

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Originating**

### **House Bill 2536**

BY DELEGATES HIGGINBOTHAM, HORST, AND

LONGANACRE

[Originating in the Committee on Education; Reported  
on February 13, 2021]



1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding a new section,  
2 designated §18-5-45a, relating to expressions of legislative intent regarding equivalent  
3 instruction time and its intended use per §18-5-45; disallowing application and use when  
4 days lost due to concerted work stoppage or strike; requiring county board to withhold pay  
5 of assigned employees when school closed temporarily due to concerted work stoppage  
6 or strike; providing for subsequent application of withheld pays when certain conditions  
7 are met; providing disposition of funds withheld and not so applied; and prohibiting  
8 school's participation in extracurricular activities during any part of a day it is closed due  
9 to concerted work stoppage or strike.

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

**ARTICLE 5. COUNTY BOARD OF EDUCATION.**

**§18-5-45a. Further expressions of legislative intent with respect to school calendar;  
applicability to time lost due to work stoppage or strike; effect on pay.**

1 (a) Section 18-5-45 of this code is designed to define the school term both for employees  
2 and for instruction. The employment term consists of at least 200 days as provided in that section  
3 and, within the employment term, an instructional term for students must consist of at least 180  
4 separate instructional days. Section 18-5-45 of this code also defines the minimum length of an  
5 instructional day, requires county boards to develop a policy for additional minutes of instruction  
6 to recover time lost due to late arrivals and early dismissals, and also allows schools with an  
7 instructional day in excess of certain minimums to apply this equivalent instructional time to cancel  
8 time lost due to necessary closures and other purposes designed to improve instruction. The use  
9 of equivalent time gained to cancel days lost and the use of alternative methods to deliver  
10 instruction on canceled days as defined in §18-5-45 of this code constitute instructional days for  
11 the purposes of meeting both the 200-day minimum employment term and the 180-day minimum  
12 separate instructional day requirements. The Legislature intended with the enactment of these  
13 provisions regarding equivalent instructional time and alternative instructional delivery to help

14 improve instruction and lessen the disruption to the planned school calendar if rescheduling and  
15 adding instructional days became necessary to make up lost days due to closures pursuant to  
16 §18-4-10(5) of this code when conditions are detrimental to the health, safety, or welfare of pupils.  
17 The Legislature did not intend with the enactment of these provisions to permit a reduction of the  
18 instructional term for students or of the employment term for personnel when the conditions  
19 causing the closure of the school are a concerted work stoppage or strike by the employees. The  
20 provisions of §18-5-45 of this code permitting accrued or equivalent instructional time to cancel  
21 days lost, improve instruction and deliver instruction through alternative methods, do not apply to  
22 and may not be used to cancel days lost due to a concerted work stoppage or strike.

23 (b) When a concerted work stoppage or strike by the employees assigned to a school  
24 causes the county superintendent to close the school temporarily, the county board shall withhold  
25 the pay of the employees for each day that the school is closed for that cause. The county board  
26 shall apply the withheld pay to the employees who subsequently fulfill their assigned duties for  
27 the instructional term and the employment term as per §18-5-45 and their employment contract.  
28 The state portion of any funds which are withheld and are not applied for such payment shall be  
29 returned to the accounts of the Department of Education for carry-forward in the next fiscal year.

30 (c) If an originally scheduled instructional day is canceled due to a concerted work  
31 stoppage or strike by the employees assigned to a school, the school for which the day was  
32 canceled may not participate in any extracurricular activities during any part of that same day.

NOTE: The purpose of this bill is to (a) disallow the use of provisions for schools to accumulate instructional time to be used to avoid disruptions to the school calendar due to necessary closures and to help improve instruction to be used to cancel days lost due to a work stoppage or strike, (b) require pay to be withheld when schools are closed due to a work stoppage or strike and applied to employees who subsequently fulfill their duties and contract, and (c) prohibit a school's participation in extracurricular activities during any part of the day scheduled for instruction that it was closed due to a work stoppage or strike.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.