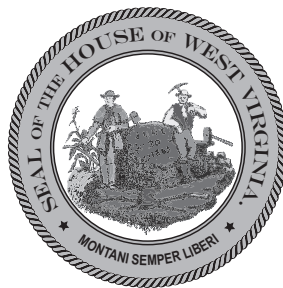


West Virginia Legislature

JOURNAL  
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Eighty-Fourth Legislature  
First Regular Session

Held at Charleston  
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February 13, 2019

THIRTY-SIXTH DAY



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Wednesday, February 13, 2019

**THIRTY-SIXTH DAY**

[DELEGATE HANSHAW, MR. SPEAKER, IN THE CHAIR]

The House of Delegates met at 11:00 a.m., and was called to order by the Honorable Roger Hanshaw, Speaker.

Prayer was offered and the House was led in recitation of the Pledge of Allegiance.

The Clerk proceeded to read the Journal of Tuesday, February 12, 2019, being the first order of business, when the further reading thereof was dispensed with and the same approved.

**Reordering of the Calendar**

Delegate Summers announced that the Committee on Rules had transferred H. B. 2692 and H. B. 2819, on Second Reading, Special Calendar, to the House Calendar; and Com. Sub. for S. B. 451 to the foot of bills on the Special Calendar.

**Committee Reports**

Delegate Cooper, Chair of the Committee on Agriculture and Natural Resources, submitted the following report, which was received:

Your Committee on Agriculture and Natural Resources has had under consideration:

**H. B. 2718**, Requiring purchasers of roundwood to collect and maintain certain information,

**H. B. 2774**, Relating to the right to farm,

And,

**H. B. 2796**, Relating to analysis of samples of industrial hemp production,

And reports the same back with the recommendation that they each do pass, but that they first be referred to the Committee on the Judiciary.

In accordance with the former direction of the Speaker, the bills (H. B. 2718, H. B. 2774 and H. B. 2796) were each referred to the Committee on the Judiciary.

Delegate Cooper, Chair of the Committee on Agriculture and Natural Resources, submitted the following report, which was received:

Your Committee on Agriculture and Natural Resources has had under consideration:

**H. B. 2694**, Relating to the state's ability to regulate hemp,

And reports the same back with the recommendation that it do pass, but that it first be referred to the Committee on Government Organization.

In accordance with the former direction of the Speaker, the bill (H. B. 2694) was referred to the Committee on Government Organization.

Delegate Harshbarger, Chair of the Committee on Agriculture and Natural Resources, submitted the following report, which was received:

Your Committee on Agriculture and Natural Resources has had under consideration:

**S. B. 331**, Using leashed dogs to track mortally wounded deer or bear,

And,

**S. B. 332**, Relating to Class Q special hunting permit for disabled persons,

And reports the same back with the recommendation that they each do pass, but that they first be referred to the Committee on the Judiciary.

In accordance with the former direction of the Speaker, the bills (S. B. 331 and S. B. 332) were each referred to the Committee on the Judiciary.

Delegate Harshbarger, Chair of the Committee on Agriculture and Natural Resources, submitted the following report, which was received:

Your Committee on Agriculture and Natural Resources has had under consideration:

**H. B. 2727**, Relating to conducting a study of the Upper Mud River Lake,

And reports the same back with the recommendation that it do pass, but that it first be referred to the Committee on Government Organization.

In accordance with the former direction of the Speaker, the bill (H. B. 2727) was referred to the Committee on Government Organization.

Delegate Harshbarger, Chair of the Committee on Agriculture and Natural Resources, submitted the following report, which was received:

Your Committee on Agriculture and Natural Resources has had under consideration:

**H. B. 2597**, Creating a hunting permit to safely accommodate visually impaired hunters,

And,

**Com. Sub. for S. B. 389**, Allowing developmentally disabled person purchase base hunting license,

And reports the same back, with amendment, with the recommendation that they each do pass, as amended, but that they first be referred to the Committee on the Judiciary.

In accordance with the former direction of the Speaker, the bills (H. B. 2597 and Com. Sub. for S. B. 389) were each referred to the Committee on the Judiciary.

Delegate Fast, Chair of the Committee on Industry and Labor, submitted the following report, which was received:

Your Committee on Industry and Labor has had under consideration:

**H. B. 2049**, Relating to a prime contractor's responsibility for wages and benefits,

And reports the same back, with amendment, with the recommendation that it do pass, as amended, but that it first be referred to the Committee on the Judiciary.

In accordance with the former direction of the Speaker, the bill (H. B. 2049) was referred to the Committee on the Judiciary.

Delegate Anderson, Chair of the Committee on Energy, submitted the following report, which was received:

Your Committee on Energy has had under consideration:

**H. B. 2834**, Updating and modernizing the minimum spacing provisions for the drilling of horizontal deep wells,

And reports back a committee substitute therefor, with the same title, as follows:

**Com. Sub. for H. B. 2834** - "A Bill to amend and reenact §22C-9-4 of the Code of West Virginia, 1931, as amended, relating to updating and modernizing the minimum spacing provisions for the drilling of horizontal deep wells, which will allow exploration and production companies to implement evidence based best practices; establishing no spacing limitations on horizontal deep wells that are operated by the same operator or different operators pursuant to written agreement; establishing setbacks from unit boundaries between different operators; establishing the spacing between the wells of different operators; and limiting certain distances that may be established to only those between the producing portions of horizontal deep wells and not the entire well bore,"

With the recommendation that the committee substitute do pass.

Delegate Anderson, Chair of the Committee on Energy, submitted the following report, which was received:

Your Committee on Energy has had under consideration:

**H. B. 2866**, Relating to the termination, expiration, or cancellation of oil or natural gas leases,

And reports the same back, with amendment, with the recommendation that it do pass, as amended, but that it first be referred to the Committee on the Judiciary.

In accordance with the former direction of the Speaker, the bill (H. B. 2866) was referred to the Committee on the Judiciary.

On motion for leave, a bill was introduced (Originating in the Committee on Health and Human Resources and reported with the recommendation that it do pass), which was read by its title, as follows:

**By Delegates Ellington, Hill, Summers, Rohrbach, Hollen, Pack, Atkinson, D. Jeffries and Rowan:**

**H. B. 3131** - "A Bill to amend and reenact §5-5-4 and §5-5-4a of the Code of West Virginia, as amended; and to amend said code by adding thereto a new section, designated §5-5-4b, all relating to providing salary adjustments to employees of the Department of Health and Human Resources; requiring the department to conduct a marketplace analysis; and exempting the department from certain functions of the Division of Personnel."

The Speaker referred the bill to the Committee on Government Organization.

Delegate Ellington, Chair of the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration:

**H. B. 2100**, Establishing a pilot program to develop school-based mental and behavioral health services,

And reports the same back, with amendment, with the recommendation that it do pass, as amended, but that it first be referred to the Committee on Education.

In accordance with the former direction of the Speaker, the bill (H. B. 2100) was referred to the Committee on Education.

