contract.

73 The State Department of Education or board may hold all papers and credentials of the
74 teacher on file for a period of one year for the violation and shall report such disqualification status
75 in the National Association of State Directors of Teacher Education and Certification (NASDTEC)
76 database system.

77 (f) Any classroom teacher, as defined in section one, article one of this chapter, who
78 desires to resign employment with a ~~county~~ school district board or request a leave of absence,
79 the resignation or leave of absence to become effective on or before July 15 of the same year
80 and after completion of the employment term, may do so at any time during the school year by
81 written notification of the resignation or leave of absence and any notification received by a ~~county~~
82 school district board shall automatically extend the teacher's public employee insurance coverage
83 until August 31 of the same year.

84 (g) (1) A classroom teacher who gives written notice to the ~~county~~ school district board on
85 or before March 1 of the school year of his or her retirement from employment with the board at

86 the conclusion of the school year shall be paid \$500 from the early notification of retirement line
87 item established for the Department of Education for this purpose, subject to appropriation by the
88 Legislature. If the appropriations to the Department of Education for this purpose are insufficient
89 to compensate all applicable teachers, the Department of Education shall request a supplemental
90 appropriation in an amount sufficient to compensate all such teachers. Additionally, if funds are
91 still insufficient to compensate all applicable teachers, the priority of payment is for teachers who
92 give written notice the earliest. This payment may not be counted as part of the final average
93 salary for the purpose of calculating retirement.

94 (2) The position of a classroom teacher providing written notice of retirement pursuant to
95 this subsection may be considered vacant and the ~~county~~ school district board may immediately
96 post the position as an opening to be filled at the conclusion of the school year. If a teacher has
97 been hired to fill the position of a retiring classroom teacher prior to the start of the next school
98 year, the retiring classroom teacher is disqualified from continuing his or her employment in that
99 position. However, the retiring classroom teacher may be permitted to continue his or her
100 employment in that position and forfeit the early retirement notification payment if, after giving
101 notice of retirement in accordance with this subsection, he or she becomes subject to a significant
102 unforeseen financial hardship, including a hardship caused by the death or illness of an immediate
103 family member or loss of employment of a spouse. Other significant unforeseen financial
104 hardships shall be determined by the ~~county~~ school district superintendent on a case-by-case
105 basis. This subsection does not prohibit a ~~county~~ school district board from eliminating the position
106 of a retiring classroom teacher.

§18A-2-2a. Leaves of absence for teachers and service personnel.

1 (a) Any teacher who is returning from an approved leave of absence that extended for a
2 period of one year or less shall be reemployed by the ~~county~~ school district board with the right
3 to be restored to the same assignment of position or duties held prior to the approved leave of
4 absence. Such teacher shall retain all seniority, rights and privileges which had accrued at the

5 time of the approved leave of absence, and shall have all rights and privileges generally accorded
6 teachers at the time of the reemployment.

7 (b) An employee shall notify the ~~county~~ school district board at least ten working days prior
8 to beginning a leave of absence. The ~~county~~ school district board shall approve such leave of
9 absence for any teacher or service personnel who requests an extended leave of absence without
10 pay for any period of time not exceeding one year for the purpose of pregnancy, childbirth or
11 adoptive or infant bonding. An employee shall not be required to use accumulated annual leave
12 or sick leave prior to taking an extended leave of absence.

13 (c) Such employee who returns from an approved leave of absence for the purpose of
14 pregnancy, childbirth or adoptive or infant bonding which lasted for a period of one year or less
15 than one year shall be reemployed with the right to be restored to the same assignment of position
16 or duties and benefits held prior to the approved leave of absence. Such employee shall retain all
17 rights and privileges generally accorded employees at the time of the reemployment.

**§18A-2-3. Employment of substitute teachers; employment of retired teachers as
substitutes in areas of critical need and shortage; and employment of prospective
employable professional personnel.**

1 (a) The ~~county~~ school district superintendent, subject to approval of the ~~county~~ school
2 district board, may employ and assign substitute teachers to any of the following duties:

3 (1) Fill the temporary absence of any teacher or an unexpired school term made vacant
4 by resignation, death, suspension or dismissal;

5 (2) Fill a teaching position of a regular teacher on leave of absence; and

6 (3) Perform the instructional services of any teacher who is authorized by law to be absent
7 from class without loss of pay, providing the absence is approved by the board of education in
8 accordance with the law.

9 The substitute shall be a duly certified teacher.

10 (b) Notwithstanding any other provision of this code to the contrary, a substitute teacher

11 who has been assigned as a classroom teacher in the same classroom continuously for more
12 than one half of a grading period and whose assignment remains in effect two weeks prior to the
13 end of the grading period, shall remain in the assignment until the grading period has ended,
14 unless the principal of the school certifies that the regularly employed teacher has communicated
15 with and assisted the substitute with the preparation of lesson plans and monitoring student
16 progress or has been approved to return to work by his or her physician. For the purposes of this
17 section, teacher and substitute teacher, in the singular or plural, mean professional educator as
18 defined in section one, article one of this chapter.

19 (c) (1) The Legislature hereby finds and declares that due to a shortage of qualified
20 substitute teachers, a compelling state interest exists in expanding the use of retired teachers to
21 provide service as substitute teachers in areas of critical need and shortage. The Legislature
22 further finds that diverse circumstances exist among the ~~counties~~ school districts for the expanded
23 use of retired teachers as substitutes. For the purposes of this subsection, "area of critical need
24 and shortage for substitute teachers" means an area of certification and training in which the
25 number of available substitute teachers in the ~~county~~ school district who hold certification and
26 training in that area and who are not retired is insufficient to meet the projected need for substitute
27 teachers.

28 (2) A person receiving retirement benefits under article seven-a, chapter eighteen of this
29 code or who is entitled to retirement benefits during the fiscal year in which that person retired
30 may accept employment as a critical needs substitute teacher for an unlimited number of days
31 each fiscal year without affecting the monthly retirement benefit to which the retirant is otherwise
32 entitled if the following conditions are satisfied:

33 (A) The ~~county~~ school district board adopts a policy recommended by the superintendent
34 to address areas of critical need and shortage for substitute teachers;

35 (B) The policy sets forth the areas of critical need and shortage for substitute teachers in
36 the ~~county~~ school district in accordance with the definition of area of critical need and shortage

37 for substitute teachers set forth in subdivision (1) of this subsection;

38 (C) The policy provides for the employment of retired teachers as critical needs substitute
39 teachers during the school year on an expanded basis in areas of critical need and shortage for
40 substitute teachers as provided in this subsection;

41 (D) The policy provides that a retired teacher may be employed as a substitute teacher in
42 an area of critical need and shortage for substitute teachers on an expanded basis as provided
43 in this subsection only when no other teacher who holds certification and training in the area and
44 who is not retired is available and accepts the substitute assignment;

45 (E) The policy is effective for one school year only and is subject to annual renewal by the
46 ~~county~~ school district board;

47 (F) The state board approves the policy and the use of retired teachers as substitute
48 teachers on an expanded basis in areas of critical need and shortage for substitute teachers as
49 provided in this subsection; and

50 (G) Prior to employment of a retired teacher as a critical needs substitute teacher beyond
51 the post-retirement employment limitations established by the Consolidated Public Retirement
52 Board, the superintendent of the affected ~~county~~ school district submits to the state board in a
53 form approved by the Consolidated Public Retirement Board and the state board, an affidavit
54 signed by the superintendent stating the name of the ~~county~~ school district, the fact that the ~~county~~
55 school district has adopted a policy to employ retired teachers as substitutes to address areas of
56 critical need and shortage, the name or names of the person or persons to be employed as a
57 critical needs substitute pursuant to the policy, the critical need and shortage area position filled
58 by each person, the date that the person gave notice to the ~~county~~ school district board of the
59 person's intent to retire, and the effective date of the person's retirement. Upon verification of
60 compliance with this section and the eligibility of the critical needs substitute teacher for
61 employment beyond the post-retirement limit, the state board shall submit the affidavit to the
62 Consolidated Public Retirement Board.

63 (3) Any person who retires and begins work as a critical needs substitute teacher within
64 the same employment term shall lose those retirement benefits attributed to the annuity reserve,
65 effective from the first day of employment as a retiree substitute in that employment term and
66 ending with the month following the date the retiree ceases to perform service as a substitute.

67 (4) Retired teachers employed to perform expanded substitute service pursuant to this
68 subsection are considered day-to-day, temporary, part-time employees. The substitutes are not
69 eligible for additional pension or other benefits paid to regularly employed employees and may
70 not accrue seniority.

71 (5) A retired teacher is eligible to be employed as a critical needs substitute to fill a vacant
72 position only if the retired teacher's retirement became effective at least twenty days before the
73 beginning of the employment term during which he or she is employed as a substitute.

74 (6) When a retired teacher is employed as a critical needs substitute to fill a vacant
75 position, the ~~county~~ school district board shall continue to post the vacant position until it is filled
76 with a regularly employed teacher who is fully certified or permitted for the position.

77 (7) When a retired teacher is employed as a critical needs substitute to fill a vacant
78 position, the position vacancy shall be posted electronically and easily accessible to prospective
79 employees as determined by the state board.

80 (8) Until this subsection is expired pursuant to subdivision (9) of this subsection, the state
81 board, annually, shall report to the Joint Committee on Government and Finance prior to February
82 1 of each year. Additionally, a copy shall be provided to the Legislative Oversight Commission on
83 Education Accountability. The report shall contain information indicating the effectiveness of the
84 provisions of this subsection on reducing the critical need and shortage of substitute teachers
85 including, but not limited to, the number of retired teachers, by critical need and shortage area
86 position filled and by ~~county~~ school district, employed beyond the post-retirement employment
87 limit established by the Consolidated Public Retirement Board, the date that each person gave
88 notice to the ~~county~~ school district board of the person's intent to retire, and the effective date of

89 the person's retirement.

90 (9) The provisions of this subsection shall expire on June 30, 2017.

91 (d) (1) Notwithstanding any other provision of this code to the contrary, each year a ~~county~~
92 school district superintendent may employ prospective employable professional personnel on a
93 reserve list at the ~~county~~ school district level subject to the following conditions:

94 (A) The ~~county~~ school district board adopts a policy to address areas of critical need and
95 shortage as identified by the state board. The policy shall include authorization to employ
96 prospective employable professional personnel;

97 (B) The ~~county~~ school district board posts a notice of the areas of critical need and
98 shortage in the ~~county~~ school district in a conspicuous place in each school for at least ten working
99 days; and

100 (C) There are not any potentially qualified applicants available and willing to fill the
101 position.

102 (2) Prospective employable professional personnel may only be employed from
103 candidates at a job fair who have or will graduate from college in the current school year or whose
104 employment contract with a ~~county~~ school district board has or will be terminated due to a
105 reduction in force in the current fiscal year.

106 (3) Prospective employable professional personnel employed are limited to three full-time
107 prospective employable professional personnel per one hundred professional personnel
108 employed in a ~~county~~ school district or twenty-five full-time prospective employable professional
109 personnel in a ~~county~~ school district, whichever is less.

110 (4) Prospective employable professional personnel shall be granted benefits at a cost to
111 the ~~county~~ school district board and as a condition of the employment contract as approved by
112 the ~~county~~ school district board.

113 (5) Regular employment status for prospective employable professional personnel may
114 be obtained only in accordance with the provisions of section seven-a, article four of this chapter.

§18A-2-4. Commercial driver's license for school personnel; intrastate waiver for bus operators diagnosed with diabetes mellitus requiring insulin; reimbursement of electrician's and commercial driver's license when required, and educational sign language interpreter certification.

1 (a) If a commercial driver's license is required as a condition of employment for any school
2 employee or qualified applicant who becomes an employee by a ~~county~~ school district board the
3 cost is paid in full by the ~~county~~ school district board.

4 A ~~county~~ school district board may not require any employee or applicant who becomes
5 an employee of the board to pay the cost of acquiring a commercial driver's license as a condition
6 of employment.

7 (b) The Division of Motor Vehicles shall accept the West Virginia Department of Education
8 physical and psychomotor test result forms in lieu of the Division of Motor Vehicles vision report
9 form.

10 (c) A school bus operator who is currently employed by a ~~county~~ school district board or
11 who is otherwise subject to state board rules governing school bus operators and who is
12 diagnosed with diabetes mellitus requiring insulin is not ineligible for employment as a school bus
13 operator because of the diagnosis if the operator is issued a passenger endorsement for his or
14 her commercial driver license through the intrastate waiver program pertaining to diabetes of the
15 West Virginia Division of Motor Vehicles, subject to the following:

16 (1) A copy of the information required to be submitted to the Division of Motor Vehicles for
17 waiver application and proof of passenger endorsement under the waiver program is submitted
18 to his or her employer; and

19 (2) The operator remains in compliance with the stipulations of and grounds for eligibility
20 for the intrastate waiver.

21 (d) If a ~~county~~ school district board requires of any employee who is employed as an
22 electrician any license renewal when the employee is exempt from renewing the license pursuant

23 to section three, article three-b, chapter twenty-nine of this code, the cost of the license renewal
24 is paid in full by the ~~county~~ school district board.

25 (e) The cost of certification renewal and satisfying the requirements of the West Virginia
26 Registry of Interpreters is paid in full by the employer for any service person who is:

27 (1) Employed as an educational sign language interpreter I or II and is required to complete
28 any testing, training or continuing education in order to renew or maintain certification at that level;

29 (2) Employed as an educational sign language interpreter I and is required to complete
30 any testing, training or continuing education to advance to an educational sign language
31 interpreter II; or

32 (3) Employed as a sign support specialist and is required to complete any testing, training
33 or continuing education in order to advance to an educational sign language interpreter I or II.

34 (f) For any service person required to hold certification as a condition of employment, any
35 time devoted to acquiring or maintaining the certification, including instructional time and training,
36 constitutes hours of continuing education for purposes of meeting the annual continuing education
37 requirements in state board policy.

38 (g) Compliance with or failure to comply by a health care provider licensed and authorized
39 pursuant to chapter thirty of this code, with the reporting requirements of the Division of Motor
40 Vehicles regarding the provisions of subsection (c) of this section does not constitute negligence,
41 nor may compliance or noncompliance with the requirements of this section be admissible as
42 evidence of negligence in any civil or criminal action.

§18A-2-5. Employment of service personnel; limitation.

1 The board is authorized to employ such service personnel, including substitutes, as is
2 deemed necessary for meeting the needs of the ~~county~~ school district system: *Provided*, That the
3 board may not employ a number of such personnel whose minimum monthly salary under section
4 eight-a, article four, of this chapter is specified as pay grade "H", which number exceeds the
5 number employed by the board on March 1, 1988.

6 Effective July 1, 1988, a ~~county~~ school district board shall not employ for the first time any
7 person who has not obtained a high school diploma or general educational development
8 certificate (GED) or who is not enrolled in an approved adult education course by the date of
9 employment in preparation for obtaining a GED: *Provided*, That such employment is contingent
10 upon continued enrollment or successful completion of the GED program.

11 Before entering upon their duties service personnel shall execute with the board a written
12 contract which shall be in the following form:

13 "~~COUNTY~~ SCHOOL DISTRICT BOARD OF EDUCATION"
14 SERVICE PERSONNEL CONTRACT OF EMPLOYMENT

15 THIS (Probationary or Continuing) CONTRACT OF EMPLOYMENT, made and entered
16 into this _____ day of _____, 19____, by and between THE BOARD OF
17 EDUCATION OF THE ~~COUNTY~~ SCHOOL DISTRICT OF _____, a corporation,
18 hereinafter called the 'Board,' and (Name and Social Security Number of Employee), of (Mailing
19 Address), hereinafter called the 'Employee.'

20 WITNESSETH, that whereas, at a lawful meeting of the board of Education of the ~~County~~
21 School District of _____ held at the offices of said Board, in the City of
22 _____, _____ County, West Virginia, on the _____ day of
23 _____, 19____, the Employee was duly hired and appointed for employment as
24 a (Job Classification) at (Place of Assignment) for the school year commencing _____ for
25 the employment term and at the salary and upon the terms hereinafter set out.

26 NOW, THEREFORE, pursuant to said employment, Board and Employee mutually agree
27 as follows:

28 (1) The Employee is employed by the board as a (Job Classification) at (Place of
29 Assignment) for the school year or remaining part thereof commencing _____,
30 19____. The period of employment is _____ days at an annual salary of \$_____ at the rate
31 of \$_____ per month.

32 (2) The Board hereby certifies that the Employee's employment has been duly approved
33 by the board and will be a matter of the board's minute records.

34 (3) The services to be performed by the Employee shall be such services as are prescribed
35 for the job classification set out above in paragraph (1) and as defined in Section 8, Article 4,
36 Chapter 18A of the Code of West Virginia, as amended.

37 (4) The Employee may be dismissed at any time for immorality, incompetency, cruelty,
38 insubordination, intemperance or willful neglect of duty pursuant to the provisions of Section 8,
39 Article 2, Chapter 18A of the Code of West Virginia, as amended.

40 (5) The Superintendent of the _____ County School District Board of Education,
41 subject to the approval of the board, may transfer and assign the Employee in the manner
42 provided by Section 7, Article 2, Chapter 18A of the Code of West Virginia, as amended.

43 (6) This contract shall at all times be subject to any and all existing laws, or such laws as
44 may hereafter be lawfully enacted, and such laws shall be a part of this contract.

45 (7) This contract may be terminated or modified at any time by the mutual consent of the
46 board and the Employee.

47 (8) This contract must be signed and returned to the board at its address of
48 _____ within thirty days after being received by the
49 Employee.

50 (9) By signing this contract the Employee accepts employment upon the terms herein set
51 out.

52 WITNESS the following signatures as of the day, month and year first above written:

53 _____, (President, _____ County School District Board of Education)

54 _____, (Secretary, _____ County School District Board of Education)

55 _____, (Employee)"

56 The use of this form shall not be interpreted to authorize boards to discontinue any
57 employee's contract status with the board or rescind any rights, privileges or benefits held under

58 contract or otherwise by any employee prior to the effective date of this section.

59 Each contract of employment shall be designated as a probationary or continuing contract.

60 The employment of service personnel shall be made a matter of minute record. The employee
61 shall return the contract of employment to the ~~county~~ school district board of education within
62 thirty days after receipt or otherwise he or she shall forfeit his or her right to employment.

63 Under such regulation and policy as may be established by the ~~county~~ school district
64 board, service personnel selected and trained for teacher-aide classifications, such as monitor
65 aide, clerical aide, classroom aide and general aide, shall work under the direction of the principal
66 and teachers to whom assigned.

§18A-2-5a. Authorizing payment for notification of retirement.

1 Each ~~county~~ school district board is authorized to pay, entirely from local funds, \$500 or
2 less to any service employee, or to any professional employee who is not a classroom teacher,
3 who gives written notice to the ~~county~~ school district board on or before March 1 of the school
4 year of his or her retirement from employment with the board at the conclusion of the school year.

§18A-2-6. Continuing contract status for service personnel; termination.

1 After three years of acceptable employment, each service person who enters into a new
2 contract of employment with the board shall be granted continuing contract status. A service
3 person holding continuing contract status with one ~~county~~ school district shall be granted
4 continuing ~~county~~ school district status with any other ~~county~~ school district upon completion of
5 one year of acceptable employment if such employment is during the next succeeding school
6 year or immediately following an approved leave of absence which extends no more than one
7 year. The continuing contract of any such employee shall remain in full force and effect except as
8 modified by mutual consent of the school board and the employee, unless and until terminated
9 with written notice, stating cause or causes, to the employee, by a majority vote of the full
10 membership of the board on or before May 1 of the then current year, or by written resignation of
11 the employee on or before that date. The affected employee has the right of a hearing before the

12 board, if requested, before final action is taken by the board upon the termination of such
13 employment.

14 Those employees who have completed three years of acceptable employment as of the
15 effective date of this legislation shall be granted continuing contract status.

**§18A-2-7. Assignment, transfer, promotion, demotion, suspension and recommendation
of dismissal of school personnel by superintendent; preliminary notice of transfer;
hearing on the transfer; proof required.**

1 (a) The superintendent, subject only to approval of the board, may assign, transfer,
2 promote, demote or suspend school personnel and recommend their dismissal pursuant to
3 provisions of this chapter. However, an employee shall be notified in writing by the superintendent
4 on or before April 1 if he or she is being considered for transfer or to be transferred. Only those
5 employees whose consideration for transfer or intended transfer is based upon known or
6 expected circumstances which will require the transfer of employees shall be considered for
7 transfer or intended for transfer and the notification shall be limited to only those employees. Any
8 teacher or employee who desires to protest the proposed transfer may request in writing a
9 statement of the reasons for the proposed transfer. The statement of reasons shall be delivered
10 to the teacher or employee within ten days of the receipt of the request. Within ten days of the
11 receipt of the statement of the reasons, the teacher or employee may make written demand upon
12 the superintendent for a hearing on the proposed transfer before the ~~county~~ school district board.
13 The hearing on the proposed transfer shall be held on or before May 1. At the hearing, the reasons
14 for the proposed transfer must be shown.

15 (b) The superintendent at a meeting of the board on or before May 1 shall furnish in writing
16 to the board a list of teachers and other employees to be considered for transfer and subsequent
17 assignment for the next ensuing school year. An employee who was not provided notice and an
18 opportunity for a hearing pursuant to subsection (a) of this section may not be included on the list.
19 All other teachers and employees not so listed shall be considered as reassigned to the positions

20 or jobs held at the time of this meeting. The list of those recommended for transfer shall be
21 included in the minute record of the meeting and all those so listed shall be notified in writing and
22 shall be delivered within ten days following the board meeting, with written receipt notification
23 documented by the superintendent, and shall state that the person is being recommended for
24 transfer and subsequent assignment and the reasons therefor.

25 (c) The superintendent's authority to suspend school personnel shall be temporary only
26 pending a hearing upon charges filed by the superintendent with the ~~county~~ school district board
27 and the period of suspension may not exceed thirty days unless extended by order of the board.

28 (d) The provisions of this section respecting hearing upon notice of transfer are not
29 applicable in emergency situations where a school building becomes damaged or destroyed
30 through an unforeseeable act and which act necessitates a transfer of the school personnel
31 because of the aforementioned condition of the building.

32 (e) Notwithstanding this section or any provision of this code, when actual student
33 enrollment in a grade level or program, unforeseen on or before May 1 of the preceding school
34 year, permits the assignment of fewer teachers or service personnel to or within a school under
35 any pupil-teacher ratio, class size or caseload standard established in section eighteen-a, article
36 five, chapter eighteen of this code or any policy of the state board, the superintendent, with board
37 approval, may reassign the surplus personnel to another school or to another grade level or
38 program within the school if needed there to comply with any such pupil-teacher ratio, class size
39 or caseload standard.

40 (1) Before any reassignment may occur pursuant to this subsection, notice shall be
41 provided to the employee and the employee shall be provided an opportunity to appear before
42 the ~~county~~ school district board to state the reasons for his or her objections, if any, prior to the
43 board voting on the reassignment.

44 (2) Except as otherwise provided in subdivision (1) of this subsection, the reassignment
45 may be made without following the notice and hearing provisions of this section, and at any time

46 during the school year when the conditions of this subsection are met: *Provided*, That the
47 reassignment may not occur after the last day of the second school month.

48 (3) A professional employee reassigned under this subsection shall be the least senior of
49 the surplus professional personnel who holds certification or licensure to perform the duties at the
50 other school or at the grade level or program within the school.

51 (4) A service employee reassigned under this subsection shall be the least senior of the
52 surplus personnel who holds the same classification or multiclassification needed to perform the
53 duties at the other school or at the grade level or program within the same school.

54 (5) No school employee's annual contract term, compensation or benefits shall be
55 changed as a result of a reassignment under this subsection.

**§18A-2-7b. Limitations on voluntary transfer of school employees to posted vacant
position after twentieth day prior to beginning of instructional term.**

1 (a) The Legislature finds that it is not in the best interest of the students particularly in the
2 elementary grades to have multiple teachers for any one grade level or course during the
3 instructional term. Therefore, it is the intent of the Legislature that the filling of positions through
4 transfers of personnel from one professional position to another after the twentieth day prior to
5 the beginning of the instructional term should be kept to a minimum in accordance with the
6 following:

7 (1) After the twentieth day prior to the beginning of the instructional term, no person
8 employed and assigned to a professional position may transfer to another professional position
9 in the ~~county~~ school district during that instructional term unless the person holding that position
10 does not have valid certification;

11 (2) The person may apply for any posted, vacant positions with the successful applicant
12 assuming the position at the beginning of the next instructional term;

13 (3) Professional personnel who have been on an approved leave of absence may fill these
14 vacancies upon their return from the approved leave of absence; and

15 (4) The ~~county~~ school district board, upon recommendation of the superintendent may fill
16 a position before the next instructional term when it is determined to be in the best interest of the
17 students.

18 (b) The Legislature finds that it is not in the best interest of students with autism or with an
19 exceptionality whose IEP requires one-on-one services, or students in the early childhood years,
20 to have multiple teachers, mentors, aides, paraprofessionals, interpreters or any combination
21 thereof during the instructional term. Therefore, it is the intent of the Legislature that after the
22 twentieth day prior to the beginning of the instructional term, filling positions through transfers of
23 personnel from one position to another be kept to a minimum for autism mentors and aides who
24 work with students with autism and for paraprofessionals, interpreters, early childhood classroom
25 assistant teachers and aides who work with students with exceptionalities whose IEPs require
26 one-on-one services, in accordance with the following:

27 (1) After the twentieth day prior to the beginning of the instructional term, a service person
28 may not transfer to another position in the ~~county~~ school district during that instructional term,
29 unless he or she does not have valid certification, if the service person is employed and assigned
30 as an autism mentor or aide who works with students with autism, or as a paraprofessional,
31 interpreter, early childhood classroom assistant teacher, or aide who works with a student with an
32 exceptionality whose IEP requires one-on-one services;

33 (2) The aide, autism mentor, paraprofessional, interpreter or early childhood classroom
34 assistant teacher may apply for any posted, vacant position with the successful applicant
35 assuming the position at the beginning of the next instructional term; and

36 (3) The ~~county~~ school district board, upon recommendation of the superintendent, may fill
37 a position before the beginning of the next instructional term when it is determined to be in the
38 best interest of the students.

39 (c) Except as provided in subsection (b) of this section, after the twentieth day prior to the
40 beginning of the instructional term, a service person may transfer to another position of

41 employment one time only during any one half of the instructional term, unless otherwise mutually
42 agreed upon by the service person and the ~~county~~ school district superintendent, or the
43 superintendent's designee, subject to ~~county~~ school district board approval. During the first year
44 of employment as a service person, a service person may not transfer to another position of
45 employment during the first one half of the instructional term unless mutually agreed upon by the
46 service person and ~~county~~ school district superintendent, subject to ~~county~~ school district board
47 approval, except as follows:

48 (1) Upon return from an approved leave of absence, a service person may fill a vacant
49 position for which he or she is qualified or holds valid certification;

50 (2) A service person may apply for a posted, vacant position at any time. The successful
51 applicant for the position may not assume the position until the beginning of the next one half of
52 the instructional term; and

53 (3) Extracurricular assignments for school bus operators pursuant to section sixteen,
54 article four of this chapter are exempt from the requirements of this subsection.

§18A-2-8. Suspension and dismissal of school personnel by board; appeal.

1 (a) Notwithstanding any other provisions of law, a board may suspend or dismiss any
2 person in its employment at any time for: Immorality, incompetency, cruelty, insubordination,
3 intemperance, willful neglect of duty, unsatisfactory performance, the conviction of a felony or a
4 guilty plea or a plea of nolo contendere to a felony charge.

5 (b) A charge of unsatisfactory performance shall not be made except as the result of an
6 employee performance evaluation pursuant to section twelve of this article. The charges shall be
7 stated in writing served upon the employee within two days of presentation of the charges to the
8 board.

9 (c) The affected employee shall be given an opportunity, within five days of receiving the
10 written notice, to request, in writing, a level three hearing and appeals pursuant to the provisions
11 of article two, chapter six-c of this code, except that dismissal for the conviction of a felony or

12 guilty plea or plea of nolo contendere to a felony charge is not by itself a grounds for a grievance
13 proceeding. An employee charged with the commission of a felony may be reassigned to duties
14 which do not involve direct interaction with pupils pending final disposition of the charges.

§18A-2-9. Duties and responsibilities of school principals; assistant principals.

1 Upon the recommendation of the ~~county~~ school district superintendent of schools, the cou
2 ~~county~~ school district board of education shall employ and assign, through written contract, public
3 school principals who shall supervise the management and the operation of the school or schools
4 to which they are assigned. Such principals shall hold valid administrative certificates appropriate
5 for their assignments.

6 Beginning on July 1, 1994, the prerequisites for issuance of an administrative certificate
7 for principals shall include that the person has successfully completed at least six credit hours of
8 approved course work in public school management techniques at an accredited institution of
9 higher education and has successfully completed education and training in evaluation skills
10 through the center for professional development, or equivalent education and training in
11 evaluation skills approved by the state board.

12 Under the supervision of the superintendent and in accordance with the rules and
13 regulations of the ~~county~~ school district board of education, the principal shall assume
14 administrative and instructional supervisory responsibility for the planning, management,
15 operation and evaluation of the total educational program of the school or schools to which he or
16 she is assigned.

17 The principal may submit recommendations to the superintendent regarding the
18 appointment, assignment, promotion, transfer and dismissal of all personnel assigned to the
19 school or schools under said principal's control. Such recommendation shall be submitted in
20 writing as prescribed by the superintendent.

21 The principal shall perform such other duties as may be assigned by the superintendent
22 pursuant to the rules and regulations of the ~~county~~ school district board of education.

23 Upon recommendation of the ~~county~~ school district superintendent of schools, the ~~county~~
24 school district board of education shall, when needed, employ and assign, through written
25 contract, assistant principals who shall work under the direction of the school principal. Such
26 assistant principals shall hold valid administrative certificates appropriate for their assignments.

27 On or before July 1, 1989, and continuing thereafter, each ~~county~~ school district board of
28 education shall assign a certificated principal to each school and no principal may be assigned
29 more than two schools: *Provided*, That where enrollment exceeds four hundred students there
30 will be no additional schools assigned to that principal.

31 No principal assigned to more than one school may be assigned any teaching duties
32 except on a temporary emergency basis. No ~~county~~ school district shall have more teaching
33 principalships or multischool principalships than was present on January 1, 1988.

34 On or before July 1, 1993, and continuing thereafter, each ~~county~~ school district board of
35 education shall employ a full-time supervising principal at each school whose net enrollment
36 equals or exceeds one hundred seventy students. A principal assigned to a school with a net
37 enrollment equal to or greater than one hundred seventy students may not be assigned any
38 teaching duties except on a temporary emergency basis. When a principal is assigned on a full-
39 time basis to a school whose net enrollment is more than seventy-five students but less than one
40 hundred seventy students, such principal shall have a minimum of twenty hours per week for
41 nonteaching duties. A principal assigned on a full-time basis to a school with seventy-five students
42 or less shall have a minimum of ten hours per week for nonteaching duties: *Provided*, That nothing
43 in this section prohibits a ~~county~~ school district board of education from assigning a full-time
44 supervising principal to a school with a net enrollment of less than one hundred seventy students.

45 Nothing contained in this section shall be construed to reduce or limit the rights and
46 privileges of principals and assistant principals as teachers under the provisions of section one,
47 article one, chapter eighteen of the Code of West Virginia as amended; section one, article one,
48 chapter eighteen-a; and other provisions of this code: *Provided*, That on or before July 1, 1993,

49 the state Board of Education shall not deny a ~~county~~ school district board of education the right
 50 to place a principal in a school with less than one hundred seventy students.

§18A-2-11. Employee's right to attorney's fees and costs.

1 If an employee shall appeal to a circuit court an adverse decision of either a ~~county~~ school
 2 district board of education or of a hearing examiner rendered in a grievance or other proceeding
 3 pursuant to provisions of chapters eighteen and eighteen-a of this code and such person shall
 4 substantially prevail, the adverse party or parties shall be liable to such employee, upon final
 5 judgment or order, for court costs, and for reasonable attorney's fees, to be set by the court, for
 6 representing such employee in all administrative hearings and before the circuit court and the
 7 Supreme Court of Appeals, and shall be further liable to such employee for any court reporter's
 8 costs incurred during any such administrative hearings or court proceedings: *Provided*, That in no
 9 event shall such attorney's fees be awarded in excess of a total of \$1,000 for the administrative
 10 hearings and circuit court proceedings nor an additional \$1,000 for supreme court proceedings:
 11 *Provided, however*, That the requirements of this section shall not be construed to limit the school
 12 employee's right to recover reasonable attorney's fees in a mandamus proceeding brought under
 13 section eight, article four, chapter eighteen-a of this code.

**§18A-2-12. Performance evaluations of school personnel; professional personnel
 evaluation process; restrictions on requirements on lesson plans and record
 keeping by classroom teachers.**

1 (a) The state board shall adopt a written system for the evaluation of the employment
 2 performance of personnel, which system shall be applied uniformly by ~~county~~ school district
 3 boards in the evaluation of the employment performance of personnel employed by the board.

4 (b) The system adopted by the state board for evaluating the employment performance of
 5 professional personnel shall be in accordance with the provisions of this section.

6 (c) For purposes of this section, "professional personnel", "professional" or
 7 "professionals", means professional personnel and other professional employees, as defined in

8 section one, article one of this chapter but does not include classroom teachers, principals and
9 assistant principals subject to the evaluation processes established pursuant to section two,
10 article three-c of this chapter.

11 (d) In developing the professional personnel performance evaluation system, and
12 amendments thereto, the state board shall consult with the Center for Professional Development
13 created in article three-a of this chapter. The center shall participate actively with the state board
14 in developing written standards for evaluation which clearly specify satisfactory performance and
15 the criteria to be used to determine whether the performance of each professional meets those
16 standards.

17 (e) The performance evaluation system shall contain, but not be limited to, the following
18 information:

19 (1) The professional personnel positions to be evaluated;

20 (2) The frequency and duration of the evaluations, which shall be of such frequency and
21 duration as to insure the collection of a sufficient amount of data from which reliable conclusions
22 and findings may be drawn, but at least annually;

23 (3) The evaluation shall serve the following purposes:

24 (A) Serve as a basis for the improvement of the performance of the personnel in their
25 assigned duties;

26 (B) Provide an indicator of satisfactory performance for individual professionals;

27 (C) Serve as documentation for a dismissal on the grounds of unsatisfactory performance;

28 and

29 (D) Serve as a basis for programs to increase the professional growth and development
30 of professional personnel;

31 (4) The standards for satisfactory performance for professional personnel and the criteria
32 to be used to determine whether the performance of each professional meets those standards
33 and other criteria for evaluation for each professional position evaluated. Professional personnel,

34 as appropriate, shall demonstrate competency in the knowledge and implementation of the
35 technology standards adopted by the state board. If a professional fails to demonstrate
36 competency in the knowledge and implementation of these standards, he or she will be subject
37 to an improvement plan to correct the deficiencies; and

38 (5) Provisions for a written improvement plan, which shall be specific as to what
39 improvements, if any, are needed in the performance of the professional and shall clearly set forth
40 recommendations for improvements, including recommendations for additional education and
41 training during the professional's recertification or license renewal process.

42 (f) A professional whose performance is considered to be unsatisfactory shall be given
43 notice of deficiencies. A remediation plan to correct deficiencies shall be developed by the
44 employing ~~county~~ school district board and the professional. The professional shall be given a
45 reasonable period of time for remediation of the deficiencies and shall receive a statement of the
46 resources and assistance available for the purposes of correcting the deficiencies.

47 (g) No person may evaluate professional personnel for the purposes of this section or
48 professional educator for the purposes of section two, article three-c of this chapter unless the
49 person has an administrative certificate issued by the state superintendent and has successfully
50 completed education and training in evaluation skills through the center for professional
51 development, or equivalent education training approved by the state board, which will enable the
52 person to make fair, professional, and credible evaluations of the personnel whom the person is
53 responsible for evaluating. After July 1, 1994, no person may be issued an administrative
54 certificate or have an administrative certificate renewed unless the state board determines that
55 the person has successfully completed education and training in evaluation skills through the
56 center for professional development or equivalent education and training approved by the state
57 board.

58 (h) Any professional whose performance evaluation includes a written improvement plan
59 shall be given an opportunity to improve his or her performance through the implementation of

60 the plan. If the next performance evaluation shows that the professional is now performing
61 satisfactorily, no further action may be taken concerning the original performance evaluation. If
62 the evaluation shows that the professional is still not performing satisfactorily, the evaluator either
63 shall make additional recommendations for improvement or may recommend the dismissal of the
64 professional in accordance with the provisions of section eight of this article.

65 (i) This subsection applies to all classroom teachers irrespective of the process under
66 which they are evaluated.

67 (1) Lesson plans are intended to serve as a daily guide for teachers and substitutes for
68 the orderly presentation of the curriculum. Lesson plans may not be used as a substitute for
69 observations by an administrator in the performance evaluation process. A classroom teacher, as
70 defined in section one, article one of this chapter, may not be required to post his or her lesson
71 plans on the Internet or otherwise make them available to students and parents or to include in
72 his or her lesson plans any of the following:

73 (A) Teach and reteach strategies;

74 (B) Write to learn activities;

75 (C) Cultural diversity;

76 (D) Color coding; or

77 (E) Any other similar items which are not required to serve as a guide to the teacher or
78 substitute for daily instruction;

79 (2) The Legislature finds that classroom teachers must be free of unnecessary paper work
80 so that they can focus their time on instruction. Therefore, classroom teachers may not be
81 required to keep records or logs of routine contacts with parents or guardians;

82 (3) Nothing in this subsection may be construed to prohibit classroom teachers from
83 voluntarily posting material on the Internet; and

84 (4) Nothing in article three-c of this chapter may be construed to negate the provisions of
85 this subsection.

§18A-2-12a. Statement of policy and practice for the ~~county~~ school district boards and school personnel to minimize possible disagreement and misunderstanding.

1 (a) The Legislature makes the following findings:

2 (1) The effective and efficient operation of the public schools depends upon the
3 development of harmonious and cooperative relationships between ~~county~~ school district boards
4 and school personnel;

5 (2) Each group has a fundamental role to perform in the educational program and each
6 has certain separate, distinct and clearly defined areas of responsibility as provided in chapters
7 eighteen and eighteen-a of this code; and

8 (3) There are instances, particularly involving questions of wages, salaries and conditions
9 of work, that are subject to disagreement and misunderstanding between ~~county~~ school district
10 boards and school personnel and may not be so clearly set forth.

11 (b) The purpose of this section is to establish a statement of policy and practice for the
12 ~~county~~ school district boards and school personnel, as follows, in order to minimize possible
13 disagreement and misunderstanding:

14 (1) ~~County~~ School district boards, subject to the provisions of this chapter, chapter
15 eighteen of this code and the policies and rules of the state board, are responsible for the
16 management of the schools within their respective ~~counties~~ school districts. The powers and
17 responsibilities of ~~county~~ school district boards in setting policy and in providing management are
18 broad, but not absolute;

19 (2) The school personnel shares the responsibility for putting into effect the policies and
20 practices approved by the ~~county~~ school district board that employs them and the school
21 personnel also have certain rights and responsibilities as provided in statute, and in their
22 contracts;

23 (3) School personnel are entitled to meet together, form associations and work in concert
24 to improve their circumstances and the circumstances of the schools;

25 (4) ~~County~~ School district boards and school personnel can most effectively discharge
26 their total responsibilities to the public and to each other by establishing clear and open lines of
27 communication. School personnel should be encouraged to make suggestions, proposals and
28 recommendations through appropriate channels to the ~~county~~ school district board. Decisions of
29 the ~~county~~ school district board concerning the suggestions, proposals and recommendations
30 should be communicated to the school personnel clearly and openly;

31 (5) Official meetings of ~~county~~ school district boards are public meetings. School
32 personnel are free to attend the meetings without fear of reprisal and should be encouraged to
33 attend;

34 (6) All school personnel are entitled to know how well they are fulfilling their responsibilities
35 and should be offered the opportunity of open and honest evaluations of their performance on a
36 regular basis and in accordance with the provisions of section twelve of this article. All school
37 personnel are entitled to opportunities to improve their job performance prior to the termination or
38 transfer of their services. Decisions concerning the promotion, demotion, transfer or termination
39 of employment of school personnel, other than those for lack of need or governed by specific
40 statutory provisions unrelated to performance, should be based upon the evaluations, and not
41 upon factors extraneous thereto. All school personnel are entitled to due process in matters
42 affecting their employment, transfer, demotion or promotion; and

43 (7) All official and enforceable personnel policies of a ~~county~~ school district board must be
44 written and made available to its employees.

§18A-2-14. Mileage reimbursement for school personnel.

1 A ~~county~~ school district board shall reimburse any school personnel for each mile traveled
2 when the employee is required to use a personal motor vehicle in the course of employment. The
3 ~~county~~ school district board shall reimburse at the same rate for all employees in that ~~county~~
4 school district. The rate of reimbursement shall be at least the lesser of, and not more than the
5 greater of, the federal standard mileage rate and the rate authorized by the travel management

6 rule of the Department of Administration.

**ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL
DEVELOPMENT.**

**§18A-3-1. Teacher preparation programs; program approval and standards; authority to
issue teaching certificates.**

1 (a) The education of professional educators in the state is under the general direction and
2 control of the state board after consultation with the Secretary of Education and the Arts and the
3 Chancellor for Higher Education who shall represent the interests of educator preparation
4 programs within the institutions of higher education in this state as defined in section two, article
5 one, chapter eighteen-b of this code.

6 The education of professional educators in the state includes all programs leading to
7 certification to teach or serve in the public schools. The programs include the following:

8 (1) Programs in all institutions of higher education, including student teaching and teacher-
9 in-residence programs as provided in this section;

10 (2) Beginning teacher induction programs;

11 (3) Granting West Virginia certification to persons who received their preparation to teach
12 outside the boundaries of this state, except as provided in subsection (b) of this section;

13 (4) Alternative preparation programs in this state leading to certification, including
14 programs established pursuant to the provisions of sections one-a, one-b, one-c, one-d, one-e,
15 one-f, one-g, one-h and one-i of this article and programs which are in effect on the effective date
16 of this section; and

17 (5) Continuing professional education, professional development and in-service training
18 programs for professional educators employed in the public schools in the state.

19 (b) After consultation with the Secretary of Education and the Arts and the Chancellor for
20 Higher Education, the state board shall adopt standards for the education of professional

21 educators in the state and for awarding certificates valid in the public schools of this state. The
22 standards include, but are not limited to the following:

23 (1) A provision for the study of multicultural education. As used in this section, multicultural
24 education means the study of the pluralistic nature of American society including its values,
25 institutions, organizations, groups, status positions and social roles;

26 (2) A provision for the study of classroom management techniques, including methods of
27 effective management of disruptive behavior including societal factors and their impact on student
28 behavior; and(3) A teacher from another state shall be awarded a teaching certificate for a
29 comparable grade level and subject area valid in the public schools of this state, subject to section
30 ten of this article, if he or she has met the following requirements:

31 (A) Holds a valid teaching certificate or a certificate of eligibility issued by another state;

32 (B) Has graduated from an educator preparation program at a regionally accredited
33 institution of higher education or from another educator preparation program;

34 (C) Possesses the minimum of a bachelor's degree; and

35 (D) Meets all of the requirements of the state for full certification except employment.

36 (c) The state board may enter into an agreement with ~~county~~ school district boards for the
37 use of the public schools in order to give prospective teachers the teaching experience needed
38 to demonstrate competence as a prerequisite to certification to teach in the West Virginia public
39 schools.

40 (d) An agreement established pursuant to subsection (c) of this section shall recognize
41 student teaching as a joint responsibility of the educator preparation institution and the
42 cooperating public schools. The agreement shall include the following items:

43 (1) The minimum qualifications for the employment of public school teachers selected as
44 supervising teachers, including the requirement that field-based and clinical experiences be
45 supervised by a teacher fully certified in the state in which that teacher is supervising;

46 (2) The remuneration to be paid to public school teachers by the state board, in addition

47 to their contractual salaries, for supervising student teachers;

48 (3) Minimum standards to guarantee the adequacy of the facilities and program of the
49 public school selected for student teaching;

50 (4) Assurance that the student teacher, under the direction and supervision of the
51 supervising teacher, shall exercise the authority of a substitute teacher;

52 (5) A provision requiring any higher education institution with an educator preparation
53 program to document that the student teacher's field-based and clinical experiences include
54 participation and instruction with multicultural, at-risk and exceptional children at each
55 programmatic level for which the student teacher seeks certification; and

56 (6) A provision authorizing a school or school district that has implemented a
57 comprehensive beginning teacher induction program, to enter into an agreement that provides for
58 the training and supervision of student teachers consistent with the educational objectives of this
59 subsection by using an alternate structure implemented for the support, supervision and
60 mentoring of beginning teachers. The agreement is in lieu of any specific provisions of this
61 subsection and is subject to the approval of the state board.

62 (e) *Teacher-in-residence programs.* --

63 (1) In lieu of the provisions of subsections (c) and (d) of this section and subject to approval
64 of the state board, an institution of higher education with a program for the education of
65 professional educators in the state approved by the state board may enter into an agreement with
66 ~~county~~ school district boards for the use of teacher-in-residence programs in the public schools.

67 (2) A "teacher-in-residence program" means an intensively supervised and mentored
68 residency program for prospective teachers during their senior year that refines their professional
69 practice skills and helps them gain the teaching experience needed to demonstrate competence
70 as a prerequisite to certification to teach in the West Virginia public schools.

71 (3) The authorization for the higher education institution and the ~~county~~ school district
72 board to implement a teacher-in-residence program is subject to state board approval. The

73 provisions of the agreement include, but are not limited to, the following items:

74 (A) A requirement that the prospective teacher in a teacher-in-residence program has
75 completed all other preparation courses and has passed the appropriate basic skills and subject
76 matter test or tests required by the state board for teachers to become certified in the area for
77 which licensure is sought;

78 (B) A requirement that the teacher-in-residence serve only in a teaching position in the
79 ~~county~~ school district which has been posted and for which no other teacher fully certified for the
80 position has been employed;

81 (C) Specifics regarding the program of instruction for the teacher-in-residence setting forth
82 the responsibilities for supervision and mentoring by the higher education institution's educator
83 preparation program, the school principal, and peer teachers and mentors, and the responsibilities
84 for the formal instruction or professional development necessary for the teacher-in-residence to
85 perfect his or her professional practice skills. The program also may include other instructional
86 items as considered appropriate.

87 (D) A requirement that the teacher-in-residence hold a teacher-in-residence permit
88 qualifying the individual to teach in his or her assigned position as the teacher of record;

89 (E) A requirement that the salary and benefit costs for the position to which the teacher-
90 in-residence is assigned shall be used only for program support and to pay a stipend to the
91 teacher-in-residence as specified in the agreement, subject to the following:

92 (i) The teacher-in-residence is a student enrolled in the teacher preparation program of
93 the institution of higher education and is not a regularly employed employee of the ~~county~~ school
94 district board;

95 (ii) The teacher-in-residence is included on the certified list of employees of the ~~county~~
96 school district eligible for state aid funding the same as an employee of the ~~county~~ school district
97 at the appropriate level based on their permit and level of experience;

98 (iii) All state-aid-funding due to the ~~county~~ school district board for the teacher-in-residence

99 shall be used only in accordance with the agreement with the institution of higher education for
100 support of the program as provided in the agreement, including costs associated with instruction
101 and supervision as set forth in paragraph (C) of this subdivision;

102 (iv) The teacher-in-residence is provided the same liability insurance coverage as other
103 employees; and

104 (v) All state aid funding due to the ~~county~~ school district for the teacher-in-residence and
105 not required for support of the program shall be paid as a stipend to the teacher-in-residence:
106 *Provided*, That the stipend paid to the teacher-in-residence shall be no less than sixty-five percent
107 of all state aid funding due the ~~county~~ school district for the teacher-in-residence.

108 (F) Other provisions that may be required by the state board.

109 (f) In lieu of the student teaching experience in a public school setting required by this
110 section, an institution of higher education may provide an alternate student teaching experience
111 in a nonpublic school setting if the institution of higher education meets the following criteria:

112 (1) Complies with the provisions of this section;

113 (2) Has a state board approved educator preparation program; and

114 (3) Enters into an agreement pursuant to subdivisions (g) and (h) of this section.

115 (g) At the discretion of the higher education institution, an agreement for an alternate
116 student teaching experience between an institution of higher education and a nonpublic school
117 shall require one of the following:

118 (1) The student teacher shall complete at least one half of the clinical experience in a
119 public school; or

120 (2) The educator preparation program shall include a requirement that any student
121 performing student teaching in a nonpublic school shall complete the following:

122 (A) At least two hundred clock hours of field-based training in a public school; and

123 (B) A course, which is a component of the institution's state board approved educator
124 preparation program, that provides information to prospective teachers equivalent to the teaching

125 experience needed to demonstrate competence as a prerequisite to certification to teach in the
126 public schools in West Virginia. The course also shall include instruction on at least the following
127 elements:

128 (i) State board policy and provisions of this code governing public education;

129 (ii) Requirements for federal and state accountability, including the mandatory reporting of
130 child abuse;

131 (iii) Federal and state mandated curriculum and assessment requirements, including
132 multicultural education, safe schools and student code of conduct;

133 (iv) Federal and state regulations for the instruction of exceptional students as defined by
134 the Individuals with Disabilities Education Act, 20 U.S.C. §1400 *et seq.*; and

135 (v) Varied approaches for effective instruction for students who are at-risk.