Delegate Ellington, Chair of the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration:

**H. B. 2768**, Reducing the use of certain prescription drugs,

And reports back a committee substitute therefor, with the same title, as follows:

**Com. Sub. for H. B. 2768** - 'A Bill to amend and reenact §16-54-1, §16-54-3, §16-54-4, §16-54-5, §16-54-6, §16-54-7, and §16-54-8, of the Code of West Virginia, 1931, as amended, all relating to reducing the use of certain prescription drugs; defining terms; clarifying types of examinations; requiring certain information in a narcotics contract; clarifying that the drug being regulated is a schedule II opioid drug; providing exceptions; and requiring coverage for certain procedures to treat chronic pain,'

And,

**H. B. 2849**, Establishing different classes of pharmacy technicians,

And reports back a committee substitute therefor, with a new title, as follows:

**Com. Sub. for H. B. 2849** - "A Bill to amend and reenact §30-5-11 and §30-5-12 of the Code of West Virginia, 1931, as amended, all relating to establishing different classes of pharmacy technicians; establishing an application process for a registered pharmacy technician to obtain an endorsement as a pharmacy technician; establishing an application process for a nuclear pharmacy technician endorsement; expanding the scope of practice for a registered pharmacy technician endorsement; and defining the scope of practice for a nuclear pharmacy technician endorsement,"

With the recommendation that the committee substitutes each do pass.

### Messages from the Senate

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, to take effect from passage, a bill of the House of Delegates as follows:

**Com. Sub. for H. B. 2191**, Relating generally to limited video lottery.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had agreed to the appointment of a Committee of Conference of three from each house on the disagreeing votes of the two houses as to

**H. B. 2351**, Relating to regulating prior authorizations.

The message further announced that the President of the Senate had appointed as conferees on the part of the Senate the following:

Senators Maroney, Takubo and Stollings.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 13** - "A Bill to amend and reenact §29-22-18a of the Code of West Virginia, 1931, as amended, relating to distributions from the State Excess Lottery Fund"; which was referred to the Committee on Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 26** - "A Bill to amend and reenact §18-7A-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18-7B-2 of said code, all relating to permitting full-time employees of educational services cooperatives to participate in the State Teachers Retirement System; and permitting full-time employees of educational services cooperatives to participate in the State Teachers' Defined Contribution Retirement System"; which was referred to the Committee on Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**S. B. 440** - "A Bill to amend and reenact §18-16-2 of the Code of West Virginia, 1931, as amended, relating to the Antihazing Law; and modifying the definition of 'hazing' to address any type of organization whose members include students at any public or private institution of higher education"; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, to take effect from passage, and requested the concurrence of the House of Delegates in the passage, of

**S. B. 442** - “A Bill supplementing and amending by decreasing an existing appropriation and adding a new appropriation of federal funds out of the Treasury to the Department of Revenue – Insurance Commissioner, fund 8883, fiscal year 2019, organization 0704, by supplementing, amending, decreasing, and adding the appropriations for the fiscal year ending June 30, 2019”; which was referred to the Committee on Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, to take effect from passage, and requested the concurrence of the House of Delegates in the passage, of

**S. B. 443** - “A Bill making a supplementary appropriation of federal funds out of the Treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending June 30, 2019, to the Department of Health and Human Resources, Division of Health – Community Mental Health Services, fund 8794, fiscal year 2019, organization 0506, to the Department of Health and Human Resources, Division of Human Services – Energy Assistance, fund 8755, fiscal year 2019, organization 0511, and to the Department of Health and Human Resources, Division of Human Services – Child Care and Development, fund 8817, fiscal year 2019, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019”; which was referred to the Committee on Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, to take effect from passage, and requested the concurrence of the House of Delegates in the passage, of

**S. B. 444** - “A Bill making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2019, to the Department of Health and Human Resources, Division of Health – Laboratory Services Fund, fund 5163, fiscal year 2019, organization 0506, and to the Department of Health and Human Resources, Division of Health – West Virginia Birth-to-Three Fund, fund 5214, fiscal year 2019, organization 0506, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019”; which was referred to the Committee on Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, to take effect from passage, and requested the concurrence of the House of Delegates in the passage, of

**S. B. 452** - “A Bill making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2019, to the Department of Military Affairs and Public Safety, Division of Justice and Community Services – Second Chance Driver’s License Program Account, fund 6810, fiscal year 2019, organization 0620, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019”; which was referred to the Committee on Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, to take effect from passage, and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 491** - “A Bill to amend and reenact §3-2-11 of the Code of West Virginia, 1931, as amended, relating generally to automatic voting registration through the Division of Motor Vehicles; adding United States citizenship status to information that applicants must provide; requiring the Division of Motor Vehicles to confirm and maintain a record of an applicant’s citizenship status; requiring the Division of Motor Vehicles to provide notice to the Secretary of State and the



appropriate county clerk if voting registration information related to a noncitizen is released to the Secretary of State in error; requiring the Division of Motor Vehicles and the Secretary of State to cooperate to develop a process by January 1, 2020, to compare all information regarding a person's citizenship status available to the Division of Motor Vehicles with voter information released to the Secretary of State in order to detect and cancel voting registration by noncitizens; delaying the effective date for automatic voter registration in conjunction with certain Division of Motor Vehicle transactions until July 1, 2021; and requiring the Division of Motor Vehicles, the Department of Transportation, and the Secretary of State to file certain reports with and appear before the Joint Committee on Government and Finance and the Joint Standing Committee on the Judiciary during the first interim meetings occurring after September 1, 2019"; which was referred to the Committee on the Judiciary.

### **Resolutions Introduced**

Delegates Atkinson, Westfall, Canestraro, D. Jeffries and Hollen offered the following resolution, which was read by its title and referred to the Committee on Technology and Infrastructure then Rules:

**H. C. R. 70** - "Requesting the Division of Highways name bridge number: 44-119-9.04 (44A109), locally known as Walton Bridge, carrying U. S. 119 over the Pocatalico River in Roane County, the 'Danny Wayne Marks Memorial Bridge'."

Whereas, Danny Wayne Marks was a lifelong resident of Walton, West Virginia. Walton is a small community where the work and dedication of one person can make a significant difference in the lives of the residents in this rural town. Danny Wayne Marks was such a person; and

Whereas, Danny Wayne Marks was dedicated to making his community a better and stronger place in which to live; and

Whereas, Danny Wayne Marks not only contributed money to buy land for a community park, but also contributed his labor to help clear the lot for the park. When Danny noticed that people were standing on a ladder at the Walton Middle School announcers booth, Danny Wayne Marks built a safer structure. As is the mark of a true leader, Danny would often take the first step when community projects needed to be completed; and

Whereas, Danny Wayne Marks lived his life to matter: To be productive, to be useful, to have made a difference for others. The tremendous outpouring of love and appreciation expressed by the residents of Walton and the surrounding area at his death demonstrates how much difference Danny Wayne Marks made for his community; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Commissioner of the Division of Highways is hereby requested to name bridge number: 44-119-9.04 (44A109), locally known as Walton Bridge, carrying U. S. 119 over the Pocatalico River in Roane County, the 'Danny Wayne Marks Memorial Bridge'; and, be it

*Further Resolved*, That the Commissioner of the Division of Highways is hereby requested to erect signs at both ends of the bridge containing bold and prominent letters proclaiming the bridge as the 'Danny Wayne Marks Memorial Bridge'; and, be it

*Further Resolved*, That the Clerk of the House of Delegates forward a copy of this resolution to the Commissioner of the Division of Highways.

### Motions

Delegate Hartman filed a written motion to remove from the table the motion by Delegate Fluharty of February 7, 2019, that pursuant to House Rule 82, that H. B. 2733 be discharged from the Committee on Industry and Labor.

On this question, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 129**), and there were—yeas 37, nays 59, absent and not voting 4, with the yeas and absent and not voting being as follows:

Yeas: Angelucci, Barrett, Bates, Boggs, S. Brown, Byrd, Campbell, Caputo, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Hansen, Hartman, Hicks, Hornbuckle, Lavender-Bowe, Longstreth, Lovejoy, Miley, Miller, Pethtel, Pushkin, Pyles, Robinson, Rodighiero, Rowe, Sponaugle, Staggers, Swartzmiller, C. Thompson, R. Thompson, Tomblin and Walker.

Absent and Not Voting: Canestraro, Fluharty, Kump and Skaff.

So, a majority of the members present and voting not having voted in the affirmative, the motion did not prevail.

Delegate Summers asked and obtained unanimous consent that, for the remainder of the session, members of Conference Committees be permitted to vote on any question or issue before the House which they have missed as a direct result of their duties on Conference Committees, provided that such members notify the Clerk of the House in writing as to how they wish to vote, before the daily Journal is published, and that any such vote will not change the outcome on any question.

### Special Calendar

#### Third Reading

**Com. Sub. for S. B. 18**, Relating to crimes committed on State Capitol Complex; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 130**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

Absent and Not Voting: Canestraro, Fluharty, Kump and Skaff.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 18) passed.

Delegate Summers moved that the bill take effect from from passage.

On this question, the yeas and nays were taken (**Roll No. 131**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

Absent and Not Voting: Canestraro, Fluharty, Kump and Skaff.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 18) takes effect from from passage.

*Ordered*, That the Clerk of the House communicate to the Senate the action of the House of Delegates.

**Com. Sub. for S. B. 61**, Adding certain crimes for which prosecutor may apply for wiretap; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 132**), and there were—yeas 94, nays 3, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: McGeehan, Phillips and Pushkin.

Absent and Not Voting: Canestraro, Kump and Skaff.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 61) passed.

*Ordered*, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

**Com. Sub. for S. B. 323**, Establishing revenue fund and source to support Department of Agriculture's improvement to facilities; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 133**), and there were—yeas 98, nays 1, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: McGeehan.

Absent and Not Voting: Kump.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 323) passed.

Delegate Summers moved that the bill take effect from its passage.

On this question, the yeas and nays were taken (**Roll No. 134**), and there were—yeas 97, nays 2, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Cowles and McGeehan.

Absent and Not Voting: Kump.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 323) takes effect from its passage.

*Ordered*, That the Clerk of the House communicate to the Senate the action of the House of Delegates.

**Com. Sub. for H. B. 2109**, Extending the maximum period of confinement a judge may impose for certain, first-time probationary violations; on third reading, coming up in regular order, was reported by the Clerk.

On motion of Delegate Capito, the bill (Com. Sub. for H. B. 2109) was committed to the Committee on Finance.

The Speaker then referred the bill to the Committee on Finance.

**Com. Sub. for H. B. 2468**, Department of Agriculture Capital Improvements Fund; on third reading, coming up in regular order, was, on motion of Delegate Summers, laid upon the table.

**Com. Sub. for H. B. 2609**, Relating to presumptions of abandonment and indication of ownership in property; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 135**), and there were—yeas 95, nays 2, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: J. Jeffries and Paynter.

Absent and Not Voting: Doyle, Kump and Robinson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2609) passed.

*Ordered*, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

**H. B. 2647**, Self Storage Limited License Act; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 136**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Kump.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2647) passed.

*Ordered*, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

**Com. Sub. for H. B. 2720**, Authorizing certain investigators and first responders to carry firearms; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 137**), and there were—yeas 91, nays 8, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Angelucci, S. Brown, Caputo, Doyle, Fleischauer, Lavender-Bowe, Longstreth and Walker.

Absent and Not Voting: Kump.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2720) passed.

*Ordered*, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

**H. B. 2878**, Relating to updating the controlled substances listed on schedule one; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 138**), and there were—yeas 87, nays 11, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: S. Brown, Byrd, Diserio, Estep-Burton, Fluharty, Hansen, Hornbuckle, Pushkin, Steele, C. Thompson and Walker.

Absent and Not Voting: Doyle and Kump.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2878) passed.

*Ordered*, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

### **Second Reading**

**Com. Sub. for H. B. 2173**, Allowing state and federal law-enforcement officers to testify as to the contents and evidence of a wiretap or electronic surveillance; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2338**, Allowing the owner of an antique military vehicle to display alternate registration insignia; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2359**, Relating to exemptions to the commercial driver's license requirements; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2673**, Creating the Oil and Gas Abandoned Well Plugging Fund; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 2709**, Relating to hunting licenses; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2715**, Relating to Class Q special hunting permit for disabled persons; on second reading, coming up in regular order, was read a second time.

On motion of Delegate Dean, the bill was amended on page two, line twenty, following the word "nurse", by inserting the words "chiropractic physician".

The bill was then ordered to engrossment and third reading.

**H. B. 2739**, Relating to contributions on behalf of employees to a retirement plan administered by the Consolidated Public Retirement Board; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 2743**, Eliminating reference to municipal policemen's pension and relief funds and firemen's pension and relief funds in section restricting investment; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2761**, Modernizing the self-service storage lien law; on second reading, coming up in regular order, was read a second time.

On motion of Delegate Robinson, the bill was amended on page ten, section five, line one hundred thirty-six, before the word "website", by inserting a comma and the words "via fixed price or timed listings that allow bidding on an internet".

The bill was then ordered to engrossment and third reading.

**Com. Sub. for H. B. 2793**, Expanding applicability of educational facilities for the West Virginia College Prepaid Tuition and Savings Program; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2821**, Updating provisions for command, clerical and other pay; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2848**, Relating to the West Virginia ABLE Act; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 2992**, Relating to governmental websites; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

### First Reading

The following bills on first reading, coming up in regular order, were each read a first time and ordered to second reading:

**S. B. 377**, Relating to minimum wage and maximum hour standards,

**H. B. 2472**, Providing a special license plate for pollinators,

**Com. Sub. for H. B. 2538**, Providing banking services for medical cannabis,

**Com. Sub. for H. B. 2579**, Relating to the collection of tax and the priority of distribution of an estate or property in receivership,

**Com. Sub. for H. B. 2618**, Including undue influence as a factor in the definition of financial exploitation of an elderly person or protected person,

**H. B. 2716**, Relating to motorboat lighting and equipment requirements,

And,

**H. B. 2846**, Designating a 'Back the Blue' plate in support of law-enforcement personnel.

### Second Reading

**Com. Sub. for S. B. 451**, Comprehensive education reform; on second reading, having been moved to the foot of the calendar in earlier proceedings, was read a second time.

An amendment, recommended by the Committee on Finance, was reported by the Clerk, on page four, following the enacting clause, by striking out the remainder of the bill and inserting in lieu thereof the following:

**“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 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.**

**§5-16-2. Definitions.**

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

(1) ‘Agency’ means the Public Employees Insurance Agency created by this article.

(2) ‘Director’ means the Director of the Public Employees Insurance Agency created by this article.