136 (h) In addition to the requirements set forth in subsection (g) of this section, an agreement
137 for an alternate student teaching experience between an institution of higher education and a
138 nonpublic school shall include the following:

139 (1) A requirement that the higher education institution with an educator preparation
140 program shall document that the student teacher's field-based and clinical experiences include
141 participation and instruction with multicultural, at-risk and exceptional children at each
142 programmatic level for which the student teacher seeks certification; and

143 (2) The minimum qualifications for the employment of school teachers selected as
144 supervising teachers, including the requirement that field-based and clinical experiences be
145 supervised by a teacher fully certified in the state in which that teacher is supervising.

146 (i) The state superintendent may issue certificates as provided in section two-a of this
147 article to graduates of educator preparation programs and alternative educator preparation
148 programs approved by the state board. The certificates are issued in accordance with this section
149 and rules adopted by the state board after consultation with the Secretary of Education and the
150 Arts and the Chancellor for Higher Education.

151 (1) A certificate to teach may be granted only to a person who meets the following criteria:

152 (A) Is a citizen of the United States, except as provided in subdivision (2) of this
153 subsection;

154 (B) Is of good moral character;

155 (C) Is physically, mentally and emotionally qualified to perform the duties of a teacher; and

156 (D) Is at least eighteen years of age on or before October 1 of the year in which his or her
157 certificate is issued.

158 (2) A permit to teach in the public schools of this state may be granted to a person who is
159 an exchange teacher from a foreign country or an alien person who meets the requirements to
160 teach.

161 (j) In consultation with the Secretary of Education and the Arts and the Chancellor for
162 Higher Education, institutions of higher education approved for educator preparation may
163 cooperate with each other, with the center for professional development and with one or more
164 ~~county~~ school district boards to organize and operate centers to provide selected phases of the
165 educator preparation program. The phases include, but are not limited to the following:

166 (1) Student teaching and teacher-in-residence programs;

167 (2) Beginning teacher induction programs;

168 (3) Instruction in methodology; and

169 (4) Seminar programs for college students, teachers with provisional certification,
170 professional support team members and supervising teachers.

171 By mutual agreement, the institutions of higher education, the center for professional
172 development and ~~county~~ school district boards may budget and expend funds to operate the
173 centers through payments to the appropriate fiscal office of the participating institutions, the center
174 for professional development and the ~~county~~ school district boards.

175 (k) The provisions of this section do not require discontinuation of an existing student
176 teacher training center or school which meets the standards of the state board.

177 (l) All institutions of higher education approved for educator preparation in the 1962-63
 178 school year continue to hold that distinction so long as they meet the minimum standards for
 179 educator preparation. Nothing in this section infringes upon the rights granted to any institution
 180 by charter given according to law previous to the adoption of this code.

181 (m) *Definitions.* -- For the purposes of this section, the following words have the meanings
 182 ascribed to them unless the context clearly indicates a different meaning:

183 (1) "Nonpublic school" means a private school, parochial school, church school, school
 184 operated by a religious order or other nonpublic school that elects to meet the following conditions:

185 (A) Comply with the provisions of article twenty-eight, chapter eighteen of this code;

186 (B) Participate on a voluntary basis in a state operated or state sponsored program
 187 provided to this type school pursuant to this section; and

188 (C) Comply with the provisions of this section;

189 (2) "At-risk" means a student who has the potential for academic failure, including, but not
 190 limited to, the risk of dropping out of school, involvement in delinquent activity or poverty as
 191 indicated by free or reduced lunch status; and

192 (3) "Exceptional child" or "exceptional children" has the meaning ascribed to these terms
 193 pursuant to section one, article twenty, chapter eighteen of this code, but, as used in this section,
 194 the terms do not include gifted students.

**§18A-3-1f. Alternative program participation; eligibility for alternative program certificate;
 contract renewals; hiring preference.**

1 (a) *Alternative program participation.* – A person may not participate in an alternative
 2 program unless he or she holds an alternative program teacher certificate issue by the State
 3 Superintendent for the alternative program position in which he or she will be teaching. An
 4 alternative program teacher certificate is the same as a professional teaching certificate for the
 5 purpose of issuing a continuing contract.

6 (b) *Eligibility for alternative program teacher certificate.* – To be eligible for an alternative

7 program teacher certificate, a person shall:

8 (1) Possess at least a bachelor's degree from a regionally accredited institution of higher
9 education;

10 (2) Pass the same basic skills and subject matter test or tests required by the State Board
11 for traditional program candidates to become certified in the area for which he or she is seeking
12 licensure;

13 (3) Hold United States citizenship;

14 (4) Be of good moral character;

15 (5) Be physically, mentally and emotionally qualified to perform the duties of a teacher;

16 (6) Attain the age of eighteen years on or before October 1 of the year in which the
17 alternative program teacher certificate is issued;

18 (7) Receive from a ~~county~~ school district superintendent a formal offer of employment in
19 an area of critical need and shortage and by a school or school district that is a member of an
20 approved educational provider;

21 (8) Have relevant academic or occupational qualifications that reasonably indicate that the
22 person will be competent to fill the teaching position in which he or she would be employed. For
23 the purposes of this section, 'reasonably indicate' means an academic major or occupational
24 area the same as or similar to the subject matter to which the alternative program teacher is being
25 hired to teach; and

26 (9) Qualify for employment after a criminal history check made pursuant to section ten of
27 this article.

28 (c) *Eligibility for alternative program certificate: American Sign Language.* – If a person
29 seeks certification to teach American Sign Language, in lieu of subdivisions (1) and (2),
30 subsection (b) of this section, he or she shall pass one or more appropriate State Board approved
31 tests demonstrating his or her proficiency in American Sign Language.

32 (d) *Eligibility for alternative program certificate: selected vocational and technical areas.* –

33 If a person seeks certification to teach in selected vocational and technical areas, in lieu of
34 subdivisions (1) and (2), subsection (b) of this section, he or she shall pass one or more
35 appropriate State Board approved tests demonstrating his or her proficiency in the basic skills
36 and occupational content areas.

37 (e) *Contract renewals.* –

38 (1) A ~~county~~ school district board shall renew an alternative program teacher's contract
39 from year to year as long as he or she makes satisfactory progress in the applicable alternative
40 education program and until he or she completes the alternative program, except as provided in
41 subdivision (2) of this subsection.

42 (2) If the school or school district that employs the alternative program teacher reduces its
43 overall number of teachers, the alternative program teacher is subject to the same force reduction
44 rules and procedures as any other employee, except those that relate to seniority. In no event will
45 an alternative program teacher displace a professional educator as defined in section one, article
46 one of this chapter.

§18A-3-2. Teacher certification; required; expiration;

1 qualifications; certification of aliens.

2 Any professional educator, as defined in article one of this chapter, who is employed within
3 the public school system of the state shall hold a valid teaching certificate licensing him or her to
4 teach in the specializations and grade levels as shown on the certificate for the period of his or
5 her employment. If a teacher is employed in good faith on the anticipation that he or she is eligible
6 for a certificate and it is later determined that the teacher was not eligible, the state Superintendent
7 of Schools may authorize payment by the ~~county~~ school district board of education to the teacher
8 for a time not exceeding three school months or the date of notification of his or her ineligibility,
9 whichever shall occur first. All certificates shall expire on June 30 of the last year of their validity
10 irrespective of the date of issuance.

§18A-3-2a. Certificates valid in the public schools that may be issued by the State

Superintendent.

1 In accordance with State Board rules for the education of professional educators adopted
2 pursuant to section one of this article and subject to the limitations and conditions of that section,
3 the State Superintendent may issue the following certificates valid in the public schools of the
4 state:

5 (a) *Professional teaching certificates.* --

6 (1) A professional teaching certificate for teaching in the public schools may be issued to
7 a person who meets the following conditions:

8 (A) Holds at least a bachelor's degree from a regionally accredited institution of higher
9 education, and

10 (i) Has passed appropriate State Board approved basic skills and subject matter tests in
11 the area for which licensure is being sought; and

12 (ii) Has completed a program for the education of teachers which meets the requirements
13 approved by the State Board; or

14 (iii) Has met equivalent standards at institutions in other states; or

15 (iv) Has completed three years of successful teaching experience within the last seven
16 years under a license issued by another state in the area for which licensure is being sought; or

17 (v) Has completed an alternative program approved by another state; or

18 (B) Holds at least a bachelor's degree from an accredited institution of higher education;
19 and

20 (i) Has passed appropriate State Board approved basic skills and subject matter tests;
21 and

22 (ii) Has completed an alternative program for teacher education as provided in this article;
23 and

24 (iii) Is recommended for a certificate in accordance with the provisions of section one-i of
25 this article relating to the program; and

- 26 (iv) Is recommended by the State Superintendent based on documentation submitted.
- 27 (2) The certificate shall be endorsed to indicate the grade level or levels or areas of
28 specialization in which the person is certified to teach or to serve in the public schools.
- 29 (3) The initial professional certificate is issued provisionally for a period of three years from
30 the date of issuance:
- 31 (A) The certificate may be converted to a professional certificate valid for five years subject
32 to successful completion of a beginning teacher induction program, if applicable; or
- 33 (B) The certificate may be renewed subject to rules adopted by the State Board.
- 34 (b) *Alternative program teacher certificate.* -- An alternative program teacher certificate
35 may be issued to a candidate who is enrolled in an alternative program for teacher education
36 approved by the State Board.
- 37 (1) The certificate is valid only for the alternative program position in which the candidate
38 is employed and is subject to enrollment in the program.
- 39 (2) The certificate is valid while the candidate is enrolled in the alternative program, up to
40 a maximum of three years, and may not be renewed.
- 41 (c) *Professional administrative certificate.* --
- 42 (1) A professional administrative certificate, endorsed for serving in the public schools,
43 with specific endorsement as a principal, vocational administrator, supervisor of instructions or
44 superintendent, may be issued to a person who has completed requirements all to be approved
45 by the State Board as follows:
- 46 (A) Holds at least a master's degree from an institution of higher education accredited to
47 offer a master's degree; and
- 48 (i) Has successfully completed an approved program for administrative certification
49 developed by the State Board in cooperation with the chancellor for higher education, and
- 50 (ii) Has successfully completed education and training in evaluation skills through the
51 center for professional development, or equivalent education and training in evaluation skills

52 approved by the State Board, and

53 (iii) Possesses three years of management level experience.

54 (2) Any person serving in the position of dean of students on June 4, 1992, is not required
55 to hold a professional administrative certificate.

56 (3) The initial professional administrative certificate is issued provisionally for a period of
57 five years. This certificate may be converted to a professional administrative certificate valid for
58 five years or renewed, subject to the regulations of the State Board.

59 (d) *Paraprofessional certificate.* -- A paraprofessional certificate may be issued to a person
60 who meets the following conditions:

61 (1) Has completed thirty-six semester hours of post-secondary education or its equivalent
62 in subjects directly related to performance of the job, all approved by the State Board; and

63 (2) Demonstrates the proficiencies to perform duties as required of a paraprofessional as
64 defined in section eight, article four of this chapter.

65 (e) *Other certificates; permits.* --

66 (1) Other certificates and permits may be issued, subject to the approval of the State
67 Board, to persons who do not qualify for the professional or paraprofessional certificate.

68 (2) A certificate or permit may not be given permanent status and a person holding one of
69 these credentials shall meet renewal requirements provided by law and by regulation, unless the
70 State Board declares certain of these certificates to be the equivalent of the professional
71 certificate.

72 (3) Within the category of other certificates and permits, the State Superintendent may
73 issue certificates for persons to serve in the public schools as athletic coaches or coaches of other
74 extracurricular activities, whose duties may include the supervision of students, subject to the
75 following limitations:

76 (A) The person is employed under a contract with the ~~county~~ school district board of
77 education.

78 (i) The contract specifies the duties to be performed, specifies a rate of pay that is
79 equivalent to the rate of pay for professional educators in the district who accept similar duties as
80 extra duty assignments, and provides for liability insurance associated with the activity; and

81 (ii) The person holding this certificate is not considered an employee of the board for salary
82 and benefit purposes other than as specified in the contract.

83 (B) The person completes an orientation program designed and approved in accordance
84 with State Board rules.

85 (f) *Teacher-In-Residence Permit.* --

86 (1) A teacher-in-residence permit may be issued to a candidate who is enrolled in a
87 teacher-in-residence program in accordance with an agreement between an institution of higher
88 education and a ~~county~~ school district board. The agreement is developed pursuant to subsection
89 (e), section one of this article and requires approval by the State Board.

90 (2) The permit is valid only for the teacher-in-residence program position in which the
91 candidate is enrolled and is subject to enrollment in the program. The permit is valid for no more
92 than one school year and may not be renewed.

§18A-3-2d. Beginning principal internships.

1 (a) Every person hired for the first time in a ~~county~~ school district system as an assistant
2 principal, principal or vocational administrator after July 1, 1995, shall complete a one school year,
3 beginning principal internship program under the provisions of this section.

4 (b) The beginning principal internship program is a ~~county~~ school district system based
5 program intended to provide appropriate orientation activities and supervision to beginning
6 assistant principals, principals or vocational administrators of this state. The beginning principal
7 internship shall consist of the following components:

8 (1) An orientation program to be conducted prior to the beginning of the instructional term,
9 but within the employment term, developed by the ~~county~~ school district system: *Provided*, That
10 if a beginning principal is hired during the instructional term the orientation program shall be

11 conducted during the instructional term;

12 (2) The scheduling of no less than three regular meetings per semester during the school
13 year between the mentor and beginning principal. Topics for each meeting may consist of, but
14 are not limited to, the following: Evaluation of personnel, budgeting, scheduling, instructional
15 leadership, discipline, public relations, conferencing skills or other topics determined by the
16 mentor and intern;

17 (3) The provision of necessary release time from regular duties for the mentor as agreed
18 to by the ~~county~~ school district superintendent and the beginning principal and a stipend of at
19 least \$600 for the mentor for duties as a mentor, to be paid by the state Department of Education;
20 and

21 (4) Documentation of the beginning principal internship recorded on the evaluation form
22 currently developed by the ~~local county~~ school district.

23 (c) Mentors are selected by the ~~county~~ school district superintendent and must have a
24 minimum of five years of administrative experience as an assistant principal, principal or
25 vocational administrator. Mentors must complete a staff development program approved by the
26 West Virginia Department of Education prior to their employment as a mentor. The mentor must
27 not be responsible for or a participant in any evaluation or supervision of the beginning principal
28 intern.

§18A-3-3a. Payment of tuition, registration and other fees for teachers; maximum payment per teacher.

1 (a) The West Virginia Department of Education shall promulgate rules to administer the
2 reimbursement of tuition, registration and other required fees for coursework completed by
3 teachers in accordance with the provisions of this section. The rules shall provide for
4 reimbursement for courses completed toward both certification renewal and additional
5 endorsement in a shortage area.

6 (b) As used in this section, the following words and phrases have the meanings ascribed

7 to them:

8 (1) "Teacher" has the meaning provided in section one, article one, chapter eighteen of
9 this code.

10 (2) "Shortage area" shall be defined by state board policy to indicate the subject areas for
11 which an insufficient number of teachers are available.

12 (3) "Certification" and "certificate" mean a valid West Virginia:

13 (A) Professional teaching, service or administrative certificate, or its equivalent; or

14 (B) Provisional professional teaching, service or administrative certificate, or its equivalent.

15 (4) "Requirements for certification renewal" are those requirements of the state
16 Department of Education as provided in section three of this article.

17 (5) "Requirements for additional endorsement" are those requirements of the state
18 Department of Education as provided in section three of this article.

19 (6) "State institution of higher education" has the meaning provided in section two, article
20 one, chapter eighteen-b of this code.

21 (c) To the extent of funds appropriated for the purposes specified in this section, payment
22 shall be made to any teacher who:

23 (1) Holds either a valid West Virginia:

24 (A) Certificate; or

25 (B) First class permit for full-time employment; and

26 (2) Is seeking:

27 (A) An additional endorsement in a shortage area, and either resides in the state or is
28 employed regularly for instructional purposes in a public school in the state; or

29 (B) Certification renewal, and has a continuing contract with a ~~county~~ school district board.

30 (d) The payment shall be made as reimbursement for the tuition, registration and other
31 required fees for any course completed at:

32 (1) Any college or university within the state; or

33 (2) A college or university outside the state if prior approval is granted by the department.

34 (e) A course is eligible for reimbursement if it meets the requirements for:

35 (1) An additional endorsement in a shortage area; or

36 (2) Certification renewal.

37 (f) If funds appropriated for the purposes specified in this section are insufficient for the
38 reimbursement of all eligible courses within the limits provided in this section, the West Virginia
39 Department of Education shall make the reimbursements for courses for additional endorsement
40 in a shortage area and certification renewal in a shortage area first.

41 (g) Payment made for any single fee may not exceed the amount of the highest
42 corresponding fee charged at a state institution of higher education.

43 (h) Reimbursement for courses completed toward certification renewal is limited to fifteen
44 semester hours of courses for any teacher. Reimbursement for courses completed toward
45 additional endorsement in a shortage area is limited to fifteen semester hours of courses for any
46 teacher.

47 (i) The West Virginia Department of Education shall seek funding from sources other than
48 general revenue appropriation, including, but not limited to, workforce investment funds.

49 (j) No provision of this section may be construed to require any appropriation or any
50 specific amount of appropriation for the purposes specified in this section, or to require the
51 department to expend funds for those purposes from any other amounts appropriated for
52 expenditure by the department.

§18A-3-6. Grounds for revocation of certificates; recalling certificates for correction.

1 The state superintendent may, after ten days' notice and upon proper evidence, revoke
2 the certificates of any teacher for any of the following causes: Intemperance; untruthfulness;
3 cruelty; immorality; the conviction of a felony or a guilty plea or a plea of no contest to a felony
4 charge; the conviction, guilty plea or plea of no contest to any charge involving sexual misconduct
5 with a minor or a student; or for using fraudulent, unapproved or insufficient credit to obtain the

6 certificates: *Provided*, That the certificates of a teacher may not be revoked for any matter for
7 which the teacher was disciplined, less than dismissal, by the ~~county~~ school district board that
8 employs the teacher, nor for which the teacher is meeting or has met an improvement plan
9 determined by the ~~county~~ school district board, unless it can be proven by clear and convincing
10 evidence that the teacher has committed one of the offenses listed in this subsection and his or
11 her actions render him or her unfit to teach: *Provided, however*, That in order for any conduct of
12 a teacher involving intemperance; cruelty; immorality; or using fraudulent, unapproved or
13 insufficient credit to obtain the certificates to constitute grounds for the revocation of the
14 certificates of the teacher, there must be a rational nexus between the conduct of the teacher and
15 the performance of his or her job. The state superintendent may designate the West Virginia
16 commission for professional teaching standards or members thereof to conduct hearings on
17 revocations or certificate denials and make recommendations for action by the state
18 superintendent.

19 It shall be the duty of any ~~county~~ school district superintendent who knows of any acts on
20 the part of any teacher for which a certificate may be revoked in accordance with this section to
21 report the same, together with all the facts and evidence, to the state superintendent for such
22 action as in the state superintendent's judgment may be proper.

23 If a certificate has been granted through an error, oversight, or misinformation, the state
24 superintendent has authority to recall the certificate and make such corrections as will conform to
25 the requirements of law and the state board.

§18A-3-8. ~~County~~ School district professional staff development councils.

1 The Legislature finds the professional expertise and insight of the classroom teacher to
2 be an invaluable ingredient in the development and delivery of staff development programs which
3 meet the needs of classroom teachers.

4 Therefore, a professional staff development council comprised of proportional
5 representation from the major school levels and from vocational, special education and other

6 specialties in proportion to their employment numbers in the ~~county~~ school district shall be
7 established in each school district in the state in accordance with rules adopted by the state Board
8 of Education. Nominations of instructional personnel to serve on the ~~county~~ school district staff
9 development council may be submitted by the faculty Senates of the district to the ~~county~~ school
10 district superintendent who shall prepare and distribute ballots and tabulate the votes of the
11 counties instructional personnel voting on the persons nominated. Each ~~county~~ school district
12 staff development council shall consist of between nine and fifteen members at the discretion of
13 the ~~county~~ school district superintendent based on the size of the ~~county~~ school district. The
14 councils have final authority to propose staff development programs for their peers based upon
15 rules established by statute and the council on professional education.

16 The ~~county~~ school district superintendent or a designee has an advisory, nonvoting role
17 on the council. The ~~county~~ school district board shall make available an amount equal to one tenth
18 of one percent of the amounts provided in accordance with section four, article nine-a, chapter
19 eighteen of this code and credit the funds to an account to be used by the council to fulfill its
20 objectives. The local board has final approval of all proposed disbursements.

21 Any funds credited to the council during a fiscal year, but not used by the council, shall be
22 carried over in the council account for use in the next fiscal year. These funds are separate and
23 apart from, and in addition to, those funds to be credited to the council pursuant to this section.
24 At the end of each fiscal year, the council shall report to each faculty Senate chairperson the
25 amount of funds carried over into the next fiscal year.

26 The professional staff development project of the center for professional development
27 shall assist in the development and delivery of staff development programs by the ~~county~~ school
28 district staff development councils and shall coordinate staff development efforts statewide.

§18A-3-9. ~~County~~ School district service personnel staff development councils.

1 (a) The Legislature finds the professional expertise and insight of service personnel to be
2 an invaluable ingredient in the development and delivery of staff development programs which

3 meet the needs of service personnel.

4 (b) Therefore, a service personnel staff development council comprised of representation
5 from the various categories of service personnel employment shall be established in each school
6 district in the state in accordance with rules adopted by the state Board of Education. Nominations
7 of service personnel to serve on the ~~county~~ school district service personnel staff development
8 council may be submitted by the six groups, as defined in subsection (e), section one, article one
9 of this chapter, of the district to the ~~county~~ school district superintendent who shall prepare and
10 distribute ballots and tabulate the votes of the counties service personnel voting on the persons
11 nominated. Each ~~county~~ school district staff service personnel development council shall consist
12 of two employees from each category of employment one of whom shall be elected as chairperson
13 by the staff development council members. The councils have final authority to propose staff
14 development programs for their peers based upon rules established by statute and the council on
15 service personnel education. The ~~county~~ school district superintendent or a designee has an
16 advisory, nonvoting role on the council. The ~~county~~ school district board shall make available an
17 amount equal to one tenth of one percent of the amounts provided in accordance with section
18 five, article nine-a, chapter eighteen of this code and credit the funds to an account to be used by
19 the council to fulfill its objectives. The local board has the final approval of all proposed
20 disbursements. Any funds credited to the council during a fiscal year, but not used by the council,
21 shall be carried over in the council account for use in the next fiscal year. Any carried-over funds
22 shall be separate and apart from, and in addition to, the funds to be credited to the council
23 pursuant to this section.

24 (c) At the end of each fiscal year, the ~~county~~ school district board of education shall report
25 to the staff development chairperson the total amount and balance of the staff development
26 council account, the amount appropriated for the recent fiscal year, the amount of funds requested
27 and used by the staff development council, and the amount of funds carried over into the next
28 fiscal year. The ~~county~~ school district board of education shall further provide to the state

29 Superintendent of Schools at the end of each fiscal year the names of the service personnel staff
30 development council members, the name of the chairperson, the number of meetings the service
31 personnel staff development council held to plan staff development programs and the number of
32 hours service employees were provided during their employment terms to implement their staff
33 development programs.

§18A-3-10. Criminal history check of applicants for licensure by the state Department of Education.

1 Beginning January 1, 2002, any applicant for an initial license issued by the West Virginia
2 Department of Education shall be fingerprinted by the West Virginia state police in accordance
3 with state board policy in order to determine the applicant's suitability for licensure. The
4 fingerprints shall be analyzed by the State Police for a state criminal history record check through
5 the central abuse registry and then forwarded to the federal bureau of investigation for a national
6 criminal history record check. Information contained in either the central abuse registry record or
7 the federal bureau of investigation record may form the basis for the denial of a certificate for just
8 cause. The applicant for initial certification pays for the cost of obtaining the central abuse registry
9 record and the federal bureau of investigation record.

10 Upon written consent to the state department by the applicant and within ninety days of
11 the state fingerprint analysis, the results of a state analysis may be provided to a ~~county~~ school
12 district board with which the applicant is applying for employment without further cost to the
13 applicant.

14 Information maintained by the state department or a ~~county~~ school district board which
15 was obtained for the purpose of this section is exempt from the disclosure provisions of chapter
16 twenty-nine-b of this code. Nothing in this section prohibits disclosure or publication of information
17 in a statistical or other form which does not identify the individuals involved or provide personal
18 information.

ARTICLE 3B. EDUCATORS' PROFESSIONAL STANDARDS BOARD.

§18A-3B-2. Educators' professional standards board; composition; appointment; terms of members.

1 (a) There is created an educators' professional standards board consisting of nine
2 members appointed by the Governor, with the advice and consent of the Senate.

3 (b) The term of office for each member is three years except that the original term of three
4 members, including not more than one teacher, shall be for one year, and the original term of
5 three members, including not more than two teachers, shall be for two years.

6 (c) Any member who, through change of employment standing or other circumstances, no
7 longer meets the criteria for the position to which the member was appointed shall no longer be
8 eligible to serve in that position, and the position on the commission shall become vacant sixty
9 days following the member's change in circumstances.

10 (d) The membership of the educators' professional standards board shall consist of: One
11 classroom teacher currently employed by a ~~county~~ school district board of education teaching
12 vocational education; one classroom teacher currently employed by a ~~county~~ school district board
13 of education teaching in an elementary school; one classroom teacher currently employed by a
14 ~~county~~ school district board of education teaching in a middle school; one classroom teacher
15 currently employed by a ~~county~~ school district board of education teaching in a secondary school;
16 one classroom teacher currently employed by a ~~county~~ school district board of education teaching
17 special education; the state superintendent of schools or his or her designee; one elementary
18 school or secondary school principal currently employed by a ~~county~~ school district board of
19 education; one ~~county~~ school district superintendent of schools currently employed by a ~~county~~
20 school district board of education; and one administrator or faculty member representing a public
21 college or university in West Virginia.

22 No more than five members of the board may belong to the same political party nor reside
23 in the same congressional district. Members of the board must have been actively engaged in
24 teaching, supervising or administering in the public schools or in approved teacher education

25 institutions in West Virginia for the period of five years immediately preceding appointment. In
26 addition, members appointed to represent classroom teachers under this section must hold valid
27 West Virginia teaching certificates other than permits.

28 (e) A member of the board shall receive no compensation for his or her services as a
29 member, but subject to any other applicable law regulating travel and other expenses for state
30 officer, he or she shall receive his or her actual and necessary travel and other expenses incurred
31 in the performance of his or her official duties: *Provided*, That any member who is an employee
32 of a ~~county~~ school district board of education shall be released by his or her employer to attend
33 board meetings without loss of salary or personal leave.

ARTICLE 3C. IMPROVING TEACHING AND LEARNING.

§18A-3C-2. Performance evaluations of professional personnel.

1 (a) The intent of the Legislature is to allow for a multi-step statewide implementation of
2 performance evaluations for professional personnel pursuant to this section consistent with sound
3 educational practices and resources available resulting in full state-wide implementation by no
4 later than the school year 2013-2014. Beginning with the schools included in the evaluation
5 processes for professional personnel piloted by the Department of Education during the 2011-
6 2012 school year, additional schools or school systems shall be subject to the provisions of this
7 article in accordance with a plan established by the state board to achieve full statewide
8 implementation by no later than the school year 2013-2014. For schools and school systems
9 subject to the provisions of this article, the provisions of this article shall govern when they are in
10 conflict with other provisions of this chapter and chapter eighteen of this code. Specifically, the
11 provisions of this article govern for the performance evaluation of classroom teachers, principals
12 and assistant principals employed in these schools and school systems. To the extent that this
13 article conflicts with the provisions of section twelve, article two of this chapter relating to
14 professional personnel performance evaluations, this article shall govern. The state board shall
15 submit a report on its plan for the phased implementation of this article to the Legislative Oversight

16 Commission on Education Accountability at the Commission's July interim meeting in each year
17 of the phased implementation. The report shall include an update on the implementation of this
18 article including, but not limited to the evaluation process and a list of the schools and school
19 systems subject to the provisions of this article. To assist the Legislative Oversight Commission
20 on Education Accountability in monitoring the implementation of this article, the state board shall
21 report to the Commission upon its request throughout the implementation process, including but
22 not limited to, reports on the results of surveys of teachers and principals on the implementation
23 and use of the new evaluation system, the adequacy of the professional development given to
24 employees on the purposes, instruments and procedures of the evaluation process, the time
25 consumed by the evaluation process and the various tasks required for employees of different
26 levels of experience, the aggregate results of the evaluations and any recommendations for
27 changes in the process or other aspects of the duties of affected employees to improve the focus
28 on the core mission of schools of teaching and learning.

29 (b) Before July 1, 2013, the state board shall adopt a legislative rule in accordance with
30 article three-b, chapter twenty-nine-a of this code, for evaluating the performance of each
31 professional person each year. The state board shall submit a draft of the proposed rule to the
32 Legislative Oversight Commission on Education Accountability by February 15, 2013, and a final
33 draft proposed rule prior to adoption. The rule shall provide for performance evaluations of
34 professional personnel to be conducted in accordance with this section in each school and school
35 system beginning with the 2013-14 school year.

36 (c) (1) The process adopted by the state board for evaluating the performance of
37 classroom teachers shall incorporate at least the following:

38 (A) Alignment with the West Virginia professional teaching standards adopted by the state
39 board that establish the foundation for educator preparation, teacher assessment and
40 professional development throughout the state;

41 (B) Employment of the professional teaching standards to provide explicit and extensive

42 measures of the work of teaching and what teachers must know and be able to do and provide
43 evaluative measures of educator performance;

44 (C) The use of two pieces of evidence at two points in time over the instructional term to
45 demonstrate student learning as an indicator of educator performance; and

46 (D) The use of school's school-wide student learning growth as measured by the state-
47 wide summative assessment as an evaluative measure of all educators employed in the school.

48 (2) Eighty percent of the evaluation shall be based on an appraisal of the educator's ability
49 to perform the critical standard elements of the professional teaching standards. The appraisal
50 shall include conferences with the evaluator reinforced through observation. Fifteen percent of
51 the evaluation shall be based on evidence of the learning of the students assigned to the educator
52 in accordance with paragraph (C), subdivision (1) of this subsection, and five percent of the
53 evaluation shall be based on student learning growth measured by the school-wide score on the
54 state summative assessment in accordance with paragraph (D), subdivision (1) of this subsection.

55 (d) (1) The process adopted by the state board for evaluating the performance of principals
56 and assistant principals shall include at least the following:

57 (A) Alignment with the West Virginia professional leadership standards adopted by the
58 state board establishing the responsibility of principals for the collective success of their school
59 including the learning, growth and achievement of students, staff and self;

60 (B) Employment of the professional leadership standards to provide explicit and extensive
61 measures of the work of school leadership focused on the continuous improvement of teaching
62 and learning. The process shall include conferences and goal setting with the superintendent or
63 his or her designee and the use of a survey of stakeholders to assist in identifying the needs and
64 establishing the goals for the school and the principal. The survey shall be distributed to at least
65 the following stakeholders: Students, parents, teachers and service personnel. The evaluative
66 measures shall include the use of data, evidence and artifacts to confirm the principal's
67 performance on achieving the goals established by the principal and superintendent;

68 (C) The use of two pieces of evidence at two points in time over the instructional term to
69 demonstrate the growth in student learning at the school; and

70 (D) The use of the school's school-wide student learning growth as measured by the state-
71 wide summative assessment as an evaluative measure of all educators employed in the school.

72 (2) Eighty percent of the evaluation shall be based on an appraisal of the principal's or the
73 assistant principal's ability to perform the critical standard elements of the professional leadership
74 standards and achieve the goals established for the principal and the school. Fifteen percent of
75 the evaluation shall be based on evidence of the learning of the students assigned to the school
76 in accordance with paragraph (C), subdivision (1) of this subsection, and five percent of the
77 evaluation shall be based on student learning growth measured by the school-wide score on the
78 state summative assessment in accordance with paragraph (D), subdivision (1) of this subsection.

79 (e) Evaluations of the performance of professional personnel shall serve the following
80 purposes:

81 (1) Serve as a basis for the improvement of the performance of the professional personnel
82 in their assigned duties;

83 (2) Serve as the basis for providing professional development specifically targeted on the
84 area or areas identified through the evaluation process as needing improvement. If possible, this
85 targeted professional development should be delivered at the school-site using collaborative
86 processes, mentoring or coaching or other approaches that maximize use of the instructional
87 setting;

88 (3) Serve as the basis for establishing priorities for the provision of ~~county~~ school district-
89 level professional development when aggregate evaluation data from the ~~county~~ school district 's
90 schools indicates an area or areas of needed improvement;

91 (4) Serve as a basis for informing the teacher preparation programs in this state of an area
92 or areas of needed improvement in the programs, or informing a specific program of needed
93 improvement, when state-level aggregate evaluation data indicates that beginning teachers who

94 have graduated from the program have specific weaknesses;

95 (5) Provide an indicator of level of performance of the professional personnel;

96 (6) Serve as a basis for programs to increase the professional growth and development
97 of professional personnel; and

98 (7) Serve as documentation for a dismissal on the grounds of unsatisfactory performance.

99 (f) The rule adopted by the state board shall include standards for performance of
100 professional personnel and the criteria to be used to determine whether their performance meets
101 the standards. The rule also shall include guidance on best practices for providing time within the
102 school day for teachers subject to performance evaluations under this section to participate in the
103 collaborative mentoring or coaching and planning processes necessary for execution of the
104 performance evaluation process and achieving advanced levels of performance.

105 (g) The rule adopted by the state board shall include provisions for written improvement
106 plans when necessary to improve the performance of the professional personnel. The written
107 improvement plan shall be specific as to what improvements are needed in the performance of
108 the professional personnel and shall clearly set forth recommendations for improvements
109 including recommendations for additional education and training of professionals subject to
110 recertification. Professional personnel whose performance evaluation includes a written
111 improvement plan shall be given an opportunity to improve his or her performance through the
112 implementation of the plan.

113 (h) A professional person whose performance is considered to be unsatisfactory shall be
114 given written notice of his of her deficiencies. A written improvement plan to correct these
115 deficiencies shall be developed by the employing ~~county~~ school district board and the employee.
116 The professional person shall be given a reasonable period of time, not exceeding twelve months,
117 to accomplish the requirements of the improvement plan and shall receive a written statement of
118 the resources and assistance available for the purposes of correcting the deficiencies. If the next
119 performance evaluation shows that the professional is now performing satisfactorily, no further

120 action may be taken concerning the original performance evaluation. If the evaluation shows that
121 the professional is still not performing satisfactorily, the evaluator either shall make additional
122 written recommendations for improvement or may recommend the dismissal of the professional
123 personnel in accordance with the provisions of section eight, article two of this chapter.

124 (i) No person may evaluate professional personnel for the purposes of this section unless
125 the person has an administrative certificate issued by the state superintendent and has
126 successfully completed education and training in evaluation skills through the center for
127 professional development, or equivalent education training approved by the state board, which
128 will enable the person to make fair, professional, and credible evaluations of the personnel whom
129 the person is responsible for evaluating.

130 (j) Prior to implementation of the evaluation process pursuant to this section at a school,
131 each affected employee shall be given training to ensure that the employees have a full
132 understanding of the purposes, instruments and procedures used in evaluating their performance.
133 Thereafter, this training shall be held annually at the beginning of the employment term.

§18A-3C-3. Comprehensive system for teacher induction and professional growth.

1 (a) The intent of the Legislature is to allow for a multistep statewide implementation of a
2 comprehensive system of support for building professional practice of beginning teachers,
3 specifically those on the initial and intermediate progressions, consistent with sound educational
4 practices and resources available. In this regard, it is the intent of the Legislature that the transition
5 of schools and school systems to a comprehensive system of support that includes support for
6 improved professional performance targeted on deficiencies identified through the evaluation
7 process will be implemented concurrent with the first year that a school or system receives final
8 evaluation results from the performance evaluation process pursuant to section two of this article.
9 Further, because of significant variability among the ~~counties~~ school districts, not only in the size
10 of their teaching force, distribution of facilities and available resources, but also because of their
11 varying needs, the Legislature intends for the implementation of this section to be accomplished

12 in a manner that provides adequate flexibility to the ~~counties~~ school districts to design and
13 implement a comprehensive system of support for improving professional performance that best
14 achieves the goals of this section within the ~~county~~ school district. Finally, because of the critical
15 importance of ensuring that all teachers perform at the accomplished level or higher in the delivery
16 of instruction that at least meets the West Virginia professional teaching standards and because
17 achieving this objective at a minimum entails providing assistance to address the needs as
18 indicated by the data informed results of annual performance evaluations, including the self-
19 assessed needs of the teachers themselves, the Legislature expects the highest priority for
20 ~~county, regional~~ school district and state professional development will be on meeting these
21 needs and that the transition to a comprehensive system of support for improving professional
22 practice will reflect substantial redirection of existing professional development resources toward
23 this highest priority.

24 (b) On or before July 1, 2012, the state board shall publish guidelines on the design and
25 implementation of a comprehensive system of support for improving professional practice. The
26 purpose of the guidelines is to assist the county board with the design and implementation of a
27 system that best achieves the goals of this section within the county. The guidelines may include
28 examples of best practices and resources available to county boards to assist them with the
29 design and implementation of a comprehensive system.

30 (c) For schools and school systems subject to the provisions of this article, the provisions
31 of this article govern when they are in conflict with section two-b, article three of this chapter
32 relating to beginning teacher internships, or in conflict with other provisions of this chapter and
33 chapter eighteen of this code.

34 (d) Effective for the school year beginning July 1, 2013, and thereafter, a ~~county~~ school
35 district board is not eligible to receive state funding appropriated for the purposes of this section
36 or any other provision of law related to beginning teacher internships and mentor teachers unless
37 it has adopted a plan for implementation of a comprehensive system of support for improving

38 professional practice, the plan has been verified by the state board as meeting the requirements
39 of this section and the ~~county~~ school district is implementing the plan. The plan shall address the
40 following:

41 (1) The manner in which the ~~county~~ school district will provide the strong school-based
42 support and supervision that will assist beginning teachers in developing instructional and
43 management strategies, procedural and policy expertise, and other professional practices they
44 need to be successful in the classroom and perform at the accomplished level. Nothing in this
45 subdivision prohibits a school or school system that was granted an exception or waiver from
46 section two-c, article three of this chapter prior to the effective date of this section from continuing
47 implementation of the program in accordance with the exception or waiver;

48 (2) The manner in which the ~~county~~ school district in cooperation with the teacher
49 preparation programs in this state will provide strong school-based support and assistance
50 necessary to make student teaching a productive learning experience;

51 (3) The manner in which the ~~county~~ school district will use the data from the educator
52 performance evaluation system to serve as the basis for providing professional development
53 specifically targeted on the area or areas identified through the evaluation process as needing
54 improvement. If possible, this targeted professional development should be delivered at the
55 school-site using collaborative processes, mentoring or coaching or other approaches that
56 maximize use of the instructional setting;

57 (4) The manner in which the ~~county~~ school district will use the data from the educator
58 performance evaluation system to serve as the basis for establishing priorities for the provision of
59 ~~county~~ school district-level professional development when aggregate evaluation data from the
60 ~~county~~ school district's schools indicates an area or areas of needed improvement;

61 (5) If a ~~county~~ school district uses master teachers, mentors, academic coaches or any
62 other approaches using individual employees to provide support, supervision or other professional
63 development or training to other employees for the purpose of improving their professional

64 practice, the manner in which the ~~county~~ school district will select each of these individual
65 employees based on demonstrated superior performance and competence as well as the manner
66 in which the ~~county~~ school district will coordinate support for these employees: *Provided*, That the
67 employment of persons for these positions shall adhere to the posting and other provisions of
68 section seven-a, article four of this chapter utilizing subsection (c) of said section seven-a to judge
69 the qualifications of the applicants. If the duties of the position are to provide mentoring to an
70 individual teacher at only one school, then priority shall being given to applicants employed at the
71 school at which those duties will be performed;

72 (6) The manner in which the ~~county~~ school district will use local resources available
73 including, but not limited to, funds for professional development and academic coaches, to focus
74 on the priority professional development goals of this section;

75 (7) The manner in which the ~~county~~ school district will adjust its scheduling, use of
76 substitutes, collaborative planning time, calendar or other measures as may be necessary to
77 provide sufficient time for professional personnel to accomplish the goals of this section as set
78 forth in the ~~county~~ school district 's plan; and

79 (8) The manner in which the ~~county~~ school district will monitor and evaluate the
80 effectiveness of implementation and outcomes of the ~~county~~ school district system of support for
81 improving professional practice.

82 (e) Effective the school year beginning July 1, 2013, and thereafter, appropriations for
83 beginning teacher mentors and any new appropriation which may be made for the purposes of
84 this section shall be expended by ~~county~~ school district boards only to accomplish the activities
85 as set forth in their ~~county~~ school district plan pursuant to this section. Effective the school year
86 beginning July 1, 2013, and thereafter, no specific level of compensation is guaranteed for any
87 employee service or employment as a mentor and such service or employment is not subject to
88 the provisions of this code governing extra duty contracts except as provided in subdivision (5),
89 subsection (c) of this section.

90 (f) The Legislative Oversight Commission on Education Accountability shall review the
91 progress of the implementation of this article and may make any recommendations it considers
92 necessary to the Legislature during the 2013 regular legislative session.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-1. Definitions.

1 For the purpose of this article, salaries shall be defined as: (a) "Basic salaries" which shall
2 mean the salaries paid to teachers with zero years of experience and in accordance with the
3 classification of certification and of training of said teachers; and (b) "advanced salaries" which
4 shall mean the basic salary plus an experience increment based on the allowable years of
5 experience of the respective teachers in accordance with the schedule established herein for the
6 applicable classification of certification and of training of said teachers.

7 "Classification of certification" means the class or type of certificate issued by the state
8 superintendent under the statutory provisions of this chapter. "Classification of training" means
9 the number of collegiate or graduate hours necessary to meet the requirements stipulated in the
10 definitions set forth in the next paragraph in items (2) to (11), inclusive.

11 The column heads of the state minimum salary schedule set forth in section two of this
12 article are defined as follows:

13 (1) "Years of experience" means the number of years the teacher has been employed in
14 the teaching profession, including active work in educational positions other than the public
15 schools, and service in the Armed Forces of the United States if the teacher was under contract
16 to teach at the time of induction. For a registered professional nurse employed by a ~~county~~ school
17 district board, "years of experience" means the number of years the nurse has been employed as
18 a public school health nurse, including active work in a nursing position related to education, and
19 service in the Armed Forces if the nurse was under contract with the ~~county~~ school district board
20 at the time of induction. For the purpose of section two of this article, the experience of a teacher
21 or a nurse shall be limited to that allowed under their training classification as found in the

22 minimum salary schedule.

23 (2) "Fourth class" means all certificates previously identified as: (a) "Certificates secured
24 by examination"; and (b) "other first grade certificates".

25 (3) "Third class" means all certificates previously identified as: (a) "Standard normal
26 certificates"; and (b) "third class temporary (sixty-four semester hours) certificates".

27 (4) "Second class" means all certificates previously identified as "second class temporary
28 certificates based upon the required ninety-six hours of college work".

29 (5) "A.B." means a bachelor's degree, from an accredited institution of higher education,
30 which has been issued to, or for which the requirements for such have been met by, a person
31 who qualifies for or holds a professional certificate or its equivalent. A registered professional
32 nurse with a bachelor's degree, who is licensed by the West Virginia board of examiners for
33 registered professional nurses and employed by a ~~county~~ school district board, shall be within
34 this classification for payment in accordance with sections two and two-a of this article.

35 (6) "A.B. plus 15" means a bachelor's degree as defined above plus fifteen hours of
36 graduate work, from an accredited institution of higher education certified to do graduate work, in
37 an approved planned program at the graduate level which requirements have been met by a
38 person who qualifies for or holds a professional certificate or its equivalent.

39 (7) "M.A." means a master's degree, earned in an institution of higher education approved
40 to do graduate work, which has been issued to, or the requirements for such have been met by,
41 a person who qualifies for or holds a professional certificate or its equivalent.

42 (8) "M.A. plus 15" means the above-defined master's degree plus fifteen hours of graduate
43 work, earned in an institution of higher education approved to do graduate work, if the person is
44 qualified for or holds a professional certificate or its equivalent.

45 (9) "M.A. plus 30" means the above-defined master's degree plus thirty graduate hours,
46 earned in an institution approved to do graduate work, if the person is qualified for or holds a
47 professional certificate or its equivalent.

48 (10) "Doctorate" means a doctor's degree, earned from a university qualified and approved
49 to confer such a degree, which has been issued to or the requirements for such have been met
50 by a person who qualifies for or holds a professional certificate or its equivalent.

51 For purposes of advanced salary classification, graduate work completed after July 1,
52 1994, shall be related to the public school program, as prescribed by the state board.

53 Notwithstanding the requirements set forth in subdivisions (6), (8) and (9) of this section
54 relating to hours of graduate work at an institution certified to do such work, fifteen undergraduate
55 credit hours from a regionally accredited institution of higher education, earned after the effective
56 date of this section, may be utilized for advanced salary classification if such hours are in
57 accordance with: (a) The teacher's current classification of certification and of training; (b) a
58 designated instructional shortage area documented by the employing ~~county~~ school district
59 superintendent; or (c) an identified teaching deficiency documented through the state approved
60 ~~county~~ school district personnel evaluation system.

61 Effective July 1, 1994, the following definition shall be applicable.

62 (11) "M.A. plus 45" means the above-defined master's degree plus forty-five graduate
63 hours, earned in an institution approved to do graduate work, if the person is qualified for or holds
64 a professional certificate or its equivalent.

**§18A-4-1a. Minimum salary for a registered professional nurse employed by the board,
who has less than a bachelor's degree.**

1 A registered professional nurse, licensed by the West Virginia Board of Examiners for
2 Registered Professional Nurses and employed by a ~~county~~ school district board of education,
3 who has less than a bachelor's degree, shall receive a salary not less than that provided in
4 sections two [§18A-4-2] and two-a [§18A-4-2a, repealed] of this article and in accordance with
5 the following:

6 (a) A registered professional nurse who has completed a two-year nursing program (sixty-
7 four semester hours) shall be paid not less than the salary for a teacher whose classification of

8 training is "third class" as defined in subparagraph (3), section one [§18A-4-1] of this article, such
9 salary to include allowable years of experience, and

10 (b) A registered professional nurse who has completed a three-year nursing program
11 (ninety-six hours) shall be paid not less than the salary for a teacher whose classification of
12 training is "second class" as defined in subparagraph (4), section one [§18A-4-1] of this article,
13 such salary to include allowable years of experience.

14 The salary provided under this section and the additional fixed charge payments required
15 therefor shall be paid outside the public school support plan provided for in article nine-a [§§18-
16 9A-1 et seq.], chapter eighteen of this code.

§18A-4-3. State minimum annual salary increments for principals and assistant principals.

1 (a) In addition to any salary increments for principals and assistant principals, in effect on
2 January 1, 2008, and paid from local funds, and in addition to the ~~county~~ school district schedule
3 in effect for teachers, the ~~county~~ school district board shall pay each principal a principal's salary
4 increment and each assistant principal an assistant principal's salary increment as prescribed by
5 this section from state funds appropriated for the salary increments.

6 (b) State funds for this purpose shall be paid within the West Virginia public school support
7 plan in accordance with article nine-a, chapter eighteen of this code.

8 (c) The salary increment in this section for each principal shall be determined by
9 multiplying the basic salary for teachers in accordance with the classification of certification and
10 of training of the principal as prescribed in this article by the appropriate percentage rate
11 prescribed in this section according to the number of teachers supervised.

STATE MINIMUM SALARY INCREMENT

RATES FOR PRINCIPALS

EFFECTIVE UNTIL JULY 1, 2008

15	No. of Teachers	
16	Supervised	Rates
17	1-7	10.0%
18	8-14	10.5%
19	15-24	11.0%
20	25-38	11.5%
21	39-57	12.0%
22	58 and up	12.5%

23 **STATE MINIMUM SALARY INCREMENT**

24 **RATES FOR PRINCIPALS**

25 **EFFECTIVE ON AND AFTER JULY 1, 2008**

26	No. of Teachers	
27	Supervised	Rates
28	1-7	11.0%
29	8-14	11.5%
30	15-24	12.0%
31	25-38	12.5%
32	39-57	13.0%
33	58 and up	13.5%

34 (d) The salary increment in this section for each assistant principal shall be determined in
 35 the same manner as that for principals using the number of teachers supervised by the principal
 36 under whose direction the assistant principal works, except that the percentage rate shall be fifty
 37 percent of the rate prescribed for the principal.