(3) ‘Employee’ means any person, including an elected officer, who works regularly full-time in the service of the State of West Virginia and, for the purpose of this article only, the term ‘employee’ also means any person, including an elected officer, who works regularly full-time in the service of a county board of education; a public charter school established pursuant to §18-5G-1 et seq. of this code if the charter school includes in its approved charter application a determination to participate in the Public Employees Insurance program; a county, city, or town in the State; any separate corporation or instrumentality established by one or more counties, cities, or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities, or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities, or towns; any comprehensive community mental health center or ~~comprehensive mental retardation~~ intellectually and developmentally disabled facility established, operated, or licensed by the Secretary of Health and Human Resources pursuant to §27-2A-1 of this code and which is supported in part by state, county, or municipal funds; any person who works regularly full-time in the service of the Higher Education Policy Commission, the West Virginia Council for Community and Technical College Education or a governing board, as defined in §18B-1-2 of this code; any person who works regularly full-time in the service of a combined city-county health department created pursuant to §16-2-1 et seq. of this code; any person designated as a 21st Century Learner Fellow pursuant to §18A-3-11 of this code; and any person who works as a long-term substitute as defined in §18A-1-1 of this code in the service of a county board of education: *Provided*, That a long-term substitute who is continuously employed for at least 133 instructional days during an instructional term, and, until the end of that instructional term, is eligible for the benefits provided in this article until September 1 following that instructional term: *Provided, however*, That a long-term substitute employed fewer than 133 instructional days during an instructional term is eligible for the benefits provided in this article only during such time as he or she is actually employed as a long-term substitute. On and after January 1, 1994, and upon election by a county board of education to allow elected board members to participate in the Public Employees Insurance Program pursuant to this article, any person elected to a county board of education shall be considered to be an ‘employee’ during the term of office of the elected member. Upon election by the state Board of Education to allow appointed board members to participate in the Public Employees Insurance Program pursuant to this article, any person appointed to the state Board of Education is considered an ‘employee’ during the term of office of the appointed member: *Provided further*, That the elected member of a county board of education and the appointed member of the

state Board of Education shall pay the entire cost of the premium if he or she elects to be covered under this article. Any matters of doubt as to who is an employee within the meaning of this article shall be decided by the director.

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

(A) Participates in a job-sharing arrangement as defined in §18A-1-1 of this code;

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

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

(4) 'Employer' means the State of West Virginia, its boards, agencies, commissions, departments, institutions, or spending units; a county board of education; a public charter school established pursuant to §18-5G-1 et seq. of this code if the charter school includes in its approved charter application a determination to participate in the Public Employees Insurance Agency program; a county, city, or town in the state; any separate corporation or instrumentality established by one or more counties, cities, or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities, or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns; any comprehensive community mental health center or ~~comprehensive mental retardation~~ intellectually and developmentally disabled facility established, operated or licensed by the Secretary of Health and Human Resources pursuant to §27-2A-1 of this code and which is supported in part by state, county or municipal funds; a combined city-county health department created pursuant to §16-2-1 et seq. of this code; and a corporation meeting the description set forth in §18B-12-3 of this code that is employing a 21st Century Learner Fellow pursuant to §18A-3-11 of this code but the corporation is not considered an employer with respect to any employee other than a 21st Century Learner Fellow. Any matters of doubt as to who is an 'employer' within the meaning of this article shall be decided by the director. The term 'employer' does not include within its meaning the National Guard.

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

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

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

(8) 'Retired employee' means an employee of the state who retired after April 29, 1971, and an employee of the Higher Education Policy Commission, the Council for Community and Technical College Education, a state institution of higher education or a county board of education who retires on or after April 21, 1972, and all additional eligible employees who retire on or after the effective date of this article, meet the minimum eligibility requirements for their respective state retirement system and whose last employer immediately prior to retirement under the state retirement system is a participating employer in the state retirement system and in the Public Employees Insurance Agency: *Provided*, That for the purposes of this article, the employees who are not covered by a state retirement system, but who are covered by a state-approved or state-contracted retirement program



or a system approved by the director, shall, in the case of education employees, meet the minimum eligibility requirements of the State Teachers Retirement System and in all other cases, meet the minimum eligibility requirements of the Public Employees Retirement System and may participate in the Public Employees Insurance Agency as retired employees upon terms as the director sets by rule as authorized in this article. Employers with employees who are, or who are eligible to become, retired employees under this article shall be mandatory participants in the Retiree Health Benefit Trust Fund created pursuant to 5-16D-1 *et seq.* of this code. Nonstate employers may opt out of the West Virginia other post-employment benefits plan of the Retiree Health Benefit Trust Fund and elect to not provide benefits under the Public Employees Insurance Agency to retirees of the nonstate employer, but may do so only upon the written certification, under oath, of an authorized officer of the employer that the employer has no employees who are, or who are eligible to become, retired employees and that the employer will defend and hold harmless the Public Employees Insurance Agency from any claim by one of the employer's past, present or future employees for eligibility to participate in the Public Employees Insurance Agency as a retired employee. As a matter of law, the Public Employees Insurance Agency shall not be liable in any respect to provide plan benefits to a retired employee of a nonstate employer which has opted out of the West Virginia other post-employment benefits plan of the Retiree Health Benefit Trust Fund pursuant to this section.

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

The provisions of this article are not mandatory upon any employee or employer who is not an employee of or is not the State of West Virginia, its boards, agencies, commissions, departments, institutions or spending units, or a county board of education, and nothing contained in this article ~~compels~~ any employee or employer to enroll in or subscribe to any insurance plan authorized by the provisions of this article: Provided, That nothing in this section requires a public charter school to participate in the Public Employees Insurance Agency program.

Those employees enrolled in the insurance program authorized under the provisions of §21A-2B-1 *et seq.* of this code ~~are~~ not required to enroll in or subscribe to an insurance plan or plans authorized by the provisions of this article, and the employees of any department which has an existing insurance program for its employees to which the government of the United States contributes any part or all of the premium or cost of the premium may be exempted from the provisions of this article. Any employee or employer exempted under the provisions of this paragraph may enroll in any insurance program authorized by the provisions of this article at any time, to the same extent as any other qualified employee or employer, but employee or employer may not remain enrolled in both programs.

~~Any plan established or administered by the Public Employees Insurance Agency pursuant to this article is exempt from the provisions of chapter thirty-three of this code unless explicitly stated. Notwithstanding any provision of this code to the contrary, the Public Employees Insurance Agency is not an insurer or engaged in the business of insurance as defined in chapter thirty-three of this code.~~

Employers, other than the State of West Virginia, its boards, agencies, commissions, departments, institutions, spending units, or a county board of education are exempt from participating in the insurance program provided for by the provisions of this article unless participation by the employer has been approved by a majority vote of the employer's governing body. It is the duty of the clerk or secretary of the governing body of an employer who by majority vote becomes a participant in the insurance program to notify the director not later than 10 days after the vote.

Any employer, whether the employer participates in the Public Employees Insurance Agency insurance program as a group or not, which has retired employees, their dependents or surviving dependents of deceased retired employees who participate in the Public Employees Insurance

Agency insurance program as authorized by this article, shall pay to the agency the same contribution toward the cost of coverage for its retired employees, their dependents or surviving dependents of deceased retired employees as the State of West Virginia, its boards, agencies, commissions, departments, institutions, spending units, or a county board of education pay for their retired employees, their dependents and surviving dependents of deceased retired employees, as determined by the finance board: *Provided*, That after June 30, 1996, an employer not mandated to participate in the plan is only required to pay a contribution toward the cost of coverage for its retired employees, their dependents or the surviving dependents of deceased retired employees who elect coverage when the retired employee participated in the plan as an active employee of the employer for at least five years: *Provided, however*, That those retired employees of an employer not participating in the plan who retire on or after July 1, 2010, who have participated in the plan as active employees of the employer for less than five years are responsible for the entire premium cost for coverage and the Public Employees Insurance Agency shall bill for and collect the entire premium from the retired employees, unless the employer elects to pay the employer share of the premium. Each employer is hereby authorized and required to budget for and make such payments as are required by this section.