38 (e) Salaries for employment beyond the minimum employment term shall be at the same
 39 daily rate as the salaries for the minimum employment terms.

40 (f) For the purpose of determining the number of teachers supervised by a principal, the

41 ~~county~~ school district board shall use data for the second school month of the prior school term
42 and the number of teachers shall be interpreted to mean the total number of professional
43 educators assigned to each school on a full-time equivalency basis: *Provided*, That if there is a
44 change in circumstances because of consolidation or catastrophe, the ~~county~~ school district board
45 shall determine what is a reasonable number of supervised teachers in order to establish the
46 appropriate increment percentage rate.

47 (g) No ~~county~~ school district may reduce local funds allocated for salary increments for
48 principals and assistant principals in effect on January 1, 2008, and used in supplementing the
49 state minimum salaries as provided in this article, unless forced to do so by defeat of a special
50 levy, or a loss in assessed values or events over which it has no control and for which the ~~county~~
51 school district board has received approval from the state board prior to making the reduction.

52 (h) Nothing in this section prevents a ~~county~~ school district board from providing, in a
53 uniform manner, salary increments greater than those required by this section.

§18A-4-4. Minimum salary schedule for teachers having specialized training.

1 The state Board of Education shall establish the minimum salary schedule for teachers
2 where specialized training may be required for vocational, technical and adult education, and such
3 other permits as may be authorized by said board.

4 On and after July 1, 1985, any vocational industrial, technical, occupational home
5 economics, or health occupations teacher who is required to hold a vocational certificate and is
6 paid a salary equivalent to the amount prescribed for "A.B. + 15" training classification in the state
7 minimum salary schedule for teachers under section two of this article shall, upon application
8 therefor, receive advanced salary classification and be entitled to increased compensation on and
9 after such date in respect to and based upon additional semester hours, approved by the state
10 Board of Education and completed either prior to or subsequent to such date. All such hours
11 earned must be from a regionally accredited institution of higher education.

12 The advanced salary classification shall be as follows:

13 (1) Those who have earned fifteen such additional semester hours shall receive an
14 amount equal to that prescribed for the "M.A." training classification under section two of this
15 article.

16 (2) Those who have earned thirty such additional semester hours shall receive an amount
17 equal to that prescribed for the "M.A. + 15" training classification under section two of this article.

18 (3) Those who have earned forty-five such additional semester hours shall receive an
19 amount equal to that prescribed for the "M.A. + 30" training classification under section two of this
20 article.

21 (4) Those who have earned sixty such additional semester hours shall receive an amount
22 equal to that prescribed for the "M.A. + 45" training classification under section two of this article.

23 Any such teacher who has a permanent vocational certificate and who has earned or
24 earns a bachelor's degree prior or subsequent to the issuance of such certificate shall be entitled
25 to receive the amount prescribed for the "M.A. + 30" training classification upon application:

26 *Provided*, That any such teacher who has a permanent vocational certificate and who has earned
27 or earns fifteen graduate hours prior or subsequent to the issuance of such certificate shall be
28 entitled to receive the amount prescribed for the "M.A. + 45" training classification upon
29 application therefor, such advanced salary to take effect immediately upon qualification therefor:

30 *Provided, however*, That any vocational teacher receiving the amount prescribed for the "M.A. +
31 30" training classification under prior enactments of this section who have not been issued a
32 permanent vocational certificate shall not have such salary reduced as a result of this section:

33 *Provided further*, That any teacher with a vocational certificate and under contract for the school
34 year 1985–1986 who has earned a bachelor's degree prior to the end of such school year shall
35 be entitled to receive the amount prescribed for the "M.A. + 30" training classification, upon
36 application therefor, for the school year beginning on July 1, 1986, and thereafter.

37 No teacher holding a valid professional certificate shall incur a salary reduction resulting
38 from assignment out of the teacher's field by the superintendent, with the approval of the county

39 school district board, under any authorization or regulation of the state board.

§18A-4-5a. County School district salary supplements for teachers.

1 County School district boards of education in fixing the salaries of teachers shall use at
2 least the state minimum salaries established under the provisions of this article. The board may
3 establish salary schedules which shall be in excess of the state minimums fixed by this article,
4 such ~~county~~ school district schedules to be uniform throughout the ~~county~~ school district as to the
5 classification of training, experience, responsibility and other requirements.

6 Counties school districts may fix higher salaries for teachers placed in special instructional
7 assignments, for those assigned to or employed for duties other than regular instructional duties,
8 and for teachers of one-teacher schools, and they may provide additional compensation for any
9 teacher assigned duties in addition to the teacher's regular instructional duties wherein such
10 noninstructional duties are not a part of the scheduled hours of the regular school day. Uniformity
11 also shall apply to such additional salary increments or compensation for all persons performing
12 like assignments and duties within the ~~county~~ school district: *Provided*, That in establishing such
13 local salary schedules, no ~~county~~ school district shall reduce local funds allocated for salaries in
14 effect on January 1, 1990, and used in supplementing the state minimum salaries as provided for
15 in this article, unless forced to do so by defeat of a special levy, or a loss in assessed values or
16 events over which it has no control and for which the ~~county~~ school district board has received
17 approval from the state board prior to making such reduction.

18 Counties School district may provide, in a uniform manner, benefits for teachers which
19 require an appropriation from local funds including, but not limited to, dental, optical, health and
20 income protection insurance, vacation time and retirement plans excluding the state Teachers
21 Retirement System. Nothing herein shall prohibit the maintenance nor result in the reduction of
22 any benefits in effect on January 1, 1984, by any ~~county~~ school district board of education.

§18A-4-5b. County School district salary supplements for school service personnel.

1 The ~~county~~ school district board of education may establish salary schedules which shall

2 be in excess of the state minimums fixed by this article.

3 These ~~county~~ school district schedules shall be uniform throughout the ~~county~~ school
4 district with regard to any training classification, experience, years of employment, responsibility,
5 duties, pupil participation, pupil enrollment, size of buildings, operation of equipment or other
6 requirements. Further, uniformity shall apply to all salaries, rates of pay, benefits, increments or
7 compensation for all persons regularly employed and performing like assignments and duties
8 within the ~~county~~ school district: *Provided*, That in establishing such local salary schedules, no
9 ~~county~~ school district shall reduce local funds allocated for salaries in effect on January 1, 1990,
10 and used in supplementing the state minimum salaries as provided for in this article, unless forced
11 to do so by defeat of a special levy, or a loss in assessed values or events over which it has no
12 control and for which the ~~county~~ school district board has received approval from the state board
13 prior to making such reduction.

14 ~~Counties~~ School districts may provide, in a uniform manner, benefits for service personnel
15 which require an appropriation from local funds including, but not limited to, dental, optical, health
16 and income protection insurance, vacation time and retirement plans excluding the state Teachers
17 Retirement System. Nothing herein shall prohibit the maintenance nor result in the reduction of
18 any benefits in effect on January 1, 1984, by any ~~county~~ school district board of education.

§18A-4-7a. Employment, promotion and transfer of professional personnel; seniority.

1 (a) A ~~county~~ school district board of education shall make decisions affecting the filling of
2 vacancies in professional positions of employment on the basis of the applicant with the highest
3 qualifications: *Provided*, That the ~~county~~ school district superintendent shall be hired under
4 separate criteria pursuant to section two, article four, chapter eighteen of this code.

5 (b) In judging qualifications for the filling of vacancies of professional positions of
6 employment, consideration shall be given to each of the following:

7 (1) Appropriate certification, licensure or both;

8 (2) Amount of experience relevant to the position or, in the case of a classroom teaching

- 9 position, the amount of teaching experience in the required certification area;
- 10 (3) The amount of course work, degree level or both in the relevant field and degree level
- 11 generally;
- 12 (4) Academic achievement;
- 13 (5) In the case of a principal or classroom teaching position, certification by the National
- 14 Board for Professional Teaching Standards;
- 15 (6) Specialized training relevant to performing the duties of the job;
- 16 (7) Past performance evaluations conducted pursuant to section twelve, article two of this
- 17 chapter and section two, article three-c of this chapter or, in the case of a classroom teacher, past
- 18 evaluations of the applicants performance in the teaching profession;
- 19 (8) Seniority;
- 20 (9) Other measures or indicators upon which the relative qualifications of the applicant
- 21 may fairly be judged;
- 22 (10) In the case of a classroom teaching position, the recommendation of the principal of
- 23 the school at which the applicant will be performing a majority of his or her duties; and
- 24 (11) In the case of a classroom teaching position, the recommendation, if any, resulting
- 25 from the process established pursuant to the provisions of section five, article five-a, chapter
- 26 eighteen of this code by the faculty senate of the school at which the employee will be performing
- 27 a majority of his or her duties.
- 28 (c) When filling of a vacancy pursuant to this section, a ~~county~~ school district board is
- 29 entitled to determine the appropriate weight to apply to each of the criterion when assessing an
- 30 applicants qualifications: *Provided*, That if one or more permanently employed instructional
- 31 personnel apply for a classroom teaching position and meet the standards set forth in the job
- 32 posting, each criterion under subsection (b) of this section shall be given equal weight except that
- 33 the criterion in subdivisions (10) and (11) shall each be double weighted.
- 34 (d) For a classroom teaching position, if the principal and faculty senate recommend the

35 same applicant pursuant to subdivisions (10) and (11), subsection (b) of this section, and the
36 superintendent concurs with those recommendations, then the other provisions of subsections
37 (b) and (c) of this section do not apply and the ~~county~~ school district board shall appoint that
38 applicant notwithstanding any other provision of this code to the contrary.

39 (e) The state board shall promulgate a rule, including an emergency rule if necessary, in
40 accordance with the provisions of article three-b, chapter twenty-nine-a of this code to implement
41 and interpret the provisions of this section. The rule may provide for t a classroom teacher who
42 directly participates in making recommendations pursuant to this section to be compensated at
43 the appropriate daily rate during periods of participation beyond his or her individual contract.

44 (f) The recommendations of the principal and faculty senate made pursuant to
45 subdivisions (10) and (11), subsection (b) of this section shall be based on a determination as to
46 which applicant is the most highly qualified for the position: *Provided*, That nothing in this
47 subsection may require principals or faculty senates to assign any amount of weight to any factor
48 in making a recommendation.

49 (g) With the exception of guidance counselors, the seniority of classroom teachers, as
50 defined in section one, article one of this chapter, shall be determined on the basis of the length
51 of time the employee has been employed as a regular full-time certified and/or licensed
52 professional educator by the ~~county~~ school district board of education and shall be granted in all
53 areas that the employee is certified, licensed or both.

54 (h) Upon completion of one hundred thirty-three days of employment in any one school
55 year, substitute teachers, except retired teachers and other retired professional educators
56 employed as substitutes, shall accrue seniority exclusively for the purpose of applying for
57 employment as a permanent, full-time professional employee. One hundred thirty-three days or
58 more of said employment shall be prorated and shall vest as a fraction of the school year worked
59 by the permanent, full-time teacher.

60 (i) Guidance counselors and all other professional employees, as defined in section one,

61 article one of this chapter, except classroom teachers, shall gain seniority in their nonteaching
62 area of professional employment on the basis of the length of time the employee has been
63 employed by the ~~county~~ school district board of education in that area: *Provided*, That if an
64 employee is certified as a classroom teacher, the employee accrues classroom teaching seniority
65 for the time that employee is employed in another professional area. For the purposes of accruing
66 seniority under this paragraph, employment as principal, supervisor or central office administrator,
67 as defined in section one, article one of this chapter, shall be considered one area of employment.

68 (j) Employment for a full employment term equals one year of seniority, but an employee
69 may not accrue more than one year of seniority during any given fiscal year. Employment for less
70 than the full employment term shall be prorated. A random selection system established by the
71 employees and approved by the ~~county~~ school district board shall be used to determine the priority
72 if two or more employees accumulate identical seniority: *Provided*, That when two or more
73 principals have accumulated identical seniority, decisions on reductions in force shall be based
74 on qualifications.

75 (k) Whenever a ~~county~~ school district board is required to reduce the number of
76 professional personnel in its employment, the employee with the least amount of seniority shall
77 be properly notified and released from employment pursuant to the provisions of section two,
78 article two of this chapter. The provisions of this subsection are subject to the following:

79 (1) All persons employed in a certification area to be reduced who are employed under a
80 temporary permit shall be properly notified and released before a fully certified employee in such
81 a position is subject to release;

82 (2) Notwithstanding any provision of this code to the contrary, for any vacancy in an
83 established, existing or newly created position that, on or before March 1, is known to exist for
84 the ensuing school year, upon recommendation of the superintendent, the board shall appoint the
85 successful applicant from among all qualified applicants. All employees subject to release shall
86 be considered applicants for the positions for which they are qualified and shall be considered

87 before posting such vacancies for application by nonemployees;

88 (3) An employee subject to release shall be employed in any other professional position
89 where the employee is certified and was previously employed or to any lateral area for which the
90 employee is certified, licensed or both, if the employees seniority is greater than the seniority of
91 any other employee in that area of certification, licensure or both;

92 (4) If an employee subject to release holds certification, licensure or both in more than one
93 lateral area and if the employees seniority is greater than the seniority of any other employee in
94 one or more of those areas of certification, licensure or both, the employee subject to release
95 shall be employed in the professional position held by the employee with the least seniority in any
96 of those areas of certification, licensure or both; and

97 (5) If, prior to August 1 of the year, a reduction in force is approved, the reason for any
98 particular reduction in force no longer exists as determined by the ~~county~~ school district board in
99 its sole and exclusive judgment, the board shall rescind the reduction in force or transfer and shall
100 notify the released employee in writing of his or her right to be restored to his or her position of
101 employment. Within five days of being so notified, the released employee shall notify the board,
102 in writing, of his or her intent to resume his or her position of employment or the right to be restored
103 shall terminate. Notwithstanding any other provision of this subdivision, if there is another
104 employee on the preferred recall list with proper certification and higher seniority, that person shall
105 be placed in the position restored as a result of the reduction in force being rescinded.

106 (l) For the purpose of this article, all positions which meet the definition of "classroom
107 teacher" as defined in section one, article one of this chapter shall be lateral positions. For all
108 other professional positions, the ~~county~~ school district board of education shall adopt a policy by
109 October 31, 1993, and may modify the policy thereafter as necessary, which defines which
110 positions shall be lateral positions. In adopting the policy, the board shall give consideration to
111 the rank of each position in terms of title; nature of responsibilities; salary level; certification,
112 licensure or both; and days in the period of employment.

113 (m) All professional personnel whose seniority with the ~~county~~ school district board is
114 insufficient to allow their retention by the ~~county~~ school district board during a reduction in work
115 force shall be placed upon a preferred recall list. As to any professional position opening within
116 the area where they had previously been employed or to any lateral area for which they have
117 certification, licensure or both, the employee shall be recalled on the basis of seniority if no
118 regular, full-time professional personnel, or those returning from leaves of absence with greater
119 seniority, are qualified, apply for and accept the position.

120 (n) Before position openings that are known or expected to extend for twenty consecutive
121 employment days or longer for professional personnel may be filled by the board, the board shall
122 be required to notify all qualified professional personnel on the preferred list and give them an
123 opportunity to apply, but failure to apply shall not cause the employee to forfeit any right to recall.
124 The notice shall be sent by certified mail to the last known address of the employee, and it shall
125 be the duty of each professional personnel to notify the board of continued availability annually,
126 of any change in address or of any change in certification, licensure or both.

127 (o) Openings in established, existing or newly created positions shall be processed as
128 follows:

129 (1) Boards shall be required to post and date notices of each opening at least once. At
130 their discretion, boards may post an opening for a position other than classroom teacher more
131 than once in order to attract more qualified applicants. At their discretion, boards may post an
132 opening for a classroom teacher one additional time after the first posting in order to attract more
133 qualified applicants only if fewer than three individuals apply during the first posting subject to the
134 following:

135 (A) Each notice shall be posted in conspicuous working places for all professional
136 personnel to observe for at least five working days;

137 (B) At least one notice shall be posted within twenty working days of the position openings
138 and shall include the job description;

139 (C) Any special criteria or skills that are required by the position shall be specifically stated
140 in the job description and directly related to the performance of the job;

141 (D) Postings for vacancies made pursuant to this section shall be written so as to ensure
142 that the largest possible pool of qualified applicants may apply; and

143 (E) Job postings may not require criteria which are not necessary for the successful
144 performance of the job and may not be written with the intent to favor a specific applicant;

145 (2) No vacancy may be filled until after the five-day minimum posting period of the most
146 recent posted notice of the vacancy;

147 (3) If one or more applicants under all the postings for a vacancy meets the qualifications
148 listed in the job posting, the successful applicant to fill the vacancy shall be selected by the board
149 within thirty working days of the end of the first posting period;

150 (4) A position held by a teacher who is certified, licensed or both, who has been issued a
151 permit for full-time employment and is working toward certification in the permit area shall not be
152 subject to posting if the certificate is awarded within five years; and

153 (5) Nothing provided herein may prevent the ~~county~~ school district board of education from
154 eliminating a position due to lack of need.

155 (p) Notwithstanding any other provision of the code to the contrary, where the total number
156 of classroom teaching positions in an elementary school does not increase from one school year
157 to the next, but there exists in that school a need to realign the number of teachers in one or more
158 grade levels, kindergarten through six, teachers at the school may be reassigned to grade levels
159 for which they are certified without that position being posted: *Provided*, That the employee and
160 the ~~county~~ school district board mutually agree to the reassignment.

161 (q) Reductions in classroom teaching positions in elementary schools shall be processed
162 as follows:

163 (1) When the total number of classroom teaching positions in an elementary school needs
164 to be reduced, the reduction shall be made on the basis of seniority with the least senior classroom

165 teacher being recommended for transfer; and

166 (2) When a specified grade level needs to be reduced and the least senior employee in
167 the school is not in that grade level, the least senior classroom teacher in the grade level that
168 needs to be reduced shall be reassigned to the position made vacant by the transfer of the least
169 senior classroom teacher in the school without that position being posted: *Provided*, That the
170 employee is certified, licensed or both and agrees to the reassignment.

171 (r) Any board failing to comply with the provisions of this article may be compelled to do
172 so by mandamus and shall be liable to any party prevailing against the board for court costs and
173 reasonable attorney fees as determined and established by the court. Further, employees denied
174 promotion or employment in violation of this section shall be awarded the job, pay and any
175 applicable benefits retroactive to the date of the violation and payable entirely from local funds.
176 Further, the board shall be liable to any party prevailing against the board for any court reporter
177 costs including copies of transcripts.

178 (s) The ~~county~~ school district board shall compile, update annually on July 1 and make
179 available by electronic or other means to all employees a list of all professional personnel
180 employed by the ~~county~~ school district, their areas of certification and their seniority.

181 (t) Notwithstanding any other provision of this code to the contrary, upon recommendation
182 of the principal and approval by the classroom teacher and ~~county~~ school district board, a
183 classroom teacher assigned to the school may at any time be assigned to a new or existing
184 classroom teacher position at the school without the position being posted.

§18A-4-7b. Calculation of seniority for professional personnel.

1 Notwithstanding any other provision of this code to the contrary, seniority for professional
2 personnel as defined in section one, article one, chapter eighteen-a of this code shall be
3 calculated pursuant to the provisions of section seven-a of this article as well as the following:
4 *Provided*, That any recalculation of seniority of a professional personnel employee that may be
5 required in order to remain consistent with the provisions contained herein shall be calculated

6 retroactively, but shall not be utilized for the purposes of reversing any decision that has been
7 made or grievance that has been filed prior to the effective date of this section:

8 (a) A professional employee shall begin to accrue seniority upon commencement of the
9 employee's duties.

10 (b) An employee shall receive seniority credit for each day the employee is professionally
11 employed regardless of whether the employee receives pay for that day: *Provided*, That no
12 employee shall receive seniority credit for any day the employee is suspended without pay
13 pursuant to section eight, article two of this chapter: *Provided, however*, That an employee who
14 is on an approved leave of absence shall accrue seniority during the period of time that the
15 employee is on the approved leave of absence.

16 (c) Any professional employee whose employment with a ~~county~~ school district board of
17 education is terminated either voluntarily or through a reduction-in-force shall, upon
18 reemployment with the same Board of Education in a regular full-time position, receive credit for
19 all seniority previously accumulated with the board of Education at the date the employee's
20 employment was terminated.

21 (d) Any professional employee whose employment has been terminated through reduction
22 in force and whose name is on the preferred recall list shall retain all accumulated seniority for
23 the purpose of seeking reemployment with the ~~county~~ school district from which he or she was
24 terminated and nothing in this section may be construed to the contrary.

25 (e) Any professional employee employed for a full employment term but in a part-time
26 position shall receive seniority credit for each day of employment prorated to the proportion of a
27 full employment day the employee is required to work: *Provided*, That nothing herein allows a
28 regular full-time employee to be credited with less than a full day of seniority credit for each day
29 the employee is employed by the board: *Provided, however*, That this calculation of seniority for
30 part-time professional personnel is prospective and does not reduce any seniority credit
31 accumulated by any employee prior to the effective date of this section: *Provided further*, That for

32 the purposes of this section a part-time employee shall be defined as an employee who is
33 employed less than three and one-half hours per day.

§18A-4-7c. Summer employment of professional educators.

1 A ~~county~~ school district board shall hire professional educators for positions in summer
2 school programs in accordance with section thirty-nine, article five, chapter eighteen of this code
3 or section seven-a of this article, as applicable, except that a professional educator who is
4 regularly employed by the ~~county~~ school district board on a full-time basis shall be given
5 employment preference over applicants who are not regularly employed by the ~~county~~ school
6 district board on a full-time basis.

§18A-4-8. Employment term and class titles of service personnel; definitions.

1 (a) The purpose of this section is to establish an employment term and class titles for
2 service personnel. The employment term for service personnel may not be less than ten months.
3 A month is defined as twenty employment days. The ~~county~~ school district board may contract
4 with all or part of these service personnel for a longer term.

5 (b) Service personnel employed on a yearly or twelve-month basis may be employed by
6 calendar months. Whenever there is a change in job assignment during the school year, the
7 minimum pay scale and any ~~county~~ school district supplement are applicable.

8 (c) Service personnel employed in the same classification for more than the two hundred-
9 day minimum employment term are paid for additional employment at a daily rate of not less than
10 the daily rate paid for the two hundred-day minimum employment term.

11 (d) A service person may not be required to report for work more than five days per week
12 without his or her agreement, and no part of any working day may be accumulated by the
13 employer for future work assignments, unless the employee agrees thereto.

14 (e) If a service person whose regular work week is scheduled from Monday through Friday
15 agrees to perform any work assignments on a Saturday or Sunday, the service person is paid for
16 at least one-half day of work for each day he or she reports for work. If the service person works

17 more than three and one-half hours on any Saturday or Sunday, he or she is paid for at least a
18 full day of work for each day.

19 (f) A custodian, aide, maintenance, office and school lunch service person required to
20 work a daily work schedule that is interrupted is paid additional compensation in accordance with
21 this subsection.

22 (1) A maintenance person means a person who holds a classification title other than in a
23 custodial, aide, school lunch, office or transportation category as provided in section one, article
24 one of this chapter.

25 (2) A service person's schedule is considered to be interrupted if he or she does not work
26 a continuous period in one day. Aides are not regarded as working an interrupted schedule when
27 engaged exclusively in the duties of transporting students;

28 (3) The additional compensation provided in this subsection:

29 (A) Is equal to at least one eighth of a service person's total salary as provided by the state
30 minimum pay scale and any ~~county~~ school district pay supplement; and

31 (B) Is payable entirely from ~~county~~ school district board funds.

32 (g) When there is a change in classification or when a service person meets the
33 requirements of an advanced classification, his or her salary shall be made to comply with the
34 requirements of this article and any ~~county~~ school district salary schedule in excess of the
35 minimum requirements of this article, based upon the service person's advanced classification
36 and allowable years of employment.

37 (h) A service person's contract, as provided in section five, article two of this chapter, shall
38 state the appropriate monthly salary the employee is to be paid, based on the class title as
39 provided in this article and on any ~~county~~ school district salary schedule in excess of the minimum
40 requirements of this article.

41 (i) The column heads of the state minimum pay scale and class titles, set forth in section
42 eight-a of this article, are defined as follows:

- 43 (1) "Pay grade" means the monthly salary applicable to class titles of service personnel;
- 44 (2) "Years of employment" means the number of years which an employee classified as a
45 service person has been employed by a ~~county~~ school district board in any position prior to or
46 subsequent to the effective date of this section and includes service in the Armed Forces of the
47 United States, if the employee was employed at the time of his or her induction. For the purpose
48 of section eight-a of this article, years of employment is limited to the number of years shown and
49 allowed under the state minimum pay scale as set forth in section eight-a of this article;
- 50 (3) "Class title" means the name of the position or job held by a service person;
- 51 (4) "Accountant I" means a person employed to maintain payroll records and reports and
52 perform one or more operations relating to a phase of the total payroll;
- 53 (5) "Accountant II" means a person employed to maintain accounting records and to be
54 responsible for the accounting process associated with billing, budgets, purchasing and related
55 operations;
- 56 (6) "Accountant III" means a person employed in the ~~county~~ school district board office to
57 manage and supervise accounts payable, payroll procedures, or both;
- 58 (7) "Accounts payable supervisor" means a person employed in the ~~county~~ school district
59 board office who has primary responsibility for the accounts payable function and who either has
60 completed twelve college hours of accounting courses from an accredited institution of higher
61 education or has at least eight years of experience performing progressively difficult accounting
62 tasks. Responsibilities of this class title may include supervision of other personnel;
- 63 (8) "Aide I" means a person selected and trained for a teacher-aide classification such as
64 monitor aide, clerical aide, classroom aide or general aide;
- 65 (9) "Aide II" means a service person referred to in the "Aide I" classification who has
66 completed a training program approved by the state board, or who holds a high school diploma
67 or has received a general educational development certificate. Only a person classified in an Aide
68 II class title may be employed as an aide in any special education program

69 (10) "Aide III" means a service person referred to in the "Aide I" classification who holds a
70 high school diploma or a general educational development certificate; and

71 (A) Has completed six semester hours of college credit at an institution of higher
72 education; or

73 (B) Is employed as an aide in a special education program and has one year's experience
74 as an aide in special education;

75 (11) "Aide IV" means a service person referred to in the "Aide I" classification who holds
76 a high school diploma or a general educational development certificate; and

77 (A) Has completed eighteen hours of State Board-approved college credit at a regionally
78 accredited institution of higher education, or

79 (B) Has completed fifteen hours of State Board-approved college credit at a regionally
80 accredited institution of higher education; and has successfully completed an in-service training
81 program determined by the state Board to be the equivalent of three hours of college credit;

82 (12) "Audiovisual technician" means a person employed to perform minor maintenance on
83 audiovisual equipment, films, and supplies and who fills requests for equipment;

84 (13) "Auditor" means a person employed to examine and verify accounts of individual
85 schools and to assist schools and school personnel in maintaining complete and accurate records
86 of their accounts;

87 (14) "Autism mentor" means a person who works with autistic students and who meets
88 standards and experience to be determined by the state Board. A person who has held or holds
89 an aide title and becomes employed as an autism mentor shall hold a multiclassification status
90 that includes both aide and autism mentor titles, in accordance with section eight-b of this article;

91 (15) "Braille specialist" means a person employed to provide braille assistance to students.
92 A service person who has held or holds an aide title and becomes employed as a braille specialist
93 shall hold a multiclassification status that includes both aide and braille specialist title, in
94 accordance with section eight-b of this article;

95 (16) "Bus operator" means a person employed to operate school buses and other school
96 transportation vehicles as provided by the state board;

97 (17) "Buyer" means a person employed to review and write specifications, negotiate
98 purchase bids and recommend purchase agreements for materials and services that meet
99 predetermined specifications at the lowest available costs;

100 (18) "Cabinetmaker" means a person employed to construct cabinets, tables, bookcases
101 and other furniture;

102 (19) "Cafeteria manager" means a person employed to direct the operation of a food
103 services program in a school, including assigning duties to employees, approving requisitions for
104 supplies and repairs, keeping inventories, inspecting areas to maintain high standards of
105 sanitation, preparing financial reports and keeping records pertinent to food services of a school;

106 (20) "Carpenter I" means a person classified as a carpenter's helper;

107 (21) "Carpenter II" means a person classified as a journeyman carpenter;

108 (22) "Chief mechanic" means a person employed to be responsible for directing activities
109 which ensure that student transportation or other ~~county~~ school district board-owned vehicles are
110 properly and safely maintained;

111 (23) "Clerk I" means a person employed to perform clerical tasks;

112 (24) "Clerk II" means a person employed to perform general clerical tasks, prepare reports
113 and tabulations, and operate office machines;

114 (25) "Computer operator" means a qualified person employed to operate computers;

115 (26) "Cook I" means a person employed as a cook's helper;

116 (27) "Cook II" means a person employed to interpret menus and to prepare and serve
117 meals in a food service program of a school. This definition includes a service person who has
118 been employed as a "Cook I" for a period of four years;

119 (28) "Cook III" means a person employed to prepare and serve meals, make reports,
120 prepare requisitions for supplies, order equipment and repairs for a food service program of a

121 school system;

122 (29) "Crew leader" means a person employed to organize the work for a crew of
123 maintenance employees to carry out assigned projects;

124 (30) "Custodian I" means a person employed to keep buildings clean and free of refuse;

125 (31) "Custodian II" means a person employed as a watchman or groundsman;

126 (32) "Custodian III" means a person employed to keep buildings clean and free of refuse,
127 to operate the heating or cooling systems and to make minor repairs;

128 (33) "Custodian IV" means a person employed as a head custodian. In addition to
129 providing services as defined in "Custodian III" duties may include supervising other custodian
130 personnel;

131 (34) "Director or coordinator of services" means an employee of a ~~county~~ school district
132 board who is assigned to direct a department or division.

133 (A) Nothing in this subdivision prohibits a professional person or a professional educator
134 from holding this class title;

135 (B) Professional personnel holding this class title may not be defined or classified as
136 service personnel unless the professional person held a service personnel title under this section
137 prior to holding the class title of "director or coordinator of services;"

138 (C) The director or coordinator of services is classified either as a professional person or
139 a service person for state aid formula funding purposes;

140 (D) Funding for the position of director or coordinator of services is based upon the
141 employment status of the director or coordinator either as a professional person or a service
142 person; and

143 (E) A person employed under the class title "director or coordinator of services" may not
144 be exclusively assigned to perform the duties ascribed to any other class title as defined in this
145 subsection: *Provided*, That nothing in this paragraph prohibits a person in this position from being
146 multiclassified;

147 (35) "Draftsman" means a person employed to plan, design and produce detailed
148 architectural/engineering drawings;

149 (36) "Early Childhood Classroom Assistant Teacher I" means a person who does not
150 possess minimum requirements for the permanent authorization requirements, but is enrolled in
151 and pursuing requirements;

152 (37) "Early Childhood Classroom Assistant Teacher II" means a person who has
153 completed the minimum requirements for a state-awarded certificate for early childhood
154 classroom assistant teachers as determined by the State Board;

155 (38) "Early Childhood Classroom Assistant Teacher III" means a person who has
156 completed permanent authorization requirements, as well as additional requirements comparable
157 to current paraprofessional certificate;

158 (39) "Educational Sign Language Interpreter I" means a person employed to provide
159 communication access across all educational environments to students who are deaf or hard of
160 hearing, and who holds the Initial Paraprofessional Certificate – Educational Interpreter pursuant
161 to state board policy;

162 (40) "Educational Sign Language Interpreter II" means a person employed to provide
163 communication access across all educational environments to students who are deaf or hard of
164 hearing, and who holds the Permanent Paraprofessional Certificate – Educational Interpreter
165 pursuant to state board policy;

166 (41) "Electrician I" means a person employed as an apprentice electrician helper or one
167 who holds an electrician helper license issued by the State Fire Marshal;

168 (42) "Electrician II" means a person employed as an electrician journeyman or one who
169 holds a journeyman electrician license issued by the State Fire Marshal;

170 (43) "Electronic technician I" means a person employed at the apprentice level to repair
171 and maintain electronic equipment;

172 (44) "Electronic technician II" means a person employed at the journeyman level to repair

173 and maintain electronic equipment;

174 (45) "Executive secretary" means a person employed as secretary to the ~~county~~ school
175 district school superintendent or as a secretary who is assigned to a position characterized by
176 significant administrative duties;

177 (46) "Food services supervisor" means a qualified person who is not a professional person
178 or professional educator as defined in section one, article one of this chapter. The food services
179 supervisor is employed to manage and supervise a ~~county~~ school district school system's food
180 service program. The duties include preparing in-service training programs for cooks and food
181 service employees, instructing personnel in the areas of quantity cooking with economy and
182 efficiency and keeping aggregate records and reports;

183 (47) "Foreman" means a skilled person employed to supervise personnel who work in the
184 areas of repair and maintenance of school property and equipment;

185 (48) "General maintenance" means a person employed as a helper to skilled maintenance
186 employees, and to perform minor repairs to equipment and buildings of a ~~county~~ school district
187 school system;

188 (49) "Glazier" means a person employed to replace glass or other materials in windows
189 and doors and to do minor carpentry tasks;

190 (50) "Graphic artist" means a person employed to prepare graphic illustrations;

191 (51) "Groundsman" means a person employed to perform duties that relate to the
192 appearance, repair and general care of school grounds in a ~~county~~ school district system.
193 Additional assignments may include the operation of a small heating plant and routine cleaning
194 duties in buildings;

195 (52) "Handyman" means a person employed to perform routine manual tasks in any
196 operation of the ~~county~~ school district system;

197 (53) "Heating and air conditioning mechanic I" means a person employed at the apprentice
198 level to install, repair and maintain heating and air conditioning plants and related electrical

199 equipment;

200 (54) "Heating and air conditioning mechanic II" means a person employed at the
201 journeyman level to install, repair and maintain heating and air conditioning plants and related
202 electrical equipment;

203 (55) "Heavy equipment operator" means a person employed to operate heavy equipment;

204 (56) "Inventory supervisor" means a person employed to supervise or maintain operations
205 in the receipt, storage, inventory and issuance of materials and supplies;

206 (57) "Key punch operator" means a qualified person employed to operate key punch
207 machines or verifying machines;

208 (58) "Licensed practical nurse" means a nurse, licensed by the West Virginia Board of
209 Examiners for Licensed Practical Nurses, employed to work in a public school under the
210 supervision of a school nurse;

211 (59) "Locksmith" means a person employed to repair and maintain locks and safes;

212 (60) "Lubrication man" means a person employed to lubricate and service gasoline or
213 diesel-powered equipment of a ~~county~~ school district system;

214 (61) "Machinist" means a person employed to perform machinist tasks which include the
215 ability to operate a lathe, planer, shaper, threading machine and wheel press. A person holding
216 this class title also should have the ability to work from blueprints and drawings;

217 (62) "Mail clerk" means a person employed to receive, sort, dispatch, deliver or otherwise
218 handle letters, parcels and other mail;

219 (63) "Maintenance clerk" means a person employed to maintain and control a stocking
220 facility to keep adequate tools and supplies on hand for daily withdrawal for all school
221 maintenance crafts;

222 (64) "Mason" means a person employed to perform tasks connected with brick and block
223 laying and carpentry tasks related to these activities;

224 (65) "Mechanic" means a person employed to perform skilled duties independently in the

225 maintenance and repair of automobiles, school buses and other mechanical and mobile
226 equipment to use in a ~~county~~ school district system;

227 (66) "Mechanic assistant" means a person employed as a mechanic apprentice and
228 helper;

229 (67) "Multiclassification" means a person employed to perform tasks that involve the
230 combination of two or more class titles in this section. In these instances the minimum salary
231 scale is the higher pay grade of the class titles involved;

232 (68) "Office equipment repairman I" means a person employed as an office equipment
233 repairman apprentice or helper;

234 (69) "Office equipment repairman II" means a person responsible for servicing and
235 repairing all office machines and equipment. A person holding this class title is responsible for the
236 purchase of parts necessary for the proper operation of a program of continuous maintenance
237 and repair;

238 (70) "Painter" means a person employed to perform duties painting, finishing and
239 decorating wood, metal and concrete surfaces of buildings, other structures, equipment,
240 machinery and furnishings of a ~~county~~ school district school system;

241 (71) "Paraprofessional" means a person certified pursuant to section two-a, article three
242 of this chapter to perform duties in a support capacity including, but not limited to, facilitating in
243 the instruction and direct or indirect supervision of students under the direction of a principal, a
244 teacher or another designated professional educator.

245 (A) A person employed on the effective date of this section in the position of an aide may
246 not be subject to a reduction in force or transferred to create a vacancy for the employment of a
247 paraprofessional;

248 (B) A person who has held or holds an aide title and becomes employed as a
249 paraprofessional shall hold a multiclassification status that includes both aide and
250 paraprofessional titles in accordance with section eight-b of this article; and

251 (C) When a service person who holds an aide title becomes certified as a paraprofessional
252 and is required to perform duties that may not be performed by an aide without paraprofessional
253 certification, he or she shall receive the paraprofessional title pay grade;

254 (72) "Payroll supervisor" means a person employed in the ~~county~~ school district board
255 office who has primary responsibility for the payroll function and who either has completed twelve
256 college hours of accounting from an accredited institution of higher education or has at least eight
257 years of experience performing progressively difficult accounting tasks. Responsibilities of this
258 class title may include supervision of other personnel;

259 (73) "Plumber I" means a person employed as an apprentice plumber and helper;

260 (74) "Plumber II" means a person employed as a journeyman plumber;

261 (75) "Printing operator" means a person employed to operate duplication equipment, and
262 to cut, collate, staple, bind and shelve materials as required;

263 (76) "Printing supervisor" means a person employed to supervise the operation of a print
264 shop;

265 (77) "Programmer" means a person employed to design and prepare programs for
266 computer operation;

267 (78) "Roofing/sheet metal mechanic" means a person employed to install, repair, fabricate
268 and maintain roofs, gutters, flashing and duct work for heating and ventilation;

269 (79) "Sanitation plant operator" means a person employed to operate and maintain a water
270 or sewage treatment plant to ensure the safety of the plant's effluent for human consumption or
271 environmental protection;

272 (80) "School bus supervisor" means a qualified person:

273 (A) Employed to assist in selecting school bus operators and routing and scheduling
274 school buses, operate a bus when needed, relay instructions to bus operators, plan emergency
275 routing of buses and promote good relationships with parents, students, bus operators and other
276 employees; and

277 (B) Certified to operate a bus or previously certified to operate a bus;

278 (81) "Secretary I" means a person employed to transcribe from notes or mechanical
279 equipment, receive callers, perform clerical tasks, prepare reports and operate office machines;

280 (82) "Secretary II" means a person employed in any elementary, secondary, kindergarten,
281 nursery, special education, vocational, or any other school as a secretary. The duties may include
282 performing general clerical tasks; transcribing from notes; stenotype, mechanical equipment or a
283 sound-producing machine; preparing reports; receiving callers and referring them to proper
284 persons; operating office machines; keeping records and handling routine correspondence.
285 Nothing in this subdivision prevents a service person from holding or being elevated to a higher
286 classification;

287 (83) "Secretary III" means a person assigned to the ~~county~~ school district board office
288 administrators in charge of various instructional, maintenance, transportation, food services,
289 operations and health departments, federal programs or departments with particular
290 responsibilities in purchasing and financial control or any person who has served for eight years
291 in a position which meets the definition of "Secretary II" or "Secretary III";

292 (84) "Sign Support Specialist" means a person employed to provide sign supported
293 speech assistance to students who are able to access environments through audition. A person
294 who has held or holds an aide title and becomes employed as a sign support specialist shall hold
295 a multiclassification status that includes both aide and sign support specialist titles, in accordance
296 with section eight-b of this article.

297 (85) "Supervisor of maintenance" means a skilled person who is not a professional person
298 or professional educator as defined in section one, article one of this chapter. The responsibilities
299 include directing the upkeep of buildings and shops, and issuing instructions to subordinates
300 relating to cleaning, repairs and maintenance of all structures and mechanical and electrical
301 equipment of a ~~county~~ school district board;

302 (86) "Supervisor of transportation" means a qualified person employed to direct school

303 transportation activities properly and safely, and to supervise the maintenance and repair of
304 vehicles, buses and other mechanical and mobile equipment used by the ~~county~~ school district
305 school system. After July 1, 2010, all persons employed for the first time in a position with this
306 classification title or in a multiclassification position that includes this title shall have five years of
307 experience working in the transportation department of a ~~county~~ school district board. Experience
308 working in the transportation department consists of serving as a bus operator, bus aide, assistant
309 mechanic, mechanic, chief mechanic or in a clerical position within the transportation department;

310 (87) "Switchboard operator-receptionist" means a person employed to refer incoming
311 calls, to assume contact with the public, to direct and to give instructions as necessary, to operate
312 switchboard equipment and to provide clerical assistance;

313 (88) "Truck driver" means a person employed to operate light or heavy duty gasoline and
314 diesel-powered vehicles;

315 (89) "Warehouse clerk" means a person employed to be responsible for receiving, storing,
316 packing and shipping goods;

317 (90) "Watchman" means a person employed to protect school property against damage
318 or theft. Additional assignments may include operation of a small heating plant and routine
319 cleaning duties;

320 (91) "Welder" means a person employed to provide acetylene or electric welding services
321 for a school system; and

322 (92) "WVEIS data entry and administrative clerk" means a person employed to work under
323 the direction of a school principal to assist the school counselor or counselors in the performance
324 of administrative duties, to perform data entry tasks on the West Virginia Education Information
325 System, and to perform other administrative duties assigned by the principal.

326 (j) Notwithstanding any provision in this code to the contrary, and in addition to the
327 compensation provided for service personnel in section eight-a of this article, each service person
328 is entitled to all service personnel employee rights, privileges and benefits provided under this or

329 any other chapter of this code without regard to the employee's hours of employment or the
330 methods or sources of compensation.

331 (k) A service person whose years of employment exceeds the number of years shown and
332 provided for under the state minimum pay scale set forth in section eight-a of this article may not
333 be paid less than the amount shown for the maximum years of employment shown and provided
334 for in the classification in which he or she is employed.

335 (l) Each ~~county~~ school district board shall review each service person's job classification
336 annually and shall reclassify all service persons as required by the job classifications. The state
337 superintendent may withhold state funds appropriated pursuant to this article for salaries for
338 service personnel who are improperly classified by the ~~county~~ school district boards. Further, the
339 state superintendent shall order a ~~county~~ school district board to correct immediately any improper
340 classification matter and, with the assistance of the Attorney General, shall take any legal action
341 necessary against any ~~county~~ school district board to enforce the order.

342 (m) Without his or her written consent, a service person may not be:

343 (1) Reclassified by class title; or

344 (2) Relegated to any condition of employment which would result in a reduction of his or
345 her salary, rate of pay, compensation or benefits earned during the current fiscal year; or for which
346 he or she would qualify by continuing in the same job position and classification held during that
347 fiscal year and subsequent years.

348 (n) Any ~~county~~ school district board failing to comply with the provisions of this article may
349 be compelled to do so by mandamus and is liable to any party prevailing against the board for
350 court costs and the prevailing party's reasonable attorney fee, as determined and established by
351 the court.

352 (o) Notwithstanding any provision of this code to the contrary, a service person who holds
353 a continuing contract in a specific job classification and who is physically unable to perform the
354 job's duties as confirmed by a physician chosen by the employee, shall be given priority status

355 over any employee not holding a continuing contract in filling other service personnel job
356 vacancies if the service person is qualified as provided in section eight-e of this article.

357 (p) Any person employed in an aide position on the effective date of this section may not
358 be transferred or subject to a reduction in force for the purpose of creating a vacancy for the
359 employment of a licensed practical nurse.

360 (q) Without the written consent of the service person, a ~~county~~ school district board may
361 not establish the beginning work station for a bus operator or transportation aide at any site other
362 than a ~~county~~ school district board-owned facility with available parking. The workday of the bus
363 operator or transportation aide commences at the bus at the designated beginning work station
364 and ends when the employee is able to leave the bus at the designated beginning work station,
365 unless he or she agrees otherwise in writing. The application or acceptance of a posted position
366 may not be construed as the written consent referred to in this subsection.

367 (r) Itinerant status means a service person who does not have a fixed work site and may
368 be involuntarily reassigned to another work site. A service person is considered to hold itinerant
369 status if he or she has bid upon a position posted as itinerant or has agreed to accept this status.
370 A ~~county~~ school district board may establish positions with itinerant status only within the aide
371 and autism mentor classification categories and only when the job duties involve exceptional
372 students. A service person with itinerant status may be assigned to a different work site upon
373 written notice ten days prior to the reassignment without the consent of the employee and without
374 posting the vacancy. A service person with itinerant status may be involuntarily reassigned no
375 more than twice during the school year. At the conclusion of each school year, the ~~county~~ school
376 district board shall post and fill, pursuant to section eight-b of this article, all positions that have
377 been filled without posting by a service person with itinerant status. A service person who is
378 assigned to a beginning and ending work site and travels at the expense of the ~~county~~ school
379 district board to other work sites during the daily schedule, is not considered to hold itinerant
380 status.

381 (s) Any service person holding a classification title on June 30, 2013, that is removed from
382 the classification schedule pursuant to amendment and reenactment of this section in the year
383 2013, has his or her employment contract revised as follows:

384 (1) Any service person holding the Braille or Sign Language Specialist classification title
385 has that classification title renamed on his or her employment contract as either Braille Specialist
386 or Sign Support Specialist. This action does not result in a loss or reduction of salary or
387 supplement by any employee. Any seniority earned in the Braille or Sign Language Specialist
388 classification prior to July 1, 2013, continues to be credited as seniority earned in the Braille
389 Specialist or Sign Support Specialist classification;

390 (2) Any service person holding the Paraprofessional classification title and holding the
391 Initial Paraprofessional Certificate – Educational Interpreter has the title Educational Sign
392 Language Interpreter I added to his or her employment contract. This action does not result in a
393 loss or reduction of salary or supplement by any employee. Any seniority earned in the
394 Paraprofessional classification prior to July 1, 2013, continues to be credited as seniority earned
395 in the Educational Sign Language Interpreter I classification; and

396 (3) Any service person holding the Paraprofessional classification title and holding the
397 Permanent Paraprofessional Certificate – Educational Interpreter has the title Educational Sign
398 Language Interpreter II added to his or her employment contract. This action does not result in a
399 loss or reduction of salary or supplement by any employee. Any seniority earned in the
400 Paraprofessional classification prior to July 1, 2013, continues to be credited as seniority earned
401 in the Educational Sign Language Interpreter II classification;

402 (t) Any person employed as an aide in a kindergarten program who is eligible for full
403 retirement benefits before the first day of the instructional term in the 2020-2021 school year, may
404 not be subject to a reduction in force or transferred to create a vacancy for the employment of a
405 less senior Early Childhood Classroom Assistant Teacher;

406 (u) A person who has held or holds an aide title and becomes employed as an Early

407 Childhood Classroom Assistant Teacher shall hold a multiclassification status that includes aide
408 and/or paraprofessional titles in accordance with section eight-b of this article.

§18A-4-8a. Service personnel minimum monthly salaries.

1 (a) The minimum monthly pay for each service employee shall be as follows:

2 (1) Beginning July 1, 2014, and continuing thereafter, the minimum monthly pay for each
3 service employee whose employment is for a period of more than three and one-half hours a day
4 shall be at least the amounts indicated in the State Minimum Pay Scale Pay Grade and the
5 minimum monthly pay for each service employee whose employment is for a period of three and
6 one-half hours or less a day shall be at least one-half the amount indicated in the State Minimum
7 Pay Scale Pay Grade set forth in this subdivision.

8 STATE MINIMUM PAY SCALE PAY GRADE

9	Years								
10	Exp.	Pay Grade							
		<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>F</u>	<u>G</u>	<u>H</u>
	0	1,660	1,681	1,723	1,776	1,829	1,892	1,924	1,997
	1	1,692	1,714	1,755	1,808	1,862	1,925	1,956	2,030
	2	1,725	1,746	1,788	1,841	1,894	1,957	1,989	2,062
	3	1,757	1,779	1,821	1,874	1,927	1,990	2,022	2,095
	4	1,790	1,812	1,853	1,906	1,959	2,023	2,054	2,129
	5	1,823	1,844	1,886	1,939	1,992	2,055	2,087	2,161
	6	1,855	1,877	1,920	1,972	2,025	2,088	2,120	2,194
	7	1,889	1,909	1,952	2,004	2,057	2,121	2,152	2,227
	8	1,922	1,942	1,985	2,037	2,090	2,153	2,185	2,259
	9	1,954	1,975	2,018	2,071	2,123	2,186	2,217	2,292
	10	1,987	2,008	2,050	2,103	2,155	2,220	2,251	2,325
	11	2,020	2,041	2,083	2,136	2,188	2,252	2,284	2,357
	12	2,052	2,074	2,115	2,169	2,222	2,285	2,316	2,390
	13	2,085	2,106	2,148	2,201	2,254	2,317	2,349	2,423
	14	2,118	2,139	2,181	2,234	2,287	2,350	2,382	2,455
	15	2,150	2,172	2,213	2,266	2,319	2,383	2,414	2,488
	16	2,183	2,204	2,246	2,299	2,352	2,415	2,447	2,521

17	2,215	2,237	2,280	2,332	2,385	2,448	2,480	2,554
18	2,248	2,270	2,312	2,364	2,417	2,481	2,512	2,587
19	2,282	2,302	2,345	2,397	2,450	2,513	2,545	2,619
20	2,314	2,335	2,378	2,431	2,483	2,546	2,578	2,653
21	2,347	2,367	2,410	2,463	2,515	2,579	2,610	2,687
22	2,380	2,401	2,443	2,496	2,548	2,612	2,644	2,719
23	2,412	2,434	2,476	2,529	2,582	2,646	2,678	2,753
24	2,445	2,466	2,508	2,561	2,614	2,680	2,711	2,787
25	2,478	2,499	2,541	2,594	2,648	2,712	2,745	2,819
26	2,510	2,532	2,573	2,628	2,682	2,746	2,777	2,853
27	2,543	2,564	2,606	2,660	2,714	2,778	2,811	2,886
28	2,576	2,597	2,640	2,694	2,748	2,812	2,845	2,920
29	2,608	2,631	2,673	2,726	2,781	2,846	2,877	2,954
30	2,642	2,663	2,707	2,760	2,814	2,878	2,911	2,987
31	2,675	2,697	2,741	2,794	2,848	2,912	2,945	3,020
32	2,709	2,730	2,773	2,827	2,880	2,946	2,977	3,054
33	2,743	2,763	2,807	2,861	2,914	2,978	3,011	3,087
34	2,775	2,797	2,841	2,895	2,948	3,012	3,045	3,120
35	2,809	2,831	2,873	2,927	2,980	3,046	3,078	3,154
36	2,843	2,864	2,907	2,961	3,015	3,079	3,112	3,186
37	2,875	2,898	2,941	2,995	3,049	3,113	3,145	3,220
38	2,909	2,930	2,973	3,027	3,081	3,146	3,178	3,254
39	2,943	2,964	3,007	3,061	3,115	3,179	3,212	3,286
40	2,975	2,998	3,040	3,094	3,149	3,213	3,245	3,320

11

12 (2) Each service employee shall receive the amount prescribed in the Minimum Pay Scale
 13 in accordance with the provisions of this subsection according to their class title and pay grade
 14 as set forth in this subdivision:

15	CLASS TITLE	PAY GRADE
16	Accountant I	D
17	Accountant II	E
18	Accountant III	F

19	Accounts Payable Supervisor	G
20	Aide I	A
21	Aide II	B
22	Aide III	C
23	Aide IV	D
24	Audiovisual Technician	C
25	Auditor	G
26	Autism Mentor	F
27	Braille Specialist	E
28	Bus Operator	D
29	Buyer	F
30	Cabinetmaker	G
31	Cafeteria Manager	D
32	Carpenter I	E
33	Carpenter II	F
34	Chief Mechanic	G
35	Clerk I	B
36	Clerk II	C
37	Computer Operator	E
38	Cook I	A
39	Cook II	B
40	Cook III	C
41	Crew Leader	F
42	Custodian I	A
43	Custodian II	B
44	Custodian III	C

45	Custodian IV	D
46	Director or Coordinator of Services	H
47	Draftsman	D
48	Early Childhood Classroom Assistant Teacher I	E
49	Early Childhood Classroom Assistant Teacher II	E
50	Early Childhood Classroom Assistant Teacher III	F
51	Educational Sign Language Interpreter I	F
52	Educational Sign Language Interpreter II	G
53	Electrician I	F
54	Electrician II	G
55	Electronic Technician I	F
56	Electronic Technician II	G
57	Executive Secretary	G
58	Food Services Supervisor	G
59	Foreman	G
60	General Maintenance	C
61	Glazier	D
62	Graphic Artist	D
63	Groundsman	B
64	Handyman	B
65	Heating and Air Conditioning Mechanic I	E
66	Heating and Air Conditioning Mechanic II	G
67	Heavy Equipment Operator	E
68	Inventory Supervisor	D
69	Key Punch Operator	B
70	Licensed Practical Nurse	F

71	Locksmith	G
72	Lubrication Man	C
73	Machinist	F
74	Mail Clerk	D
75	Maintenance Clerk	C
76	Mason	G
77	Mechanic	F
78	Mechanic Assistant	E
79	Office Equipment Repairman I	F
80	Office Equipment Repairman II	G
81	Painter	E
82	Paraprofessional	F
83	Payroll Supervisor	G
84	Plumber I	E
85	Plumber II	G
86	Printing Operator	B
87	Printing Supervisor	D
88	Programmer	H
89	Roofing/Sheet Metal Mechanic	F
90	Sanitation Plant Operator	G
91	School Bus Supervisor	E
92	Secretary I	D
93	Secretary II	E
94	Secretary III	F
95	Sign Support Specialist	E
96	Supervisor of Maintenance	H

97 Supervisor of TransportationH
 98 Switchboard Operator-ReceptionistD
 99 Truck DriverD
 100 Warehouse ClerkC
 101 WatchmanB
 102 Welder F
 103 WVEIS Data Entry and Administrative ClerkB

104 (b) An additional \$12 per month is added to the minimum monthly pay of each service
 105 person who holds a high school diploma or its equivalent.

106 (c) An additional \$11 per month also is added to the minimum monthly pay of each service
 107 person for each of the following:

108 (1) A service person who holds twelve college hours or comparable credit obtained in a
 109 trade or vocational school as approved by the state board;

110 (2) A service person who holds twenty-four college hours or comparable credit obtained
 111 in a trade or vocational school as approved by the state board;

112 (3) A service person who holds thirty-six college hours or comparable credit obtained in a
 113 trade or vocational school as approved by the state board;

114 (4) A service person who holds forty-eight college hours or comparable credit obtained in
 115 a trade or vocational school as approved by the state board;

116 (5) A service employee who holds sixty college hours or comparable credit obtained in a
 117 trade or vocational school as approved by the state board;

118 (6) A service person who holds seventy-two college hours or comparable credit obtained
 119 in a trade or vocational school as approved by the state board;

120 (7) A service person who holds eighty-four college hours or comparable credit obtained in
 121 a trade or vocational school as approved by the state board;

122 (8) A service person who holds ninety-six college hours or comparable credit obtained in

123 a trade or vocational school as approved by the state board;

124 (9) A service person who holds one hundred eight college hours or comparable credit
125 obtained in a trade or vocational school as approved by the state board;

126 (10) A service person who holds one hundred twenty college hours or comparable credit
127 obtained in a trade or vocational school as approved by the state board.

128 (d) An additional \$40 per month also is added to the minimum monthly pay of each service
129 person for each of the following:

130 (1) A service person who holds an associate's degree;

131 (2) A service person who holds a bachelor's degree;

132 (3) A service person who holds a master's degree;

133 (4) A service person who holds a doctorate degree.

134 (e) An additional \$11 per month is added to the minimum monthly pay of each service
135 person for each of the following:

136 (1) A service person who holds a bachelor's degree plus fifteen college hours;

137 (2) A service person who holds a master's degree plus fifteen college hours;

138 (3) A service person who holds a master's degree plus thirty college hours;

139 (4) A service person who holds a master's degree plus forty-five college hours; and

140 (5) A service person who holds a master's degree plus sixty college hours.

141 (f) To meet the objective of salary equity among the ~~counties~~ school districts, each service
142 person is paid an equity supplement, as set forth in section five of this article, of \$164 per month,
143 subject to the provisions of that section. These payments: (i) Are in addition to any amounts
144 prescribed in the applicable State Minimum Pay Scale Pay Grade, any specific additional amounts
145 prescribed in this section and article and any ~~county~~ school district supplement in effect in a ~~county~~
146 school district pursuant to section five-b of this article; (ii) are paid in equal monthly installments;
147 and (iii) are considered a part of the state minimum salaries for service personnel.

148 (g) When any part of a school service person's daily shift of work is performed between

149 the hours of six o'clock p. m. and five o'clock a. m. the following day, the employee is paid no less
150 than an additional \$10 per month and one half of the pay is paid with local funds.

151 (h) Any service person required to work on any legal school holiday is paid at a rate one
152 and one-half times the person's usual hourly rate.

153 (i) Any full-time service personnel required to work in excess of their normal working day
154 during any week which contains a school holiday for which they are paid is paid for the additional
155 hours or fraction of the additional hours at a rate of one and one-half times their usual hourly rate
156 and paid entirely from ~~county~~ school district board funds.

157 (j) A service person may not have his or her daily work schedule changed during the school
158 year without the employee's written consent and the person's required daily work hours may not
159 be changed to prevent the payment of time and one-half wages or the employment of another
160 employee.

161 (k) The minimum hourly rate of pay for extra duty assignments as defined in section eight-
162 b of this article is no less than one seventh of the person's daily total salary for each hour the
163 person is involved in performing the assignment and paid entirely from local funds: *Provided*, That
164 an alternative minimum hourly rate of pay for performing extra duty assignments within a particular
165 category of employment may be used if the alternate hourly rate of pay is approved both by the
166 ~~county~~ school district board and by the affirmative vote of a two-thirds majority of the regular full-
167 time persons within that classification category of employment within that ~~county~~ school district:
168 *Provided, however*, That the vote is by secret ballot if requested by a service person within that
169 classification category within that ~~county~~ school district. The salary for any fraction of an hour the
170 employee is involved in performing the assignment is prorated accordingly. When performing
171 extra duty assignments, persons who are regularly employed on a one-half day salary basis shall
172 receive the same hourly extra duty assignment pay computed as though the person were
173 employed on a full-day salary basis.

174 (l) The minimum pay for any service personnel engaged in the removal of asbestos

175 material or related duties required for asbestos removal is their regular total daily rate of pay and
176 no less than an additional \$3 per hour or no less than \$5 per hour for service personnel
177 supervising asbestos removal responsibilities for each hour these employees are involved in
178 asbestos-related duties. Related duties required for asbestos removal include, but are not limited
179 to, travel, preparation of the work site, removal of asbestos, decontamination of the work site,
180 placing and removal of equipment and removal of structures from the site. If any member of an
181 asbestos crew is engaged in asbestos-related duties outside of the employee's regular
182 employment ~~county~~ school district, the daily rate of pay is no less than the minimum amount as
183 established in the employee's regular employment ~~county~~ school district for asbestos removal
184 and an additional \$30 per each day the employee is engaged in asbestos removal and related
185 duties. The additional pay for asbestos removal and related duties shall be payable entirely from
186 ~~county~~ school district funds. Before service personnel may be used in the removal of asbestos
187 material or related duties, they shall have completed a federal Environmental Protection Act-
188 approved training program and be licensed. The employer shall provide all necessary protective
189 equipment and maintain all records required by the Environmental Protection Act.

190 (m) For the purpose of qualifying for additional pay as provided in section eight, article five
191 of this chapter, an aide is considered to be exercising the authority of a supervisory aide and
192 control over pupils if the aide is required to supervise, control, direct, monitor, escort or render
193 service to a child or children when not under the direct supervision of a certified professional
194 person within the classroom, library, hallway, lunchroom, gymnasium, school building, school
195 grounds or wherever supervision is required. For purposes of this section, "under the direct
196 supervision of a certified professional person" means that certified professional person is present,
197 with and accompanying the aide.

§18A-4-8b. Seniority rights for school service personnel.

1 (a) A ~~county~~ school district board shall make decisions affecting promotions and the filling
2 of any service personnel positions of employment or jobs occurring throughout the school year

3 that are to be performed by service personnel as provided in section eight of this article, on the
4 basis of seniority, qualifications and evaluation of past service.

5 (b) Qualifications means the applicant holds a classification title in his or her category of
6 employment as provided in this section and is given first opportunity for promotion and filling
7 vacancies. Other employees then shall be considered and shall qualify by meeting the definition
8 of the job title that relates to the promotion or vacancy, as defined in section eight of this article.
9 If requested by the employee, the ~~county~~ school district board shall show valid cause why a
10 service person with the most seniority is not promoted or employed in the position for which he or
11 she applies. Qualified applicants shall be considered in the following order:

12 (1) Regularly employed service personnel who hold a classification title within the
13 classification category of the vacancy;

14 (2) Service personnel who have held a classification title within the classification category
15 of the vacancy whose employment has been discontinued in accordance with this section;

16 (3) Regularly employed service personnel who do not hold a classification title within the
17 classification category of vacancy;

18 (4) Service personnel who have not held a classification title within the classification
19 category of the vacancy and whose employment has been discontinued in accordance with this
20 section;

21 (5) Substitute service personnel who hold a classification title within the classification
22 category of the vacancy;

23 (6) Substitute service personnel who do not hold a classification title within the
24 classification category of the vacancy; and

25 (7) New service personnel.

26 (c) The ~~county~~ school district board may not prohibit a service person from retaining or
27 continuing his or her employment in any positions or jobs held prior to the effective date of this
28 section and thereafter.

29 (d) A promotion means any change in employment that the service person considers to
30 improve his or her working circumstance within the classification category of employment.

31 (1) A promotion includes a transfer to another classification category or place of
32 employment if the position is not filled by an employee who holds a title within that classification
33 category of employment.

34 (2) Each class title listed in section eight of this article is considered a separate
35 classification category of employment for service personnel, except for those class titles having
36 Roman numeral designations, which are considered a single classification of employment:

37 (A) The cafeteria manager class title is included in the same classification category as
38 cooks;

39 (B) The executive secretary class title is included in the same classification category as
40 secretaries;

41 (C) Paraprofessional, autism mentor, early classroom assistant teacher and braille or sign
42 support specialist class titles are included in the same classification category as aides; and

43 (D) The mechanic assistant and chief mechanic class titles are included in the same
44 classification category as mechanics.

45 (3) The assignment of an aide to a particular position within a school is based on seniority
46 within the aide classification category if the aide is qualified for the position.

47 (4) Assignment of a custodian to work shifts in a school or work site is based on seniority
48 within the custodian classification category.

49 (e) For purposes of determining seniority under this section a service persons seniority
50 begins on the date that he or she enters into the assigned duties.

51 (f) *Extra-duty assignments.* --

52 (1) For the purpose of this section, "extra-duty assignment" means an irregular job that
53 occurs periodically or occasionally such as, but not limited to, field trips, athletic events, proms,
54 banquets and band festival trips.

55 (2) Notwithstanding any other provisions of this chapter to the contrary, decisions affecting
56 service personnel with respect to extra-duty assignments are made in the following manner:

57 (A) A service person with the greatest length of service time in a particular category of
58 employment is given priority in accepting extra duty assignments, followed by other fellow
59 employees on a rotating basis according to the length of their service time until all employees
60 have had an opportunity to perform similar assignments. The cycle then is repeated.

61 (B) An alternative procedure for making extra-duty assignments within a particular
62 classification category of employment may be used if the alternative procedure is approved both
63 by the ~~county~~ school district board and by an affirmative vote of two-thirds of the employees within
64 that classification category of employment.

65 (g) ~~County~~ School district boards shall post and date notices of all job vacancies of existing
66 or newly created positions in conspicuous places for all school service personnel to observe for
67 at least five working days.

68 (1) Posting locations include any website maintained by or available for the use of the
69 ~~county~~ school district board.

70 (2) Notice of a job vacancy shall include the job description, the period of employment, the
71 work site, the starting and ending time of the daily shift, the amount of pay and any benefits and
72 other information that is helpful to prospective applicants to understand the particulars of the job.
73 The notice of a job vacancy in the aide classification categories shall include the program or
74 primary assignment of the position. Job postings for vacancies made pursuant to this section shall
75 be written to ensure that the largest possible pool of qualified applicants may apply. Job postings
76 may not require criteria which are not necessary for the successful performance of the job and
77 may not be written with the intent to favor a specific applicant.

78 (3) All vacancies in existing or newly created positions shall be filled within twenty working
79 days from the closing date of the job posting for the position.

80 (4) The ~~county~~ school district board shall notify the successful applicant as soon as

81 possible after the ~~county~~ school district board makes a hiring decision regarding the posted
82 position.

83 (h) All decisions by ~~county~~ school district boards concerning reduction in work force of
84 service personnel shall be made on the basis of seniority, as provided in this section.

85 (i) The seniority of a service person is determined on the basis of the length of time the
86 employee has been employed by the ~~county~~ school district board within a particular job
87 classification. For the purpose of establishing seniority for a preferred recall list as provided in this
88 section, a service person who has been employed in one or more classifications retains the
89 seniority accrued in each previous classification.

90 (j) If a ~~county~~ school district board is required to reduce the number of service personnel
91 within a particular job classification, the following conditions apply:

92 (1) The employee with the least amount of seniority within that classification or grades of
93 classification is properly released and employed in a different grade of that classification if there
94 is a job vacancy;

95 (2) If there is no job vacancy for employment within that classification or grades of
96 classification, the service person is employed in any other job classification which he or she
97 previously held with the ~~county~~ school district board if there is a vacancy and retains any seniority
98 accrued in the job classification or grade of classification.

99 (k) After a reduction in force or transfer is approved, but prior to August 1, a ~~county~~ school
100 district board in its sole and exclusive judgment may determine that the reason for any particular
101 reduction in force or transfer no longer exists.

102 (1) If the board makes this determination, it shall rescind the reduction in force or transfer
103 and notify the affected employee in writing of the right to be restored to his or her former position
104 of employment.

105 (2) The affected employee shall notify the ~~county~~ school district board of his or her intent
106 to return to the former position of employment within five days of being notified or lose the right to

107 be restored to the former position.

108 (3) The ~~county~~ school district board may not rescind the reduction in force of an employee
109 until all service personnel with more seniority in the classification category on the preferred recall
110 list have been offered the opportunity for recall to regular employment as provided in this section.

111 (4) If there are insufficient vacant positions to permit reemployment of all more senior
112 employees on the preferred recall list within the classification category of the service person who
113 was subject to reduction in force, the position of the released service person shall be posted and
114 filled in accordance with this section.

115 (l) If two or more service persons accumulate identical seniority, the priority is determined
116 by a random selection system established by the employees and approved by the ~~county~~ school
117 district board.

118 (m) All service personnel whose seniority with the ~~county~~ school district board is
119 insufficient to allow their retention by the ~~county~~ school district board during a reduction in work
120 force are placed upon a preferred recall list and shall be recalled to employment by the ~~county~~
121 school district board on the basis of seniority.

122 (n) A service person placed upon the preferred recall list shall be recalled to any position
123 openings by the ~~county~~ school district board within the classification(s) where he or she had
124 previously been employed, to any lateral position for which the service person is qualified or to a
125 lateral area for which a service person has certification and/or licensure.

126 (o) A service person on the preferred recall list does not forfeit the right to recall by the
127 ~~county~~ school district board if compelling reasons require him or her to refuse an offer of
128 reemployment by the ~~county~~ school district board.

129 (p) The ~~county~~ school district board shall notify all service personnel on the preferred recall
130 list of all position openings that exist from time to time. The notification shall be sent annually, with
131 written receipt notification documented by the superintendent, and shall list instructions to access
132 job postings on any website maintained by or available for the use of the ~~county~~ school district

133 board.

134 (q) A position opening may be filled by the ~~county~~ school district board, whether temporary
135 or permanent, until all service personnel on the preferred recall list have been properly notified of
136 existing vacancies and have been given an opportunity to accept reemployment.

137 (r) A service person released from employment for lack of need as provided in sections
138 six and eight-a, article two of this chapter is accorded preferred recall status on July 1 of the
139 succeeding school year if he or she has not been reemployed as a regular employee.

140 (s) A ~~county~~ school district board failing to comply with the provisions of this article may
141 be compelled to do so by mandamus and is liable to any party prevailing against the board for
142 court costs and the prevailing party's reasonable attorney fee, as determined and established by
143 the court.

144 (1) A service person denied promotion or employment in violation of this section shall be
145 awarded the job, pay and any applicable benefits retroactively to the date of the violation and
146 shall be paid entirely from local funds.

147 (2) The ~~county~~ school district board is liable to any party prevailing against the board for
148 any court reporter costs including copies of transcripts.

§18A-4-8c. Seniority rights for personnel employed by multicounty vocational centers.

1 Professional and service personnel employed by a multicounty vocational center shall
2 establish seniority on the basis of the length of time the employee has been employed by the
3 multicounty vocational center, except that any professional or service personnel whose
4 employment with the multicounty vocational center was immediately preceded by employment
5 with one of the ~~county~~ school district boards participating in the operation of the center or whose
6 employment contract was with one of the ~~county~~ school district boards participating in the
7 operation of the center (1) shall retain any seniority accrued during employment by said ~~county~~
8 school district board; (2) shall accrue seniority as a regular employee with said ~~county~~ school
9 district board during employment with the center; (3) shall attain continuing contract status with

10 both the ~~county~~ school district and the center if the sum of the years employed by the ~~county~~
11 school district and the center equals the statutory number required for continuing contract status;
12 and (4) shall retain and continue to accrue ~~county~~ school district and center seniority in the event
13 of reemployment by said participating ~~county~~ school district as a result of direct transfer from the
14 center or recall from the preferred list.

15 Reductions in work force in the center or employment by the center or ~~county~~ school
16 district board shall be made in accordance with the provisions of sections seven-a and eight-b of
17 this article: *Provided*, That only years of employment within the multicounty vocational center shall
18 be considered for purposes of reduction in force within the center.

19 The seniority conferred herein shall apply retroactively to all affected professional and
20 service personnel, but the rights incidental thereto shall commence as of the effective date of this
21 section.

§18A-4-8e. Competency testing for service personnel; and recertification testing for bus operators.

1 (a) The state board shall develop and make available competency tests for all of the
2 classification titles defined in section eight of this article and listed in section eight-a of this article
3 for service personnel. The board shall review and, if needed, update the competency tests at least
4 every five years. Each classification title defined and listed is considered a separate classification
5 category of employment for service personnel and has a separate competency test, except for
6 those class titles having Roman numeral designations, which are considered a single
7 classification of employment and have a single competency test.

8 (1) The cafeteria manager class title is included in the same classification category as
9 cooks and has the same competency test.

10 (2) The executive secretary class title is included in the same classification category as
11 secretaries and has the same competency test.

12 (3) The classification titles of chief mechanic, mechanic and assistant mechanic are

13 included in one classification title and have the same competency test.

14 (b) The purpose of these tests is to provide ~~county~~ school district boards a uniform means
15 of determining whether school service personnel who do not hold a classification title in a
16 particular category of employment meet the definition of the classification title in another category
17 of employment as defined in section eight of this article. Competency tests may not be used to
18 evaluate employees who hold the classification title in the category of their employment.

19 (c) The competency test consists of an objective written or performance test, or both.
20 Applicants may take the written test orally if requested. Oral tests are recorded mechanically and
21 kept on file. The oral test is administered by persons who do not know the applicant personally.

22 (1) The performance test for all classifications and categories other than bus operator is
23 administered by an employee of the ~~county~~ school district board or an employee of a multicounty
24 vocational school that serves the ~~county~~ school district at a location designated by the
25 superintendent and approved by the board. The location may be a vocational school that serves
26 the ~~county~~ school district.

27 (2) A standard passing score is established by the state Department of Education for each
28 test and is used by ~~county~~ school district boards.

29 (3) The subject matter of each competency test is commensurate with the requirements
30 of the definitions of the classification titles as provided in section eight of this article. The subject
31 matter of each competency test is designed in such a manner that achieving a passing grade
32 does not require knowledge and skill in excess of the requirements of the definitions of the
33 classification titles. Achieving a passing score conclusively demonstrates the qualification of an
34 applicant for a classification title.

35 (4) Once an employee passes the competency test of a classification title, the applicant is
36 fully qualified to fill vacancies in that classification category of employment as provided in section
37 eight-b of this article and may not be required to take the competency test again.

38 (d) An applicant who fails to achieve a passing score is given other opportunities to pass

39 the competency test when applying for another vacancy within the classification category.

40 (e) Competency tests are administered to applicants in a uniform manner under uniform
41 testing conditions. ~~County~~ School district boards are responsible for scheduling competency tests,
42 notifying applicants of the date and time of the test. ~~County~~ School district boards may not use a
43 competency test other than the test authorized by this section.

44 (f) When scheduling of the competency test conflicts with the work schedule of a school
45 employee who has applied for a vacancy, the employee is excused from work to take the
46 competency test without loss of pay.

47 (g) Competency tests are used to determine the qualification of new applicants seeking
48 initial employment in a particular classification title as either a regular or substitute employee.

49 (h) Notwithstanding any provisions in this code to the contrary, once an employee holds
50 or has held a classification title in a category of employment, that employee is considered qualified
51 for the classification title even though that employee no longer holds that classification.

52 (i) The requirements of this section do not alter the definitions of class titles as provided in
53 section eight of this article or the procedure and requirements of section eight-b of this article.

54 (j) Notwithstanding any other provision of this code to the contrary and notwithstanding
55 any rules of the school board concerning school bus operator certification, the certification test for
56 school bus operators shall be required as follows, and school bus operators may not be required
57 to take the certification test more frequently:

58 (1) For substitute school bus operators and for school bus operators with regular employee
59 status but on a probationary contract, the certification test shall be administered annually;

60 (2) For school bus operators with regular employee status and continuing contract status,
61 the certification test shall be administered triennially; and

62 (3) For substitute school bus operators who are retired from a ~~county~~ school district board
63 and who at the time of retirement had ten years of experience as a regular full-time bus operator,
64 the certification test shall be administered triennially.

65 (4) *School bus operator certificate.*

66 (A) A school bus operator certificate may be issued to a person who has attained the age
67 of twenty-one, completed the required training set forth in state board rule, and met the physical
68 requirements and other criteria to operate a school bus set forth in state board rule.

69 (B) The state superintendent may, after ten days' notice and upon proper evidence, revoke
70 the certificate of any bus operator for any of the following causes:

71 (i) Intemperance, untruthfulness, cruelty or immorality;

72 (ii) Conviction of or guilty plea or plea of no contest to a felony charge;

73 (iii) Conviction of or guilty plea or plea of no contest to any charge involving sexual
74 misconduct with a minor or a student;

75 (iv) Just and sufficient cause for revocation as specified by state board rule; and

76 (v) Using fraudulent, unapproved or insufficient credit to obtain the certificates.

77 (vi) Of the causes for certificate revocation listed in this paragraph (B), the following causes
78 constitute grounds for revocation only if there is a rational nexus between the conduct of the bus
79 operator and the performance of the job:

80 (I) Intemperance, untruthfulness, cruelty or immorality;

81 (II) Just and sufficient cause for revocation as specified by state board rule; and

82 (III) Using fraudulent, unapproved or insufficient credit to obtain the certificate.

83 (C) The certificate of a bus operator may not be revoked for either of the following unless
84 it can be proven by clear and convincing evidence that the bus operator has committed one of
85 the offenses listed in this subsection and his or her actions render him or her unfit to operate a
86 school bus:

87 (i) Any matter for which the bus operator was disciplined, less than dismissal, by the
88 employing ~~county~~ school district board; or

89 (ii) Any matter for which the bus operator is meeting or has met an improvement plan
90 determined by the ~~county~~ school district board.

91 (D) The state superintendent shall designate a review panel to conduct hearings on
92 certificate revocations or denials and make recommendations for action by the state
93 superintendent. The state board, after consultation with employee organizations representing
94 school service personnel, shall promulgate a rule to establish the review panel membership and
95 composition, method of appointment, governing principles and meeting schedule.

96 (E) It is the duty of any ~~county~~ school district superintendent who knows of any acts on
97 the part of a bus operator for which a certificate may be revoked in accordance with this section
98 to report the same, together with all the facts and evidence, to the state superintendent for such
99 action as in the state superintendent's judgment may be proper.

100 (F) If a certificate has been granted through an error, oversight or misinformation, the state
101 superintendent may recall the certificate and make such corrections as will conform to the
102 requirements of law and state board rules.

103 (5) The state board shall promulgate, in accordance with article three-b, chapter twenty-
104 nine-a of this code, revised rules in compliance with this subsection.

§18A-4-8f. Seniority rights, school consolidation.

1 (a) Notwithstanding any provision of this article to the contrary, when a majority of the
2 classroom teachers or school service personnel, who vote to do so, in accordance with
3 procedures established in this section, and who are employed by a ~~county~~ school district board,
4 the board shall give priority to classroom teachers or school service personnel in any school or
5 schools to be closed as a result of a consolidation or merger when filling positions in the new
6 school created by consolidation or newly created positions in existing schools as a result of the
7 merger.

8 (b) Each year a consolidation or merger is proposed, prior to the implementation of that
9 plan, the superintendent shall cause to be prepared and distributed to all faculty Senates and to
10 all schools or other work sites a ballot on which teachers and service personnel may indicate
11 whether or not they desire those affected by school closings to be given priority status in filling

12 new positions. A secret ballot election shall be conducted:

13 (1) In each faculty Senate for classroom teachers. The faculty Senate chair shall convey
14 the results of the election to the superintendent; and

15 (2) At each school or work site for school service personnel. The service personnel
16 supervisor at each school or work site shall convey the results of the election to the
17 superintendent.

18 (c) The superintendent shall tabulate and post all results prior to the notice requirements
19 for reduction in force and transfer as outlined in sections two and seven, article two of this chapter.
20 The total number of votes shall be tabulated separately for classroom teachers and for service
21 personnel. The provisions of this section also shall be implemented separately as follows:

22 (1) For classroom teachers only if a majority of the total number of teachers who cast a
23 ballot vote to do so; and

24 (2) For school service personnel only if a majority of the total number of service personnel
25 who cast a ballot vote to do so.

26 (d) If a majority approves, the teachers or school service personnel in the school or schools
27 to be closed have priority in filling new positions in the new or merged schools for which the
28 teachers are certified or for which the school service personnel are qualified and meet the
29 standards set forth in the job posting on the basis of seniority within the ~~county~~ school district. A
30 teacher or school service person may receive priority for filling a position at a school affected by
31 a merger or consolidation only for the position being created by the influx of students from a
32 consolidated or merged school into the school receiving students from their closed school or
33 grade level.

34 (1) The most senior teacher from the closed school or schools shall be placed first, the
35 second most senior shall be placed next and so on until all the newly created positions are filled,
36 or until all the teachers in the closed school or schools who wish to transfer into the newly created
37 positions are placed.

38 (2) The most senior service person from the closed school or schools has priority in filling
39 any position within his or her classification category. The second most senior service person from
40 the closed school or schools then has priority in filling remaining vacancies and so on until all
41 available positions are filled.

42 (3) If there are fewer new positions in the newly created school or merged school than
43 there are classroom teachers or school service personnel from the school or schools to be closed,
44 the teachers or school service personnel who were not placed in the new positions retain the
45 same rights as all other teachers or service personnel with regard to seniority, transfer and
46 reduction in force.

47 (4) This section does not grant any employee additional rights or protections with regard
48 to reduction in force.

49 (e) For the purposes of this section only:

50 (1) A consolidation means that one or more schools are closed, or one or more grade
51 levels are removed from one or more schools, and the students who previously attended the
52 closed schools or grade levels are assigned to a new school.

53 (2) A merger means that one or more schools are closed or one or more grade levels are
54 removed from one or more schools and the students who previously attended the closed schools
55 or grade levels are assigned to another existing school.

56 (f) The provisions of this section do not apply to positions that are filled by a ~~county~~ school
57 district board prior to the effective date of this section, as reenacted during the regular session of
58 the Legislature, two thousand seven.

§18A-4-8g. Determination of seniority for service personnel.

1 (a) Seniority accumulation for a regular school service person:

2 (1) Begins on the date the employee enters upon regular employment duties pursuant to
3 a contract as provided in section five, article two of this chapter;

4 (2) Continues until the service person's employment as a regular employee is severed

5 with the ~~county~~ school district board; and

6 (3) Does not cease to accumulate when the ~~county~~ school district board has authorized
7 an absence whether without pay or due to illness or other reason over which the employee has
8 no control.

9 (b) Seniority accumulation for a substitute service person:

10 (1) Begins on the date the employee enters upon the duties of a substitute as provided in
11 section fifteen of this article, after executing with the ~~county~~ school district board a contract of
12 employment as provided in section five, article two of this chapter; and

13 (2) Continues until the employee enters into the duties of a regular employment contract
14 as provided in section five, article two of this chapter; or employment as a substitute service
15 person with the ~~county~~ school district board is severed.

16 (c) Seniority of a regular or substitute service person does not continue to accumulate
17 under the following conditions:

18 (1) When a service person is willfully absent from employment duties because of a
19 concerted work stoppage or strike; or

20 (2) When a service person is suspended without pay.

21 (d) For all purposes including the filling of vacancies and reduction in force, seniority shall
22 be accumulated within particular classification categories of employment as those classification
23 categories are referred to in section eight-e of this article.

24 (e) When implementing a reduction in force, the service person with the least seniority
25 within a particular classification category shall be properly released and placed on the preferred
26 recall list. The particular classification title held by a service person within the classification
27 category may not be considered when implementing a reduction in force.

28 (f) On or before September 1, and January 15, of each school year, ~~county~~ school district
29 boards shall post at each ~~county~~ school district school or working station the current seniority list
30 or lists of each service personnel classification. Each list shall contain the name of each regularly

31 employed school service person employed in each classification and the date that each employee
32 began performing his or her assigned duties in each classification. Current seniority lists of
33 substitute school service personnel shall be available to employees upon request at the ~~county~~
34 school district board office.

35 (g) The seniority of a service person who transfers out of a class title or classification
36 category of employment and subsequently returns to that class title or classification category of
37 employment is calculated as follows:

38 (1) The ~~county~~ school district board shall establish the number of calendar days between
39 the date the service person left the class title or category of employment in question and the date
40 of return to the class title or classification category of employment.

41 (2) This number of days shall be added to the service person's initial seniority date to
42 establish a new beginning seniority date within the class title or classification category.

43 (3) The service person then shall be considered as having held uninterrupted service
44 within the class title or classification category from the newly established seniority date.

45 The seniority of an employee who has had a break in the accumulation of seniority as a
46 result of being willfully absent from employment duties because of a concerted work stoppage or
47 strike shall be calculated in the same manner.

48 (h) Beginning on July 1, 2007, a substitute school service person shall acquire regular
49 employment status, but not regular employee job bidding rights or regular seniority, if the
50 employee receives a position pursuant to the leave of absence or suspension provisions of
51 subdivisions (2) and (5), subsection (a), section fifteen of this article.

52 (1) A substitute service person shall accumulate substitute employee seniority while
53 holding a position acquired pursuant to subsections (2) and (5).

54 (2) Upon termination of the regular service person's leave of absence or suspension, the
55 substitute service person shall return to the status previously held.

56 (3) ~~County~~ School district boards are not prohibited from providing any benefits of regular

57 employment for substitute service personnel, but the benefits may not include regular service
58 personnel employee status or seniority.

59 (i) If two or more service personnel accumulate identical seniority, the priority shall be
60 determined by a random selection system established by the service personnel and approved by
61 the ~~county~~ school district board.

62 (1) A board shall conduct the random selection within thirty days of the time the service
63 personnel establish an identical seniority date. All service personnel with an identical seniority
64 date within the same class title or classification category shall participate in the random selection.

65 (2) As long as the affected employees hold identical seniority within the same classification
66 category, the initial random selection conducted by the board shall be permanent for the duration
67 of the employment within the same classification category of the employees by the board. This
68 random selection priority applies to the filling of vacancies and to the reduction in force of school
69 service personnel.

70 (3) If any other service person subsequently acquires seniority identical to the employees
71 involved in the original random selection, a second random selection shall be held within thirty
72 days to determine the seniority ranking of the new employee within the group.

73 (A) The priority between the employees who participated in the original random selection
74 remains the same.

75 (B) The second random selection is performed by placing numbered pieces of paper equal
76 to the number of employees with identical seniority in a container. Any service person who was
77 not involved in the original random selection shall draw a number from the container which will
78 determine his or her seniority within the group as a whole.

79 (C) This process will be repeated if any additional service person subsequently acquires
80 identical seniority.

81 (D) The same process shall be used if any additional service person is subsequently
82 discovered to have the same seniority as the original group of employees but who did not

83 participate in the original random selection due to oversight or mistake.

84 (j) Service personnel who are employed in a classification category of employment at the
85 time when a vacancy is posted in the same classification category of employment shall be given
86 first opportunity to fill the vacancy.

87 (k) Seniority acquired as a substitute service person and as a regular service person shall
88 be calculated separately and may not be combined for any purpose. Seniority acquired within
89 different classification categories shall be calculated separately. If a school service employee
90 applies for a position outside of the classification category he or she currently holds, and if the
91 vacancy is not filled by an applicant within the classification category of the vacancy, the applicant
92 shall combine all regular employment seniority acquired for the purpose of bidding on the position.

93 (l) A school service person who holds a multiclassification title accrues seniority in each
94 classification category of employment that the employee holds and is considered an employee of
95 each classification category contained within his or her multiclassification title. A multiclassified
96 service person is subject to reduction in force in any category of employment contained within his
97 or her multiclassification title, based upon the seniority accumulated within that category of
98 employment. If a multiclassified service person is subject to a reduction in force in one
99 classification category, the service person retains employment in any of the other classification
100 categories that he or she holds within his or her multiclassification title. In that case, the ~~county~~
101 school district board shall delete the appropriate classification title or classification category from
102 the contract of the multiclassified employee.

103 (m) When applying to fill a vacancy outside the classification categories held by a
104 multiclassified service person, seniority acquired simultaneously in different classification
105 categories is calculated as if accrued in one classification category only.

106 (n) The seniority conferred in this section applies retroactively to all affected school service
107 personnel, but the rights incidental to the seniority commence as of the effective date of this
108 section.

§18A-4-8i. Seniority rights for professional educators and school service personnel in cases of ~~county~~ interdistrict transfer arrangements.

1 Notwithstanding any other provisions of this code to the contrary, if students are required
2 to attend school in a ~~county~~ other than the ~~county~~ school district county of their residence as a
3 result of an ~~intercounty~~ interdistrict transfer arrangement, then the following terms, rules and
4 procedures shall apply:

5 (a) For the purposes of this section, the following terms have the following meanings:

6 (1) "~~Intercounty~~ Interdistrict transfer arrangement" means those cases in which students
7 are required to attend school in a ~~county~~ school district other than the ~~county~~ school district of
8 their residence;

9 (2) "Receiving ~~county~~ school district " means the ~~county~~ school district, other than the
10 ~~county~~ school district of residence, where students are required to attend school; and

11 (3) "Sending ~~county~~ school district" means the ~~county~~ school district of residence of
12 students involved in ~~intercounty~~ interdistrict transfer arrangements.

13 (b) The state board shall determine the number of professional educator and school
14 service personnel positions to be created in facilities receiving students or in any facility affected
15 by an ~~intercounty~~ interdistrict transfer arrangement. The state board shall prepare a certified list
16 of positions and shall provide the list to both the sending and receiving ~~counties~~ school districts
17 involved in the ~~intercounty~~ interdistrict transfer arrangement.

18 (c) The state board shall prepare a certified list containing the names and seniority of the
19 professional educators and service personnel in the sending ~~county~~ school district whose
20 employment has been terminated as a result of an ~~intercounty~~ interdistrict transfer arrangement.
21 Those eligible to appear on the certified list shall be limited to the following classifications of
22 employees:

23 (1) Those persons whose positions were eliminated as a direct result of an ~~intercounty~~
24 interdistrict transfer arrangement and: (i) Who choose not to exercise their right to displace

25 another employee with lesser seniority; or (ii) whose seniority is insufficient to allow them to
26 displace other employees; and

27 (2) Those persons, as determined by the state board, who would have retained a position
28 with the sending ~~county~~ school district if the ~~intercounty~~ interdistrict transfer arrangement had not
29 occurred.

30 (d) The receiving ~~county~~ school district may not fill any position on the list of positions
31 created pursuant to the provisions of subsection (b) of this section until the receiving ~~county~~ school
32 district has received the list of employees created pursuant to the provisions of subsection (c) of
33 this section. When the receiving ~~county~~ school district has been provided copies of both the
34 certified list of positions and the certified list of employees, the receiving ~~county~~ school district
35 shall begin filling the vacancies by selecting employees from the certified list. In filling these
36 positions, the receiving ~~county~~ school district shall comply with all provisions of law relevant to
37 the filling of professional educator or service personnel vacancies.

38 (e) For the remainder of the school year immediately following the effective date of an
39 ~~intercounty~~ interdistrict transfer arrangement, but in no case less than six months, the receiving
40 ~~county~~ school district may fill positions on the certified list of positions only by selecting employees
41 from the certified list of employees.

42 (f) For the purposes of this section only, professional educators and service personnel
43 whose names appear on the certified list of employees created pursuant to the provisions of
44 subsection (c) of this section and who are hired by the ~~county~~ school district board of the receiving
45 ~~county~~ school district shall accrue seniority in both the sending and the receiving counties during
46 the time in which they continue to be employed by the ~~county~~ school district board of the receiving
47 ~~county~~ school district.

48 (g) The state board shall promulgate legislative rules to implement the provisions of this
49 section pursuant to the provisions of article three-b, chapter twenty-nine-a of this code. The rules
50 shall be filed with the office of the Secretary of State no later than October 1, 1997.

§18A-4-9. Payment of teachers and other employees; withholdings.

1 Teachers and all other employees whose salaries or wages are payable out of the school
2 current fund shall be paid for their services by orders duly signed by the president and secretary
3 of the board in accordance with the following provisions: Notwithstanding any other provisions of
4 this chapter and chapter eighteen, the number of pays to be made during the school year to the
5 various classes of employees shall be determined by the board: *Provided*, That the sum of such
6 pays for any employee does not exceed the equivalent of an annual salary based upon twelve
7 calendar months. In the event a teacher or other employee is not paid the full salary or wage
8 earned in the fiscal year in which the work is performed, the unpaid amount may be paid during
9 July and August of the following fiscal year. Adjustments for time loss due to absence may be
10 made in the next paycheck following such time loss.

11 The ~~county~~ school district board may withhold the pay of any teacher or employee until he
12 or she has made the reports required by the board or the state superintendent.

13 Accompanying the pay of each employee shall be an accounting of gross earnings, all
14 withholdings and the dollar value of all benefits provided by the state on behalf of the employee.

§18A-4-10. Personal leave for illness and other causes; leave banks; substitutes.

1 (a) *Personal Leave.*

2 (1) At the beginning of the employment term, any full-time employee of a ~~county~~ school
3 district board is entitled annually to at least one and one-half days personal leave for each
4 employment month or major fraction thereof in the employee's employment term. Unused leave
5 shall be accumulative without limitation and is transferable within the state. A change in job
6 assignment during the school year does not affect the employee's rights or benefits.

7 (2) A regular full-time employee who is absent from assigned duties due to accident,
8 sickness, death in the immediate family, or life threatening illness of the employee's spouse,
9 parents or child, or other cause authorized or approved by the board, shall be paid the full salary
10 from his or her regular budgeted salary appropriation during the period which the employee is

11 absent, but not to exceed the total amount of leave to which the employee is entitled.

12 (3) Each employee is permitted to use three days of leave annually without regard to the
13 cause for the absence. Personal leave without cause may not be used on consecutive work days
14 unless authorized or approved by the employee's principal or immediate supervisor, as
15 appropriate. The employee shall give notice of leave without cause to the principal or immediate
16 supervisor at least twenty-four hours in advance, except that in the case of sudden and
17 unexpected circumstances, notice shall be given as soon as reasonably practicable. The principal
18 or immediate supervisor may deny use of the day if, at the time notice is given, either fifteen
19 percent of the employees or three employees, whichever is greater, under the supervision of the
20 principal or immediate supervisor, have previously given notice of their intention to use that day
21 for leave. Personal leave may not be used in connection with a concerted work stoppage or strike.
22 Where the cause for leave originated prior to the beginning of the employment term, the employee
23 shall be paid for time lost after the start of the employment term. If an employee uses personal
24 leave which the employee has not yet accumulated on a monthly basis and subsequently leaves
25 the employment, the employee is required to reimburse the board for the salary or wages paid for
26 the unaccumulated leave.

27 (4) The State Board shall maintain a rule to restrict the payment of personal leave benefits
28 and the charging of personal leave time used to an employee receiving a workers' compensation
29 benefit from a claim filed against and billed to the ~~county~~ school district board by which the person
30 is employed. If an employee is awarded this benefit, the employee shall receive personal leave
31 compensation only to the extent the compensation is required, when added to the workers'
32 compensation benefit, to equal the amount of compensation regularly paid the employee. If
33 personal leave compensation equal to the employee's regular pay is paid prior to the award of the
34 workers' compensation benefit, the amount which, when added to the benefit, is in excess of the
35 employee's regular pay shall be deducted from the employee's subsequent pay. The employee's
36 accrued personal leave days shall be charged only for such days as equal the amount of personal

37 leave compensation required to compensate the employee at the employee's regular rate of pay.

38 (5) The ~~county~~ school district board may establish reasonable rules for reporting and
39 verification of absences for cause. If any error in reporting absences occurs, the ~~county~~ school
40 district board may make necessary salary adjustments:

41 (A) In the next pay after the employee has returned to duty; or

42 (B) In the final pay if the absence occurs during the last month of the employment term.

43 (b) *Leave Banks.*

44 (1) Each ~~county~~ school district board shall establish a personal leave bank that is available
45 to all school personnel. The board may establish joint or separate banks for professional
46 personnel and school service personnel. Each employee may contribute up to two days of
47 personal leave per school year. An employee may not be coerced or compelled to contribute to a
48 personal leave bank.

49 (2) The personal leave bank shall be established and operated pursuant to a rule adopted
50 by the ~~county~~ school district board. The rule:

51 (A) May limit the maximum number of days used by an employee;

52 (B) Shall limit the use of leave bank days to an active employee with fewer than five days
53 accumulated personal leave who is absent from work due to accident or illness of the employee;
54 and

55 (C) Shall prohibit the use of days to:

56 (i) Qualify for or add to service for any retirement system administered by the state; or

57 (ii) Extend insurance coverage pursuant to section thirteen, article sixteen, chapter five of
58 this code.

59 (D) Shall require that each personal leave day contributed:

60 (i) Is deducted from the number of personal leave days to which the donor employee is
61 entitled by this section;

62 (ii) Is not deducted from the personal leave days without cause to which a donor employee

63 is entitled if sufficient general personal leave days are otherwise available to the donor employee;

64 (iii) Is credited to the receiving employee as one full personal leave day;

65 (iv) May not be credited for more or less than a full day by calculating the value of the
66 leave according to the hourly wage of each employee; and

67 (v) May be used only for an absence due to the purpose for which the leave was
68 transferred. Any transferred days remaining when the catastrophic medical emergency ends
69 revert back to the leave bank.

70 (3) The administration, subject to ~~county~~ school district board approval, may use its
71 discretion as to the need for a substitute where limited absence may prevail, when an allowable
72 absence does not:

73 (i) Directly affect the instruction of the students; or

74 (ii) Require a substitute employee because of the nature of the work and the duration of
75 the cause for the absence.

76 (4) If funds in any fiscal year, including transfers, are insufficient to pay the full cost of
77 substitutes for meeting the provisions of this section, the remainder shall be paid on or before the
78 thirty-first day of August from the budget of the next fiscal year.

79 (5) A ~~county~~ school district board may supplement the leave provisions in any manner it
80 considers advisable in accordance with applicable rules of the state Board and the provisions of
81 this chapter and chapter eighteen of this code.

§18A-4-10a. Bonus for unused days of personal leave.

1 ~~County~~ School district boards of education are authorized to pay to their employees or to
2 defined groups thereof, for the purpose of reducing absenteeism, a bonus at the end of an
3 employment term for each unused day of personal leave accumulated by the employee during
4 that employment term.

§18A-4-10c. Personal leave banks for care givers.

1 (a) For the purposes of this section:

2 (1) "Care giver" means any employee of a ~~county~~ school district board who:

3 (A) Is a spouse, child or parent of any employee who meets the following qualifications:

4 (i) He or she is an employee of the same ~~county~~ school district board of education as the
5 care giver; and

6 (ii) He or she ~~or she~~ or she currently is eligible to receive benefits from the personal leave
7 bank established in section ten of this article; or

8 (B) Is a parent of a dependent child who is suffering from a catastrophic illness or injury;

9 (2) "Catastrophic illness or injury" means a medical or physical condition that incapacitates
10 a family member of the care giver and results in the care giver being required to take time off from
11 work as defined by the rules of the board to care for the family member.

12 (b) A ~~county~~ school district board of education may establish a personal leave bank for
13 care givers which is separate from any personal leave bank as defined in section ten of this article.
14 The personal leave bank shall be operated pursuant to rules adopted by the ~~county~~ school district
15 board which shall include, but not be limited to, the following:

16 (1) An employee may contribute no more than two days of personal leave per school year;

17 (2) The bank shall be established either jointly or separately for both professional
18 personnel and school service personnel and shall be available to all school personnel;

19 (3) The rules may limit the maximum number of days used by a care giver;

20 (4) Where the care giver is caring for an absent employee as defined in paragraph (A),
21 subdivision (1), subsection (a) of this section, the rules shall require that leave bank days be used
22 only by a care giver who is absent from work during the same time period as the absent employee
23 for whom care is being provided; and

24 (5) The rules shall require that the care giver is an active employee with less than five
25 days accumulated personal leave.