## CHAPTER 11. TAXATION.

### ARTICLE 8. LEVIES.

#### **§11-8-6f. Regular school board levy rate; creation and implementation of Growth County School Facilities Act; creation of Growth County School Facilities Act Fund.**

(a) Notwithstanding any other provision of law except §11-8-6f(c) of this code, where any annual appraisal, triennial appraisal, or general valuation of property would produce a statewide aggregate assessment that would cause an increase of two percent or more in the total property tax revenues that would be realized were the then current regular levy rates of the county boards of education to be imposed, the rate of levy for county boards of education shall be reduced uniformly statewide and proportionately for all classes of property for the forthcoming tax year so as to cause the rate of levy to produce no more than 102 percent of the previous year's projected statewide aggregate property tax revenues from extending the county board of education levy rate, unless subsection (b) of this section is complied with. The reduced rates of levy shall be calculated in the following manner: (1) The total assessed value of each class of property as it is defined by section five of this article for the assessment period just concluded shall be reduced by deducting the total assessed value of newly created properties not assessed in the previous year's tax book for each class of property; (2) the resulting net assessed value of Class I property shall be multiplied by .01; the value of Class II by .02; and the values of Classes III and IV, each by .04; (3) total the current year's property tax revenue resulting from regular levies for the boards of education throughout this state and multiply the resulting sum by one hundred two percent: *Provided*, That the 102 percent figure shall be increased by the amount the boards of education's increased levy provided for in subsection (b), section eight, article one-c of this chapter; (4) divide the total regular levy tax revenues, thus increased in subdivision (3) of this subsection, by the total weighted net assessed value as calculated in subdivision (2) of this subsection and multiply the resulting product by 100; the resulting number is the Class I regular levy rate, stated as cents-per-100 of assessed value; and (5) the Class II rate is two times the Class I rate; Classes III and IV, four times the Class I rate as calculated in the preceding subdivision.

An additional appraisal or valuation due to new construction or improvements, including beginning recovery of natural resources, to existing real property or newly acquired personal property shall not be an annual appraisal or general valuation within the meaning of this section, nor shall the assessed value of the improvements be included in calculating the new tax levy for purposes of this section. Special levies shall not be included in any calculations under this section.

(b) After conducting a public hearing, the Legislature may, by act, increase the rate above the reduced rate required in subsection (a) of this section if an increase is determined to be necessary.

(c) Beginning with the 2020 fiscal year and the 2019 tax year, §11-8-6f(a) and (b) of this code shall expire and the regular levy rates for the county boards of education shall be the following: (1) For Class I property, 19.4 cents per \$100; (2) for Class II property, 38.8 cents per \$100; and (3) for Class III and Class IV property, 77.6 cents per \$100: *Provided*, That county boards of education may increase their regular levy rates through a majority vote of their members up to the sum of the levy rates set forth in subdivisions (1), (2), and (3), section six-c of this article for each class of property, which are: (1) For Class I property, 22.95 cents per \$100; (2) for Class II property, 45.9 cents per \$100; and (3) for Class III and Class IV property, 91.8 cents per \$100: *Provided, however*, That prior to any regular levy rate increase, such increase must be approved by a majority vote of the voters of the county.

~~(d)~~ (d) The State Tax Commissioner shall report to the Joint Committee on Government and Finance and the Legislative Oversight Commission on Education Accountability by March 1 of each year on the progress of assessors in each county in assessing properties at the Constitutionally required 60 percent of market value and the effects of increasing the limit on the increase in total property tax revenues set forth in this section to two percent.

~~(e)~~ (e) *Growth County School Facilities Act. — Legislative findings. --*

The Legislature finds and declares that there has been, overall, a statewide decline in enrollment in the public schools of this state; due to this decline, most public schools have ample space for students, teachers, and administrators; however, some counties of this state have experienced significant increases in enrollment due to significant growth in those counties; that those counties experiencing significant increases do not have adequate facilities to accommodate students, teachers, and administrators. Therefore, the Legislature finds that county boards of education in those high-growth counties should have the authority to designate revenues generated from the application of the regular school board levy due to new construction or improvements placed in a Growth County School Facilities Act Fund be used for school facilities in those counties to promote the best interests of this state's students.

(1) For the purposes of this subsection, 'growth county' means any county that has experienced an increase in second month net enrollment of 50 or more during any three of the last five years, as determined by the state Department of Education.

(2) The provisions of this subsection shall only apply to any growth county, as defined in subdivision (1) of this subsection, that, by resolution of its county board of education, chooses to use the provisions of this subsection.

(3) For any growth county, as defined in subdivision (1) of this subsection, that adopts a resolution choosing to use the provisions of this subsection, pursuant to subdivision (2) of this subsection, assessed values resulting from additional appraisal or valuation due to new construction or improvements to existing real property shall be designated as new property values and identified by the county assessor. The statewide regular school board levy rate as established by the Legislature shall be applied to the assessed value designated as new property values and the resulting property tax revenues collected from application of the regular school board levy rate shall be placed in a separate account designated as the Growth County School Facilities Act Fund. Revenues deposited in the Growth County School Facilities Act Fund shall be appropriated by the county board of education for construction, maintenance or repair of school facilities. Revenues in the fund may be carried over for an indefinite length of time and may be used as matching funds for the purpose of

obtaining funds from the School Building Authority or for the payment of bonded indebtedness incurred for school facilities. For any growth county choosing to use the provisions of this subsection, estimated school board revenues generated from application of the regular school board levy rate to new property values are not to be considered as local funds for purposes of the computation of local share under the provisions of §18-9A-11 of this code.

~~(e)~~ (f) This section, as amended during the legislative session in the year 2004, shall be effective as to any regular levy rate imposed for the county boards of education for taxes due and payable on or after July 1, 2004. If any provision of this section is held invalid, the invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or its application and to this end the provisions of this section are declared to be severable.

## ARTICLE 21. PERSONAL INCOME TAX.

### §11-21-25. Education expenses tax credits.

(a) Credit allowed. — For those tax years beginning on or after January 1, 2019, there is allowed a nonrefundable credit for expenditures on qualified educational expenses incurred by a teacher or service person employed by a public or private school. ‘Teacher’ and ‘service person’ have the meanings ascribed to them in §18-1-1 of this code except that the teacher or service person may be employed in either a public school or in a comparable position in a private school in this state.

(b) Amount of credit. — A teacher or service person employed by a public or private school may claim a tax credit not to exceed \$250.

(c) Qualifying educational expenses. — Qualifying expenses include costs relating to computer equipment including education-related software and services, textbooks, workbooks, curricula and other written or supplementary materials used for curricular, cocurricular, or extra-curricular instruction and expenses for curricular or cocurricular activities.

(d) Unused credit. — If any credit remains after application of §11-21-25(c) of this code, that amount is forfeited. A carryback to a prior taxable year is not allowed for the amount of any unused portion of any annual credit allowance.

## CHAPTER 18. EDUCATION.

### ARTICLE 5. COUNTY BOARD OF EDUCATION.

#### **§18-5-16. Student transfers; definitions; ~~legislative findings~~; appeals; calculating net enrollment; fees for transfer.**

~~(a) County districts and school attendance. — Establishment of attendance zones within counties.~~  
— The county board may divide shall establish attendance zones within the county into such districts as are necessary to determine to designate the schools the that its resident students of its county shall attend. Upon the written request of any parent or guardian, or person legally responsible for any student, or for reasons affecting the best interests of the schools, the superintendent may transfer students from one school to another within the county. Any aggrieved person may appeal the decision of the county superintendent to the county board, and the decision of the county board shall be is final.