26 (c) The use of these days by the care giver for the extension of insurance coverage
27 pursuant to section twelve, article sixteen, chapter five of this code is prohibited.

28 (d) Contributions shall reduce, to the extent of the contribution, the number of personal
29 leave days to which a contributing employee is entitled by section ten of this article: *Provided,*
30 That the employee's contribution may not reduce the number of entitled personal leave days
31 without cause.

32 (e) No employee may be compelled to contribute to a personal leave bank.

§18A-4-10d. Use of personal leave days by surviving spouse in certain circumstances.

1 (a) For the purposes of this section, the following terms have the following meanings:

2 (1) "Surviving spouse" means an employee of a ~~county~~ school district board whose spouse
3 was also employed by the same ~~county~~ school district board at the time of his or her death; and

4 (2) "Deceased spouse" means a person who, at the time of his or her death, was employed
5 by the same Board of Education as his or her spouse.

6 (b) Beginning January 1, 1999, a ~~county~~ school district board of education may credit a
7 surviving spouse with any or all personal leave days to which the deceased spouse was entitled
8 at the time of the death of the deceased spouse.

9 (c) The provisions of this section only shall apply if all the following conditions are met:

10 (1) Both spouses were employed by the same ~~county~~ school district board of education at
11 the time of the death of the deceased spouse;

12 (2) The deceased spouse had unused personal leave days which he or she was entitled
13 to use;

14 (3) The surviving spouse is an active employee with less than five days accumulated
15 personal leave;

16 (4) The death of the deceased spouse was by accident;

17 (5) It is determined by the ~~county~~ school district board, on evidence provided by a licensed
18 physician, that the surviving spouse is physically disabled to work at the position held by the
19 surviving spouse; and

20 (6) It is determined by the ~~county~~ school district board that the cause of the disability to

21 the surviving spouse arose from the same accident that resulted in the death of the deceased
22 spouse.

23 (d) The ~~county~~ school district board periodically shall review the status of the surviving
24 spouse and, upon a determination of the ~~county~~ school district board that the surviving spouse is
25 able to work at his or her assigned position, any personal leave days credited to the surviving
26 spouse pursuant to the terms of this section shall be extinguished.

27 (e) Personal leave days credited to the surviving spouse pursuant to this section may be
28 used only for the purposes of this section and may not be used for any other purpose, including,
29 but not limited to, the enhancement of retirement or health insurance benefits.

§18A-4-10f. Leave donation program.

1 (a) *Definitions.*

2 For the purposes of this section and section ten of this article, the following words have
3 the meanings specified unless the context clearly indicates a different meaning:

4 (1) "Catastrophic medical emergency" means a medical or physical condition that:

5 (A) Incapacitates an employee or an immediate family member for whom the employee
6 will provide care;

7 (B) Is likely to require the prolonged absence of the employee from duty; and

8 (C) Will result in a substantial loss of income to the employee because the employee:

9 (i) Has exhausted all accrued personal leave; and

10 (ii) Is not eligible to receive personal leave or has exhausted personal leave available from
11 a leave bank established pursuant to this article;

12 (2) "Employee" means a professional educator or school service person who is employed
13 by a ~~county~~ school district board and entitled to accrue personal leave as a benefit of employment;

14 (3) "Donor employee" means a professional educator or school service person employed
15 by a ~~county~~ school district board who voluntarily contributes personal leave to another designated
16 employee; and

17 (4) "Receiving employee" means a professional educator or school service person
18 employed by a ~~county~~ school district board who receives donated personal leave from another
19 employee.

20 (b) *Leave donation program.*

21 (1) In addition to any personal leave bank established pursuant to this article, a ~~county~~
22 school district board shall establish a leave donation program pursuant to which a donor employee
23 may transfer accrued personal leave to the personal leave account of another designated
24 employee.

25 (2) A ~~county~~ school district board:

26 (A) May not limit the number of personal leave days a donor employee may transfer to a
27 receiving employee who is his or her spouse;

28 (B) May not limit the total number of personal leave days a receiving employee receives;
29 and

30 (C) May limit the number of days a donor employee transfers to a receiving employee who
31 is not his or her spouse.

32 (c) *Rule.*

33 (1) The ~~county~~ school district board shall adopt a rule to implement the program.

34 (2) The rule shall set forth at least the following conditions:

35 (A) The donor employee voluntarily agrees to the leave transfer;

36 (B) The donor employee selects the employee designated to receive the personal leave
37 transferred; and

38 (C) The receiving employee requires additional personal leave because of a catastrophic
39 medical emergency;

40 (D) The donated leave may not be used to:

41 (i) Qualify for or add to service for any retirement system administered by the state; or

42 (ii) Extend insurance coverage pursuant to section thirteen, article sixteen, chapter five of

43 this code;

44 (E) Each personal leave day contributed:

45 (i) Shall be deducted from the number of personal leave days to which the donor employee
46 is entitled by section ten of this article;

47 (ii) Shall not be deducted from the number of personal leave days without cause to which
48 the donor employee is entitled if sufficient general personal leave days are otherwise available to
49 the donor employee;

50 (iii) Shall be credited to the receiving employee as one full personal leave day;

51 (iv) May not be credited for more or less than a full day by calculating the value of the
52 leave according to the hourly wage of each employee; and

53 (v) May be used only for an absence due to the purpose for which the leave was
54 transferred. Any transferred days remaining when the catastrophic medical emergency ends
55 revert back to the donor employee; and

56 (F) An employee may not be coerced or compelled to contribute to a leave donation
57 program.

§18A-4-12. Tax deferred investments for teachers and other employees.

1 For the purpose of this section, when an employee shall have attained the age of eighteen
2 years the said employee may be eligible to participate in the defined group plans.

3 A ~~county~~ school district board of education, the Teachers' Retirement Board, the West
4 Virginia Board of Education and the board of regents of West Virginia and their agencies may
5 provide by written agreement between any such board or agency and any teacher or other
6 employee to reduce the cash salary payable to such teacher or other employee, and, in
7 consideration thereof, to pay an amount equal to the amount of such reduction as premiums on
8 an annuity contract or payments on a custodial account or other investment owned by such
9 teacher or other employee, which annuity contract, custodial account or other investment is in
10 such form and upon such terms as will qualify the payments thereon for tax deferral under the

11 United States Internal Revenue Code. The amount of such reduction shall not exceed the amount
12 excludable from income under section 403(b) of the United States Internal Revenue Code, and
13 amendments and successor provisions thereto, and shall be considered a part of the teacher's or
14 employee's salary for all purposes other than federal and state income tax.

15 The purchase of such tax deferred investment for a teacher or other employee by a Board
16 of Education, the Teachers' Retirement Board, the West Virginia Board of Education and the
17 board of regents of West Virginia and their agencies shall impose no liability nor responsibility
18 whatsoever on said boards or members thereof except to show that the payments have been
19 remitted for the purposes for which deducted.

§18A-4-15. Employment of service personnel substitutes.

1 (a) The ~~county~~ school district board shall employ and the ~~county~~ school district
2 superintendent, subject to the approval of the ~~county~~ school district board, shall assign substitute
3 service personnel on the basis of seniority to perform any of the following duties:

4 (1) To fill the temporary absence of another service employee;

5 (2) To fill the position of a regular service person as follows:

6 (A) If the regular service person requests a leave of absence from the ~~county~~ school district
7 board in writing and is granted the leave in writing by the ~~county~~ school district board; or

8 (B) If the regular service person is on workers' compensation and absent.

9 (C) If an absence pursuant to paragraph (A) or (B) of this subdivision is to extend beyond
10 thirty working days, the ~~county~~ school district board shall post the position of the absent employee
11 under the procedures set forth in section eight-b of this article. If a substitute service person is
12 employed to fill the position of the absent employee and is employed in the position for twenty or
13 more working days, the substitute service person:

14 (i) Acquires regular employment status with the exception of regular employee job bidding
15 rights;

16 (ii) Does not accrue regular seniority; and

17 (iii) Is accorded all other rights, privileges and benefits pertaining to the position until the
18 regular employee returns to the position or ceases to be employed by the ~~county~~ school district
19 board;

20 (D) If a regular or substitute employee fills a vacancy that is related in any manner to a
21 leave of absence or the absence of an employee on workers' compensation as provided in this
22 section, upon termination of the absence the employee shall be returned to his or her original
23 position or status;

24 (E) A service person may not be:

25 (i) Required to request or to take a leave of absence; or

26 (ii) Deprived of any right or privilege of regular employment status for refusal to request or
27 failure to take a leave of absence;

28 (3) To perform the service of a service person who is authorized to be absent from duties
29 without loss of pay;

30 (4) To temporarily fill a vacancy in a permanent position caused by severance of
31 employment by the resignation, transfer, retirement, permanent disability, dismissal pursuant to
32 section eight, article two of this chapter, or death of the regular service person who had been
33 assigned to the position. Within twenty working days from the commencement of the vacancy,
34 the ~~county~~ school district board shall fill the vacancy under the procedures set forth in section
35 eight-b of this article and section five, article two of this chapter. The person hired to fill the
36 vacancy shall have and be accorded all rights, privileges and benefits pertaining to the position;

37 (5) To fill the vacancy created by a regular employee's suspension.

38 (A) If the suspension is for more than thirty working days, the ~~county~~ school district board
39 shall post the position of the suspended employee under the procedures set forth in section eight-
40 b of this article.

41 (B) If a substitute service person is employed to fill the suspended employee's position,
42 the substitute service person:

43 (i) Acquires regular employment status with the exception of regular employee job-bidding
44 rights;

45 (ii) Does not accrue regular seniority; and

46 (iii) Is accorded all other rights, privileges and benefits pertaining to the position until the
47 termination by the ~~county~~ school district board becomes final or the suspended employee is
48 returned to employment.

49 (C) If the suspended employee is not returned to his or her job, the ~~county~~ school district
50 board shall fill the vacancy under the procedures set forth in section eight-b of this article and
51 section five, article two of this chapter; and

52 (6) To fill temporarily a vacancy in a newly created position prior to employing a service
53 person on a regular basis pursuant to section eight-b of this article.

54 (b) Service personnel substitutes shall be assigned in the following manner:

55 (1) The substitute with the greatest length of service time in the vacant category of
56 employment has priority in accepting the assignment throughout the period of the regular service
57 person's absence or until the vacancy is filled on a regular basis pursuant to section eight-b of
58 this article. Length of service time is calculated from the date a substitute service person begins
59 assigned duties as a substitute in a particular category of employment.

60 (2) All service personnel substitutes are employed on a rotating basis according to their
61 lengths of service time until each substitute has had an opportunity to perform similar
62 assignments.

63 (3) Any regular service person employed in the same building or working station and the
64 same classification category of employment as the absent employee shall be given the first
65 opportunity to fill the position of the absent employee on a rotating and seniority basis. In such
66 case the regular service person's position is filled by a substitute service person. A regular service
67 person assigned to fill the position of an absent employee has the opportunity to hold that position
68 throughout the absence. For the purpose of this section only, all regularly employed school bus

69 operators are considered to be employed within the same building or working station.

70 (c) The ~~county~~ school district board shall return a regular school service person to the
71 same position held prior to any approved leave of absence or period of recovery from injury or
72 illness. The school service person:

73 (1) Retains all rights, privileges and benefits which had accrued at the time of the absence
74 or accrued under any other provision of law during the absence; and

75 (2) Has all rights, privileges and benefits generally accorded school service personnel at
76 the time of return to work.

77 (d) The salary of a substitute service person is determined:

78 (1) Based upon his or her years of employment as defined in section eight of this article;

79 (2) As provided in the state minimum pay scale set forth in section eight-a of this article;

80 and

81 (3) In accordance with the salary schedule of persons regularly employed in the same
82 position in the ~~county~~ school district in which he or she is employed.

83 (e) A substitute service person shall execute a written contract with the ~~county~~ school
84 district board pursuant to section five, article two of this chapter, prior to beginning assigned
85 duties.

86 (f) The following method shall be used to establish a fair, equitable and uniform system
87 for assigning service personnel substitutes to their duties for the first time:

88 (1) The initial order of assigning newly-employed substitutes is determined by a random
89 selection system established by the affected substitute employees and approved by the ~~county~~
90 school district board; and

91 (2) The initial order is effective only until the substitute service personnel have begun their
92 duties for the first time.

93 (g) A substitute service person who has worked thirty days for a school system has all
94 rights pertaining to suspension, dismissal and contract renewal as are granted to regular service

95 personnel in sections six, seven, eight and eight-a, article two of this chapter.

§18A-4-16. Extracurricular assignments.

1 (1) The assignment of teachers and service personnel to extracurricular assignments shall
2 be made only by mutual agreement of the employee and the superintendent, or designated
3 representative, subject to board approval. Extracurricular duties shall mean, but not be limited to,
4 any activities that occur at times other than regularly scheduled working hours, which include the
5 instructing, coaching, chaperoning, escorting, providing support services or caring for the needs
6 of students, and which occur on a regularly scheduled basis: *Provided*, That all school service
7 personnel assignments shall be considered extracurricular assignments, except such
8 assignments as are considered either regular positions, as provided by section eight of this article,
9 or extra-duty assignments, as provided by section eight-b of this article.

10 (2) The employee and the superintendent, or a designated representative, subject to board
11 approval, shall mutually agree upon the maximum number of hours of extracurricular assignment
12 in each school year for each extracurricular assignment.

13 (3) The terms and conditions of the agreement between the employee and the board shall
14 be in writing and signed by both parties.

15 (4) An employee's contract of employment shall be separate from the extracurricular
16 assignment agreement provided for in this section and shall not be conditioned upon the
17 employee's acceptance or continuance of any extracurricular assignment proposed by the
18 superintendent, a designated representative, or the board.

19 (5) The board shall fill extracurricular school service personnel assignments and
20 vacancies in accordance with section eight-b of this article: *Provided*, That an alternative
21 procedure for making extracurricular school service personnel assignments within a particular
22 classification category of employment may be utilized if the alternative procedure is approved
23 both by the ~~county~~ school district board and by an affirmative vote of two thirds of the employees
24 within that classification category of employment.

25 (6) An employee who was employed in any service personnel extracurricular assignment
26 during the previous school year shall have the option of retaining the assignment if it continues to
27 exist in any succeeding school year. A ~~county~~ school district board of education may terminate
28 any school service personnel extracurricular assignment for lack of need pursuant to section
29 seven, article two of this chapter. If an extracurricular contract has been terminated and is
30 reestablished in any succeeding school year, it shall be offered to the employee who held the
31 assignment at the time of its termination. If the employee declines the assignment, the
32 extracurricular assignment shall be posted and filled pursuant to section eight-b of this article.

§18A-4-17. Health and other facility employee salaries.

1 (a) The minimum salary scale for professional personnel and service personnel employed
2 by the state Department of Education to provide education and support services to residents of
3 state Department of Health and Human Resources facilities, corrections facilities providing
4 services to juvenile and youthful offenders, in the West Virginia schools for the deaf and the blind
5 and in public community and technical colleges providing middle college services is the same as
6 set forth in sections two, three and eight-a of this article. Additionally, those personnel shall
7 receive the equivalent of salary supplements paid to professional and service personnel employed
8 by the ~~county~~ school district board in the ~~county~~ school district wherein each facility is located, as
9 set forth in sections five-a and five-b of this article. Professional personnel and service personnel
10 in these facilities who earn advanced classification of training after the effective date of this section
11 shall be paid the advanced salary from the date the classification of training is earned. The
12 professional personnel shall be certified, licensed or trained, and shall meet other eligibility
13 classifications as may be required by the provisions of this chapter and by state board regulations
14 for comparable instructional personnel who are employed by ~~county~~ school district boards. The
15 professional personnel shall be paid at the equivalent rate of pay of teachers as set forth in section
16 two of this article, but outside the public support plan, plus the equivalent of the salary supplement
17 paid to teachers employed by the ~~county~~ school district board in the ~~county~~ school district in which

18 each facility is located, as set forth in section five-a of this article.

19 (b) Professional personnel employed by the department to provide education services to
20 residents in state Department of Health and Human Resources facilities, corrections facilities
21 providing services to juvenile and youthful offenders, in the West Virginia schools for the deaf and
22 the blind or in public community and technical colleges providing middle college services are
23 afforded all the rights, privileges and benefits established for the professional personnel under
24 this article, subject to the following:

25 (1) The benefits apply only within the facility at which the professional personnel are
26 employed;

27 (2) The benefits exclude salaries unless explicitly provided for under this or other sections
28 of this article; and

29 (3) Seniority for the professional personnel is determined on the basis of the length of time
30 the employee has been professionally employed at the facility, regardless of which state agency
31 was the actual employer.

32 (c) Professional personnel and service personnel employed by the Department of
33 Education to provide education and support services to residents in state Department of Health
34 and Human Resources facilities, corrections facilities providing services to juvenile and youthful
35 offenders, the West Virginia schools for the deaf and the blind and in public community and
36 technical colleges providing middle college services are state employees.

37 (d) *Additional seniority provisions.* --

38 (1) Notwithstanding any other provision of this section to the contrary, professional and
39 service personnel employed in an educational facility operated by the West Virginia Department
40 of Education accrue seniority at that facility on the basis of the length of time the employee has
41 been employed at the facility. Professional and service personnel whose employment at the
42 facility was preceded immediately by employment with the ~~county~~ school district board previously
43 providing education services at the facility or whose employment contract was with the ~~county~~

44 school district board previously providing education services at the facility:

45 (A) Retains any seniority accrued during employment by the ~~county~~ school district board;

46 (B) Accrues seniority as a regular employee with the ~~county~~ school district board during
47 employment at the facility;

48 (C) Attains continuing contract status in accordance with section two, article two, chapter
49 eighteen-a of this code with both the ~~county~~ school district and the facility if the sum of the years
50 employed by the ~~county~~ school district and the facility equals the statutory number required for
51 continuing contract status; and

52 (D) Retains and continues to accrue ~~county~~ school district and facility seniority in the event
53 of reemployment by the ~~county~~ school district as a result of direct transfer from the facility or recall
54 from the preferred list.

55 (2) Reductions in work force in the facility or employment by the facility or ~~county~~ school
56 district board are made in accordance with the provisions of sections seven-a and eight-b of this
57 chapter. Only years of employment within the facility are considered for purposes of reduction in
58 force within the facility.

59 (3) The seniority conferred in this section applies retroactively to all affected professional
60 and service personnel, but the rights incidental to the seniority commence on the effective date
61 of this section.

62 (4) Amendments made to this section during the 2009 regular session of the Legislature
63 do not abrogate any rights, privileges or benefits bestowed under previous enactments of this
64 section.

§18A-4-18. Department of education certified staff salaries.

1 (a) Personnel employed by the state Department of Education who are required to hold a
2 teaching certificate shall receive a salary that is at least equal to the salary paid to comparable
3 professional personnel employed by the ~~county~~ school district board in the ~~county~~ school district
4 in which their office is located, minus the \$600 authorized pursuant to section two of this article

5 for classroom teachers with twenty years of experience.

6 (b) Effective July 1, 2002, service personnel employed by the Department of Education
7 shall receive a salary that is at least equal to the salary paid to comparable personnel employed
8 by the ~~county~~ school district board in the ~~county~~ school district in which their principal place of
9 employment is located. The Department of Education shall establish a salary schedule that
10 phases in the necessary salary increases before July 1, 2002.

§18A-4-19. Alteration of contract.

1 (a) Notwithstanding the provisions of section seven-a of this article relating to professional
2 personnel or any other section of this code to the contrary, any alteration of an employment
3 contract of a professional educator who is employed for more than two hundred days, which
4 alteration changes the number of days in the employment term, shall not be deemed a creation
5 of a new position, nor shall such alteration require the posting of the position.

6 Notwithstanding the provisions of section seven-a of this article relating to professional
7 personnel or any other section of this code to the contrary, any alteration of an employment
8 contract of a professional educator which reduces or eliminates the local salary supplement or
9 the benefits provided to such employee due to a defeat of a special levy, or a loss in assessed
10 values or events over which it has no control and for which the ~~county~~ school district board has
11 received approval from the state board prior to making such reduction or elimination in
12 accordance with section five-a of this article, shall not require termination of said employment
13 contract as set forth in sections two and eight-a, article two of this chapter, nor shall it be deemed
14 a creation of a new position, nor shall such alteration require the posting of the position.

15 (b) Notwithstanding the provisions of section eight-b of this article relating to school service
16 personnel or any other section of this code to the contrary, any alteration of an employment
17 contract of a service personnel employee who is employed for more than two hundred days, which
18 alteration changes the number of days in the employment term, shall not be deemed a creation
19 of a new position, nor shall such alteration require the posting of the position.

20 Notwithstanding the provisions of section eight-b of this article relating to school service
21 personnel or any other section of this code to the contrary, any alteration of an employment
22 contract of a service personnel employee which reduces or eliminates the local salary supplement
23 or the benefits provided to such employee due to a defeat of a special levy, or a loss in assessed
24 values or events over which it has no control and for which the ~~county~~ school district board has
25 received approval from the state board prior to making such reduction or elimination in
26 accordance with section five-b of this article, shall not require termination of said employment
27 contract as set forth in sections six and eight-a, article two of this chapter, nor shall it be deemed
28 a creation of a new position, nor shall such alteration require the posting of the position.

§18A-4-20. Moving expenses allowed for teachers laid off in counties due to lack of need.

1 (a) From funds appropriated, the Department of Education may pay the moving expenses
2 for a teacher who meets the following criteria:

3 (1) The teacher's position was eliminated as part of a reduction in force by a West Virginia
4 ~~county~~ school district school board;

5 (2) The teacher has secured employment for a West Virginia ~~county~~ school district board
6 in another ~~county~~ school district;

7 (3) The teacher has moved his or her residence to the West Virginia ~~county~~ school district
8 in which he or she has gained employment or to an adjacent ~~county~~ school district in West
9 Virginia;

10 (4) The teacher is to be employed in a ~~county~~ school district where shortages exist either
11 in numbers of teachers or in subject matter areas as determined by the state board; and

12 (5) As a result of the new employment, it would be impractical for the teacher to maintain
13 his or her previous residence.

14 (b) The reimbursement shall be for actual expenses and shall not exceed \$2,500, subject
15 to the availability of funds.

16 (c) Each ~~county~~ school district board of education shall send the state board by May 1,

17 annually, a report that includes:

18 (1) The available teacher positions in the ~~county~~ school district;

19 (2) Any shortages in subject matter areas in the ~~county~~ school district; and

20 (3) The name of all teachers reduced in force: *Provided*, That the teacher has permitted
21 the ~~county~~ school district board to submit his or her name.

22 (d) The state board shall compile a report including all information submitted to the state
23 board based on the reports provided in subsection (c) of this section. The state board shall send
24 this report to each ~~county~~ school district board of education. Additionally, the state board shall
25 send a letter to all teachers reduced in force. This letter shall identify all teacher positions available
26 in West Virginia and identify those ~~counties~~ school districts where shortages exist either in
27 numbers of teachers or in subject matter areas.

28 (e) The state board shall promulgate a rule pursuant to the provisions of article three-b,
29 chapter twenty-nine-a of this code that implements the provisions of this section. The rule shall
30 include, but is not limited to:

31 (1) Standards sufficient to define and measure the criteria set forth in subsection (a) of this
32 section; and

33 (2) A procedure for allocating the funds if the funds appropriated are insufficient.

34 (f) Nothing in this section shall require any level of appropriation by the Legislature.

35 (g) The state board shall report to the Legislature by January 1, of each year on the
36 number of teachers being reimbursed.

37 (h) This section shall expire on July 1, 2005, unless continued by the Legislature.

§18A-4-21. Posting of position opening following death of incumbent.

1 A ~~county~~ school district board may not declare a position vacant and post a job opening
2 sooner than ten days following the death of an individual employed in that position.

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-1. Authority of teachers and other school personnel; exclusion of students having

infectious diseases; suspension or expulsion of disorderly students; corporal punishment abolished.

1 (a) The teacher shall stand in the place of the parent(s), guardian(s) or custodian(s) in
2 exercising authority over the school and has control of all students enrolled in the school from the
3 time they reach the school until they have returned to their respective homes, except that where
4 transportation of students is provided, the driver in charge of the school bus or other mode of
5 transportation shall exercise such authority and control over the students while they are in transit
6 to and from the school.

7 (b) Subject to the rules of the state Board of Education, the teacher shall exclude from the
8 school any student known to have or suspected of having any infectious disease, or any student
9 who has been exposed to any infectious disease, and shall immediately notify the proper health
10 officer or medical inspector of the exclusion. Any student so excluded may not be readmitted to
11 the school until he or she has complied with all the requirements of the rules governing those
12 cases or has presented a certificate of health signed by the medical inspector or other proper
13 health officer.

14 (c) The teacher may exclude from his or her classroom or school bus any student who is
15 guilty of disorderly conduct; who in any manner interferes with an orderly educational process;
16 who threatens, abuses or otherwise intimidates or attempts to intimidate a school employee or a
17 student; who willfully disobeys a school employee; or who uses abusive or profane language
18 directed at a school employee. Any student excluded shall be placed under the control of the
19 principal of the school or a designee. The excluded student may be admitted to the classroom or
20 school bus only when the principal, or a designee, provides written certification to the teacher that
21 the student may be readmitted and specifies the specific type of disciplinary action, if any, that
22 was taken. If the principal finds that disciplinary action is warranted, he or she shall provide written
23 and, if possible, telephonic notice of the action to the parent(s), guardian(s) or custodian(s). When
24 a student is excluded from a classroom or a school bus two times in one semester, and after

25 exhausting all reasonable methods of classroom discipline provided in the school discipline plan,
26 the student may be readmitted to the classroom or the school bus only after the principal, teacher
27 and, if possible, the parent(s), guardian(s) or custodian(s) of the student have held a conference
28 to discuss the student's disruptive behavior patterns, and the teacher and the principal agree on
29 a course of discipline for the student and inform the parent(s), guardian(s) or custodian(s) of the
30 course of action. Thereafter, if the student's disruptive behavior persists, upon the teacher's
31 request, the principal may, to the extent feasible, transfer the student to another setting. The
32 Legislature finds that isolating students or placing them in alternative learning centers may be the
33 best setting for chronically disruptive students. The ~~county~~ school district board shall create more
34 alternative learning centers or expand its capacity for alternative placements, subject to funding,
35 to correct these students' behaviors so they can return to a regular classroom without engaging
36 in further disruptive behavior.

37 (d) The Legislature finds that suspension from school is not appropriate solely for a
38 student's failure to attend class. Therefore, a student may not be suspended from school solely
39 for not attending class. Other methods of discipline may be used for the student which may
40 include, but are not limited to, detention, extra class time or alternative class settings.

41 (e) Corporal punishment of any student by a school employee is prohibited.

42 (f) Each ~~county~~ school district board is solely responsible for the administration of proper
43 discipline in the public schools of the ~~county~~ school district and shall adopt policies consistent with
44 the provisions of this section to govern disciplinary actions. These policies shall encourage the
45 use of alternatives to corporal punishment, providing for the training of school personnel in
46 alternatives to corporal punishment and for the involvement of parent(s), guardian(s) or
47 custodian(s) in the maintenance of school discipline. The ~~county~~ school district boards shall
48 provide for the immediate incorporation and implementation in the schools of a preventive
49 discipline program which may include the responsible student program and a student involvement
50 program which may include the peer mediation program, devised by the West Virginia Board of

51 Education. Each ~~county~~ school district board may modify those programs to meet the particular
 52 needs of the ~~county~~ school district. The ~~county~~ school district boards shall provide in-service
 53 training for teachers and principals relating to assertive discipline procedures and conflict
 54 resolution. The ~~county~~ school district boards also may establish cooperatives with private entities
 55 to provide middle educational programs which may include programs focusing on developing
 56 individual coping skills, conflict resolution, anger control, self-esteem issues, stress management
 57 and decision making for students and any other program related to preventive discipline.

58 (g) For the purpose of this section:

59 (1) " Student" includes any child, youth or adult who is enrolled in any instructional program
 60 or activity conducted under board authorization and within the facilities of or in connection with
 61 any program under public school direction: *Provided, That*, in the case of adults, the student–
 62 teacher relationship shall terminate when the student leaves the school or other place of
 63 instruction or activity;

64 (2) "Teacher" means all professional educators as defined in section one, article one of
 65 this chapter and includes the driver of a school bus or other mode of transportation; and

66 (3) "Principal" means the principal, assistant principal, vice principal or the administrative
 67 head of the school or a professional personnel designee of the principal or the administrative head
 68 of the school.

69 (h) Teachers shall exercise other authority and perform other duties prescribed for them
 70 by law or by the rules of the state board not inconsistent with the provisions of this chapter and
 71 chapter eighteen of this code.

**§18A-5-1a. Possessing deadly weapons on premises of educational facilities; possessing
 a controlled substance on premises of educational facilities; assaults and batteries
 committed by students upon teachers or other school personnel; temporary
 suspension, hearing; procedure, notice and formal hearing; extended suspension;
 sale of narcotic; expulsion; exception; alternative education.**

1 (a) A principal shall suspend a student from school or from transportation to or from the
2 school on any school bus if the student, in the determination of the principal after an informal
3 hearing pursuant to subsection (d) of this section, has: (i) Violated the provisions of subsection
4 (b), section fifteen, article two, chapter sixty-one of this code; (ii) violated the provisions of
5 subsection (b), section eleven-a, article seven of said chapter; or (iii) sold a narcotic drug, as
6 defined in section one hundred one, article one, chapter sixty-a of this code, on the premises of
7 an educational facility, at a school-sponsored function or on a school bus. If a student has been
8 suspended pursuant to this subsection, the principal shall, within twenty-four hours, request that
9 the ~~county~~ school district superintendent recommend to the ~~county~~ school district board that the
10 student be expelled. Upon such a request by a principal, the ~~county~~ school district superintendent
11 shall recommend to the ~~county~~ school district board that the student be expelled. Upon such
12 recommendation, the ~~county~~ school district board shall conduct a hearing in accordance with
13 subsections (e), (f) and (g) of this section to determine if the student committed the alleged
14 violation. If the ~~county~~ school district board finds that the student did commit the alleged violation,
15 the ~~county~~ school district board shall expel the student.

16 (b) A principal shall suspend a student from school, or from transportation to or from the
17 school on any school bus, if the student, in the determination of the principal after an informal
18 hearing pursuant to subsection (d) of this section, has: (i) Committed an act or engaged in conduct
19 that would constitute a felony under the laws of this state if committed by an adult; or (ii) unlawfully
20 possessed on the premises of an educational facility or at a school-sponsored function a
21 controlled substance governed by the Uniform Controlled Substances Act as described in chapter
22 sixty-a of this code. If a student has been suspended pursuant to this subsection, the principal
23 may request that the superintendent recommend to the ~~county~~ school district board that the
24 student be expelled. Upon such recommendation by the ~~county~~ school district superintendent,
25 the ~~county~~ school district board may hold a hearing in accordance with the provisions of
26 subsections (e), (f) and (g) of this section to determine if the student committed the alleged

27 violation. If the ~~county~~ school district board finds that the student did commit the alleged violation,
28 the ~~county~~ school district board may expel the student.

29 (c) A principal may suspend a student from school, or transportation to or from the school
30 on any school bus, if the student, in the determination of the principal after an informal hearing
31 pursuant to subsection (d) of this section: (i) Threatened to injure, or in any manner injured, a
32 student, teacher, administrator or other school personnel; (ii) willfully disobeyed a teacher; (iii)
33 possessed alcohol in an educational facility, on school grounds, a school bus or at any school-
34 sponsored function; (iv) used profane language directed at a school employee or student; (v)
35 intentionally defaced any school property; (vi) participated in any physical altercation with another
36 person while under the authority of school personnel; or (vii) habitually violated school rules or
37 policies. If a student has been suspended pursuant to this subsection, the principal may request
38 that the superintendent recommend to the ~~county~~ school district board that the student be
39 expelled. Upon such recommendation by the ~~county~~ school district superintendent, the ~~county~~
40 school district board may hold a hearing in accordance with the provisions of subsections (e), (f)
41 and (g) of this section to determine if the student committed the alleged violation. If the ~~county~~
42 school district board finds that the student did commit the alleged violation, the ~~county~~ school
43 district board may expel the student.

44 (d) The actions of any student which may be grounds for his or her suspension or
45 expulsion under the provisions of this section shall be reported immediately to the principal of the
46 school in which the student is enrolled. If the principal determines that the alleged actions of the
47 student would be grounds for suspension, he or she shall conduct an informal hearing for the
48 student immediately after the alleged actions have occurred. The hearing shall be held before the
49 student is suspended unless the principal believes that the continued presence of the student in
50 the school poses a continuing danger to persons or property or an ongoing threat of disrupting
51 the academic process, in which case the student shall be suspended immediately and a hearing
52 held as soon as practicable after the suspension.

53 The student and his or her parent(s), guardian(s) or custodian(s), as the case may be,
54 shall be given telephonic notice, if possible, of this informal hearing, which notice shall briefly state
55 the grounds for suspension.

56 At the commencement of the informal hearing, the principal shall inquire of the student as
57 to whether he or she admits or denies the charges. If the student does not admit the charges, he
58 or she shall be given an explanation of the evidence possessed by the principal and an opportunity
59 to present his or her version of the occurrence. At the conclusion of the hearing or upon the failure
60 of the noticed student to appear, the principal may suspend the student for a maximum of ten
61 school days, including the time prior to the hearing, if any, for which the student has been excluded
62 from school.

63 The principal shall report any suspension the same day it has been decided upon, in
64 writing, to the parent(s), guardian(s) or custodian(s) of the student by regular United States mail.
65 The suspension also shall be reported to the ~~county~~ school district superintendent and to the
66 faculty senate of the school at the next meeting after the suspension.

67 (e) Prior to a hearing before the ~~county~~ school district board, the ~~county~~ school district
68 board shall cause a written notice which states the charges and the recommended disposition to
69 be served upon the student and his or her parent(s), guardian(s) or custodian(s), as the case may
70 be. The notice shall state clearly whether the board will attempt at hearing to establish the student
71 as a dangerous student, as defined by section one, article one of this chapter. The notice also
72 shall include any evidence upon which the board will rely in asserting its claim that the student is
73 a dangerous student. The notice shall set forth a date and time at which the hearing shall be held,
74 which date shall be within the ten-day period of suspension imposed by the principal.

75 (f) The ~~county~~ school district board shall hold the scheduled hearing to determine if the
76 student should be reinstated or should, under the provisions of this section, must be expelled from
77 school. If the ~~county~~ school district board determines that the student should or must be expelled
78 from school, it also may determine whether the student is a dangerous student pursuant to

79 subsection (g) of this section. At this, or any hearing before a ~~county~~ school district board
80 conducted pursuant to this section, the student may be represented by counsel, may call his or
81 her own witnesses to verify his or her version of the incident and may confront and cross examine
82 witnesses supporting the charge against him or her. The hearing shall be recorded by mechanical
83 means unless recorded by a certified court reporter. The hearing may be postponed for good
84 cause shown by the student but he or she shall remain under suspension until after the hearing.
85 The state board may adopt other supplementary rules of procedure to be followed in these
86 hearings. At the conclusion of the hearing the ~~county~~ school district board shall either: (1) Order
87 the student reinstated immediately at the end of his or her initial suspension; (2) suspend the
88 student for a further designated number of days; or (3) expel the student from the public schools
89 of the ~~county~~ school district.

90 (g) A ~~county~~ school district board that did not intend prior to a hearing to assert a
91 dangerous student claim, that did not notify the student prior to the hearing that a dangerous
92 student determination would be considered and that determines through the course of the hearing
93 that the student may be a dangerous student shall schedule a second hearing within ten days to
94 decide the issue. The hearing may be postponed for good cause shown by the student, but he or
95 she remains under suspension until after the hearing.

96 A ~~county~~ school district board that expels a student, and finds that the student is a
97 dangerous student, may refuse to provide alternative education. However, after a hearing
98 conducted pursuant to this section for determining whether a student is a dangerous student,
99 when the student is found to be a dangerous student, is expelled and is denied alternative
100 education, a hearing shall be conducted within three months after the refusal by the board to
101 provide alternative education to reexamine whether or not the student remains a dangerous
102 student and whether the student shall be provided alternative education. Thereafter, a hearing for
103 the purpose of reexamining whether or not the student remains a dangerous student and whether
104 the student shall be provided alternative education shall be conducted every three months for so

105 long as the student remains a dangerous student and is denied alternative education. During the
106 initial hearing, or in any subsequent hearing, the board may consider the history of the student's
107 conduct as well as any improvements made subsequent to the expulsion. If it is determined during
108 any of the hearings that the student is no longer a dangerous student or should be provided
109 alternative education, the student shall be provided alternative education during the remainder of
110 the expulsion period.

111 (h) The superintendent may apply to a circuit judge or magistrate for authority to subpoena
112 witnesses and documents, upon his or her own initiative, in a proceeding related to a
113 recommended student expulsion or dangerous student determination, before a ~~county~~ school
114 district board conducted pursuant to the provisions of this section. Upon the written request of any
115 other party, the superintendent shall apply to a circuit judge or magistrate for the authority to
116 subpoena witnesses, documents or both on behalf of the other party in a proceeding related to a
117 recommended student expulsion or dangerous student determination before a ~~county~~ school
118 district board. If the authority to subpoena is granted, the superintendent shall subpoena the
119 witnesses, documents or both requested by the other party. Furthermore, if the authority to
120 subpoena is granted, it shall be exercised in accordance with the provisions of section one, article
121 five, chapter twenty-nine-a of this code.

122 Any hearing conducted pursuant to this subsection may be postponed: (1) For good cause
123 shown by the student; (2) when proceedings to compel a subpoenaed witness to appear must be
124 instituted; or (3) when a delay in service of a subpoena hinders either party's ability to provide
125 sufficient notice to appear to a witness. A student remains under suspension until after the hearing
126 in any case where a postponement occurs.

127 (i) Students may be expelled pursuant to this section for a period not to exceed one school
128 year, except that if a student is determined to have violated the provisions of subsection (a) of
129 this section the student shall be expelled for a period of not less than twelve consecutive months,
130 subject to the following:

131 (1) The ~~county~~ school district superintendent may lessen the mandatory period of twelve
132 consecutive months for the expulsion of the student if the circumstances of the student's case
133 demonstrably warrant;

134 (2) Upon the reduction of the period of expulsion, the ~~county~~ school district superintendent
135 shall prepare a written statement setting forth the circumstances of the student's case which
136 warrant the reduction of the period of expulsion. The ~~county~~ school district superintendent shall
137 submit the statement to the ~~county~~ school district board, the principal, the faculty senate and the
138 local school improvement council for the school from which the student was expelled. The ~~county~~
139 school district superintendent may use the following factors as guidelines in determining whether
140 or not to reduce a mandatory twelve-month expulsion:

141 (A) The extent of the student's malicious intent;

142 (B) The outcome of the student's misconduct;

143 (C) The student's past behavior history;

144 (D) The likelihood of the student's repeated misconduct; and

145 (E) If applicable, successful completion or making satisfactory progress toward successful
146 completion of Juvenile Drug Court pursuant to section one-d of this section.

147 (j) In all hearings under this section, facts shall be found by a preponderance of the
148 evidence.

149 (k) For purposes of this section, nothing herein may be construed to be in conflict with the
150 federal provisions of the Individuals with Disabilities Education Act, 20 U. S. C. §1400, *et seq.*

151 (l) Each suspension or expulsion imposed upon a student under the authority of this
152 section shall be recorded in the uniform integrated regional computer information system
153 (commonly known as the West Virginia Education Information System) described in subsection
154 (f), section twenty-six, article two, chapter eighteen of this code.

155 (1) The principal of the school at which the student is enrolled shall create an electronic
156 record within twenty-four hours of the imposition of the suspension or expulsion.

157 (2) Each record of a suspension or expulsion shall include the student's name and
158 identification number, the reason for the suspension or expulsion and the beginning and ending
159 dates of the suspension or expulsion.

160 (3) The state board shall collect and disseminate data so that any principal of a public
161 school in West Virginia can review the complete history of disciplinary actions taken by West
162 Virginia public schools against any student enrolled or seeking to enroll at that principal's school.
163 The purposes of this provision are to allow every principal to fulfill his or her duty under subsection
164 (b), section fifteen-f, article five, chapter eighteen of this code to determine whether a student
165 requesting to enroll at a public school in West Virginia is currently serving a suspension or
166 expulsion from another public school in West Virginia and to allow principals to obtain general
167 information about students' disciplinary histories.

168 (m) Principals may exercise any other authority and perform any other duties to discipline
169 students consistent with state and federal law, including policies of the state board.

170 (n) Each ~~county~~ school district board is solely responsible for the administration of proper
171 discipline in the public schools of the ~~county~~ school district and shall adopt policies consistent with
172 the provisions of this section to govern disciplinary actions.

173 (o) For the purpose of this section, "principal" means the principal, assistant principal, vice
174 principal or the administrative head of the school or a professional personnel designee of the
175 principal or the administrative head of the school.

§18A-5-1b. Alternative procedures for expulsion hearings by ~~county~~ school district boards.

1 The ~~county~~ school district boards may employ a hearing examiner to conduct the
2 expulsion hearings required by this article. The hearing examiner shall be an attorney, duly
3 licensed to practice law in the State of West Virginia and shall not be employed by the state or
4 ~~county~~ school district boards for any other reason.

5 The hearing examiner shall conduct hearings in compliance with the guidelines of section
6 one-a of this article. All hearings shall be recorded by mechanical means, unless recorded by a

7 certified court reporter. The hearing examiner shall issue a decision and written findings of fact
8 and conclusions of law within five days of the conclusion of the hearing. Hearings by a hearing
9 examiner shall have the same force and effect as a decision made by a ~~county~~ school district
10 board. Upon the written request of a parent, guardian, or custodian of the student, or the ~~county~~
11 school district superintendent, the ~~county~~ school district board shall review the decision of the
12 hearing examiner. Within ten calendar days from the date of the request of the review, the ~~county~~
13 school district board shall enter an order affirming, reversing, or modifying the decision of the
14 hearing examiner. A ~~county~~ school district board may, in its own discretion, hold a hearing to
15 determine any issues in question.

16 The authority of the ~~county~~ school district superintendent shall be the same as contained
17 in section one-a of this article.

§18A-5-1d. Return to school through Juvenile Drug Court for certain students.

1 (a) When a student is expelled from school pursuant to section one-a of this article, the
2 ~~county~~ school district board, ~~county~~ school district superintendent or principal for the school from
3 which the student was expelled or the parent, guardian or custodian may refer the student to a
4 Juvenile Drug Court, operated pursuant to section two-b, article five, chapter forty-nine of this
5 code. Upon such referral, the judge assigned to Juvenile Drug Court shall determine whether the
6 student is an appropriate candidate for Juvenile Drug Court.

7 (b) If the judge determines the student is an appropriate candidate for Juvenile Drug Court,
8 then the court has jurisdiction over the student in the same manner as it has jurisdiction over all
9 other persons in Juvenile Drug Court. Such jurisdiction over students includes the ability to issue
10 any of the various sanctions available to the Juvenile Drug Court, including temporary detention.

11 (c)(1) Successful completion of Juvenile Drug Court or certification by the Juvenile Drug
12 Court judge that the student is making satisfactory progress toward successful completion of
13 Juvenile Drug Court warrants consideration for reduction of the expulsion period, pursuant to
14 section one-a of this article.

15 (2) The Juvenile Drug Court shall notify the ~~county~~ school district superintendent of such
16 completion or certification. The ~~county~~ school district superintendent shall arrange a meeting with
17 the Juvenile Drug Court treatment team, the court and the student assistance team of the school
18 from which the student was expelled to discuss the student's history, progress and potential for
19 improvement.

20 (3) The student assistance team shall evaluate and recommend whether the student's
21 expulsion period should be reduced and the student reinstated in school.

22 (4) The student assistance team's recommendation shall be presented to the
23 superintendent, who shall make the final determination. The superintendent shall prepare a
24 statement detailing reasons for or against school reinstatement and submit the statement to the
25 ~~county~~ school district board. If the superintendent determines to reduce the expulsion period, he
26 or she shall submit the statement required by subsection (i), section one-a of this article and place
27 the student in an appropriate school within the district.

28 (5) A student to be reinstated shall be permitted to return to school no later than the tenth
29 regular school day following notice by the court to the superintendent regarding the student's
30 successful completion or satisfactory progress toward successful completion of Juvenile Drug
31 Court.

**§18A-5-2. Holidays; closing of schools; time lost because of such; special Saturday
classes.**

1 (a) Schools shall be closed on Saturdays and on the following days which are designated
2 as legal school holidays: Independence Day, Labor Day, Veterans Day, Thanksgiving Day,
3 Christmas Day, New Year's Day, Martin Luther King's birthday, Memorial Day and West Virginia
4 Day. Schools also shall be closed on any day on which a primary election, general election or
5 special election is held throughout the state or school district and on any day appointed and set
6 apart by the president or the Governor as a holiday of special observance by the people of the
7 state.

8 (b) When any of the above designated holidays, except a special election, falls on
9 Saturday, the schools shall be closed on the preceding Friday. When any designated holiday falls
10 on Sunday, the schools shall be closed on the following Monday.

11 (c) Special classes may be conducted on Saturdays for pupils and by teachers and service
12 personnel. Saturday classes shall be conducted on a voluntary basis and teachers and service
13 personnel shall be remunerated in ratio to the regularly contracted pay.

14 (d) Any school or schools may be closed by proper authorities on account of the
15 prevalence of contagious disease, conditions of weather or any other calamitous cause over
16 which the board has no control.

17 (1) Under any or all of the above provisions, the time lost by the school closings may not
18 be counted as days of employment and may not be counted as meeting a part of the requirements
19 of the minimum term of one hundred eighty days of instruction. A school employee's pay per pay
20 period may not change as a result of a school closing not being counted as a day of employment,
21 and the employee shall be paid the same amount during any pay period in which a school closing
22 occurs that the employee would have been paid during the pay period if a school closing had not
23 occurred.

24 (2) On the day or days when a school or schools are closed, ~~county~~ school district boards
25 may provide appropriate alternate work schedules for professional and service personnel affected
26 by the closing of any school or schools under any or all of the provisions of this subsection.
27 Professional and service personnel shall receive pay the same as if school were in session.

28 (3) Insofar as funds are available or can be made available during the school year, the
29 board may extend the employment term for the purpose of making up time that might affect the
30 instructional term.

31 (e) In addition to any other provisions of this chapter, the board further is authorized to
32 provide in its annual budget for meetings, workshops, vacation time or other holidays through
33 extended employment of personnel at the same rate of pay.

§18A-5-4. Educational meetings.

1 A ~~county~~ school district board of education may approve the attendance of any or all
2 teachers at educational conventions, conferences, or other professional meetings of teachers on
3 school days when in the judgment of the superintendent it is necessary or desirable. Attendance
4 at such meetings may be substituted for an equal amount of teaching or employment and teachers
5 attending shall not suffer loss of pay. Further, the board is authorized to pay all or any part of
6 expenses of any personnel whom it may designate to represent the board at any such
7 professional or educational meetings or in visitation to another school system.

8 Every ~~county~~ school district board of education shall adopt a policy under which
9 professional educators serving as mentor teachers, serving on state and ~~county~~ school district
10 professional staff development councils, serving on school curriculum teams, and serving on
11 professional support teams will be granted professional time if required for performance of their
12 duties during the instructional day or extra duty compensation if required at other times and for
13 reimbursement for necessary expenses actually incurred in attending meetings of the bodies upon
14 which they serve upon. Such policy shall provide for the coverage of the professional personnel's
15 regular duties during such release times through the use of paraprofessional aides, substitutes
16 and other methods if necessary to avoid the interruption of instruction.

§18A-5-6. School census.

1 A school census of youths from birth through twenty years of age as of September first of
2 the year in which taken, or of such ages as otherwise may locally be determined and of mentally
3 and physically handicapped persons of all ages, may be made as directed by a ~~county~~ school
4 district board of education. The school census may be taken by the teachers or as otherwise
5 directed by the ~~county~~ school district board of education. Teachers taking the school census shall
6 be entitled to use school hours not to exceed a total of one school day, and shall be compensated
7 for such time as for time taught.

8 The State Superintendent of Schools shall have authority to require a statewide

9 enumeration by the ~~counties~~ school districts at such times as he or she may direct and may
10 establish the procedures therefor.

11 In order that the census record may be as currently accurate as possible, and a reliable
12 source of reference through the school year, it shall be the duty of each ~~county~~ school district
13 superintendent of schools to establish and administer through the office of the ~~county~~ school
14 district director of school attendance a system of cumulative census records which may be
15 prescribed by the state Superintendent of Schools.

**§18A-5-8. Authority of certain aides to exercise control over students; compensation;
transfers.**

1 (a) Within the limitations provided in this section, any aide who agrees to do so shall stand
2 in the place of the parent or guardian and shall exercise such authority and control over students
3 as is required of a teacher as provided in section one of this article. The principal shall designate
4 aides in the school who agree to exercise that authority on the basis of seniority as an aide and
5 shall enumerate the instances in which the authority shall be exercised by an aide when requested
6 by the principal, assistant principal or professional employee to whom the aide is assigned.

7 (b) The authority provided for in subsection (a) of this section does not extend to
8 suspending or expelling any student, participating in the administration of corporal punishment or
9 performing instructional duties as a teacher or substitute teacher. However, the authority extends
10 to supervising students undergoing in-school suspension if the instructional duties required by the
11 supervision are limited solely to handing out class work and collecting class work. The authority
12 to supervise students undergoing in-school suspension does not include actual instruction.

13 (c) An aide designated by the principal under subsection (a) of this section shall receive a
14 salary not less than one pay grade above the highest pay grade held by the service person under
15 section eight-a, article four of this chapter and any ~~county~~ school district salary schedule in excess
16 of the minimum requirements of this article.

17 (d) An aide may not be required by the operation of this section to perform noninstructional

18 duties for an amount of time which exceeds that required under the aide's contract of employment
 19 or that required of other aides in the same school unless the assignment of the duties is mutually
 20 agreed upon by the aide and the ~~county~~ school district superintendent, or the superintendent's
 21 designated representative, subject to ~~county~~ school district board approval.

22 (1) The terms and conditions of the agreement shall be in writing, signed by both parties,
 23 and may include additional benefits.

24 (2) The agreement shall be uniform as to aides assigned similar duties for similar amounts
 25 of time within the same school.

26 (3) Aides have the option of agreeing to supervise students and of renewing related
 27 assignments annually. If an aide elects not to renew the previous agreement to supervise
 28 students, the minimum salary of the aide shall revert to the pay grade specified in section eight-
 29 a, article four of this chapter for the classification title held by the aide and any ~~county~~ school
 30 district salary schedule in excess of the minimum requirements of this article.

31 (e) For the purposes of this section, aide means any aide class title as defined in section
 32 eight, article four of this chapter regardless of numeric classification.

33 (f) Regular service personnel employed in a category of employment other than aide who
 34 seek employment as an aide shall hold a high school diploma or shall have received a general
 35 educational development certificate and shall have the opportunity to receive appropriate training
 36 pursuant to subsection (j), section thirteen, article five, chapter eighteen of this code and section
 37 two, article twenty of said chapter.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.

§18B-2A-1. Findings; composition of boards; terms and qualifications of members; vacancies; eligibility for reappointment.

1 (a) *Findings.* –

2 The Legislature finds that the State of West Virginia is served best when the membership
3 of each governing board includes the following:

4 (1) The academic expertise and institutional experience of faculty members and a student
5 of the institution governed by the board;

6 (2) The technical or professional expertise and institutional experience of a classified
7 employee of the institution governed by the board;

8 (3) An awareness and understanding of the issues facing the institution governed by the
9 board; and

10 (4) The diverse perspectives that arise from a membership that is balanced in terms of
11 gender and varied in terms of race and ethnic heritage.

12 (b) *Boards of governors established.* –

13 A board of governors is continued at each of the following institutions: Bluefield State
14 College, Blue Ridge Community and Technical College, Bridgemont Community and Technical
15 College, Concord University, Eastern West Virginia Community and Technical College, Fairmont
16 State University, Glenville State College, Kanawha Valley Community and Technical College,
17 Mountwest Community and Technical College, Marshall University, New River Community and
18 Technical College, Pierpont Community and Technical College, Shepherd University, Southern
19 West Virginia Community and Technical College, West Liberty University, West Virginia Northern
20 Community and Technical College, the West Virginia School of Osteopathic Medicine, West
21 Virginia State University, West Virginia University and West Virginia University at Parkersburg.

22 (c) *Board membership.* –

23 (1) An appointment to fill a vacancy on the board or reappointment of a member who is
24 eligible to serve an additional term is made in accordance with the provisions of this section.

25 (2) The Board of Governors for Marshall University consists of sixteen persons. The Board
26 of Governors for West Virginia University consists of seventeen persons. The boards of governors
27 of the other state institutions of higher education consist of twelve persons.

28 (3) Each board of governors includes the following members:

29 (A) A full-time member of the faculty with the rank of instructor or above duly elected by
30 the faculty of the respective institution;

31 (B) A member of the student body in good academic standing, enrolled for college credit
32 work and duly elected by the student body of the respective institution; and

33 (C) A member from the institutional classified employees duly elected by the classified
34 employees of the respective institution;

35 (4) For the Board of Governors at Marshall University, thirteen lay members appointed by
36 the Governor, by and with the advice and consent of the Senate, pursuant to this section;

37 (5) For the Board of Governors at West Virginia University, twelve lay members appointed
38 by the Governor, by and with the advice and consent of the Senate, pursuant to this section, and
39 additionally:

40 (A) The Chairperson of the Board of Visitors of West Virginia University Institute of
41 Technology;

42 (B) A full-time faculty member representing the extension service at the institution or a full-
43 time faculty member representing the health sciences, selected by the faculty senate.(6) For each
44 board of governors of the other state institutions of higher education, nine lay members appointed
45 by the Governor, by and with the advice and consent of the Senate, pursuant to this section.

46 (A) Of the nine members appointed by the Governor, no more than five may be of the
47 same political party. Of the thirteen members appointed by the Governor to the governing board
48 of Marshall University, no more than eight may be of the same political party. Of the twelve
49 members appointed by the Governor to the governing board of West Virginia University, no more
50 than seven may be of the same political party.

51 (B) Of the nine members appointed by the Governor, at least five shall be residents of the
52 state. Of the thirteen members appointed by the Governor to the governing board of Marshall
53 University, at least eight shall be residents of the state. Of the twelve members appointed by the

54 Governor to the governing board of West Virginia University, at least seven shall be residents of
55 the state.

56 (7) In making lay appointments, the Governor shall consider the institutional mission and
57 membership characteristics including the following:

58 (A) The need for individual skills, knowledge and experience relevant to governing the
59 institution;

60 (B) The need for awareness and understanding of institutional problems and priorities,
61 including those related to research, teaching and outreach;

62 (C) The value of gender, racial and ethnic diversity; and

63 (D) The value of achieving balance in gender and diversity in the racial and ethnic
64 characteristics of the lay membership of each board.

65 (d) *Board member terms.* –

66 (1) The student member serves for a term of one year. Each term begins on July 1.

67 (2) The faculty member serves for a term of two years. Each term begins on July 1. Faculty
68 members are eligible to succeed themselves for three additional terms, not to exceed a total of
69 eight consecutive years.

70 (3) The member representing classified employees serves for a term of two years. Each
71 term begins on July 1. Members representing classified employees are eligible to succeed
72 themselves for three additional terms, not to exceed a total of eight consecutive years.

73 (4) The appointed lay citizen members serve terms of four years each and are eligible to
74 succeed themselves for no more than one additional term, except that citizen members who are
75 appointed to fill unexpired terms are eligible to succeed themselves for two full terms after
76 completing an unexpired term.

77 (5) A vacancy in an unexpired term of a member shall be filled for the unexpired term
78 within thirty days of the occurrence of the vacancy in the same manner as the original appointment
79 or election. Except in the case of a vacancy, all elections are held and all appointments are made

80 no later than June 30 preceding the commencement of the term. Each board of governors shall
81 elect one of its appointed lay members to be chairperson in June of each year. A member may
82 not serve as chairperson for more than four consecutive years.

83 (6) The appointed members of the boards of governors serve staggered terms of up to
84 four years except that four of the initial appointments to the governing boards of community and
85 technical colleges that became independent July 1, 2008, are for terms of two years and five of
86 the initial appointments are for terms of four years.

87 (e) *Board member eligibility, expenses.* –

88 (1) A person is ineligible for appointment to membership on a board of governors of a state
89 institution of higher education under the following conditions:

90 (A) For a baccalaureate institution or university, a person is ineligible for appointment who
91 is an officer, employee or member of any other board of governors; an employee of any institution
92 of higher education; an officer or member of any political party executive committee; the holder of
93 any other public office or public employment under the government of this state or any of its
94 political subdivisions; an employee of any affiliated research corporation created pursuant to
95 article twelve of this chapter; an employee of any affiliated foundation organized and operated in
96 support of one or more state institutions of higher education; or a member of the council or
97 commission. This subsection does not prevent the representative from the faculty, classified
98 employees, students or the superintendent of a ~~county~~ school district board of education from
99 being members of the governing boards.

100 (B) For a community and technical college, a person is ineligible for appointment who is
101 an officer, employee or member of any other board of governors; a member of a board of visitors
102 of any public institution of higher education; an employee of any institution of higher education;
103 an officer or member of any political party executive committee; the holder of any other public
104 office, other than an elected county office, or public employment, other than employment by the
105 ~~county~~ school district board of education, under the government of this state or any of its political

106 subdivisions; an employee of any affiliated research corporation created pursuant to article twelve
107 of this chapter; an employee of any affiliated foundation organized and operated in support of one
108 or more state institutions of higher education; or a member of the council or commission. This
109 subsection does not prevent the representative from the faculty, classified employees or students
110 from being members of the governing boards.

111 (2) Before exercising any authority or performing any duties as a member of a governing
112 board, each member shall qualify as such by taking and subscribing to the oath of office
113 prescribed by section five, article IV of the Constitution of West Virginia and the certificate thereof
114 shall be filed with the Secretary of State.

115 (3) A member of a governing board appointed by the Governor may not be removed from
116 office by the Governor except for official misconduct, incompetence, neglect of duty or gross
117 immorality and then only in the manner prescribed by law for the removal of the state elective
118 officers by the Governor.

119 (4) The members of the board of governors serve without compensation, but are
120 reimbursed for all reasonable and necessary expenses actually incurred in the performance of
121 official duties under this article upon presentation of an itemized sworn statement of expenses.

122 (5) The president of the institution shall make available resources of the institution for
123 conducting the business of its board of governors. All expenses incurred by the board of governors
124 and the institution under this section are paid from funds allocated to the institution for that
125 purpose.

ARTICLE 3C. COMMUNITY AND TECHNICAL COLLEGE SYSTEM.

§18B-3C-11. Shared facilities and resources; memoranda of agreements; and joint administrative boards.

1 (a) To the maximum extent feasible, community and technical colleges shall be developed
2 as multisite institutions utilizing existing facilities, including cooperative use of existing vocational
3 education institutes and centers, offering services on the campuses of existing baccalaureate and

4 graduate institutions, at work sites in collaboration with employers and other appropriate venues.
5 Subject to the limitation of subdivision (13), subsection (a), section four, article one-b of this
6 chapter, new public capital investment in physical facilities shall be kept to a minimum. All
7 community and technical colleges shall have missions encompassing the full range of services
8 and programs.

9 (b) The governing boards may accept federal grants and funds from ~~county~~ school district
10 boards of education, other local governmental bodies, corporations or persons. The governing
11 boards may enter into memoranda of understanding agreements with such governmental bodies,
12 corporations or persons for the use or acceptance of local facilities and for the acceptance of
13 grants or contributions toward the cost of the acquisition or construction of such facilities. Such
14 local governmental bodies may convey capital improvements, or lease the same without monetary
15 consideration, to the governing boards for the use by the community and technical college and
16 the governing boards may accept such facilities, or the use or lease thereof, and grants or
17 contributions for such purposes from such governmental bodies, the federal government or any
18 corporation or person. In addition, the various education agencies shall establish cooperative
19 relationships to utilize existing community and technical colleges and programs, public school
20 vocational centers and other existing facilities to serve the identified needs within the community
21 and technical college district.

22 (c) To facilitate the administration, operation and financing of programs in shared facilities
23 of any institution of public higher education and a ~~county~~ school district board or boards of
24 education, the affected president and ~~county~~ school district board or boards of education may
25 appoint a joint administrative board consisting of such membership and possessing such
26 delegated authorities as the respective boards consider necessary and prudent for the operation
27 of such shared facilities. Such joint administrative boards, as an example, may consist of five
28 members appointed as follows: The ~~county~~ school district board of education appoints two
29 members; the president appoints two members; and one at-large member, who shall chair the

30 joint administrative board, is appointed by mutual agreement of the board and the president.
31 When two or more ~~county~~ school district boards of education are participating in such shared
32 program, such ~~county~~ school district board appointments would be made by mutual agreement of
33 each of the participating ~~county~~ school district boards. Members would serve for staggered terms
34 of three years. With respect to initial appointments, one member appointed by the ~~county~~ school
35 district board or boards of education and one member appointed by the governing board would
36 serve for one year, one member appointed by the ~~county~~ school district board or boards of
37 education and one member appointed by the governing board would serve for two years and the
38 at-large member would serve for three years. Subsequent appointments should be for three
39 years. A member would not serve more than two consecutive terms. Members would be
40 reimbursed for reasonable and necessary expenses actually incurred in the performance of their
41 duties as board members from funds allocated to the shared facility, except that members who
42 are employed by a Board of Education, governing board or state institution of higher education
43 would be reimbursed by their employer.

CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS AND STATE AID.

ARTICLE 4. ~~COUNTY~~ SCHOOL DISTRICT SUPERINTENDENT OF SCHOOLS.

§18C-4-3. Scholarship agreement.

1 (a) Each recipient of an Underwood-Smith teacher scholarship shall enter into an
2 agreement with the vice chancellor for administration under which the recipient shall meet the
3 following conditions:

4 (1) Provide the commission with evidence of compliance with subsection (a), section four
5 of this article;

6 (2) Within a ten-year period after completing the teacher education for which the
7 scholarship was awarded:

8 (A) Teach full time under contract with a ~~county~~ school district board of education in a

9 public education program in the state for a period of not fewer than two years for each year for
10 which a scholarship was received; or

11 (B) Teach full time under contract for not less than one year for each year for which a
12 scholarship was received with a ~~county~~ school district board of education in this state in a teacher
13 shortage area pursuant to section one of this article, in an exceptional children program in this
14 state, in a school having less than average academic results or in a school in an economically
15 disadvantaged area of this state; or

16 (C) Within the ten-year period, while seeking and unable to secure a full-time teaching
17 position under contract with a ~~county~~ school district board of education which satisfies the
18 conditions of paragraph (A) of this subdivision:

19 (i) Teach full-time in a private school, parochial or other school approved for the instruction
20 of students of compulsory school age pursuant to section one, article eight, chapter eighteen of
21 this code; or

22 (ii) Teach in an institution of higher education in this state as defined in section two, article
23 one, chapter eighteen-b of this code or in a post-secondary vocational education program in this
24 state for a period of not fewer than two years for each year for which a scholarship was received;
25 or

26 (iii) Perform alternative service or employment in this state pursuant to rules promulgated
27 by the commission, in federal, state, county or local supported programs with an educational
28 component, including mental or physical health care, or with bona fide tax exempt charitable
29 organizations dedicated to the above, for a period of not fewer than two years for each year for
30 which a scholarship was received.

31 Any teaching time accrued as a substitute teacher for a ~~county~~ school district board of
32 education under paragraph (A) or (B) of this subdivision shall be credited pro rata in accordance
33 with rules promulgated by the commission; or

34 (3) Repay all or part of an Underwood-Smith teacher scholarship received under this

35 article plus interest and, if applicable, reasonable collection fees in accordance with subsection
 36 (c), section four of this article, except as provided in subsection (d) of section four of this article.

37 (b) Scholarship agreements shall disclose fully the terms and conditions under which
 38 assistance under this article is provided and under which repayment may be required. The
 39 agreements shall include the following:

40 (1) A description of the conditions and procedures to be established under section four of
 41 this article; and

42 (2) A description of the appeals procedure required to be established under section four
 43 of this article.

44 (c) Individuals who were awarded an Underwood-Smith teacher scholarship prior to the
 45 effective date of this section may apply the provisions of paragraph (A), (B) or (C), subdivision
 46 (2), subsection (a) of this section to teaching or other service performed by them after July 1,
 47 1997.

ARTICLE 4A. UNDERWOOD-SMITH TEACHER LOAN ASSISTANCE PROGRAM.

§18C-4A-2. Loan assistance agreement.

1 (a) Before receiving an award, each eligible teacher shall enter into an agreement with the
 2 Vice Chancellor for Administration and shall meet the following criteria:

3 (1) Provide the commission with evidence of compliance with subsection (b), section four,
 4 article four of this chapter;

5 (2) Teach in a subject area of critical need or in a school or geographic area of critical
 6 need full time under contract with a ~~county~~ school district board for a period of two school years
 7 for each year for which loan assistance is received pursuant to this article. The Vice Chancellor
 8 for Administration may grant a partial award to an eligible recipient whose contract term is for less
 9 than a full school year pursuant to criteria established by commission rule.

10 (3) Acknowledge that an award is to be paid to the recipient's student loan institution, not
 11 directly to the recipient, and only after the commission determines that the recipient has complied

12 with all terms of the agreement; and

13 (4) Repay all or part of an award received pursuant to this article if the award is not paid
14 to the student loan institution or if the recipient does not comply with the other terms of the
15 agreement.

16 (b) Each loan agreement shall disclose fully the terms and conditions under which an
17 award may be granted pursuant to this article and under which repayment may be required. The
18 agreement also is subject to and shall include the terms and conditions established by section
19 five, article four of this chapter.

§18C-4A-3. Amount and duration of loan assistance; limits.

1 (a) Each award recipient is eligible to receive loan assistance of up to \$3,000 annually,
2 subject to limits set forth in subsection (b) of this section:

3 (1) If the recipient has taught for a full school year under contract with a ~~county~~ school
4 district board in a subject area of critical need or in a school or geographic area of critical need;
5 and

6 (2) If the recipient otherwise has complied with the terms of the agreement and with
7 applicable provisions of this article and article four of this chapter, and any rules promulgated
8 pursuant thereto.

9 (b) The recipient is eligible for renewal of loan assistance only during periods when the
10 recipient is under contract with a ~~county~~ school district board to teach in a subject area of critical
11 need or in a school or geographic area of critical need and complies with other criteria and
12 conditions established by rule, except that a teacher who is teaching under a contract in a position
13 that no longer meets the definition of critical need under rules established in accordance with
14 section one, article four of this chapter is eligible for renewal of loan assistance until the teacher
15 leaves his or her current position.

16 (c) A recipient may not receive loan assistance pursuant to this article which accumulates
17 in excess of \$15,000.

CHAPTER 19. AGRICULTURE.

ARTICLE 8. COOPERATIVE EXTENSION WORKERS.

§19-8-1. County extension service committee; composition; organization; duties and responsibilities; employment and compensation of extension workers.

1 The county extension service committee shall be composed of (a) the president of the
2 county farm bureau, (b) the president of the county extension homemakers council, (c) the
3 president of the county Four-H leaders' association, (d) a county commissioner designated by the
4 president of the county commission, (e) a member of the ~~county~~ school district board of education
5 designated by the president of the county board of education, (f) a county representative of the
6 grange, and (g) two members who are residents of the county to be appointed by the board of
7 advisors of West Virginia University for staggered terms of three years each beginning on July 1,
8 and in making these appointments the board of advisors shall appoint one member designated
9 by any other active farm organization in the county not already represented by virtue of this
10 section. If any of the above-named organizations do not exist in the county, the board of advisors
11 of West Virginia University may appoint an additional member for each such vacancy. The
12 committee shall annually elect from its membership a chairperson and a secretary.

13 It shall each year be the duty and responsibility of the county extension service committee:

14 (1) To enter into a memorandum of agreement with the cooperative extension service of
15 West Virginia University for the employment of county cooperative extension workers.

16 (2) To prepare a memorandum of agreement with the county commission and with the
17 ~~county~~ school district board of education for their financial support of extension work.

18 (3) To give guidance and assistance in the development of the county cooperative
19 extension service program and in the preparation of the annual plan of work for the county.

20 Such county cooperative extension service committee may on or before July 1, of each
21 year file with the county commission a written memorandum of agreement with the cooperative

22 extension service of West Virginia University for the employment for the next fiscal year of county
23 extension agents, extension homemaker agents, associate or assistant agents, and clerical
24 workers.

25 The county cooperative extension service committee may also file on or before July 1, of
26 each year with the ~~county~~ school district board of education a written memorandum of agreement
27 with the cooperative extension service of West Virginia University for the employment for the next
28 fiscal year of Four-H club or youth development agents, associate or assistant agents, and clerical
29 workers.

30 If such agreement or agreements are so filed, the county commission and the ~~county~~
31 school district board of education of such county, or either of them, may annually enter into such
32 agreement or agreements for the employment for the next fiscal year of such county extension
33 agents, extension homemaker agents, Four-H club or youth development agents, associate or
34 assistant agents, and clerical workers, or any of them, as may be nominated by the cooperative
35 extension service of West Virginia University, and approved in writing by at least five members of
36 the county extension service committee.

37 Salaries and expenses of all such county extension workers shall be paid by the
38 cooperative extension service, the county commission, and the board of Education, or jointly out
39 of such appropriations as are made by the Legislature, the county commission and the board of
40 Education, separately or in conjunction with such federal acts as do now, or may hereafter,
41 provide funds for such purpose. That part of salaries, travel and general office expense to be
42 provided by the county commission according to the approved memorandum shall be paid from
43 general county funds.

44 Whenever the cooperative extension service is required by law or legislative intent to grant
45 a salary increase to its employees, the state budget shall include such additional funds as may
46 be necessary to fully fund such salary increase. It is the intent of this section that the cooperative
47 extension service shall not be dependent upon county or federal funds or upon the other funds of

48 the institution or the governing board to meet the costs of such a salary increase required by law
 49 or legislative intent regardless of the source of the employee's base salary: *Provided*, That any
 50 decrease by the county of base salary levels of county extension employees, as exists on June
 51 thirtieth of the year preceding the year the salary increase is authorized, shall not be funded by
 52 the state.

§19-8-2. Expenditure of appropriations; compliance with "Smith-Lever Act."

1 All moneys levied or appropriated by the county court or the ~~county~~ school district board
 2 of education under this article shall be expended upon orders of the county court or Board of
 3 Education as other such county funds are expended, and a duplicate of all salary vouchers and
 4 expense accounts shall be filed with the cooperative extension service of West Virginia University
 5 in such form as will comply with the provisions of the act of Congress approved May 8, 1914,
 6 known as the "Smith-Lever Act," or any act of Congress amendatory thereof or supplementary
 7 thereto, but no part of any money so appropriated shall be used to compensate any representative
 8 of West Virginia University or any other person, except the persons employed under this article.

§19-8-3. Duties of county extension workers; extension service to cooperate with county court and Board of Education.

1 Under the supervision of the cooperative extension service of West Virginia University, it
 2 shall be the duty of each county extension worker to promote, through various educational
 3 programs, the improvement and advancement of agriculture, forestry and home economics, and
 4 the general economic, cultural and social life of the people in the respective areas to which they
 5 are assigned. It shall also be the duty of the cooperative extension service of West Virginia
 6 University to cooperate with each county court and each ~~county~~ school district board of education
 7 appropriating money under this article.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-10a. Authority to convey land to ~~county~~ school district board of education for educational purposes.

1 To further an appreciation and understanding of the outdoors by the youth of this state,
2 the director is hereby authorized to enter into long-term agreements, with the written approval of
3 the Governor, leasing unto the ~~county~~ school district board of education of any county wherein
4 are situate lands belonging to the department of natural resources, for nominal consideration, one
5 parcel of rural land not exceeding in size one acre for each five hundred students registered in
6 the public schools of the ~~county~~ school district at the time of the lease. Such land shall be used
7 by the ~~county~~ school district board of education exclusively to establish and maintain an outdoor
8 education program and for no other purpose. By a multicounty agreement, the ~~county~~ school
9 district boards of education of any ~~county or counties~~ school district in which no land belonging to
10 the department of natural resources is located may join with any other ~~county or counties~~ school
11 districts in which such land is located to establish and maintain a joint outdoor education program
12 and the combined student enrollment of the ~~counties~~ school districts joining into such an
13 agreement shall determine the maximum acreage that may be leased by the department of
14 natural resources for such purposes.

15 If the department of natural resources makes a finding that land leased pursuant to this
16 section has ceased to be used for the purposes set forth herein for a period of three consecutive
17 years, the director shall notify the affected ~~county~~ school district board or boards of education of
18 such a finding in writing. Upon the expiration of sixty days from receipt of said notice, such lease
19 shall become null and void and control of such leased land shall revert to the department of natural
20 resources unless the affected board or boards of education have petitioned the circuit court of the
21 county wherein the land or the greater portion thereof lies for review of the said finding.

22 Upon petition and hearing, the said circuit court shall determine whether the land has
23 ceased to be used for the purposes set forth in this section. Periodic or incidental use of the land
24 for less than six months of each calendar year shall not be sufficient to support a finding that the

25 land has ceased to be used for the purposes set forth herein. If the said circuit court determines
26 that the land has ceased to be used for the purposes set forth herein, the court shall, by written
27 order, declare the lease null and void and reinstate control of the leased land in the department
28 of natural resources.

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-30a. Certificate of training; falsifying, altering, forging, counterfeiting or uttering training certificate; penalties.

1 (a) Notwithstanding any other provisions of this article, no base hunting license may be
2 issued to any person who was born on or after January 1, 1975, unless the person submits to the
3 person authorized to issue hunting licenses a certificate of training as provided in this section or
4 proof of completion of any course which promotes as a major objective safety in the handling of
5 firearms and of bow and arrows and which course is approved by the hunter education association
6 or the director, or provides a State of West Virginia resident or nonresident hunting license from
7 the previous hunting season that displays a certification of training, or attests that a hunter training
8 course has been completed when purchasing a license or stamp online: *Provided*, That after
9 January 1, 2013, a person may be issued a Class AH, Class AHJ, Class AAH and Class AAHJ
10 apprentice hunting and trapping license pursuant to the provisions of section forty-two-y of this
11 article and is exempt from the hunter training requirements set forth herein.

12 (b) The director shall establish a course in the safe handling of firearms and of bows and
13 arrows, such as the course approved by the Hunter Education Association. This course shall be
14 given at least once per year in each county in this state and shall be taught by instructors certified
15 by the director. In establishing and conducting this course, the director may cooperate with any
16 reputable association or organization which promotes as a major objective safety in the handling
17 of firearms and of bows and arrows: *Provided*, That any person holding a Class A-L or AB-L
18 lifetime resident license obtained prior to his or her fifteenth birthday shall be required to obtain a
19 certificate of training as provided in this section before hunting or trapping pursuant to said license.

20 This course of instruction shall be offered without charge, except for materials or ammunition
21 consumed. Upon satisfactory completion of the course, each person instructed in the course shall
22 be issued a certificate of training for the purposes of complying with the requirements of
23 subsection (a) of this section. The certificate shall be in the form prescribed by the director and
24 shall be valid for hunting license application purposes.

25 (c) (1) Upon satisfactory completion of this course, any person whose hunting license has
26 been revoked for a violation of the provisions of this chapter may petition the director for a
27 reduction of his or her revocation time. However, under no circumstances may the time be
28 reduced to less than one year.

29 (2) Successful completion of this course shall be required to consider the reinstatement of
30 a hunting license of any person whose license has been revoked due to a conviction for negligent
31 shooting of a human being or of livestock under the provisions of section fifty-seven of this article,
32 and who petitions the director for an early reinstatement of his or her hunting privileges. Such a
33 petitioner shall also comply with the other requirements for consideration of reinstatement
34 contained in section thirty-eight of this article.

35 (d) It is unlawful for any person to falsify, alter, forge, counterfeit or utter a certificate of
36 training. Any person who violates the provisions of this subsection is guilty of a misdemeanor and,
37 upon conviction thereof, shall be fined not less than \$500 nor more than \$1,000, or confined in
38 jail for a period not to exceed one year, or both fined and imprisoned.

39 (e) Nothing herein contained shall mandate that any ~~county~~ school district in the state be
40 responsible for implementing hunter safety education programs.

ARTICLE 3. FORESTS AND WILDLIFE AREAS.

§20-3-17. Disposition of proceeds of national forests.

1 Receipts from any national forest, paid to the state or its proper officers pursuant to
2 directions of acts of Congress, are to be allocated by the Auditor to each county which has
3 acreage located in such national forest, in the proportion which the acreage in the county bears

4 to the total acreage of the national forest in this state. Interest or other earnings accrued upon
 5 investment of the receipts pending allocation thereof shall be allocated to the recipients of the
 6 allocations in proportion to each recipient's allocation of the receipts. Eighty percent of the funds
 7 so allocated to any county are to be paid to the Board of Education of the ~~county~~ school district
 8 to be expended by the board for the benefit of the public schools of the ~~county~~ school district.
 9 Twenty percent of the funds so allocated to any county are to be paid to the state road commission
 10 to be expended for feeder and state local service road purposes in that county.

11 Notwithstanding any contrary provisions of former law, any sheriff or county court of any
 12 county having charge or custody of any unexpended national forest proceeds, received under
 13 allocations made pursuant to former provisions of law, shall pay over eighty percent of the
 14 unexpended balance to the ~~county~~ school district board of education, and twenty percent thereof
 15 to the state road commission, for expenditure as provided herein.

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-3. Payment of wages by employers other than railroads; assignments of wages.

1 (a) Every person, firm or corporation doing business in this state, except railroad
 2 companies as provided in section one of this article, shall settle with its employees at least twice
 3 every month and with no more than nineteen days between settlements, unless otherwise
 4 provided by special agreement, and pay them the wages due, less authorized deductions and
 5 authorized wage assignments, for their work or services.

6 (b) Payment required in subsection (a) of this section shall be made:

- 7 (1) In lawful money of the United States;
- 8 (2) By cash order as described and required in section four of this article;
- 9 (3) By deposit or electronic transfer of immediately available funds into an employee's
 10 payroll card account in a federally insured depository institution. The term "payroll card account"
 11 means an account in a federally insured depository institution that is directly or indirectly
 12 established through an employer and to which electronic fund transfers of the employee's wages,

13 salary, commissions or other compensation are made on a recurring basis, whether the account
14 is operated or managed by the employer, a third-party payroll processor, a depository institution
15 or another person. "Payroll card" means a card, code or combination thereof or other means of
16 access to an employee's payroll card account, by which the employee may initiate electronic fund
17 transfers or use a payroll card to make purchases or payments. Payment of employee
18 compensation by means of a payroll card must be agreed upon in writing by both the person, firm
19 or corporation paying the compensation and the person being compensated; or

20 (4) By any method of depositing immediately available funds in an employee's demand or
21 time account in a bank, credit union or savings and loan institution that may be agreed upon in
22 writing between the employee and such person, firm or corporation, which agreement shall
23 specifically identify the employee, the financial institution, the type of account and the account
24 number: *Provided*, That nothing herein contained shall be construed in a manner to require any
25 person, firm or corporation to pay employees by depositing funds in a financial institution.

26 (c) If, at any time of payment, any employee shall be absent from his or her regular place
27 of labor and shall not receive his or her wages through a duly authorized representative, he or
28 she shall be entitled to payment at any time thereafter upon demand upon the proper paymaster
29 at the place where his or her wages are usually paid and where the next pay is due.

30 (d) Nothing herein contained shall affect the right of an employee to assign part of his or
31 her claim against his or her employer except as in subsection (e) of this section.

32 (e) No assignment of or order for future wages shall be valid for a period exceeding one
33 year from the date of the assignment or order. An assignment or order shall be acknowledged by
34 the party making the same before a notary public or other officer authorized to take
35 acknowledgments, and any order or assignment shall specify thereon the total amount due and
36 collectible by virtue of the same and three fourths of the periodical earnings or wages of the
37 assignor shall at all times be exempt from such assignment or order and no assignment or order
38 shall be valid which does not so state upon its face: *Provided*, That no such order or assignment

39 shall be valid unless the written acceptance of the employer of the assignor to the making thereof
40 is endorsed thereon: *Provided, however,* That nothing herein contained shall be construed as
41 affecting the right of employer and employees to agree between themselves as to deductions to
42 be made from the payroll of employees.

ARTICLE 5D. THE PARENTAL LEAVE ACT.

§21-5D-2. Definitions.

1 As used in this article:

2 (a) "Commissioner" means the commissioner of the department of labor.

3 (b) "Dependent" means any person who is living with or dependent upon the income of
4 any employee whether related by blood or not.

5 (c) Employee. --

6 (1) "Employee" means any individual, hired for permanent employment, who has worked
7 for at least twelve consecutive weeks performing services for remuneration within this state for
8 any department, division, board, bureau, agency, commission or other unit of state government,
9 or any ~~county~~ school district board of education in the state.

10 (2) "Employee" does not include:

11 (A) Individuals employed by persons who are not "employers" as defined by this article;

12 (B) Elected public officials or the members of their immediate personal staffs;

13 (C) Principal administrative officers of any department, division, board, bureau, agency,
14 commission or other unit of state government, or any ~~county~~ school district board of education in
15 the state; or

16 (D) A person in a vocational rehabilitation facility certified under federal law who has been
17 designated an evaluatee, trainee or work activity client.

18 (d) Employer. -- "Employer" includes any department, division, board, bureau, agency,
19 commission or other unit of state government and any ~~county~~ school district board of education
20 in the state.

21 (e) "Employment benefits" means all benefits, other than salary or wages, provided or
22 made available to employees by an employer, and includes group life insurance, health insurance,
23 disability insurance, sick leave, annual leave, educational benefits and pensions, regardless of
24 whether such benefits are provided by a policy or practice of an employer or by an employee
25 benefit plan as defined in the federal Employee Retirement Income Security Act of 1974.

26 (f) The term "health care" or "health care services" means clinically related preventive,
27 diagnostic, treatment or rehabilitative services whether provided in the home, office, hospital,
28 clinic or any other suitable place, provided or prescribed by any health care provider or providers.
29 Such services include, among others, drugs and medical supplies, appliances, laboratory,
30 preventive, diagnostic, therapeutic and rehabilitative services, hospital care, nursing home and
31 convalescent care, medical physicians, osteopathic physicians, chiropractic physicians, and such
32 other surgical, dental, nursing, pharmaceutical, and podiatric services and supplies as may be
33 prescribed by such health care providers.

34 (g) "Health care provider" means a person, partnership, corporation, facility or institution
35 licensed, certified or authorized by law to provide professional health care services in this state to
36 an individual during this individual's medical care, treatment or confinement.

37 (h) "Parent" means a biological, foster or adoptive parent, a stepparent or a legal guardian.

38 (i) "Serious health condition" means a physical or mental illness, injury or impairment
39 which involves:

40 (1) Inpatient care in a hospital, hospice or residential health care facility; or

41 (2) Continuing treatment, health care or continuing supervision by a health care provider.

42 (j) "Son" or "daughter" means an individual who is a biological, adopted or foster child, a
43 stepchild or a legal ward, and is (1) under eighteen years of age; or (2) eighteen years of age or
44 older and incapable of self-care because of mental or physical disability.

45 (k) "Spouse" means any person legally married to an "employee" covered under this
46 article.

1

CHAPTER 23. WORKERS' COMPENSATION.

**ARTICLE 2. EMPLOYERS AND EMPLOYEES SUBJECT TO CHAPTER;
EXTRATERRITORIAL COVERAGE.**

§23-2-1a. Employees subject to chapter.

1 (a) Employees subject to this chapter are all persons in the service of employers and
2 employed by them for the purpose of carrying on the industry, business, service or work in which
3 they are engaged, including, but not limited to:

4 (1) Persons regularly employed in the state whose duties necessitate employment of a
5 temporary or transitory nature by the same employer without the state;

6 (2) Every person in the service of the state or of any political subdivision or agency thereof,
7 under any contract of hire, express or implied, and every appointed official or officer thereof while
8 performing his or her official duties;

9 (3) Checkweighmen employed according to law;

10 (4) All members of rescue teams assisting in mine accidents with the consent of the owner
11 who, in such case, shall be deemed the employer, or at the direction of the director of the
12 department of mines;

13 (5) All forest firefighters who, under the supervision of the director of the department of
14 natural resources or his or her designated representative, assist in the prevention, confinement
15 and suppression of any forest fire; and

16 (6) Students while participating in a work-based learning experience with an employer
17 approved as a part of the curriculum by the ~~county~~ school district board. The ~~county~~ school district
18 board shall be the employer of record of students while participating in unpaid work-based
19 experiences off school premises with employers other than the ~~county~~ school district board.
20 Students in unpaid work-based learning experiences shall be considered to be paid the amount

21 of wages so as to provide the minimum workers' compensation weekly benefits required by
22 section six, article four of this chapter.

23 (b) The right to receive compensation under this chapter shall not be affected by the fact
24 that a minor is employed or is permitted to be employed in violation of the laws of this state relating
25 to the employment of minors, or that he or she obtained his or her employment by misrepresenting
26 his or her age.

CHAPTER 24A. COMMERCIAL MOTOR CARRIERS.

ARTICLE 1. PURPOSES, DEFINITIONS AND EXEMPTIONS.

§24A-1-3. Exemptions from chapter.

1 The provisions of this chapter, except where specifically otherwise provided, do not apply
2 to:

3 (1) Motor vehicles operated exclusively in the transportation of United States mail or in the
4 transportation of newspapers: *Provided*, That the vehicles and their operators are subject to the
5 safety rules promulgated by the commission;

6 (2) Motor vehicles owned and operated by the United States of America, the State of West
7 Virginia or any county, municipality or ~~county~~ school district board of education, urban mass
8 transportation authority established and maintained pursuant to article twenty-seven, chapter
9 eight of this code, or by any of their departments, and any motor vehicles operated under a
10 contract with a ~~county~~ school district board of education exclusively for the transportation of
11 children to and from school or other legitimate transportation for the schools as the commission
12 may specifically authorize;

13 (3) Motor vehicles used exclusively in the transportation of agricultural or horticultural
14 products, livestock, poultry and dairy products from the farm or orchard on which they are raised
15 or produced to markets, processing plants, packing houses, canneries, railway shipping points
16 and cold storage plants, and in the transportation of agricultural or horticultural supplies to farms

17 or orchards where they are to be used: *Provided*, That the vehicles that are exempted by this
18 subdivision and are also operated by common carriers by motor vehicle or contract carriers by
19 motor vehicle, and their operators are subject to the safety and insurance rules promulgated by
20 the commission;

21 (4) Motor vehicles used exclusively in the transportation of human or animal excreta;

22 (5) Motor vehicles used exclusively in ambulance service or duly chartered rescue squad
23 service;

24 (6) Motor vehicles used exclusively for volunteer fire department service;

25 (7) Motor vehicles used exclusively in the transportation of coal from mining operations to
26 loading facilities for further shipment by rail or water carriers: *Provided*, That the vehicles and their
27 operators are subject to the safety rules promulgated by the commission and the vehicles that are
28 exempted by this subdivision and are also operated by common carriers by motor vehicle or
29 contract carriers by motor vehicle, and their operators are subject to the insurance rules
30 promulgated by the commission;

31 (8) Motor vehicles used by petroleum commission agents and oil distributors solely for the
32 transportation of petroleum products and related automotive products when the transportation is
33 incidental to the business of selling the products: *Provided*, That the vehicles and their operators
34 are subject to the safety rules promulgated by the commission and the vehicles that are exempted
35 by this subdivision and are also operated by common carriers by motor vehicle or contract carriers
36 by motor vehicle, and their operators are subject to the insurance rules promulgated by the
37 commission;

38 (9) Motor vehicles owned, leased by or leased to any person and used exclusively for the
39 transportation of processed source-separated recycled materials, generated by commercial,
40 institutional and industrial customers, transported free of charge or by a nonprofit recycling
41 cooperative association in accordance with subdivision (1), subsection (d), section one, article
42 four, chapter nineteen of this code from the customers to a facility for further processing: *Provided*,

43 That the vehicles and their operators shall be subject to the safety rules promulgated by the
44 commission and the vehicles that are exempted by this subdivision and are also operated by
45 common carriers by motor vehicle or contract carriers by motor vehicle, and their operators are
46 subject to the insurance rules promulgated by the commission;

47 (10) Motor vehicles specifically preempted from state economic regulation of intrastate
48 motor carrier operations by the provisions of 49 U. S. C. §14501 as amended by Title I, Section
49 103 of the federal Interstate Commerce Commission Termination Act of 1995: *Provided*, That the
50 vehicles and their operators are subject to the safety regulations promulgated by the commission
51 and the vehicles that are exempted by this subdivision and are also operated by common carriers
52 by motor vehicle or contract carriers by motor vehicle, and their operators are subject to the
53 insurance rules promulgated by the commission;

54 (11) Motor vehicles designated by the West Virginia Bureau of Senior Services for use
55 and operation by local county aging programs: *Provided*, That the vehicles and their operators
56 are subject to the safety rules promulgated by the commission;

57 (12) Motor vehicles designated by the West Virginia Division of Public Transit operated by
58 organizations that receive federal grants from the Federal Transit Administration: *Provided*, That
59 the vehicles and their operators are subject to the safety and insurance rules promulgated by the
60 commission; and

61 (13) Motor vehicles used exclusively in the nonemergency medical transportation of
62 Medicaid members by community action agencies as designated by the Governor, although these
63 vehicles and their operators shall be subject to the safety rules promulgated by the commission.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 12. STATE INSURANCE.

§29-12-5a. Liability insurance for ~~county~~ school district boards of education, their employees and members, the ~~county~~ school district superintendent of schools, and

for employees and officers of the state Department of Corrections.

1 (a) In accordance with the provisions of this article, the state Board of Risk and Insurance
2 Management shall provide appropriate professional or other liability insurance for all ~~county~~
3 school district boards of education, teachers, supervisory and administrative staff members,
4 service personnel, ~~county~~ school district superintendents of schools and school board members
5 and for all employees and officers of the state Department of Corrections: *Provided*, That the
6 board of Risk and Insurance Management is not required to provide insurance for every property,
7 activity or responsibility of ~~county~~ school district boards of education, teachers, supervisory and
8 administrative staff members, service personnel, ~~county~~ school district superintendents of schools
9 and school board members and for all employees and officers of the state Department of
10 Corrections.

11 (b) Insurance provided by the board of Risk and Insurance Management pursuant to the
12 provisions of subsection (a) of this section shall cover claims, demands, actions, suits or
13 judgments by reason of alleged negligence or other acts resulting in bodily injury or property
14 damage to any person within or without any school building or correctional institution if, at the
15 time of the alleged injury, the teacher, supervisor, administrator, service personnel employee,
16 ~~county~~ school district superintendent, school board member, or employee or officer of the
17 Department of Corrections was acting in the discharge of his or her duties, within the scope of his
18 or her office, position or employment, under the direction of the board of Education or
19 Commissioner of Corrections or in an official capacity as a ~~county~~ school district superintendent
20 or as a school board member or as Commissioner of Corrections.

21 (c) Insurance coverage provided by the board of Risk and Insurance Management
22 pursuant to subsection (a) of this section shall be in an amount to be determined by the state
23 Board of Risk and Insurance Management, but in no event less than \$1 million for each
24 occurrence. In addition, each ~~county~~ school district board of education shall purchase, through
25 the board of Risk and Insurance Management, excess coverage of at least \$5 million for each

26 occurrence. The cost of this excess coverage will be paid by the respective ~~county~~ school district
27 boards of education. Any insurance purchased under this section shall be obtained from a
28 company licensed to do business in this state.

29 (d) The insurance policy provided by the board of Risk and Insurance Management
30 pursuant to subsection (a) of this section shall include comprehensive coverage, personal injury
31 coverage, malpractice coverage, corporal punishment coverage, legal liability coverage as well
32 as a provision for the payment of the cost of attorney's fees in connection with any claim, demand,
33 action, suit or judgment arising from such alleged negligence or other act resulting in bodily injury
34 under the conditions specified in this section.

35 (e) The ~~county~~ school district superintendent and other school personnel shall be
36 defended by the ~~county~~ school district board or an insurer in the case of suit, unless the act or
37 omission shall not have been within the course or scope of employment or official responsibility
38 or was motivated by malicious or criminal intent.

ARTICLE 22C. WEST VIRGINIA LOTTERY RACETRACK TABLE GAMES ACT.

§29-22C-27. West Virginia Lottery Racetrack Table Games Fund; Community-Based Service Fund; State Debt Reduction Fund; distribution of funds.

1 (a) (1) The special fund in the State Treasury known as the West Virginia Lottery
2 Racetrack Table Games Fund is continued and all tax collected under this article shall be
3 deposited with the State Treasurer and placed in the West Virginia Lottery Racetrack Table
4 Games Fund. The fund shall be an interest-bearing account with all interest or other return earned
5 on the money of the fund credited to and deposited in the fund.

6 (2) Notwithstanding any provision of this article to the contrary, all racetrack table games
7 license fees received by the commission pursuant to section eight of this article shall be deposited
8 into the Community-Based Service Fund which is continued in the State Treasury. Moneys of the
9 fund shall be expended by the Bureau of Senior Services upon appropriation of the Legislature
10 solely for the purpose of enabling the aged and disabled citizens of this state to maintain their

11 residency in the community-based setting through the provision of home and community-based
12 services.

13 (b) From the gross amounts deposited into the Racetrack Table Games Fund pursuant to
14 subsection (a) of this section, the commission shall:

15 (1) Retain an amount for the administrative expenses of the commission as determined
16 by the commission in accordance with subsection (e) of this section;

17 (2) Transfer two and one-half percent of adjusted gross receipts from all thoroughbred
18 racetracks with West Virginia Lottery table games to the special funds established by each
19 thoroughbred racetrack table games licensees for the payment of regular racetrack purses, the
20 amount being divided on a pro rata basis between the special funds of each thoroughbred
21 racetrack table games licensee and transfer two and one-half percent of adjusted gross receipts
22 from all greyhound racetracks with West Virginia Lottery table games to the special funds
23 established by each greyhound racetrack table games licensees for the payment of regular
24 racetrack purses, the amount being divided equally between the special funds of each greyhound
25 racetrack table games licensee;

26 (3) Transfer two percent of the adjusted gross receipts from all licensed racetracks to the
27 West Virginia Thoroughbred Development Fund created under section thirteen-b, article twenty-
28 three, chapter nineteen of this code and the West Virginia Greyhound Breeding Development
29 Fund created under section ten, article twenty-three, chapter nineteen of this code. The total
30 amount transferred under this subdivision shall be divided pro rata among the development funds
31 for each racetrack table games licensee based on relative adjusted receipts from each racetrack.
32 The amounts transferred to these funds may not be used for the benefit of any person or activity
33 other than at or associated with a racetrack table games licensee;

34 (4) Transfer one percent of the adjusted gross receipts from each licensed racetrack to
35 the county commissions of the counties where racetracks with West Virginia Lottery table games
36 are located. County commissions may pledge this money to make payments on lottery revenue

37 bonds issued pursuant to article two-h, chapter thirteen of this code. The one percent transferred
38 under this subdivision shall be divided pro rata among the counties with a racetrack with West
39 Virginia Lottery table games based on relative adjusted gross receipts from each county's
40 racetrack: *Provided*, That the ~~county~~ school district board of education of a growth county, as that
41 term is defined in section three, article twenty, chapter seven of this code, which has enacted the
42 Local Powers Act, and in which county a racetrack is located that has participated in the West
43 Virginia Thoroughbred Development Fund since on or before January 1, 1991, shall receive the
44 one percent of adjusted gross receipts as provided in this subdivision for the purpose of public
45 projects, as defined in section two, article two-h, chapter thirteen of this code or to make payments
46 on lottery revenue bonds issued to finance public projects;

47 (5) Transfer two percent of the adjusted gross receipts from each licensed racetrack to the
48 governing bodies of municipalities within counties where racetracks with West Virginia Lottery
49 table games are located. Municipalities may pledge the money to make payments on lottery
50 revenue bonds issued pursuant to article two-h, chapter thirteen of this code. This money shall
51 be allocated as follows:

52 (A) One half of the amounts transferred under this subdivision shall be allocated to the
53 municipalities within each county having a racetrack table games licensee, based on relative
54 adjusted gross receipts from West Virginia Lottery table games from those racetracks and the
55 total amount allocated to the municipalities within a county shall be divided pro rata among the
56 municipalities based on each municipality's population determined at the most recent United
57 States decennial census of population: *Provided*, That: (i) For each allocation, when a municipality
58 is physically located in two or more counties, only that portion of its population residing in the
59 county where the authorized table games are located shall be considered; (ii) a single municipality
60 in a county where West Virginia Lottery racetrack table games are played may not receive a total
61 share under this paragraph that is in excess of seventy-five percent of the total distribution under
62 this paragraph for the county in which the municipality is located; and (iii) a municipality receiving

63 moneys under this paragraph may not receive an amount which is less than that received by a
64 municipality under provisions of subdivision (4), subsection (d) of this section; and

65 (B) One half of the amounts transferred under this subdivision shall be allocated pro rata
66 to the municipalities within all the counties, having a racetrack table games licensee based on
67 each municipality's population determined at the most recent United States decennial census of
68 population: *Provided, That:* (i) A municipality which received funds above its pro rata share
69 pursuant to subpart (iii), paragraph (A) of this subdivision may not receive an allocation under this
70 paragraph; (ii) for each allocation, when a municipality is physically located in two or more
71 counties, only that portion of its population residing in the county where the authorized table
72 games are located shall be considered; and (iii) a single municipality in a county where West
73 Virginia Lottery racetrack games are played may not receive a total share under this paragraph
74 that is in excess of twenty-five percent of the total transfers under this paragraph: *Provided,*
75 *however,* That the ~~county~~ school district board of education of a growth county, as that term is
76 defined in section three, article twenty, chapter seven of this code, which has enacted the Local
77 Powers Act, and in which county a racetrack is located that has participated in the West Virginia
78 Thoroughbred Development Fund since on or before January 1, 1991, shall receive the two
79 percent of adjusted gross receipts as provided in this subdivision for the purpose of public
80 projects, as defined in section two, article two-h, chapter thirteen of this code, or to make
81 payments on lottery revenue bonds issued to finance the public projects;

82 (6) Transfer one half of one percent of the adjusted gross receipts to the governing bodies
83 of municipalities in which a racetrack table games licensee is located. The municipalities shall
84 each receive an equal share of the total amount allocated under this subdivision: *Provided, That*
85 *distribution under this subdivision may not be made to any municipality which did not have a*
86 *licensed racetrack within its municipal boundaries as they existed on January 1, 2007: Provided,*
87 *however,* That if no racetrack table games licensee is located within a municipality, a transfer may
88 not be made under this subdivision. The municipality may pledge this money to make payments

89 on lottery revenue bonds issued pursuant to article two-h, chapter thirteen of this code; and

90 (7) Distribute the remaining amounts, hereinafter referred to as the net amounts in the
91 Racetrack Table Games Funds, in accordance with the provisions of subsection (d) of this section.