~~(b) Transfers between counties; legislative findings —~~

~~(1) Transfers of students from one county to another may be made by the county board of the county in which the student desiring to be transferred resides. The transfer shall be subject to the approval of both the board of the county in which the student resides and the board to which the student wishes to be transferred.~~

~~(2) *Legislative findings.*— Over the past several years, counties have been forced to close a number of schools because of declining student enrollment. School officials predict that an additional eighteen percent loss in enrollment may occur between 2002 and 2012. This continued decrease in the number of students enrolled in the public schools of the state may result in more instances of consolidation which will increase the problem of long bus rides for students if they remain in a school in their county of residence.~~

~~Therefore the Legislature makes the following findings:~~

~~(A) County lines may impede the effective and efficient delivery of education services;~~

~~(B) Students often must endure long bus rides to a school within their county of residence when a school in an adjacent county is a fraction of the distance away;~~

~~(C) The wishes of parents or guardians to have their children transferred to a county other than their county of residence should be considered by the county boards; and~~

~~(D) Where counties cannot agree, it is necessary to establish a process to determine when transfers are appropriate.~~

~~(3) The state board shall establish a process whereby a parent or guardian of a student may appeal the refusal of a county board to enter into an agreement to transfer or accept the transfer of the student.~~

~~(A) The process shall designate the state superintendent to hear the appeal. In determining whether to overturn a decision of a county board, the state superintendent shall consider such factors as the following:~~

~~(i) Travel time for the student;~~

~~(ii) Impact on levies or bonds;~~

~~(iii) Other financial impact on the county of residence; and~~

~~(iv) Such other factors as the state superintendent may determine.~~

~~(B) If, during the appeal process, the state superintendent discovers that the education and the welfare of students in the transferring county could be enhanced, the state superintendent may direct that students may be permitted to attend a school in another county.~~

~~(C) If multiple appeals are received from the same geographical area of a county, the state superintendent may impose on the receiving county restrictions including, but not limited to, requiring the receiving county to accept all students in that geographical area of the sending county who wish to transfer to the receiving county.~~

~~(D) If a student is transferred on either a full-time or a part-time basis without the agreement of both boards by official action as reflected in the minutes of their respective meetings and if the student's parent or guardian fails to appeal or loses the appeal under the process established in~~

~~subdivision (3) of this subsection, the student shall be counted only in the net enrollment of the county in which the student resides.~~

~~(4) If, after two county boards have agreed to a transfer arrangement for a student, that student chooses to return to a school in his or her county of residence after the second month of any school year, the following shall apply:~~

~~(A) The county of residence may issue an invoice to the county from which the student transferred for the amount, determined on a pro rata basis, that the county of residence otherwise would have received under the state basic foundation program established in article nine-a [§§ 18-9A-1 et seq.] of this chapter; and~~

~~(B) The county from which the student transferred shall reimburse the county of residence for the amount of the invoice.~~

~~(c) *Transfers between high schools.* — In any county where a high school is maintained, but topography, impassable roads, long bus rides, or other conditions prevent the practicable transportation of any students to such high school, the board may transfer them to a high school in an adjoining county. In any such case, the county boards may enter into an agreement providing for the payment of the cost of transportation, if any, of the students.~~

(b) *Definitions.* – For the purposes of this section, unless a different meaning clearly appears from the context:

'Nonresident student' means a student who resides in this state and who is enrolled in or is seeking enrollment in a county school district other than the county school district in which the student resides.

'Open enrollment' means a policy adopted and implemented by a county board to allow nonresident students to enroll in any school within the district. Open enrollment is distinct from a mutual agreement of two county boards regarding mass transfer of students, as contemplated in §18-5-13(f)(1)(C) of this code.

(c) *Enrollment policies.* – County boards may establish and implement an open enrollment policy without charging tuition and without obtaining approval from the board of the county in which a student resides and transfers. These policies shall clearly articulate any admission criteria, application procedures, transportation provisions, timelines for open enrollment periods, and restrictions on transfers due to building capacity constraints. Enrollment policies are subject to the following:

(1) A county board may give enrollment preference to:

(A) Siblings of students already enrolled through the open enrollment policy;

(B) Secondary students who have completed tenth grade and, due to family relocation, become nonresident students, but express the desire to remain in a specific school to complete their education;

(C) Students who are children, grandchildren, or legal wards of employees;

(D) Students whose legal residences, though geographically within another county, are more proximate to a school within the receiving county, whether calculated by miles or transportation time; and

(E) Students who reside in a portion of a county where topography, impassable roads, long bus rides, or other conditions prevent the practicable transportation of the student to a school within the county, and a school within a contiguous county is more easily accessible.

(2) A county must comply with all enrollment requirements for children who are in foster care or who meet the definition of unaccompanied youth prescribed in the McKinney-Vento Homeless Assistance Act (42 U.S.C. §11434a(6)).

(3) The county board for the county educating the nonresident student may provide an adequate means of transportation to nonresident students when students have complied with the procedure for obtaining authorization to attend school outside their county of residence, subject to the following:

(A) County boards of education are not required to uniformly provide nonresident student transportation, and may consider whether a nonresident student meets the eligibility criteria for free or reduced price lunches and milk established within the Richard B. Russell National School Lunch Act (42 U.S.C. §1758); and

(B) The county board for the county educating the nonresident student shall provide transportation to and from the school of attendance, or to and from an agreed pickup point on a regular transportation route, or for the total miles traveled each day for the nonresident student to reach the school of enrollment if the nonresident student with disabilities has an individualized education program that specifies that transportation is necessary for fulfillment of the program.

(d) Appeal. – The state board of education shall establish a process whereby a parent or guardian of a student may appeal the refusal of a county board to accept the transfer of the student. If during the appeal process, the State Superintendent discovers that the education and the welfare of the student could be enhanced, the State Superintendent may direct that the student may be permitted to attend a school in the receiving county.

(e) Net enrollment. – For purposes of net enrollment as defined in §18-9A-2 of this code, whenever a student is transferred on a full-time basis from one school district to another district pursuant to the provisions of this section, the county to which the student is transferred shall include the student in its net enrollment, subject to the following:

(1) If, after transferring to another county, a student chooses to return to a school in his or her county of residence after the second month of any school year, the following applies:

(A) The county of residence may issue an invoice to the county from which the student transferred for the amount, determined on a pro rata basis, that the county of residence otherwise would have received under the state basic foundation program established in §18-9A-1 *et seq.* of this code; and

(B) The county from which the student transferred shall reimburse the county of residence for the amount of the invoice.

(c) Transfers between high schools. — In any county where a high school is maintained, but topography, impassable roads, long bus rides, or other conditions prevent the practicable transportation of any students to such high school, the board may transfer them to a high school in an adjoining county. In any such case, the county boards may enter into an agreement providing for the payment of the cost of transportation, if any, of the students.

(d) (f) Transfers between states. — Transfer of students from this state to another state shall be upon such terms, including payment of tuition, as shall be mutually agreed upon by the board of the

~~transferring receiving~~ county and the ~~authorities~~ board of the school ~~to~~ or district from which the transfer is made.

~~(e)~~ (g) No parent, guardian, or person acting as parent or guardian ~~shall be~~ is required to pay for the transfer of a student or for the tuition of the student after the transfer when ~~such~~ the transfer is carried out under the terms of this section.

(h) Nothing in this section supersedes the eligibility requirements for participation in extra-curricular activities established by the Secondary Schools Activities Commission.

(i) The amendments to this section during the 2019 regular session of the Legislature shall be effective for school years beginning on or after July 1, 2019, and the provisions of this section existing immediately prior to the 2019 regular session of the Legislature remain in effect for school years beginning prior to July 1, 2019.

**§18-5-16a. Authorization to transfer pupils from one district to another; mandatory transfer; payment of tuition; net enrollment.**

(a) The provisions of this section expire effective July 1, 2019: *Provided*, That any agreements made pursuant to this section prior to July 1, 2019, shall remain in effect.

(b) Whenever, in the opinion of the board of Education of any county, the education and welfare of a pupil will be enhanced, the board of Education of such county shall have the authority to transfer any such pupil or pupils on a part-time or full-time basis from one school district to another school district within the state: *Provided*, That the boards of education of both the transferor and the transferee districts agree to the same by official action of both boards as reflected in the minutes of their respective meetings.

(c) Any pupil attending a school in a district of this state adjacent to the district of residence during the school year one thousand nine hundred eighty-four—eighty-five, is authorized to continue such attendance in the adjacent district, and, upon written request therefor by the parent or guardian, any person who is entitled to attend the public schools of this state and who resides in the same household and is a member of the immediate family of such pupil is authorized to enroll in such adjacent district. The transferor and transferee school districts shall effectuate any transfer herein authorized in accordance with the provisions of this section.

(d) Whenever a pupil is transferred from one school district to another district on a full-time or part-time basis, the board of Education of the school district in which the pupil is a bona fide resident shall pay to the board of Education of the school district to which the pupil is transferred a tuition that is agreed upon by both such boards. Tuition for each full-time pupil shall not exceed the difference between the state aid per pupil received by the county to which the pupil is transferred and the county cost per pupil in the county to which said pupil is transferred.

(e) For purposes of net enrollment as defined in section two, article nine-a of this chapter: (1) Whenever a pupil is transferred on a full-time basis from one school district to another district pursuant to the provisions of this section, the county to which the pupil is transferred shall include such pupil in its net enrollment; and (2) whenever a pupil is transferred on a part-time basis from one school district to another school district pursuant to the provisions of this section, the county in which the student is a bona fide resident shall count the pupil in its net enrollment.

**§18-5-18b. School counselors in public schools.**



(a) A school counselor means a professional educator who holds a valid school counselor's certificate in accordance with §18-3-1 *et seq.* of this code.

(b) Each county board shall provide counseling services for each pupil enrolled in the public schools of the county.

(c) The school counselor shall work with individual pupils and groups of pupils in providing developmental, preventive and remedial guidance and counseling programs to meet academic, social, emotional, and physical needs; including programs to identify and address the problem of potential school dropouts. The school counselor also may provide consultant services for parents, teachers, and administrators and may use outside referral services, when appropriate, if no additional cost is incurred by the county board.

(d) The state board may adopt rules consistent with the provisions of this section that define the role of a school counselor based on the 'National Standards for School Counseling Programs' of the American school counselor association. A school counselor is authorized to perform such services as are not inconsistent with the provisions of the rule as adopted by the state board. To the extent that any funds are made available for this purpose, county boards shall provide training for counselors and administrators to implement the rule as adopted by the state board.

(e) Each county board shall develop a comprehensive drop-out prevention program utilizing the expertise of school counselors and any other appropriate resources available.

(f) School counselors shall be full-time professional personnel shall spend at least ~~seventy-five~~ eighty percent of work time in a direct counseling relationship with pupils, and shall devote no more than ~~one-fourth~~ twenty percent of the work day to administrative activities: *Provided*, That such activities are counselor related.

(g) Nothing in this section prohibits a county board from exceeding the provisions of this section, or requires any specific level of funding by the Legislature.

**§18-5-32. Assistant superintendents; directors and supervisors of instruction and other educational activities.**

(a) The county board, upon the recommendation of the county superintendent, may employ an assistant whose term of employment may be not less than one nor more than four years: *Provided*, That his or her term may not extend beyond that of the incumbent county superintendent.

(b) The board may not employ more than one assistant for each 200 teachers or major fraction thereof.

(c) The county board, upon the recommendation of the county superintendent, is authorized to employ general and special supervisors or directors of instruction and of other educational activities as may be considered necessary.

(d) The employment of the assistant superintendent shall be on a 12-month basis. ~~The period of employment for all others named herein shall be at the discretion of the county board.~~

(e) Rules for qualifications of assistant superintendents, and directors and supervisors of instruction and of other educational activities shall be fixed by the state board: *Provided*, That the qualifications required for any assistant superintendent may not be higher than those required for the county superintendent: *Provided, however*, That the rules do not affect the status of any incumbent nor his or her right to succeed himself or herself in his or her assigned position.

(f) The county board is authorized to reimburse the employees for their necessary traveling expenses upon presentation of a monthly, itemized, sworn statement approved by the county superintendent.

~~(g) Any person employed under the foregoing provision of this section, provided he or she holds a valid teacher's certificate, shall be given continuing contract status as a teacher and shall hold that status unless dismissed for statutory reasons: Provided, That central office administrators, supervisors, and directors who begin employment in their new position after July 1, 2020 shall serve at the will and pleasure of the superintendent and may be removed by the superintendent upon approval of the county board.~~

(h) The job duties of a professional educator employed under the provisions of this section, including a professional educator employed as a 'supervisor' or 'central office administrator' as defined in §18A-1-1 of this code, shall include substitute teaching on at least three instructional days each school year: *Provided*, That the substitute teaching requirement of this subsection does not apply to the superintendent and those who have never held a teaching certificate or an administrative certificate.

(i) All acts or parts of acts inconsistent with this section are hereby repealed.

**§18-5-46. Requiring teacher to change grade prohibited; teacher recommendation relating to promotion.**

(a) No teacher may be required by a principal or any other person to change a student's grade on either an individual assignment or a report card unless there is clear and convincing evidence that there was a mathematical error in calculating the student's grade.

(b) The teacher's recommendation relating to whether or not a student should be promoted to the next grade level shall be a primary consideration when making such a determination.

**5B. SCHOOL INNOVATION ZONES ACT**

**§18-5B-14. ~~Termination of funding for School Innovation Zones and Local Solution Dropout Prevention and Recovery Innovation Zones.~~ Funding for Innovation Zones.**

~~No school, group of schools, district, subdivision or department of a group of schools, or a subdivision or department of a school designated or to be designated as an Innovation Zone or Local Solution Dropout Prevention and Recovery Innovation Zone shall receive any funding pursuant to this article after June 30, 2016.~~

Nothing in this section prevents counties from establishing magnet schools within their boundaries and such magnet schools shall be eligible for funding under the terms of the Act.

**§18-5B-15. Funding for Innovation Zones.**

There is hereby created in the State Treasury a special revenue fund to be known as the 'Innovation Zone Fund'. The fund shall consist of all moneys received from whatsoever source to further the purpose of this article. At a minimum, these funds shall consist of a 5 million dollar line item appropriation for the purposes of this article. The fund shall be administered by the state board solely for the purposes of this article, including providing grants and other financial assistance to innovation zone designated schools to implement and carry out such school's innovation zone plans. Any moneys remaining in the fund at the close of the fiscal year shall be carried forward for use in the next fiscal year. Fund balances shall be invested with the state's consolidated investment fund

and any and all interest shall be used solely for the purposes that moneys deposited in the fund may be used pursuant to this article.