92 (c) Beginning with the fiscal year following the licensing of every licensed racetrack to offer
93 West Virginia Lottery racetrack table games under this article, subsection (b) of this section shall
94 be superseded and replaced by this subsection for distribution of the balances in the fund
95 established by subsection (a) of this section. From the gross amounts deposited into the fund, the
96 commission shall:

97 (1) Retain an amount for the administrative expenses of the commission as determined
98 by the commission in accordance with subsection(e) of this section;

99 (2) Transfer two and one-half percent of adjusted gross receipts from all thoroughbred
100 racetracks with West Virginia Lottery table games to the special funds established by each
101 thoroughbred racetrack table games licensee for the payment of regular racetrack purses, the
102 amount being divided on a pro rata basis between the special funds of each thoroughbred
103 racetrack table games licensee and transfer two and one-half percent of adjusted gross receipts
104 from all greyhound racetracks with West Virginia Lottery table games to the special funds
105 established by each greyhound racetrack table games licensee for the payment of regular
106 racetrack purses, the amount being divided equally between the special funds of each greyhound
107 racetrack table games licensee;

108 (3) Transfer two percent of the adjusted gross receipts from all licensed racetracks to the
109 West Virginia Thoroughbred Development Fund created under section thirteen-b, article twenty-
110 three, chapter nineteen of this code and the West Virginia Greyhound Breeding Development
111 Fund created under section ten, article twenty-three, chapter nineteen of this code. The total
112 amount transferred under this subdivision shall be divided pro rata among the development funds
113 for each racetrack table games licensee based on relative adjusted receipts from each racetrack.
114 The amounts transferred to these funds may not be used for the benefit of any person or activity

115 other than at or associated with a racetrack table games licensee;

116 (4) Transfer two percent of the adjusted gross receipts from each licensed racetrack to the
117 county commissions of the counties where racetracks with West Virginia Lottery table games are
118 located. The money transferred under this subdivision shall be divided pro rata among the
119 counties with a racetrack with West Virginia Lottery table games based on relative adjusted gross
120 receipts from each county's racetrack: *Provided*, That the ~~county~~ school district board of education
121 of a growth county, as that term is defined in section three, article twenty, chapter seven of this
122 code, which has enacted the Local Powers Act, and in which a racetrack is located that has
123 participated in the West Virginia Thoroughbred Development Fund since on or before January 1,
124 1991, shall receive one half of that county's share of adjusted gross receipts as provided in this
125 subdivision for the purpose of capital improvements;

126 (5) Transfer three percent of the adjusted gross receipts from each licensed racetrack to
127 the governing bodies of municipalities within counties where racetracks with West Virginia Lottery
128 table games are located, which shall be allocated as follows:

129 (A) One half of the money transferred by this subdivision shall be allocated to the
130 municipalities within each county, other than a county described in paragraph (C) of this
131 subdivision, having a racetrack table games licensee based on relative adjusted gross receipts
132 from West Virginia Lottery table games from those racetracks and the total amount allocated to
133 the municipalities within a county shall be divided pro rata among the municipalities based on
134 each municipality's population determined at the most recent United States decennial census of
135 population: *Provided*, That: (i) For each allocation, when a municipality is physically located in two
136 or more counties, only that portion of its population residing in the county where the authorized
137 table games are located shall be considered; (ii) a single municipality in a county where West
138 Virginia Lottery racetrack table games are played may not receive a total share under this
139 paragraph that is in excess of seventy-five percent of the total distribution under this paragraph
140 for the county in which the municipality is located; and (iii) a municipality receiving moneys under

141 this paragraph may not receive an amount which is less than that received by a municipality under
142 provisions of subdivision (4), subsection (d) of this section.

143 (B) One half of the money transferred under this subdivision shall be allocated pro rata to
144 the municipalities within all the counties, other than a county described in paragraph (C) of this
145 subdivision, having a racetrack table games licensee based on each municipality's population
146 determined at the most recent United States decennial census of population: *Provided, That:* (i)
147 A municipality which received funds above its pro rata share pursuant to subparagraph (iii),
148 paragraph (A) of this subdivision shall not receive an allocation under this paragraph; (ii) for each
149 allocation, when a municipality is physically located in two or more counties, only that portion of
150 its population residing in the county where the authorized table games are located shall be
151 considered; and (iii) a single municipality in a county where West Virginia Lottery racetrack games
152 are played may not receive a total share under this paragraph that is in excess of twenty-five
153 percent of the total transfers under this paragraph.

154 (C) Notwithstanding the provisions of paragraphs (A) and (B) of this subdivision, when a
155 racetrack is located in a growth county, as that term is defined in section three, article twenty,
156 chapter seven of this code, which has enacted the Local Powers Act, and in which county a
157 racetrack is located that has participated in the West Virginia Thoroughbred Development Fund
158 since on or before January 1, 1991, the ~~county~~ school district board of education shall receive
159 two thirds of the share of adjusted gross receipts from West Virginia Lottery table games from the
160 racetrack in the county as provided in this subdivision and the municipalities within the county
161 shall share the remaining one third of the total amount allocated as provided in this paragraph.
162 The municipal one-third share shall be divided pro rata among the municipalities based on each
163 municipality's population determined at the most recent United States decennial census of
164 population. All money transferred under this paragraph shall be used by the ~~county~~ school district
165 board of education and by the municipalities for the purpose of capital improvements;

166 (6) Transfer one half of one percent of the adjusted gross receipts to the governing bodies

167 of municipalities in which a racetrack table games licensee is located. The municipalities shall
168 each receive an equal share of the total amount allocated under this subdivision: *Provided*, That
169 distribution under this subdivision may not be made to any municipality that did not have a
170 licensed racetrack within its municipal boundaries as they existed on January 1, 2007: *Provided*,
171 *however*, That if no racetrack table games licensee is located within a municipality, a transfer may
172 not be made under this subdivision; and

173 (7) Distribute the remaining amounts, hereinafter referred to as the net amounts in the
174 Racetrack Table Games Funds, in accordance with the provisions of subsection (d) of this section.

175 (d) From the net amounts in the Racetrack Table Games Fund, the commission shall:

176 (1) Transfer seventy-six percent to the State Debt Reduction Fund which is hereby
177 continued in the State Treasury. Moneys of the fund shall be expended solely for the purpose of
178 accelerating the reduction of existing unfunded liabilities and existing bond indebtedness of the
179 state and shall be expended or transferred only upon appropriation of the Legislature;

180 (2) Transfer four percent, divided pro rata based on relative adjusted gross receipts from
181 the individual licensed racetracks for and on behalf of all employees of each licensed racing
182 association, into a special fund to be established by the Racing Commission to be used for
183 payment into the pension plan for all employees of each licensed racing association;

184 (3) Transfer ten percent, to be divided and paid in equal shares, to each county
185 commission in the state that is not eligible to receive a distribution under subdivision (4),
186 subsection (b) of this section: *Provided*, That funds transferred to county commissions under this
187 subdivision shall be used only to pay regional jail expenses and the costs of infrastructure
188 improvements and other capital improvements: *Provided, however*, That up to fifty percent of
189 these funds may be pledged to make payments on lottery revenue bonds issued pursuant to
190 article two-h, chapter thirteen of this code; and

191 (4) Transfer ten percent, to be divided and paid in equal shares, to the governing bodies
192 of each municipality in the state that is not eligible to receive a distribution under subdivisions (5)

193 and (6), subsection (b) of this section: *Provided*, That funds transferred to municipalities under
194 this subdivision shall be used only to pay for debt reduction in municipal police and fire pension
195 funds and the costs of infrastructure improvements and other capital improvements: *Provided*,
196 *however*, That up to fifty percent of these funds may be pledged to make payments on lottery
197 revenue bonds issued pursuant to article two-h, chapter thirteen of this code.

198 (e) All expenses of the commission incurred in the administration and enforcement of this
199 article shall be paid from the Racetrack Table Games Fund, including reimbursement of state law-
200 enforcement agencies for services performed at the request of the commission pursuant to this
201 article. The commission's expenses associated with a particular racetrack with authorized table
202 games under this article may not exceed three percent of the total annual adjusted gross receipts
203 received from that licensee's operation of table games under this article, including, but not limited
204 to, all license fees or other amounts attributable to the licensee's operation of table games under
205 this article, except as provided in subdivision (2), subsection (a) of this section. However, for the
206 fiscal year following the licensing of every licensed racetrack to offer West Virginia lottery
207 racetrack table games under this article and for the fiscal year thereafter, the commission's
208 expenses associated with a particular racetrack with authorized table games under this article
209 may not exceed four percent of the total annual adjusted gross receipts received from that
210 licensee's operation of table games under this article, including, but not limited to, all license fees
211 or other amounts attributable to the licensee's operation of table games under this article, except
212 as provided in subdivision (2), subsection (a) of this section. These expenses shall either be
213 allocated to the racetrack with West Virginia Lottery table games for which the expense is
214 incurred, if practicable, or be treated as general expenses related to all racetrack table games
215 facilities and be allocated pro rata among the racetrack table games facilities based on the ratio
216 that annual adjusted gross receipts from operation of table games at each racetrack with West
217 Virginia Lottery table games bears to total annual adjusted gross receipts from operation of table
218 games at all racetracks with West Virginia Lottery table games during the fiscal year of the state.

219 From this allowance, the commission shall transfer at least \$100,000 but not more than \$500,000
 220 into the Compulsive Gambling Treatment Fund created in section nineteen, article twenty-two-a
 221 of this chapter.

1

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 12. ARCHITECTS.

§30-12-12. Exceptions.

1 Nothing in this article may be construed to prevent:

2 (a) Any of the activities that, apart from this exemption, would constitute the practice of
 3 architecture, if performed in connection with any of the following:

4 (1) A detached single family dwelling and any sheds, storage buildings and garages
 5 incidental thereto;

6 (2) A multifamily residential structure not in excess of three stories excluding any
 7 basement area;

8 (3) Farm buildings, including barns, silos, sheds or housing for farm equipment and
 9 machinery, livestock, poultry or storage, if such structures are designed to be occupied by no
 10 more than ten persons;

11 (4) Any alteration, renovation or remodeling of a building, if such alteration, renovation or
 12 remodeling does not affect structural or other safety features of the building or if the work
 13 contemplated by the design does not require the issuance of a permit under any applicable
 14 building code;

15 (5) Preengineered buildings, including mobile classrooms purchased by ~~county~~ school
 16 district school boards; and

17 (6) A commercial structure which is to contain not more than seventy-six hundred square
 18 feet and not in excess of one story excluding any basement area.

19 (b) The preparation of any detailed or shop drawings required to be furnished by a
20 contractor, or the administration of construction contracts by persons customarily engaged in
21 contracting work.

22 (c) The preparation of technical submissions or the administration of construction
23 contracts by employees of a person or organization lawfully engaged in the practice of
24 architecture when such employees are acting under the direct supervision of a registered
25 architect.

26 (d) Officers and employees of the United States of America from engaging in the practice
27 of architecture as employees of said United States of America.

28 (e) A partnership, corporation or other business entity from performing or holding itself out
29 as able to perform any of the services involved in the practice of architecture, provided such
30 practice is actually carried on under the direct supervision of architects registered in the State of
31 West Virginia.

32 (f) A nonresident, who holds a certificate to practice architecture in the state in which he
33 or she resides and in addition holds the certification issued by the national council of architectural
34 registration boards, from agreeing to perform or holding herself or himself or herself out as able
35 to perform any of the professional services involved in the practice of architecture: *Provided*, That
36 he or she may not perform any of the professional services involved in the practice of architecture
37 until registered as hereinbefore provided and he or she notifies the board in writing if, prior to
38 registration, he or she engages in any of the activities permitted by this paragraph.

39 (g) The practice of landscape architecture as defined in section two, article twenty-two of
40 this chapter.

1

ARTICLE 21. PSYCHOLOGISTS; SCHOOL PSYCHOLOGISTS.

§30-21-2. Definitions.

1 Unless the context in which used clearly requires a different meaning, as used in this

2 article:

3 (a) "Applicant" means any person making application for an original or renewal license or
4 a temporary permit under the provisions of this article.

5 (b) "Licensee" means any person holding a license or a temporary permit issued under
6 the provisions of this article.

7 (c) "Board" means the board of examiners of psychologists created by this article.

8 (d) "Psychology" means the science involving the principles, methods and procedures of
9 understanding, predicting and influencing behavior; the principles pertaining to learning,
10 perception, motivation, thinking, emotions and interpersonal relationships; the methods and
11 procedures of interviewing and counseling; the methods and procedures of psychotherapy,
12 meaning the use of learning, conditioning methods and emotional reactions, in a professional
13 relationship, to assist a person or persons to modify feelings, attitudes and behavior, which are
14 intellectually, socially or emotionally maladjustive or ineffectual; the constructing, administering
15 and interpreting of tests of intelligence, special abilities, aptitudes, interests, attitudes, personality
16 characteristics, emotions and motivation; the psychological evaluation, prevention and
17 improvements of adjustment problems of individuals and groups; and the resolution of
18 interpersonal and social conflicts.

19 (e) "Practice of psychology" means the rendering or offering to render for a fee, salary or
20 other compensation, monetary or otherwise, any psychological service involving: (i) The
21 application of the principles, methods and procedures of understanding, predicting and influencing
22 behavior; (ii) the application of the principles pertaining to learning, perception, motivation,
23 thinking, emotions and interpersonal relationships; (iii) the application of the methods and
24 procedures of interviewing and counseling; (iv) the application of the methods and procedures of
25 psychotherapy, meaning the use of learning, conditioning methods and emotional reactions, in a
26 professional relationship, to assist a person or persons to modify feelings, attitudes and behavior,
27 which are intellectually, socially or emotionally maladjustive or ineffectual; (v) the constructing,

28 administering and interpreting of tests of intelligence, special abilities, aptitudes, interests,
29 attitudes, personality characteristics, emotions and motivation; (vi) the psychological evaluation,
30 prevention and improvement of adjustment problems of individuals and groups; and (vii) the
31 resolution of interpersonal and social conflicts.

32 However, for the purpose of this article, the term "practice of psychology" shall not include:

33 (1) Teaching, lecturing or engaging in research in psychology as part of salaried
34 employment at an institution of higher learning;

35 (2) The official duties of a person employed as a psychologist by the State of West Virginia
36 or any of its departments, agencies, divisions or bureaus, or local governments, except for the
37 West Virginia Department of Education, a ~~county~~ school district board of education, or a regional
38 education agency, which duties are performed under the direct and regular supervision of a
39 licensee;

40 (3) The official duties of a person employed as a psychologist by any department, agency,
41 division or bureau of the United States of America;

42 (4) The official duties of a person working under the direct and regular supervision of a
43 licensee for the purpose of gaining the experience required for a license hereunder by the
44 provisions of subdivision (4), subsection (a), section seven of this article, which experience is of
45 a type approved by the board;

46 (5) The use, in good faith, of certain psychological techniques, procedures, methods and
47 principles as an incident to engaging in a recognized occupation or profession, other than the
48 practice of psychology, including, but not limited to, the occupation or profession of a physician,
49 lawyer, dentist, social worker, sociologist, political scientist, economist, probation or parole officer,
50 rehabilitation or marriage counselor, clergyman, audiologist, speech pathologist, teacher,
51 educational or guidance counselor and a placement or personnel director;

52 (6) The activities of a student of psychology, psychological intern or psychological
53 resident, which activities are a part of and are engaged in pursuant to a course of study at an

54 institution of higher learning; or

55 (7) The activities of an assistant or technician which are performed under the direct and
56 regular supervision of a licensee.

57 (f) "Examination" means the examination in psychology required by subdivision (5),
58 subsection (a), section seven of this article.

59 (g) "School psychological services" means the activities which school psychologists may
60 engage in to promote mental health and to facilitate the education of school age children, which
61 include, but are not limited to, the following:

62 (A) Consultation, which includes collaboration with individuals and groups of school
63 personnel, parents, families and representatives of community agencies;

64 (B) Psychological and psychoeducational assessment, which includes the gathering,
65 interpreting and communicating of information derived from the assessment process which relates
66 to learning and behavior;

67 (C) Intervention, which includes individual and group counseling, behavioral intervention
68 and crisis intervention;

69 (D) Education, which includes parent training, school inservice and community education;

70 (E) Facilitation, which includes assisting in developing useful communication between
71 diverse groups of people separated by institutional, bureaucratic, educational or other barriers;

72 (F) Research, which includes designing, reporting and utilizing the results of research of
73 a psychological nature;

74 (G) Program planning and evaluation, which includes program development, program
75 implementation, program evaluation and problem solving for organizational decision making;

76 (H) Supervision, which includes the supervision of intern school psychologists, other
77 school psychologists and personnel contracted to provide either psychological or
78 psychoeducational assessment data;

79 However, for the purpose of this article, the term "practice of school psychology" shall not

80 include:

81 (1) The activities of clinical, counseling, child, industrial, health, and other types of
82 psychology which the board determines to be outside the scope of school psychology activities;

83 (2) Teaching, lecturing or engaging in research in school psychology as part of salaried
84 employment at an institution of higher learning;

85 (3) The official duties of a person employed as a school psychologist by the State of West
86 Virginia or any of its departments, agencies, divisions or bureaus, or local governments, except
87 for the West Virginia Department of Education, a ~~county~~ school district board of education, or a
88 regional education service agency, which duties are performed under the direct and regular
89 supervision of a licensee;

90 (4) The official duties of a person employed as a school psychologist by any department,
91 agency, division or bureau of the United States of America;

92 (5) The official duties of a school psychologist working under the direct and regular
93 supervision of a licensee for the purpose of gaining the experience required for a license
94 hereunder by the provisions of subdivision (4), subsection (a), section seven of this article, which
95 experience is of a type approved by the board;

96 (6) The use, in good faith, of certain psychological techniques, procedures, methods and
97 principles as an incident to engaging in a recognized occupation or profession, other than the
98 practice of school psychology, including, but not limited to, the occupation or profession of a
99 physician, lawyer, dentist, social worker, sociologist, political scientist, economist, probation or
100 parole officer, rehabilitation or marriage counselor, clergyman, audiologist, speech pathologist,
101 teacher, educational or guidance counselor and placement or personnel director;

102 (7) The activities of a student of school psychology, school psychological intern or extern,
103 which activities are a part of and are engaged in pursuant to a course of study at an institution of
104 higher learning;

105 (8) The activities of an assistant or technician which are performed under the direct and

106 regular supervision of a licensee.

107 (h) "Practice of school psychology" means the rendering or offering to render for a fee,
108 salary or other compensation to an individual or to the public school psychological services as
109 defined in this article;

110 (i) "School psychologist" means any person who proposes to provide school psychological
111 services as defined herein, to the public and in so doing claims to have the knowledge, training,
112 expertise and ethical standards necessary to engage in such practice;

113 (j) "School board" means a West Virginia ~~county~~ school district school board and also
114 means the West Virginia Department of Education, or a regional educational service agency;

115 (k) "School board employee" means any person who provides services for the school
116 board and is reimbursed via a salary and benefits and who has met the educational requirements
117 under the state law and regulations of the West Virginia Board of Education to be certified or
118 otherwise empowered by the State Superintendent of Schools to provide school psychological
119 services for school boards;

120 (l) "School board contractee" means any person who provides services for one or more
121 school boards and is reimbursed on a per evaluation, per unit of service, or some other contract
122 basis;

123 (m) "School psychologist resident" means a school psychologist who provides school
124 psychology services on a school board property and is a school board employee;

125 (n) "Licensed school psychologist" means a school psychologist who provides school
126 psychology services on school board property and is a school board employee or contractee;

127 (o) "Licensed school psychologist independent practitioners" means a school psychologist
128 who provides school psychology services to an individual or the public on school board or
129 nonschool board property, and provide such services for a fee or other compensation, or as a
130 school board employee or contractee.

ARTICLE 31. LICENSED PROFESSIONAL COUNSELORS.

§30-31-11. Persons exempted from licensure.

1 (a) The following activities are exempt from the provisions of this article:

2 (1) Teaching, lecturing or engaging in research in professional counseling or marriage and
3 family therapy so long as such activities do not otherwise involve the practice of professional
4 counseling or marriage and family therapy directly affecting the welfare of the person counseled;

5 (2) The official duties of persons employed as professional counselors or marriage and
6 family therapists by the State of West Virginia or any of its departments, agencies, divisions,
7 bureaus or political subdivisions, counties, ~~county~~ school district boards of education, regional
8 education service agencies, municipalities or any other facilities or programs established,
9 supported or funded, in whole or in part, by the governmental entity;

10 (3) The official duties of persons employed as professional counselors or marriage and
11 family therapists by any department, agency, division or bureau of the United States of America;

12 (4) The official duties of persons serving as professional counselors or marriage and family
13 therapists, whether as volunteers or for compensation or other personal gain, in any public or
14 private nonprofit corporations, organizations, associations or charities;

15 (5) The official duties of persons who are employed by a licensed professional counselor
16 or licensed marriage and family therapist, whose duties are supervised by a licensed professional
17 counselor or licensed marriage and family therapists and who represent themselves by the title
18 provisionally licensed counselor or provisionally licensed marriage and family therapist, and do
19 not represent themselves as licensed professional counselors or licensed marriage and family
20 therapists as defined in this article;

21 (6) The activities of a student of professional counseling or marriage and family therapy
22 which are part of the prescribed course of study at an accredited educational institution and are
23 supervised by a licensed professional counselor, licensed marriage and family therapist or by a
24 teacher, instructor or professor of counseling or marriage and family therapy acting within the

25 official duties or scope of activities exempted by this section; or

26 (7) The activities and services of qualified members of other recognized professions such
27 as physicians, psychologists, psychoanalysts, social workers, lawyers, clergy, nurses or teachers
28 performing counseling or marriage and family therapy consistent with the laws of this state, their
29 training and any code of ethics of their professions so long as such persons do not represent
30 themselves as licensed professional counselors or licensed marriage and family therapists as
31 defined by section three of this article.

32 (b) Nothing in the article requires licensing of the following persons pursuant to this article:

33 (1) A school counselor who holds a school counseling certificate issued by the West
34 Virginia Department of Education and who is engaged in counseling solely within the scope of his
35 or her employment with the department, a ~~county~~ school district board of education or a regional
36 education service agency; or

37 (2) A nonresident professional counselor or marriage and family therapist who holds a
38 license or other authorization to engage in the practice of professional counseling or marriage
39 and family therapy issued by another state, the qualifications for which in the opinion of the board
40 are at least as stringent as those provided in section eight and section nine of this article, and
41 who renders counseling services in this state for no more than thirty days in any calendar year.

42 (c) Nothing in this article permits a licensed professional counselor or licensed marriage
43 and family therapist to administer or prescribe drugs or otherwise engage in the practice of
44 medicine as defined in articles three and fourteen of chapter thirty of this code.

CHAPTER 31. CORPORATIONS.

ARTICLE 18E. WEST VIRGINIA LAND REUSE AGENCY AUTHORIZATION ACT.

§31-18E-11. Financing of land reuse agency operations.

1 (a) *General rule.* -- A land reuse agency may receive funding through grants and loans
2 from:

- 3 (1) The federal government;
- 4 (2) The state;
- 5 (3) A municipality or county;
- 6 (4) The land reuse jurisdiction which created the land reuse agency; and
- 7 (5) Private or other public sources.

8 (b) *Funding.* -- A land reuse agency may receive and retain payments for services
 9 rendered, for rents and leasehold payments received, for consideration for disposition of real and
 10 personal property, for proceeds of insurance coverage for losses incurred, for income from
 11 investments and for an asset and activity lawfully permitted to a land reuse agency under this
 12 article.

13 (c) *Allocated real property taxes.* -- (1) A taxing jurisdiction may authorize the remittance
 14 or dedication of a portion of real property taxes collected pursuant to the laws of this state to a
 15 land reuse agency on real property conveyed by a land reuse agency.

16 (2) Allocation of property tax revenues in accordance with this subsection, if authorized by
 17 the taxing jurisdiction, begins with the first taxable year following the date of conveyance and
 18 continues for a period of up to five years and may not exceed a maximum of fifty percent of the
 19 aggregate property tax revenues generated by the property.

20 (3) Remittance or dedication of real property taxes include the real property taxes of a
 21 ~~county~~ school district board of education only if the ~~county~~ school district board of education enters
 22 into an agreement with the land reuse agency for the remittance or dedication.

ARTICLE 21. WEST VIRGINIA LAND STEWARDSHIP CORPORATION.

§31-21-5. Creation of the West Virginia Land Stewardship Corporation; powers and limitations.

- 1 (a) The corporation shall be organized as a nonprofit, nonstock corporation under the West

2 Virginia Nonprofit Corporation Act, article two, chapter thirty-one-e of this code. The property
3 thereof is deemed to be held for an area economic development purpose under subdivision
4 fourteen, subsection (a), section nine, article three, chapter eleven of this code.

5 (b) The corporation shall apply for recognition of nonprofit exempt status by the United
6 States Internal Revenue Service under one or more charitable purposes within the meaning of
7 section 501(c) of the Internal Revenue Code of 1986, as amended.

8 (c) The corporate name for the corporation shall be the "West Virginia Land Stewardship
9 Corporation".

10 (d) The corporation shall have all of the powers of a nonprofit corporation as set forth in
11 chapter thirty-one-e of this code.

12 (e) Except as otherwise provided in chapter thirty-one-e of this code or in this article, the
13 corporation may do all things necessary or convenient to implement the purposes, objectives and
14 provisions of this article and the purposes, objectives and powers delegated to the board of
15 directors of a nonprofit corporation by other laws or executive orders, including, but not limited to,
16 all of the following:

17 (1) Adopt, amend and repeal bylaws for the regulation of its affairs and the conduct of its
18 business;

19 (2) Establish the service offerings and related fees for such services under each of the
20 voluntary programs described herein;

21 (3) Sue and be sued in its own name and plead and be impleaded, including, but not
22 limited to, defending the corporation in an action arising or resulting from the services, programs
23 and responsibilities arising under this article;

24 (4) Solicit and accept gifts, grants, labor, loans, services and other aid from any person,
25 or the federal government, this state or a political subdivision of this state or any agency of the
26 federal government or a state institution of higher education or nonprofit affiliates or an
27 intergovernmental entity created under the laws of this state, or participate in any other way in a

28 program of the federal government;

29 (5) Procure insurance against risk and loss in connection with the programs, property,
30 assets or activities of the corporation;

31 (6) Invest money of the corporation, at the discretion of the board of directors, in
32 instruments, obligations, securities or property determined proper by the board of directors of the
33 corporation and name and use depositories for its money;

34 (7) Employ legal and technical experts, contractors, consultants, agents or employees,
35 permanent or temporary, paid from the funds of the corporation. The corporation shall determine
36 the qualifications, duties and compensation of those it employs;

37 (8) Contract for goods and services and engage personnel as necessary, contract with
38 Regional Brownfield Assistance Centers as set out in section seven, article eleven, chapter
39 eighteen-b of this code, and engage the services of private consultants, managers, legal counsel,
40 engineers, accountants and auditors for rendering professional environmental, legal and financial
41 assistance and advice payable from funds of the corporation;

42 (9) Create limited liability companies or other sole purpose entities or devices to accept
43 and hold real property as part of administering its programs;

44 (10) Study, develop and prepare the reports or plans the corporation considers necessary
45 to assist it in the exercise of its powers under this article and to monitor and evaluate progress
46 under this article; and

47 (11) Enter into contracts for the management of, the collection of rent from, or the sale of
48 real property held by the corporation.

49 (f) The enumeration of a power in this article may not be construed as a limitation upon
50 the general powers of the corporation. The powers granted under this article are in addition to
51 those powers granted by any other statute or as provided in articles of incorporation filed with the
52 Secretary of State.

53 (g) The property of the corporation and its income and operations are exempt from all

54 taxation by this state or any of its political subdivisions. Property owned and leased by the
55 corporation as lessor to a commercial lessee or an industrial lessee is hereby declared to be tax
56 exempt and held by the corporation for a public purpose. A payment in lieu of taxes, payable by
57 the lessee, shall be established for any property so leased, in an amount not less than the property
58 tax otherwise payable on the property. The lessee's leasehold interest therein is hereby declared
59 to be a tax exempt leasehold interest held for a public purpose so long as the payment in lieu of
60 taxes is timely paid. Payments made to any county commission, ~~county~~ school district school
61 board or municipality in lieu of tax pursuant to such agreement shall be distributed as if the
62 payments resulted from ad valorem property taxation.

63 (h) The corporation may not issue tax-exempt financing or issue bonds.

64 (i) The corporation does not have the power of eminent domain or the ability to condemn
65 property.

66 (j) The exercise by the corporation of powers and duties under this article and its activities
67 under the programs described herein shall be considered a necessary public purpose and for the
68 benefit of the public.

69 (k) The corporation is not liable under the environmental acts or common law equivalents
70 to the state or to any other person by virtue of the fact that the corporation is fulfilling the purposes
71 of this article including, but not limited to, providing land stewardship services or accepting title to
72 property under any program established under this article unless:

73 (1) The corporation, its employees or agents directly cause an immediate release or
74 directly exacerbate a release of regulated substances on or from a property that is an enrolled
75 site or accepted into the land bank program; or

76 (2) The corporation, its employees or agents knowingly and willfully do an action which
77 causes an immediate release of regulated substances or violates an environmental act. Liability
78 pursuant to this article is limited to the cost for a response action which may be directly attributable
79 to the corporation's activities, and only if these activities are the proximate and efficient cause of

80 the release or violation. Ownership or control of the property after accepting title in the land bank
81 program does not by itself trigger liability.

82 (l) The corporation shall adopt a code of ethics for its directors, officers and employees.

83 (m) The corporation shall establish policies and procedures requiring the disclosure of
84 relationships that may give rise to a conflict of interest. The board of directors of the corporation
85 shall require that any member of the board with a direct or indirect interest in any matter before
86 the corporation disclose the member's interest to the governing body before the board takes any
87 action on the matter.

88 (n) The programs that are established under this article and administered by the
89 corporation are voluntary programs. Parties can participate in the land stewardship program,
90 certified sites program and land bank program at their option.

91 (o) In the event of a conveyance of property to the corporation, at the discretion of the
92 corporation, the prior owner may be required to post a bond or other type of financial assurance
93 for any potential future remediation, in order to ensure the original owner's liability is maintained.

94 (p) The state may contract with the corporation for services for properties for which the
95 state is responsible and may enter into long-term contracts for services that are funded under a
96 trust agreement or provided in an escrow account.

§31-21-15. Exemption from taxation.

1 The property of the corporation shall be exempt from ad valorem property taxation.
2 Property owned and leased by the corporation as lessor to a commercial lessee or an industrial
3 lessee is hereby declared to be tax exempt and held by the corporation for a public purpose. A
4 payment in lieu of taxes, payable by the lessee, shall be established for any property so leased,
5 in an amount not less than the property tax otherwise payable on the property. The lessee's
6 leasehold interest therein is hereby declared to be a tax exempt leasehold interest held for a
7 public purpose so long as the payment in lieu of taxes is timely paid. Payments made to any
8 county commission, ~~county~~ school district school board or municipality in lieu of tax pursuant to

9 such agreement shall be distributed as if the payments resulted from ad valorem property
10 taxation. The corporation shall be exempt from the taxes imposed by chapter eleven of this code,
11 except that the corporation shall comply with the employer withholding of tax requirements in
12 sections seventy-one through seventy-six, article twenty-one of said chapter eleven. The
13 corporation shall be exempt from sales and use taxes, business and occupation taxes and all
14 other taxes imposed by a county commission, a municipal corporation or other unit of local
15 government, whether now or hereinafter in effect.

CHAPTER 33. INSURANCE.

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-21a. State agency workers' compensation programs.

1 (a) The intent of this section is to provide a means of managing workers' compensation
2 coverage for persons directly employed by the State of West Virginia. For the purposes of this
3 section:

4 (1) "Discretionary participant" means the Parkways Authority, offices of the State Auditor,
5 the State Treasurer, the Secretary of State, the Attorney General, the Department of Agriculture,
6 the State Senate and House of Delegates or their related entities, the Supreme Court of Appeals,
7 the State Police and any other spending unit of the state that is required by section twelve, article
8 two, chapter eleven-b of this code to provide a detailed expenditure schedule to the Secretary of
9 Revenue in his or her capacity as Director of the Budget: *Provided*, That the term "discretionary
10 participant" does not include any executive state entity other than the State Police and the
11 Parkways Authority, any ~~county~~ school district board of education, any other county entity or its
12 instrumentality or any municipality or its instrumentality.

13 (2) "Executive state entity" means the Governor's Office and its affiliated entities, Bureau
14 of Senior Services, or any state department, division, fund, office, position, system, survey or
15 other entity of state government, however designated, transferred to and incorporated in one of

16 the executive departments created in section two, article one, chapter five-f of this code, except
17 the State Police, and that is required by section twelve, article two, chapter eleven-b of this code
18 to provide a detailed expenditure schedule to the Secretary of Revenue in his or her capacity as
19 Director of the Budget.

20 (b) Notwithstanding any provision of this code to the contrary, the commissioner has sole
21 responsibility for managing the workers' compensation risks of all executive state entities and for
22 supervising and controlling the workers' compensation programs for such entities: *Provided*, That
23 any discretionary participant may participate in the program upon application to the commissioner
24 under the same terms and conditions as are applicable to executive state entities: *Provided*
25 *further*, That a discretionary participant is, in accordance with rules governing the program,
26 permitted to withdraw from continued participation in the program.

27 (c) The commissioner may assess such fees or surcharges on participants in the program
28 necessary to manage the workers' compensation risks of those participants. All premiums, fees
29 and surcharges shall be established in accordance with generally acceptable actuarial standards
30 applicable to workers compensation coverage as to each participant and as to all participants in
31 the aggregate. The commissioner shall establish criteria for assessments of premiums, fees and
32 surcharges designed to provide the most cost efficient coverage for all participants.

33 (d) The provisions of article three, chapter five-a of this code relating to the Purchasing
34 Division of the Department of Administration do not apply to any contract entered into by the
35 commissioner in furtherance of the requirements of this section: *Provided*, That those contracts
36 shall be awarded on a competitive basis.

37 (e) (1) There is hereby established the "State Entities Workers' Compensation Program
38 Fund." All premiums, surcharges, assessments, deposits or any other moneys or funds deposited
39 or otherwise designated or accruing to the fund as well as all earnings payable to it, shall be
40 deposited in the State Treasury to the credit of the fund. Expenditures from the fund shall be for
41 the purposes set forth in this section, are authorized from collections, and shall not revert to the

42 General Fund. The fund shall be a separate and distinct fund upon the books and records of the
43 Auditor and Treasurer, and disbursements therefrom shall be made upon requisitions signed by
44 the Insurance Commissioner.

45 (2) Any premiums, assessments or deposits or any other moneys or funds received for
46 the purposes of this section shall be invested by the State Treasurer at the request of the
47 commissioner.

48 (3) The Insurance Commissioner may borrow funds as is determined necessary from the
49 Insurance Commission Fund, created in section thirteen-b, article three, chapter thirty-three of
50 this code, for the initial operations of the workers' compensation program for state entities:
51 *Provided*, That any borrowed funds shall be deposited to the credit of the State Entities Workers'
52 Compensation Program Fund: *Provided, however*, That these borrowed funds shall be repaid,
53 without interest, and redeposited to the credit of the Insurance Commission Fund as determined
54 by the Insurance Commissioner.

55 (f) The commissioner may promulgate emergency rules and shall propose for legislative
56 approval legislative rules, in accordance with the provisions of article three, chapter twenty-nine-
57 a of this code, as are necessary to provide for implementation and enforcement of the provisions
58 of this section.

59 (g) The commissioner shall submit reports on the status and progress of the program
60 established in this section to the joint committee on government and finance monthly and upon
61 request, together with any other specific information on the program requested by the committee.

62 (h) The commissioner shall consult with the State Board of Risk and Insurance
63 Management to solicit any applicable experience and expertise in establishing and managing a
64 program to provide insurance coverage to state agencies.

ARTICLE 14. GROUP LIFE INSURANCE.

**§33-14-29. Group annuity plans for employees of county school district boards of
education, the Teachers' Retirement Board, the West Virginia Board of Education,**

the board of regents and their agencies.

1 The provisions in subdivisions (b), (c) and (d) of section two of this article shall not apply
 2 to group annuity contracts issued by insurance companies to ~~county~~ school district boards of
 3 education, the Teachers' Retirement Board, the West Virginia Board of Education, and the board
 4 of regents and their agencies. The boards of education, the Teachers' Retirement Board, the West
 5 Virginia Board of Education, and the board of regents and their agencies shall be the holders of
 6 the master policies under which annuities are insured for the benefit of their employees who elect
 7 to participate in a "tax sheltered group annuity plan" established pursuant to section 403(b) of the
 8 Internal Revenue Code of 1954 and amendments and successor provisions thereto: *Provided,*
 9 *however,* That no such plan shall be adopted unless the board of Education first secures the
 10 written approval of the Insurance Commissioner: *Provided further,* That no group annuity contract
 11 shall be awarded, approved or issued by any ~~county~~ school district board of education without
 12 competitive bid.

CHAPTER 38. LIENS.

**ARTICLE 5B. SUGGESTION OF THE STATE AND POLITICAL SUBDIVISIONS;
 GARNISHMENT AND SUGGESTION OF PUBLIC OFFICERS.**

38-5B-1. Definitions.

1 For purposes of this article:

2 1. The term "suggestee execution" shall mean an execution differing from an ordinary
 3 execution upon a judgment only in that it is directed against money due or to become due to the
 4 judgment debtor from the suggestee as therein set out.

5 2. The term "state agency" shall mean any department, institution, board, commission,
 6 bureau, or other agency of the state government, including a public corporation created to effect
 7 a state public improvement.

8 3. The term "political subdivision" shall mean any county, ~~county~~ school district board of

9 education, municipal corporation, or any other public corporation or governmental unit organized
10 to perform one or more of the functions of local government or to effect a local public improvement.

11 4. The term "proper officer" shall mean the officer of the state, a state agency, or a political
12 subdivision, as the case may be, upon whom to make service of suggestee executions under this
13 article.

14 5. The term "judgment creditor" shall include the owner of a money decree.

CHAPTER 49. CHILD WELFARE.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§49-1-206. Definitions related, but not limited, to child advocacy, care, residential and treatment programs.

1 When used in this chapter, terms defined in this section have the meanings ascribed to
2 them that relate to, but are not limited to, child advocacy, care, residential and treatment
3 programs, except in those instances where a different meaning is provided or the context in which
4 the word is used clearly indicates that a different meaning is intended.

5 "Child advocacy center (CAC)" means a community-based organization that is a member
6 in good standing with the West Virginia Child Abuse Network, Inc., as set forth in section one
7 hundred one, article three of this chapter.

8 "Child care" means responsibilities assumed and services performed in relation to a child's
9 physical, emotional, psychological, social and personal needs and the consideration of the child's
10 rights and entitlements, but does not include secure detention or incarceration under the
11 jurisdiction of the Division of Juvenile Services pursuant to part nine, article two of this chapter. It
12 includes the provision of child care services or residential services.

13 "Child care center" means a facility maintained by the state or any county or municipality
14 thereof, or any agency or facility maintained by an individual, firm, corporation, association or
15 organization, public or private for the care of thirteen or more children for child care services in
16 any setting, if the facility is open for more than thirty days per year per child.

17 "Child care services" means direct care and protection of children during a portion of a
18 twenty-four hour day outside of the child's own home which provides experiences to children that
19 foster their healthy development and education.

20 "Child placing agency" means a child welfare agency organized for the purpose of placing
21 children in private family homes for foster care or for adoption. The function of a child-placing
22 agency may include the investigation and certification of foster family homes and foster family
23 group homes as provided in this chapter. The function of a child placing agency may also include
24 the supervision of children who are sixteen or seventeen years old and living in unlicensed
25 residences.

26 "Child welfare agency" means any agency or facility maintained by the state or any county
27 or municipality thereof, or any agency or facility maintained by an individual, firm, corporation,
28 association or organization, public or private, to receive children for care and maintenance or for
29 placement in residential care facilities, including, without limitation, private homes or any facility
30 that provides care for unmarried mothers and their children. A child welfare agency does not
31 include juvenile detention facilities or juvenile correctional facilities operated by or under contract
32 with the Division of Juvenile Services, pursuant to part nine, article two of this chapter, nor any
33 other facility operated by that division for the secure housing or holding of juveniles committed to
34 its custody.

35 "Community based" means a facility, program or service located near the child's home or
36 family and involving community participation in planning, operation and evaluation and which may
37 include, but is not limited to, medical, educational, vocational, social and psychological guidance,
38 training, special education, counseling, substance abuse and any other treatment or rehabilitation
39 services.

40 "Community-based juvenile probation sanctions" means any of a continuum of
41 nonresidential accountability measures, programs and sanctions in response to a technical
42 violation of probation, as part of a system of community-based juvenile probation sanctions and

43 incentives, that may include, but are not limited to:

44 (A) Electronic monitoring;

45 (B) Drug and alcohol screening, testing or monitoring;

46 (C) Youth reporting centers;

47 (D) Reporting and supervision requirements;

48 (E) Community service; and

49 (F) Rehabilitative interventions such as family counseling, substance abuse treatment,
50 restorative justice programs and behavioral or mental health treatment.

51 "Community services" means nonresidential prevention or intervention services or
52 programs that are intended to reduce delinquency and future court involvement.

53 "Evidence-based practices" means policies, procedures, programs and practices
54 demonstrated by research to reliably produce reductions in the likelihood of reoffending.

55 "Facility" means a place or residence, including personnel, structures, grounds and
56 equipment used for the care of a child or children on a residential or other basis for any number
57 of hours a day in any shelter or structure maintained for that purpose. Facility does not include
58 any juvenile detention facility or juvenile correctional facility operated by or under contract with
59 the Division of Juvenile Services for the secure housing or holding of juveniles committed to its
60 custody. "Family child care facility" means any facility which is used to provide nonresidential child
61 care services for compensation for seven to twelve children, including children who are living in
62 the household, who are under six years of age. No more than four of the total number of children
63 may be under twenty-four months of age. A facility may be in a provider's residence or a separate
64 building.

65 "Family child care home" means a facility which is used to provide nonresidential child
66 care services for compensation in a provider's residence. The provider may care for four to six
67 children, at one time including children who are living in the household, who are under six years
68 of age. No more than two of the total number of children may be under twenty-four months of

69 age. "Family resource network" means:

70 (A) A local community organization charged with service coordination, needs and resource
71 assessment, planning, community mobilization and evaluation, and which has met the following
72 criteria:

73 (i) Agreeing to a single governing entity;

74 (ii) Agreeing to engage in activities to improve service systems for children and families
75 within the community;

76 (iii) Addressing a geographic area of a county or two or more contiguous counties;

77 (iv) Having nonproviders, which include family representatives and other members who
78 are not employees of publicly funded agencies, as the majority of the members of the governing
79 body, and having family representatives as the majority of the nonproviders;

80 (v) Having representatives of local service agencies, including, but not limited to, the public
81 health department, the behavioral health center, the local health and human resources agency
82 and the ~~county~~ school district, on the governing body; and

83 (vi) Accepting principles consistent with the cabinet's mission as part of its philosophy.

84 (B) A family resource network may not provide direct services, which means to provide
85 programs or services directly to children and families.

86 "Family support", for the purposes of part six, article two of this chapter, means goods and
87 services needed by families to care for their family members with developmental disabilities and
88 to enjoy a quality of life comparable to other community members.

89 "Family support program" means a coordinated system of family support services
90 administered by the Department of Health and Human Resources through contracts with
91 behavioral health agencies throughout the state.

92 "Foster family home" means a private residence which is used for the care on a residential
93 basis of no more than five children who are unrelated by blood, marriage or adoption to any adult
94 member of the household.

95 "Health care and treatment" means:

96 (A) Developmental screening;

97 (B) Mental health screening;

98 (C) Mental health treatment;

99 (D) Ordinary and necessary medical and dental examination and treatment;

100 (E) Preventive care including ordinary immunizations, tuberculin testing and well-child
101 care; and

102 (F) Nonemergency diagnosis and treatment. However, nonemergency diagnosis and
103 treatment does not include an abortion."Home-based family preservation services" means
104 services dispensed by the Division of Human Services or by another person, association or group
105 who has contracted with that division to dispense services when those services are intended to
106 stabilize and maintain the natural or surrogate family in order to prevent the placement of children
107 in substitute care. There are two types of home-based family preservation services and they are
108 as follows:

109 (A) Intensive, short-term intervention of four to six weeks; and

110 (B) Home-based, longer-term after care following intensive intervention.

111 "Informal family child care" means a home that is used to provide nonresidential child care
112 services for compensation for three or fewer children, including children who are living in the
113 household, who are under six years of age. Care is given in the provider's own home to at least
114 one child who is not related to the caregiver.

115 "Nonsecure facility" means any public or private residential facility not characterized by
116 construction fixtures designed to physically restrict the movements and activities of individuals
117 held in lawful custody in that facility and which provides its residents access to the surrounding
118 community with supervision.

119 "Nonviolent misdemeanor offense" means a misdemeanor offense that does not include
120 any of the following:

- 121 (A) An act resulting in bodily injury or death;
- 122 (B) The use of a weapon in the commission of the offense;
- 123 (C) A domestic abuse offense involving a significant or likely risk of harm to a family
124 member or household member;
- 125 (D) A criminal sexual conduct offense; or
- 126 (E) Any offense for driving under the influence of alcohol or drugs.

127 "Out-of-home placement" means a post-adjudication placement in a foster family home,
128 group home, nonsecure facility, emergency shelter, hospital, psychiatric residential treatment
129 facility, staff-secure facility, hardware secure facility, detention facility or other residential
130 placement other than placement in the home of a parent, custodian or guardian.

131 "Out-of-school time" means a child care service which offers activities to children before
132 and after school, on school holidays, when school is closed due to emergencies and on school
133 calendar days set aside for teacher activities.

134 "Placement" means any temporary or permanent placement of a child who is in the
135 custody of the state in any foster home, group home or other facility or residence.

136 "Pre-adjudicatory community supervision" means supervision provided to a youth prior to
137 adjudication, a period of supervision up to one year for an alleged status or delinquency offense.

138 "Regional family support council" means the council established by the regional family
139 support agency to carry out the responsibilities specified in part six, article two of this chapter.

140 "Relative family child care" means a home that provides nonresidential child care services
141 only to children related to the caregiver. The caregiver is a grandparent, great grandparent, aunt,
142 uncle, great-aunt, great-uncle or adult sibling of the child or children receiving care. Care is given
143 in the provider's home.

144 "Residential services" means child care which includes the provision of nighttime shelter
145 and the personal discipline and supervision of a child by guardians, custodians or other persons
146 or entities on a continuing or temporary basis. It may include care and/or treatment for

147 transitioning adults. Residential services does not include or apply to any juvenile detention facility
148 or juvenile correctional facility operated by the Division of Juvenile Services, created pursuant to
149 this chapter, for the secure housing or holding of juveniles committed to its custody.

150 "Risk and needs assessment" means a validated, standardized actuarial tool which
151 identifies specific risk factors that increase the likelihood of reoffending and the factors that, when
152 properly addressed, can reduce the likelihood of reoffending.

153 "Secure facility" means any public or private residential facility which includes construction
154 fixtures designed to physically restrict the movements and activities of juveniles or other
155 individuals held in lawful custody in such facility.

156 "Staff-secure facility" means any public or private residential facility characterized by staff
157 restrictions of the movements and activities of individuals held in lawful custody in such facility
158 and which limits its residents' access to the surrounding community, but is not characterized by
159 construction fixtures designed to physically restrict the movements and activities of residents.

160 "Standardized screener" means a brief, validated nondiagnostic inventory or
161 questionnaire designed to identify juveniles in need of further assessment for medical, substance
162 abuse, emotional, psychological, behavioral, or educational issues, or other conditions.

163 "State family support council" means the council established by the Department of Health
164 and Human Resources pursuant to part six, article two of this chapter to carry out the
165 responsibilities specified in article two of this chapter.

166 "Time-limited reunification services" means individual, group and family counseling,
167 inpatient, residential or outpatient substance abuse treatment services, mental health services,
168 assistance to address domestic violence, services designed to provide temporary child care and
169 therapeutic services for families, including crisis nurseries and transportation to or from those
170 services, provided during fifteen of the most recent twenty-two months a child or juvenile has been
171 in foster care, as determined by the earlier date of the first judicial finding that the child is subjected
172 to abuse or neglect, or the date which is sixty days after the child or juvenile is removed from

173 home.

174 "Technical violation" means an act that violates the terms or conditions of probation or a
175 court order that does not constitute a new delinquent offense.

176 "Truancy diversion specialist" means a school-based probation officer or truancy social
177 worker within a school or schools who, among other responsibilities, identifies truants and the
178 causes of the truant behavior, and assists in developing a plan to reduce the truant behavior prior
179 to court involvement.

ARTICLE 4. COURT ACTIONS.

§49-4-406. Multidisciplinary treatment process for status offenders or delinquents; requirements; custody; procedure; reports; cooperation; inadmissibility of certain statements.

1 (a) When a juvenile is adjudicated as a status offender pursuant to section seven hundred
2 eleven of this article, the Department of Health and Human Resources shall promptly convene a
3 multidisciplinary treatment team and conduct an assessment, utilizing a standard uniform
4 comprehensive assessment instrument or protocol, including a risk and needs assessment, to
5 determine the juvenile's mental and physical condition, maturity and education level, home and
6 family environment, rehabilitative needs and recommended service plan, which shall be provided
7 in writing to the court and team members. Upon completion of the assessment, the treatment
8 team shall prepare and implement a comprehensive, individualized service plan for the juvenile.

9 (b) When a juvenile is adjudicated as a delinquent or has been granted a preadjudicatory
10 community supervision period pursuant to section seven hundred eight of this article, the court,
11 either upon its own motion or motion of a party, may require the Department of Health and Human
12 Resources to convene a multidisciplinary treatment team and conduct an assessment, utilizing a
13 standard uniform comprehensive assessment instrument or protocol, including a risk and needs
14 assessment, to determine the juvenile's mental and physical condition, maturity and education
15 level, home and family environment, rehabilitative needs and recommended service plan, which

16 shall be provided in writing to the court and team members. A referral to the Department of Health
17 and Human Resources to convene a multidisciplinary treatment team and to conduct such an
18 assessment shall be made when the court is considering placing the juvenile in the department's
19 custody or placing the juvenile out-of-home at the department's expense pursuant to section
20 seven hundred fourteen of this article. In any delinquency proceeding in which the court requires
21 the Department of Health and Human Resources to convene a multidisciplinary treatment team,
22 the probation officer shall notify the department at least fifteen working days before the court
23 proceeding in order to allow the department sufficient time to convene and develop an
24 individualized service plan for the juvenile.

25 (c) When a juvenile has been adjudicated and committed to the custody of the Director of
26 the Division of Juvenile Services, including those cases in which the juvenile has been committed
27 for examination and diagnosis, the Division of Juvenile Services shall promptly convene a
28 multidisciplinary treatment team and conduct an assessment, utilizing a standard uniform
29 comprehensive assessment instrument or protocol, including a risk and needs assessment, to
30 determine the juvenile's mental and physical condition, maturity and education level, home and
31 family environment, rehabilitative needs and recommended service plan. Upon completion of the
32 assessment, the treatment team shall prepare and implement a comprehensive, individualized
33 service plan for the juvenile, which shall be provided in writing to the court and team members. In
34 cases where the juvenile is committed as a post-sentence disposition to the custody of the
35 Division of Juvenile Services, the plan shall be reviewed quarterly by the multidisciplinary
36 treatment team. Where a juvenile has been detained in a facility operated by the Division of
37 Juvenile Services without an active service plan for more than sixty days, the director of the facility
38 may call a multidisciplinary team meeting to review the case and discuss the status of the service
39 plan.

40 (d)(1) The rules of juvenile procedure shall govern the procedure for obtaining any
41 assessment of a juvenile, preparing an individualized service plan and submitting the plan and

42 any assessment to the court.

43 (2) In juvenile proceedings conducted pursuant to part seven of this article, the following
44 representatives shall serve as members and attend each meeting of the multidisciplinary
45 treatment team, so long as they receive notice at least seven days prior to the meeting:

46 (A) The juvenile;

47 (B) The juvenile's case manager in the Department of Health and Human Resources or
48 the Division of Juvenile Services;

49 (C) The juvenile's parent, guardian or custodian;

50 (D) The juvenile's attorney;

51 (E) Any attorney representing a member of the multidisciplinary treatment team;

52 (F) The prosecuting attorney or his or her designee;

53 (G) The ~~county~~ school district superintendent or the superintendent's designee;

54 (H) A treatment or service provider with training and clinical experience coordinating
55 behavioral or mental health treatment; and

56 (I) Any other person or agency representative who may assist in providing
57 recommendations for the particular needs of the juvenile and family, including domestic violence
58 service providers. In delinquency proceedings, the probation officer shall be a member of a
59 multidisciplinary treatment team. When appropriate, the juvenile case manager in the Department
60 of Health and Human Resources and the Division of Juvenile Services shall cooperate in
61 conducting multidisciplinary treatment team meetings when it is in the juvenile's best interest.

62 (3) Prior to disposition, in each case in which a treatment planning team has been
63 convened, the team shall advise the court as to the types of services the team has determined
64 are needed and type of placement, if any, which will best serve the needs of the child. If the team
65 determines that an out-of-home placement will best serve the needs of the child, the team shall
66 first consider placement at facilities or programs located within the state. The team may only
67 recommend placement in an out-of-state facility if it concludes, after considering the best interests

68 and overall needs of the child, that there are no available and suitable in-state facilities which can
69 satisfactorily meet the specific needs of the child. The multidisciplinary treatment team shall also
70 determine and advise the court as to the individual treatment and rehabilitation plan
71 recommended for the child for either out-of-home placement or community supervision. The plan
72 may focus on reducing the likelihood of reoffending, requirements for the child to take
73 responsibility for his or her actions, completion of evidence-based services or programs or any
74 other relevant goal for the child. The plan may also include opportunities to incorporate the family,
75 custodian or guardian into the treatment and rehabilitation process.

76 (4) The multidisciplinary treatment team shall submit written reports to the court as
77 required by applicable law or by the court, shall meet with the court at least every three months,
78 as long as the juvenile remains in the legal or physical custody of the state, and shall be available
79 for status conferences and hearings as required by the court. The multidisciplinary treatment team
80 shall monitor progress of the plan identified in subdivision (3) of this subsection and review
81 progress of the plan at the regular meetings held at least every three months pursuant to this
82 section, or at shorter intervals, as ordered by the court, and shall report to the court on the
83 progress of the plan or if additional modification is necessary.

84 (5) In any case in which a juvenile has been placed out of his or her home except for a
85 temporary placement in a shelter or detention center, the multidisciplinary treatment team shall
86 cooperate with the state agency in whose custody the juvenile is placed to develop an after-care
87 plan. The rules of juvenile procedure and section four hundred nine of this article govern the
88 development of an after-care plan for a juvenile, the submission of the plan to the court and any
89 objection to the after-care plan.

90 (6) If a juvenile respondent admits the underlying allegations of the case initiated pursuant
91 to part VII of this article, in the multidisciplinary treatment planning process, his or her statements
92 may not be used in any juvenile or criminal proceedings against the juvenile, except for perjury or
93 false swearing.

§49-4-407. Team directors; records; case logs.

1 All persons directing any team created pursuant to this article shall maintain records of
2 each meeting indicating the name and position of persons attending each meeting and the
3 number of cases discussed at the meeting, including a designation of whether or not that case
4 was previously discussed by any multidisciplinary team. Further, all investigative teams shall
5 maintain a log of all cases to indicate the number of referrals to that team, whether or not a police
6 report was filed with the prosecuting attorney's office, whether or not a petition was sought
7 pursuant to part six of this article or whether or not a criminal complaint was issued and a case
8 was criminally prosecuted. All treatment teams shall maintain a log of all cases to indicate the
9 basis for failure to review a case for a period in excess of six months.

§49-4-710. Waiver and transfer of jurisdiction.

1 (a) Upon written motion of the prosecuting attorney filed at least eight days prior to the
2 adjudicatory hearing and with reasonable notice to the juvenile, his or her counsel, and his or her
3 parents, guardians or custodians, the court shall conduct a hearing to determine if juvenile
4 jurisdiction should or must be waived and the proceeding transferred to the criminal jurisdiction of
5 the court. Any motion filed in accordance with this section is to state, with particularity, the grounds
6 for the requested transfer, including the grounds relied upon as set forth in subsection (d), (e), (f)
7 or (g) of this section, and the burden is upon the state to establish the grounds by clear and
8 convincing evidence. Any hearing held under this section is to be held within seven days of the
9 filing of the motion for transfer unless it is continued for good cause.

10 (b) No inquiry relative to admission or denial of the allegations of the charge or the demand
11 for jury trial may be made by or before the court until the court has determined whether the
12 proceeding is to be transferred to criminal jurisdiction.

13 (c) The court shall transfer a juvenile proceeding to criminal jurisdiction if a juvenile who
14 has attained the age of fourteen years makes a demand on the record to be transferred to the
15 criminal jurisdiction of the court. The case may then be referred to magistrate or circuit court for

16 further proceedings, subject to the court's jurisdiction.

17 (d) The court shall transfer a juvenile proceeding to criminal jurisdiction if there is probable
18 cause to believe that:

19 (1) The juvenile is at least fourteen years of age and has committed the crime of treason
20 under section one, article one, chapter sixty-one of this code; the crime of murder under sections
21 one, two and three, article two of that chapter; the crime of robbery involving the use or presenting
22 of firearms or other deadly weapons under section twelve, article two of that chapter; the crime of
23 kidnapping under section fourteen-a of article two of that chapter; the crime of first degree arson
24 under section one, article three of that chapter; or the crime of sexual assault in the first degree
25 under section three, article eight-b of that chapter;

26 (2) The juvenile is at least fourteen years of age and has committed an offense of violence
27 to the person which would be a felony if the juvenile was an adult. However, the juvenile has been
28 previously adjudged delinquent for the commission of an offense of violence to the person which
29 would be a felony if the juvenile was an adult; or

30 (3) The juvenile is at least fourteen years of age and has committed an offense which
31 would be a felony if the juvenile was an adult. However, the juvenile has been twice previously
32 adjudged delinquent for the commission of an offense which would be a felony if the juvenile was
33 an adult.

34 (e) The court may transfer a juvenile proceeding to criminal jurisdiction if there is probable
35 cause to believe that the juvenile would otherwise satisfy the provisions of subdivision (1),
36 subsection (d) of this section, but who is younger than fourteen years of age.

37 (f) The court may, upon consideration of the juvenile's mental and physical condition,
38 maturity, emotional attitude, home or family environment, school experience and similar personal
39 factors, transfer a juvenile proceeding to criminal jurisdiction if there is probable cause to believe
40 that the juvenile would otherwise satisfy the provisions of subdivision (2) or (3), subsection (d) of
41 this section, but who is younger than fourteen years of age.

42 (g) The court may, upon consideration of the juvenile's mental and physical condition,
43 maturity, emotional attitude, home or family environment, school experience and similar personal
44 factors, transfer a juvenile proceeding to criminal jurisdiction if there is probable cause to believe
45 that:

46 (1) The juvenile, who is at least fourteen years of age, has committed an offense of
47 violence to a person which would be a felony if the juvenile was an adult;

48 (2) The juvenile, who is at least fourteen years of age, has committed an offense which
49 would be a felony if the juvenile was an adult. However, the juvenile has been previously adjudged
50 delinquent for the commission of a crime which would be a felony if the juvenile was an adult;

51 (3) The juvenile, who is at least fourteen years of age, used or presented a firearm or other
52 deadly weapon during the commission of a felony; or

53 (4) The juvenile has committed a violation of section four hundred one, article four, chapter
54 sixty-a of this code which would be a felony if the juvenile was an adult involving the manufacture,
55 delivery or possession with the intent to deliver a narcotic drug. For purposes of this subdivision,
56 the term narcotic drug has the same definition as that set forth in section one hundred one, article
57 one of that chapter;

58 (5) The juvenile has committed the crime of second degree arson as defined in section
59 two, article three, chapter sixty-one of this code involving setting fire to or burning a public building
60 or church. For purposes of this subdivision, the term public building means a building or structure
61 of any nature owned, leased or occupied by this state, a political subdivision of this state or a
62 ~~county~~ school district board of education and used at the time of the alleged offense for public
63 purposes. For purposes of this subdivision, the term church means a building or structure of any
64 nature owned, leased or occupied by a church, religious sect, society or denomination and used
65 at the time of the alleged offense for religious worship or other religious or benevolent purpose,
66 or as a residence of a minister or other member of clergy.

67 (h) For purposes of this section, the term offense of violence means an offense which

68 involves the use or threatened use of physical force against a person.

69 (i) If, after a hearing, the court directs the transfer of any juvenile proceeding to criminal
70 jurisdiction, it shall state on the record the findings of fact and conclusions of law upon which its
71 decision is based or shall incorporate findings of fact and conclusions of law in its order directing
72 transfer.

73 (j) A juvenile who has been transferred to criminal jurisdiction pursuant to subsection (e),
74 (f) or (g) of this section, by an order of transfer, has the right to either directly appeal an order of
75 transfer to the supreme court of appeals or to appeal the order of transfer following a conviction
76 of the offense of transfer. If the juvenile exercises the right to a direct appeal from an order of
77 transfer, the notice of intent to appeal and a request for transcript is to be filed within ten days
78 from the date of the entry of any order of transfer, and the petition for appeal is to be presented
79 to the Supreme Court of Appeals within forty-five days from the entry of the order of transfer.
80 Article five, chapter fifty-eight of this code pertaining to the appeals of judgments in civil actions
81 applies to appeals under this chapter except as modified in this section. The court may, within
82 forty-five days of the entry of the order of transfer, by appropriate order, extend and reextend the
83 period in which to file the petition for appeal for additional time, not to exceed a total extension of
84 sixty days, as in the court's opinion may be necessary for preparation of the transcript. However,
85 the request for a transcript was made by the party seeking appeal within ten days of entry of the
86 order of transfer. In the event any notice of intent to appeal and request for transcript be timely
87 filed, proceedings in criminal court are to be stayed upon motion of the defendant pending final
88 action of the Supreme Court of Appeals.

CHAPTER 53. EXTRAORDINARY REMEDIES.

ARTICLE 8. PERSONAL SAFETY ORDERS.

§53-8-1. Definitions.

1 In this article the following words have the meanings indicated.

2 (1) *Final personal safety order.* -- "Final personal safety order" means a personal safety

3 order issued by a magistrate under section seven of this article.

4 (2) *Incapacitated adult.* -- "Incapacitated adult" means any person who by reason of
5 physical, mental or other infirmity is unable to physically carry on the daily activities of life
6 necessary to sustaining life and reasonable health.

7 (3) *Law-enforcement officer.* -- "Law-enforcement officer" means any duly authorized
8 member of a law-enforcement agency who is authorized to maintain public personal safety and
9 order, prevent and detect crime, make arrests and enforce the laws of the state or any county or
10 municipality thereof, other than parking ordinances.

11 (4) *Petitioner.* -- "Petitioner" means an individual who files a petition under section four of
12 this article.

13 (5) *Place of employment.* -- "Place of employment" includes the grounds, parking areas,
14 outbuildings and common or public areas in or surrounding the place of employment.

15 (6) *Residence.* -- "Residence" includes the yard, grounds, outbuildings and common or
16 public areas in or surrounding the residence.

17 (7) *Respondent.* -- "Respondent" means an individual alleged in a petition to have
18 committed an act specified in subsection (a), section four of this article against a petitioner.

19 (8) *School.* -- "School" means an educational facility comprised of one or more buildings,
20 including school grounds, a school bus or any school-sponsored function or extracurricular
21 activities. For the purpose of this subdivision, "school grounds" includes the land on which a
22 school is built together with such other land used by students for play, recreation or athletic events
23 while attending school. "Extracurricular activities" means voluntary activities sponsored by a
24 school, a ~~county~~ school district board or an organization sanctioned by a ~~county~~ school district
25 board or the State Board of Education and include, but are not limited to, preparation for and
26 involvement in public performances, contests, athletic competitions, demonstrations, displays,
27 organizations and clubs.

28 (9) *Sexual offense.* -- "Sexual offense" means the commission of any of the following

29 sections:

30 (A) Section nine, article eight, chapter sixty-one of this code;

31 (B) Section twelve, article eight, chapter sixty-one of this code;

32 (C) Section two, article eight-a, chapter sixty-one of this code;

33 (D) Section four, article eight-a, chapter sixty-one of this code;

34 (E) Section five, article eight-a, chapter sixty-one of this code;

35 (F) Section three, article eight-b, chapter sixty-one of this code;

36 (G) Section four, article eight-b, chapter sixty-one of this code;

37 (H) Section five, article eight-b, chapter sixty-one of this code;

38 (I) Section seven, article eight-b, chapter sixty-one of this code;

39 (J) Section eight, article eight-b, chapter sixty-one of this code;

40 (K) Section nine, article eight-b, chapter sixty-one of this code;

41 (L) Section two, article eight-c, chapter sixty-one of this code;

42 (M) Section three, article eight-c, chapter sixty-one of this code;

43 (N) Section three-a, article eight-d, chapter sixty-one of this code;

44 (O) Section five, article eight-d, chapter sixty-one of this code; and

45 (P) Section six, article eight-d, chapter sixty-one of this code.

46 (10) *Temporary personal safety order.* – "Temporary personal safety order" means a
47 personal safety order issued by a magistrate under section five of this article.

§53-8-7. Personal safety hearing; forms of relief.

1 (a) *Final personal safety order hearing.* --

2 *Proceeding; issuance of order.* -- If the respondent appears for the final personal safety
3 order hearing, has been served with a temporary personal safety order or the respondent waives
4 personal service, the magistrate:

5 (1) May proceed with the final personal safety order hearing; and

6 (2) May issue a final personal safety order to protect the petitioner if the court finds by a

7 preponderance of the evidence that:

8 (A) (i) The respondent has committed an act specified in subsection (a), section four of
9 this article against the petitioner; and

10 (ii) The petitioner has a reasonable apprehension of continued unwanted or unwelcome
11 contacts by the respondent; or

12 (B) The respondent consents to the entry of a personal safety order.

13 (b) A final personal safety order may be issued only to an individual who has filed a petition
14 or on whose behalf a petition was filed under section three of this article.

15 (c) In cases where both parties file a petition under section four of this article, the court
16 may issue mutual personal safety orders if the court finds by a preponderance of the evidence
17 that:

18 (1) Each party has committed an act specified in subsection (a), section four of this article
19 against the other party; and

20 (2) Each party has a reasonable apprehension of continued unwanted or unwelcome
21 contacts by the other party.

22 (d) *Personal safety order - Forms of relief. --*

23 (1) The final personal safety order may include any or all of the following relief:

24 (A) Order the respondent to refrain from committing or threatening to commit an act
25 specified in subsection (a), section four of this article against the petitioner;

26 (B) Order the respondent to refrain from contacting, attempting to contact or harassing the
27 petitioner directly, indirectly, or through third parties regardless of whether those third parties know
28 of the order;

29 (C) Order the respondent to refrain from entering the residence of the petitioner;

30 (D) Order the respondent to remain away from the place of employment, school or
31 residence of the petitioner;

32 (E) Order the respondent not to visit, assault, molest or otherwise interfere with the

33 petitioner and, if the petitioner is a child, the petitioner's siblings and minors residing in the
34 household of the petitioner;

35 (F) The court, in its discretion, may prohibit a respondent from possessing a firearm as
36 defined in section seven, article seven, chapter sixty-one of this code if:

37 (I) A weapon was used or threatened to be used in the commission of the offense
38 predicated the petitioning for the personal safety order;

39 (ii) The respondent has violated any prior order as specified under this article; or

40 (iii) The respondent has been convicted of an offense involving the use of a firearm; and

41 (G) Order either party to pay filing fees and costs of a proceeding pursuant to section
42 thirteen of this article.

43 (2) If the magistrate issues an order under this section, the order shall contain only the
44 relief necessary to protect the petitioner.

45 (e) *Personal safety order - Service.* --

46 (1) A copy of the final personal safety order shall be served on the petitioner, the
47 respondent, the appropriate law-enforcement agency and any other person the court determines
48 is appropriate, including a ~~county~~ school district board of education, in open court or, if the person
49 is not present at the final personal safety order hearing, by first-class mail to the person's last
50 known address or by other means in the discretion of the court.

51 (2) (A) A copy of the final personal safety order served on the respondent in accordance
52 with subdivision (1) of this subsection or the hearing of the announcement of the court's ruling in
53 court, constitutes actual notice to the respondent of the contents of the final personal safety order.

54 (B) Service is complete upon mailing.

55 (f) *Length of effectiveness.* -- All relief granted in a final personal safety order shall be
56 effective for the period stated in the order, not to exceed two years.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-15. Assault, battery on school employees; penalties.

1 (a) If any person commits an assault: (1) By unlawfully attempting to commit a violent
2 injury to the person of a school employee while he or she is engaged in the performance of his or
3 her duties, is commuting to or from his or her place of employment or if the motive for the assault
4 is retaliation for some action taken by the employee to supervise or discipline one or more pupils
5 pursuant to sections one or one-a, article five, chapter eighteen-a of this code; or (2) by unlawfully
6 committing an act which places a school employee in reasonable apprehension of immediately
7 receiving a violent injury while the employee is engaged in the performance of his or her duties,
8 is commuting to or from his or her place of employment or if the motive for the assault is retaliation
9 for some action taken by the employee to supervise or discipline one or more pupils pursuant to
10 sections one or one-a, article five, chapter eighteen-a of this code, he or she is guilty of a
11 misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail not less
12 than five days nor more than six months and fined not less than \$50 nor more than \$100.

13 (b) If any person commits a battery: (1) By unlawfully and intentionally making physical
14 contact of an insulting or provoking nature with the person of a school employee while he or she
15 is engaged in the performance of his or her duties, is commuting to or from his or her place of
16 employment or if the motive for the battery is retaliation for some action taken by the employee to
17 supervise or discipline one or more pupils pursuant to sections one or one-a, article five, chapter
18 eighteen-a of this code; or (2) by unlawfully and intentionally causing physical harm to a school
19 employee while he or she is engaged in the performance of his or her duties, is commuting to or
20 from his or her place of employment or if the motive for the battery is retaliation for some action
21 taken by the employee to supervise or discipline one or more pupils pursuant to sections one or
22 one-a, article five, chapter eighteen-a of this code, he or she is guilty of a misdemeanor and, upon
23 conviction thereof, shall be confined in the county or regional jail not less than ten days nor more

24 than twelve months and fined not less than \$100 nor more than \$500.

25 (c) For the purposes of this section, “school employee” means a person employed by a
26 ~~county~~ school district board of education whether employed on a regular full-time basis, an hourly
27 basis or otherwise. For the purposes of this section, a “school employee” includes a student
28 teacher.

ARTICLE 5A. BRIBERY AND CORRUPT PRACTICES.

§61-5A-2. Definitions.

1 The following words and phrases when used in this article shall have the meanings
2 respectively ascribed to them in this section unless the context clearly requires a different
3 meaning:

4 (1) “Government” includes the state, the state or any ~~county~~ school district board of
5 education, or any county or municipality of the state;

6 (2) “Public servant” means any officer (whether executive, judicial, legislative or
7 ministerial, and whether elected or appointed) or employee of the state, or of the state or any
8 ~~county~~ school district board of education, or of any county or municipality of the state, including
9 without in any way limiting the generality of the foregoing, commissioners of a court, justices of
10 the peace, law-enforcement officers, and any person participating as juror; or any candidate for
11 election to any state, county or local public office; but the term does not include witnesses;

12 (3) “Party official” means (i) a person who holds an office or position in a political party or
13 political party committee, whether by election, appointment or otherwise, by virtue of which he or
14 she directs or conducts, or participates in directing or conducting party affairs at any level of
15 responsibility (including, but not limited to, a treasurer of a political party committee), or (ii) a
16 committee or any member thereof advancing the interests of any political party or candidate for
17 election to any state, county or local public office (including, but not limited to, a financial agent

18 as that term is now defined in chapter three of this code) or working for or against the approval of
19 a public question by the voters at any election;

20 (4) "Administrative proceeding" means any adversary proceeding before any public
21 servant, involving the exercise of administrative authority, and said term shall not be construed
22 as including any legislative proceeding;

23 (5) "Judicial proceeding" means (i) any proceeding before any court or commissioner
24 thereof or justice of the peace, or (ii) any quasi-judicial proceeding before a board, commission
25 or public servant, the outcome of which is required to be based on a record or documentation
26 prescribed by law;

27 (6) "Legislative proceeding" means any proceeding before the Legislature or either house
28 or any committee thereof;

29 (7) "Official action" means a decision, award of contract, judgment, opinion, report,
30 recommendation, vote, or other exercise of discretion;

31 (8) "Benefit" means a gain or advantage, or anything regarded, or which might reasonably
32 be regarded, by the beneficiary as a gain or advantage, including a gain or advantage to any other
33 person; and "pecuniary benefit" means a benefit in the form of money, tangible or intangible
34 property, commercial interests or anything else the primary significance of which is economic
35 gain; but the terms "benefit" and "pecuniary benefit" shall not be construed so as to include (a)
36 salary, fees and other compensation and expenses paid by the government or political party or
37 political party committee in behalf of which the official action or legal duty is performed, or (b)
38 concurrence in official action in the course of legitimate compromise among public servants, or
39 (c) wages, salary or fees or other compensation paid to a public servant when the reason for such
40 payment is not to affect his or her official impartiality;

41 (9) "Harm" means loss to a person, physical injury of a person or injury to the property of
42 a person, including loss to, physical injury of or injury to the property of any other person in whose
43 welfare he or she is interested;

44 (10) "Approval" means recommendation, failure to disapprove, or any other manifestation
45 of favor or acquiescence; and

46 (11) "Disapproval" means failure to approve, or any other manifestation of disfavor or
47 nonacquiescence.

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-2. Definitions.

1 As used in this article, unless the context otherwise requires:

2 (1) "Blackjack" means a short bludgeon consisting, at the striking end, of an encased piece
3 of lead or some other heavy substance and, at the handle end, a strap or springy shaft which
4 increases the force of impact when a person or object is struck. The term "blackjack" shall include,
5 but not be limited to, a billy, billy club, sand club, sandbag or slapjack.

6 (2) "Gravity knife" means any knife that has a blade released from the handle by the force
7 of gravity or the application of centrifugal force and when so released is locked in place by means
8 of a button, spring, lever or other locking or catching device.

9 (3) "Knife" means an instrument, intended to be used or readily adaptable to be used as
10 a weapon, consisting of a sharp-edged or sharp-pointed blade, usually made of steel, attached to
11 a handle which is capable of inflicting cutting, stabbing or tearing wounds. The term "knife" shall
12 include, but not be limited to, any dagger, dirk, poniard or stiletto, with a blade over three and one-
13 half inches in length, any switchblade knife or gravity knife and any other instrument capable of
14 inflicting cutting, stabbing or tearing wounds. A pocket knife with a blade three and one-half inches
15 or less in length, a hunting or fishing knife carried for hunting, fishing, sports or other recreational
16 uses or a knife designed for use as a tool or household implement shall not be included within the
17 term "knife" as defined herein unless such knife is knowingly used or intended to be used to
18 produce serious bodily injury or death.

19 (4) "Switchblade knife" means any knife having a spring-operated blade which opens
20 automatically upon pressure being applied to a button, catch or other releasing device in its

21 handle.

22 (5) "Nunchuka" means a flailing instrument consisting of two or more rigid parts, connected
23 by a chain, cable, rope or other nonrigid, flexible or springy material, constructed in such a manner
24 as to allow the rigid parts to swing freely so that one rigid part may be used as a handle and the
25 other rigid part may be used as the striking end.

26 (6) "Metallic or false knuckles" means a set of finger rings attached to a transverse piece
27 to be worn over the front of the hand for use as a weapon and constructed in such a manner that,
28 when striking another person with the fist or closed hand, considerable physical damage may be
29 inflicted upon the person struck. The terms "metallic or false knuckles" shall include any such
30 instrument without reference to the metal or other substance or substances from which the
31 metallic or false knuckles are made.

32 (7) "Pistol" means a short firearm having a chamber which is integral with the barrel,
33 designed to be aimed and fired by the use of a single hand.

34 (8) "Revolver" means a short firearm having a cylinder of several chambers that are
35 brought successively into line with the barrel to be discharged, designed to be aimed and fired by
36 the use of a single hand.

37 (9) "Deadly weapon" means an instrument which is designed to be used to produce
38 serious bodily injury or death or is readily adaptable to such use. The term "deadly weapon" shall
39 include, but not be limited to, the instruments defined in subdivisions (1) through (8), inclusive, of
40 this section or other deadly weapons of like kind or character which may be easily concealed on
41 or about the person. For the purposes of section one-a, article five, chapter eighteen-a of this
42 code and section eleven-a, article seven of this chapter, in addition to the definition of "knife" set
43 forth in subdivision (3) of this section, the term "deadly weapon" also includes any instrument
44 included within the definition of "knife" with a blade of three and one-half inches or less in length.
45 Additionally, for the purposes of section one-a, article five, chapter eighteen-a of this code and
46 section eleven-a, article seven of this chapter, the term "deadly weapon" includes explosive,

47 chemical, biological and radiological materials. Notwithstanding any other provision of this
48 section, the term "deadly weapon" does not include any item or material owned by the school or
49 ~~county~~ school district board, intended for curricular use, and used by the student at the time of
50 the alleged offense solely for curricular purposes.

51 (10) "Concealed" means hidden from ordinary observation so as to prevent disclosure or
52 recognition. A deadly weapon is concealed when it is carried on or about the person in such a
53 manner that another person in the ordinary course of events would not be placed on notice that
54 the deadly weapon was being carried. For purposes of concealed handgun licensees, a licensee
55 shall be deemed to be carrying on or about his or her person while in or on a motor vehicle if the
56 firearm is located in a storage area in or on the motor vehicle.

57 (11) "Firearm" means any weapon which will expel a projectile by action of an explosion.

58 (12) "Controlled substance" has the same meaning as is ascribed to that term in
59 subsection (d), section one hundred one, article one, chapter sixty-a of this code.

60 (13) "Drug" has the same meaning as is ascribed to that term in subsection (1), section
61 one hundred one, article one, chapter sixty-a of this code.

**§61-7-11a. Possessing deadly weapons on premises of educational facilities; reports by
school principals; suspension of driver's license; possessing deadly weapons on
premises housing courts of law and family law courts.**

1 (a) The Legislature finds that the safety and welfare of the citizens of this state are
2 inextricably dependent upon assurances of safety for children attending and persons employed
3 by schools in this state and for persons employed by the judicial department of this state. It is for
4 the purpose of providing assurances of safety that subsections (b), (g) and (h) of this section are
5 enacted as a reasonable regulation of the manner in which citizens may exercise the rights
6 accorded to them pursuant to section twenty-two, article three of the Constitution of the State of
7 West Virginia.

8 (b) (1) It is unlawful for a person to possess a firearm or other deadly weapon on a school

9 bus as defined in section one, article one, chapter seventeen-a of this code, or in or on a public
10 primary or secondary education building, structure, facility or grounds including a vocational
11 education building, structure, facility or grounds where secondary vocational education programs
12 are conducted or at a school-sponsored function, or in or on a private primary or secondary
13 education building, structure or facility: *Provided*, That it shall not be unlawful to possess a
14 firearm or other deadly weapon on or in a private primary or secondary education building,
15 structure or facility when such institution has adopted written policies allowing for possession of
16 firearms on or in the institution's buildings, structures or facilities.

17 (2) This subsection does not apply to:

18 (A) A law-enforcement officer employed by a federal, state, county or municipal law-
19 enforcement agency;

20 (B) Any probation officer appointed pursuant to section five, article twelve, chapter sixty-
21 two or chapter forty-nine of this code in the performance of his or her duties;

22 (C) A retired law-enforcement officer who:

23 (i) Is employed by a state, county or municipal law-enforcement agency;

24 (ii) Is covered for liability purposes by his or her employer;

25 (iii) Is authorized by a ~~county~~ school district board of education and the school principal to
26 serve as security for a school;

27 (iv) Meets all the requirements to carry a firearm as a qualified retired law-enforcement
28 officer under the Law-Enforcement Officer Safety Act of 2004, as amended, pursuant to 18 U. S.
29 C. §926C(c); and

30 (v) Meets all of the requirements for handling and using a firearm established by his or her
31 employer, and has qualified with his or her firearm to those requirements;

32 (D) A person specifically authorized by the board of Education of the ~~county~~ school district
33 or principal of the school where the property is located to conduct programs with valid educational
34 purposes;

35 (E) A person who, as otherwise permitted by the provisions of this article, possesses an
36 unloaded firearm or deadly weapon in a motor vehicle or leaves an unloaded firearm or deadly
37 weapon in a locked motor vehicle;

38 (F) Programs or raffles conducted with the approval of the ~~county~~ school district board of
39 education or school which include the display of unloaded firearms;

40 (G) The official mascot of West Virginia University, commonly known as the Mountaineer,
41 acting in his or her official capacity; or

42 (H) The official mascot of Parkersburg South High School, commonly known as the Patriot,
43 acting in his or her official capacity.

44 (3) A person violating this subsection is guilty of a felony and, upon conviction thereof,
45 shall be imprisoned in a state correctional facility for a definite term of years of not less than two
46 years nor more than ten years, or fined not more than \$5,000, or both fined and imprisoned.

47 (c) A school principal subject to the authority of the State Board of Education who
48 discovers a violation of subsection (b) of this section shall report the violation as soon as possible
49 to:

50 (1) The State Superintendent of Schools. The State Board of Education shall keep and
51 maintain these reports and may prescribe rules establishing policy and procedures for making
52 and delivering the reports as required by this subsection; and

53 (2) The appropriate local office of the State Police, county sheriff or municipal police
54 agency.

55 (d) In addition to the methods of disposition provided by article five, chapter forty-nine of
56 this code, a court which adjudicates a person who is fourteen years of age or older as delinquent
57 for a violation of subsection (b) of this section may order the Division of Motor Vehicles to suspend
58 a driver's license or instruction permit issued to the person for a period of time as the court
59 considers appropriate, not to extend beyond the person's nineteenth birthday. If the person has
60 not been issued a driver's license or instruction permit by this state, a court may order the Division

61 of Motor Vehicles to deny the person's application for a license or permit for a period of time as
62 the court considers appropriate, not to extend beyond the person's nineteenth birthday. A
63 suspension ordered by the court pursuant to this subsection is effective upon the date of entry of
64 the order. Where the court orders the suspension of a driver's license or instruction permit
65 pursuant to this subsection, the court shall confiscate any driver's license or instruction permit in
66 the adjudicated person's possession and forward to the Division of Motor Vehicles.

67 (e)(1) If a person eighteen years of age or older is convicted of violating subsection (b) of
68 this section, and if the person does not act to appeal the conviction within the time periods
69 described in subdivision (2) of this subsection, the person's license or privilege to operate a motor
70 vehicle in this state shall be revoked in accordance with the provisions of this section.

71 (2) The clerk of the court in which the person is convicted as described in subdivision (1)
72 of this subsection shall forward to the commissioner a transcript of the judgment of conviction. If
73 the conviction is the judgment of a magistrate court, the magistrate court clerk shall forward the
74 transcript when the person convicted has not requested an appeal within twenty days of the
75 sentencing for the conviction. If the conviction is the judgment of a circuit court, the circuit clerk
76 shall forward a transcript of the judgment of conviction when the person convicted has not filed a
77 notice of intent to file a petition for appeal or writ of error within thirty days after the judgment was
78 entered.

79 (3) If, upon examination of the transcript of the judgment of conviction, the commissioner
80 determines that the person was convicted as described in subdivision (1) of this subsection, the
81 commissioner shall make and enter an order revoking the person's license or privilege to operate
82 a motor vehicle in this state for a period of one year or, in the event the person is a student enrolled
83 in a secondary school, for a period of one year or until the person's twentieth birthday, whichever
84 is the greater period. The order shall contain the reasons for the revocation and the revocation
85 period. The order of suspension shall advise the person that because of the receipt of the court's
86 transcript, a presumption exists that the person named in the order of suspension is the same

87 person named in the transcript. The commissioner may grant an administrative hearing which
88 substantially complies with the requirements of the provisions of section two, article five-a, chapter
89 seventeen-c of this code upon a preliminary showing that a possibility exists that the person
90 named in the notice of conviction is not the same person whose license is being suspended. The
91 request for hearing shall be made within ten days after receipt of a copy of the order of
92 suspension. The sole purpose of this hearing is for the person requesting the hearing to present
93 evidence that he or she is not the person named in the notice. If the commissioner grants an
94 administrative hearing, the commissioner shall stay the license suspension pending the
95 commissioner's order resulting from the hearing.

96 (4) For the purposes of this subsection, a person is convicted when he or she enters a
97 plea of guilty or is found guilty by a court or jury.

98 (f)(1) It is unlawful for a parent, guardian or custodian of a person less than eighteen years
99 of age who knows that the person is in violation of subsection (b) of this section or has reasonable
100 cause to believe that the person's violation of subsection (b) is imminent, to fail to immediately
101 report his or her knowledge or belief to the appropriate school or law-enforcement officials.

102 (2) A person violating this subsection is guilty of a misdemeanor and, upon conviction
103 thereof, shall be fined not more than \$1,000, or shall be confined in jail not more than one year,
104 or both fined and confined.

105 (g)(1) It is unlawful for a person to possess a firearm or other deadly weapon on the
106 premises of a court of law, including family courts.

107 (2) This subsection does not apply to:

108 (A) A law-enforcement officer acting in his or her official capacity; and

109 (B) A person exempted from the provisions of this subsection by order of record entered
110 by a court with jurisdiction over the premises or offices.

111 (3) A person violating this subsection is guilty of a misdemeanor and, upon conviction
112 thereof, shall be fined not more than \$1,000, or shall be confined in jail not more than one year,

113 or both fined and confined.

114 (h)(1) It is unlawful for a person to possess a firearm or other deadly weapon on the
115 premises of a court of law, including family courts, with the intent to commit a crime.

116 (2) A person violating this subsection is guilty of a felony and, upon conviction thereof,
117 shall be imprisoned in a state correctional facility for a definite term of years of not less than two
118 years nor more than ten years, or fined not more than \$5,000, or both fined and imprisoned.

119 (i) Nothing in this section may be construed to be in conflict with the provisions of federal
120 law.

§61-7-14. Right of certain persons to limit possession of firearms on premises.

Notwithstanding the provisions of this article, any owner, lessee or other person charged with the care, custody and control of real property may prohibit the carrying openly or concealed of any firearm or deadly weapon on property under his or her domain: *Provided*, That for purposes of this section “person” means an individual or any entity which may acquire title to real property.

Any person carrying or possessing a firearm or other deadly weapon on the property of another who refuses to temporarily relinquish possession of such firearm or other deadly weapon, upon being requested to do so, or to leave such premises, while in possession of such firearm or other deadly weapon, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$1,000 or confined in the county jail not more than six months, or both: *Provided*, That the provisions of this section shall not apply to those persons set forth in subsections (3) through (6) of section six of this code while such persons are acting in an official capacity: *Provided, however*, That under no circumstances may any person possess or carry or cause the possession or carrying of any firearm or other deadly weapon on the premises of any primary or secondary educational facility in this state unless such person is a law-enforcement officer or he or she has the express written permission of the ~~county~~ school district school superintendent.

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-29. Criminal loitering by persons on supervised release.

1 (a) Any person serving a period of supervised release of ten years or more pursuant to
2 the provision of section twenty-six, article twelve, chapter sixty-two of this code who loiters within
3 one thousand feet of the property line of the residence or workplace of a victim of a sexually
4 violent offense for which the person was convicted shall be guilty of a misdemeanor and, upon
5 conviction thereof, shall be confined in jail for not more than thirty days.

6 (b) Any person serving a period of supervised release of ten years or more pursuant to
7 the provisions of section twenty-six, article twelve, chapter sixty-two of this code for an offense
8 where the victim was a minor who loiters within one thousand feet of the property line of a facility
9 or business the principal purpose of which is the education, entertainment or care of minor
10 children, playground, athletic facility or school bus stop shall be guilty of a misdemeanor and,
11 upon conviction thereof, shall be confined in jail for a period of not more than thirty days.

12 (c) A person does not violate the provisions of subsection (a) or (b) of this section unless
13 he or she has previously been asked to leave the proscribed location by an authorized person
14 and thereafter refuses to leave or leaves and thereafter returns to the proscribed location.

15 (d) As used in this section:

16 (1) "Authorized person" means:

17 (A) A law-enforcement officer acting in his or her official capacity;

18 (B) A security officer employed by a business or facility to protect persons or property
19 acting in his or her employment capacity;

20 (C) An owner, manager or employee of a facility or business having a principal purpose
21 the caring for, education or entertainment of minors;

22 (D) A victim or parent, guardian or lawful temporary or permanent custodian thereof;

23 (E) An employee of a ~~county~~ school district Board of Education acting in his or her
24 employment capacity.

25 (2) "Facility or business, the principal purpose of which is the education, entertainment or

26 care of minor children" means:

27 (A) A pre-school, primary, intermediate, middle or high school, either public or private;

28 (B) A childcare facility;

29 (C) A park;

30 (D) An athletic facility used by minors;

31 (E) A school bus stop.

32 (3) "Loitering" means to enter or remain on property while having no legitimate purpose
33 or, if a legitimate purpose exists, remaining on that property beyond the time necessary to fulfill
34 that purpose.

35 (e) Nothing in this section shall be construed to prohibit or limit a person's presence within
36 one thousand feet of a location or facility referenced in this section if the person is there present
37 for the purposes of supervision, counseling or other activity in which the person is directed to
38 participate as a condition of supervision or where the person has the express permission of his
39 supervising officer to be present.

ARTICLE 10. CRIMES AGAINST PUBLIC POLICY.

**§61-10-15. Pecuniary interest of county and district officers, teachers and school officials
in contracts; exceptions; offering or giving compensation; penalties.**

1 (a) It is unlawful for any member of a county commission, district school officer, secretary
2 of a Board of Education, supervisor or superintendent, principal or teacher of public schools or
3 any member of any other county or school district board or any county or school district officer to
4 be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or
5 service or in the furnishing of any supplies in the contract for or the awarding or letting of a contract
6 if, as a member, officer, secretary, supervisor, superintendent, principal or teacher, he or she may
7 have any voice, influence or control: *Provided*, That nothing in this section prevents or makes
8 unlawful the employment of the spouse of a member, officer, secretary, supervisor,
9 superintendent, principal or teacher as a principal or teacher or auxiliary or service employee in

10 the public schools of any ~~county~~ school district or prevents or makes unlawful the employment by
11 any joint county and circuit clerk of his or her spouse.

12 (b) Any person who violates the provisions of subsection (a) of this section is guilty of a
13 misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$500
14 or confined in jail not more than one year, or both fined and confined.

15 (c) Any person convicted of violating the provisions of subsection (a) of this section shall
16 also be removed from his or her office and the certificate or certificates of any teacher, principal,
17 supervisor or superintendent so convicted shall, upon conviction thereof, be immediately revoked:
18 *Provided*, That no person may be removed from office and no certificate may be revoked for a
19 violation of the provisions of this section unless the person has first been convicted of the violation.

20 (d) Any person, firm or corporation that offers or gives any compensation or thing of value
21 or who forebears to perform an act to any of the persons named in subsection (a) of this section
22 or to or for any other person with the intent to secure the influence, support or vote of the person
23 for any contract, service, award or other matter as to which any county or school district becomes
24 or may become the paymaster is guilty of a misdemeanor and, upon conviction thereof, shall be
25 fined not less than \$500 nor more than \$2,500 and, in the court's discretion, the person or any
26 member of the firm or, if it is a corporation, any agent or officer of the corporation offering or giving
27 any compensation or other thing of value may, in addition to a fine, be confined in jail for a period
28 not to exceed one year.

29 (e) The provisions of subsection (a) of this section do not apply to any person who is a
30 salaried employee of a vendor or supplier under a contract subject to the provisions of said
31 subsection if the employee, his or her spouse or child:

32 (1) Is not a party to the contract;

33 (2) Is not an owner, a shareholder, a director or an officer of a private entity under the
34 contract;

35 (3) Receives no commission, bonus or other direct remuneration or thing of value by virtue

36 of the contract;

37 (4) Does not participate in the deliberations or awarding of the contract; and

38 (5) Does not approve or otherwise authorize the payment for any services performed or
39 supplies furnished under the contract.

40 (f) The provisions of subsection (a) of this section do not apply to any person who has a
41 pecuniary interest in a bank within the county serving or under consideration to serve as a
42 depository of funds for the county or ~~county~~ school district Board of Education, as the case may
43 be, if the person does not participate in the deliberations or any ultimate determination of the
44 depository of the funds.

45 (g) The provisions of subsection (a) of this section do not apply to any person who has a
46 pecuniary interest in a public utility which is subject to regulation by the Public Service
47 Commission of this state.

48 (h) Where the provisions of subsection (a) of this section would result in the loss of a
49 quorum in a public body or agency, in excessive cost, undue hardship or other substantial
50 interference with the operation of a governmental body or agency, the affected governmental
51 body or agency may make written application to the West Virginia Ethics Commission pursuant
52 to subsection (d), section five, article two, chapter six-b of this code for an exemption from
53 subsection (a) of this section.

54 (i) The provisions of this section do not apply to publications in newspapers required by
55 law to be made.

56 (j) No school employee or school official subject to the provisions of subsection (a) of this
57 section has an interest in the sale, proceeds or profits in any book or other thing used or to be
58 used in the free school system of this state, as proscribed in section nine, article XII of the
59 Constitution of West Virginia, if they qualify for the exceptions set forth in subsection (e), (f),(g) or
60 (h) of this section.

61 (k) The provisions of subsection (a) of this section do not prevent or make unlawful the

62 employment of the spouse of any member of a county commission as a licensed health care
63 provider at government-owned hospitals or other government agencies who provide health care
64 services: *Provided*, That the member of a county commission whose spouse is employed or to be
65 employed may not:

66 (1) Serve on the board for the government-owned hospital or other government agency
67 who provides health care services where his or her spouse is employed or to be employed;

68 (2) Vote on the appointment of members to the board for the government-owned hospital
69 or other government agency who provides health care services where his or her spouse is
70 employed or to be employed; or

71 (3) Seek to influence the hiring or promotion of his or her spouse by the government-
72 owned hospital or other government agency who provides health care services.

73 (l) The provisions of subsection (a) of this section do not make unlawful the employment
74 of a spouse of any elected county official by that county official: *Provided*, That the elected county
75 official may not:

76 (1) Directly supervise the spouse employee; or

77 (2) Set the salary of the spouse employee: *Provided*, That the provisions of this subsection
78 shall only apply to spouse employees who were neither married to nor engaged to the elected
79 county official at the time of their initial hiring.

§61-10-31. Conspiracy; construction of section; penalties.

1 It shall be unlawful for two or more persons to conspire (1) to commit any offense against
2 the state or (2) to defraud the state, the state or any ~~county~~ school district board of education, or
3 any county or municipality of the state, if, in either case, one or more of such persons does any
4 act to effect the object of the conspiracy.

5 Nothing in this section shall be construed to supersede, limit, repeal or affect the provisions
6 of section eight, article nine, chapter three; section two, article one, chapter five; section thirty-
7 eight, article three, chapter five-a; section seven, article seven, chapter twenty; section sixteen,

8 article six, chapter sixty; sections seven, eight, nine and ten, article six, chapter sixty-one; or
9 section one, article eight, chapter sixty-two; all of this code. It shall not be a defense to any
10 prosecution under this section thirty-one that the conduct charged or proven is also a crime under
11 any other provision or provisions of this code or the common law.

12 Any person who violates the provisions of this section by conspiring to commit an offense
13 against the state which is a felony, or by conspiring to defraud the state, the state or any county
14 board of education, or any county or municipality of the state, shall be guilty of a felony, and, upon
15 conviction thereof, shall be punished by imprisonment in the penitentiary for not less than one nor
16 more than five years or by a fine of not more than \$10,000, or, in the discretion of the court, by
17 both such imprisonment and fine. Any person who violates the provisions of this section by
18 conspiring to commit an offense against the state which is a misdemeanor shall be guilty of a
19 misdemeanor, and, upon conviction thereof, shall be punished by confinement in the county jail
20 for not more than one year or by a fine of not more than \$1,000, or, in the discretion of the court,
21 by both such confinement and fine.

NOTE: The purpose of this bill is to eliminate county boards of education and establish school districts.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.