## **ARTICLE 5G. PUBLIC CHARTER SCHOOLS.**

### **§18-5G-1. Legislative purpose and intent.**

(a) The West Virginia Legislature hereby authorizes a pilot program under which existing public schools may be converted into public charter schools to allow new, innovative, and more flexible ways of educating all children who choose to attend and advance a renewed commitment to the mission, goals, and diversity of public education. The purposes of this public charter school initiative are to:

(1) Improve student learning by creating more diverse public schools with high standards for student performance;

(2) Provide innovative educational methods and practices through programs that engage students in the learning process, thus resulting in higher student achievement;

(3) Enable schools to establish a distinctive school curriculum, a specialized academic theme, or method of instruction; and

(4) Allow schools enhanced freedom and flexibility in exchange for exceptional levels of results-driven accountability.

### **§18-5G-2. Definitions.**

The following words used in this article and any proceedings pursuant thereto have the following meanings unless the context clearly indicates a different meaning:

(1) 'Applicant' means an organization or group comprised primarily of parents and others who reside within the community served by the school who:

(A) Have obtained 501(c)(3) tax-exempt status or have submitted an application for 501(c)(3) tax-exempt status;

(B) Develop and submit an application to become a conversion public charter school to an authorizer;

(C) May include as partner organizations a public or private institution or institutions of higher education and partners in business and industry; and

(D) With respect to an application for a conversion public charter school, in addition to the other requirements of this article, the applicants shall demonstrate support for the proposed conversion to a public charter school by:

(i) Submitting a petition for conversion signed by a majority of the employees of the school proposed for conversion; and

(ii) Submitting a petition for conversion signed by a majority of the parents, guardians or custodians of the students enrolled in the school proposed for conversion.

(2) 'Authorizer' means the county board of education of the county in which the conversion public charter school is proposed to be located;

(3) 'Charter application' means a proposal from an applicant to an authorizer to enter into a charter contract whereby the proposed school obtains public charter school status;

(4) 'Charter contract' or 'contract' means a fixed-term, renewable contract between a public charter school's governing board and an authorizer that identifies the roles, powers, responsibilities, operational duties, accountability, and performance expectations for each party to the contract, consistent with the requirements of this article;

(6) 'Conversion public charter school' means a public charter school that existed as a noncharter public school before becoming a public charter school;

(7) 'County board' means a county board of education;

(8) 'Education service provider' means an education management organization, school design provider, or any other partner entity with which a public charter school contracts for educational design, implementation, or comprehensive management;

(9) 'Governing board' means a board of directors as provided for in §18-5G-3 of this code;

(10) 'Noncharter public school' means a public school other than a public charter school established pursuant to this article;

(11) 'Parent' means a parent, guardian, or other person or entity having legal custody over a child;

(12) 'Public charter school' means a public school established pursuant to this article that:

(A) Is a public school and is part of the state's system of public education but is exempt from all statutes and administrative regulations applicable to the state board, a county board, or a school unless expressly stated otherwise in this article: *Provided*, That nothing in this article prohibits a public charter school from complying with any statute, state board policy, or county board policy applicable to noncharter public schools;

(B) Is a public corporate body, exercising public power through its governing board, including the power in name to contract and be contracted with, sue and be sued, and adopt bylaws not inconsistent with this article;

(C) Has autonomy over decisions relating to finance, personnel, scheduling, curriculum, and instruction consistent with this article and its charter contract;

(D) Is governed by a governing board that is independent of a county board except as otherwise provided in this article;

(E) Is established and operating under the terms of a charter contract between the public charter school's governing board and its authorizer;

(F) Is a public school to which parents choose to send their children;

(G) Is a public school that admits students on the basis of a random and open lottery if more students apply for admission than can be accommodated, pursuant to and subject to §18-5G-4 of this code;

(H) Offers a comprehensive instructional program that meets or exceeds the student performance standards adopted pursuant to §18-2E-5 of this code; and

(I) Operates under the oversight of its authorizer in accordance with its charter contract;

(13) 'State board' means the West Virginia Board of Education; and

(14) 'Student' means any person that is eligible for attendance in a public school in West Virginia.

**§18-5G-3. Authorization for the establishment of public charter schools; governing board.**

(a) The authorization for the establishment of public charter schools in this state is limited as a pilot project to two elementary schools that are low performing, that have been designated as federal Title I eligible schools, that meet the definition of an applicant to become a conversion public charter school, and that are authorized by their respective county board.

(b) No elected official may profit or receive any monetary consideration from a charter school: *Provided*, That this prohibition does not apply with respect to the continued employment of an elected official who was employed by a public school prior to its conversion to a public charter school.

(c) A public charter school authorized under this article shall:

(1) Adhere to the same immunization, civil rights, and disability rights requirements applicable to noncharter public schools;

(2) Have no entrance requirements or charge any tuition or fees: *Provided*, That a public charter school may require the payment of fees on the same basis and to the same extent as noncharter public schools.

(3) Have no power to levy taxes.

(4) Be governed by a governing board as specified in subsection (d) of this section;

(5) Provide instructional time that is at least equal to the number of days or their equivalent required by §18-5-45 of this code;

(6) Require criminal background checks for staff and volunteers, including members of its governing board, as required of all noncharter public school employees and volunteers;

(7) Prohibit contractors and service providers or their employees from making direct, unaccompanied contact with students or accessing school grounds unaccompanied when students are present if it cannot be verified that the contractors, service providers, or their employees have not been previously convicted of a qualifying offense pursuant to §18-5-15c of this code;

(8) Ensure student participation in the required state summative assessment pursuant to §18-2E-5 of this code;

(9) Adhere to generally accepted accounting principles and adhere to the same financial audits, audit procedures, and audit requirements applicable to noncharter public schools;

(10) Utilize the same system for reporting student information data and financial data as is utilized by noncharter public schools;

(11) Comply with the Freedom of Information Act as set forth in §29B-1-1 et seq. of this code;

(12) Report data using the West Virginia Education Information System or successor data reporting system that noncharter public schools use;

(13) Operate under the oversight of its authorizer in accordance with its charter contract;

(14) As a public corporate body, have the powers necessary for carrying out the terms of its charter contract, including, but not limited to the power to:

(A) Receive and disburse funds for school purposes;

(B) Secure appropriate insurance and enter into contracts and leases;

(C) Contract with an education service provider, so long as the governing board retains final oversight and authority over the school;

(D) Pledge, assign, or encumber its assets to be used as collateral for loans or extensions of credit;

(E) Solicit and accept any gifts or grants for school purposes, subject to applicable laws and the terms of its charter; and

(F) Acquire real property for use as its facilities or facilities from public or private sources;

(15) Enroll students in the public charter school pursuant to §18-5G-4 of this code;

(16) Require any education service provider contracted with the governing board to provide a monthly detailed budget to the board;

(17) Serve one or more of grades and limit admission to students within the grade levels served; and

(18) Provide programs and services to a student with a disability in accordance with the student's individualized education program and all federal and state laws, rules, and regulations. A public charter school shall deliver the services directly or contract with another provider to deliver the services.

(d) A public charter school authorized under this article may:

(1) Negotiate and contract with its authorizer or any third party for the use, operation, and maintenance of a building and grounds, liability insurance, and the provision of any service, activity, or undertaking that the public charter school is required to perform in order to carry out the educational program described in its charter contract. Any services for which a public charter school contracts with a school district shall be provided by the district at cost and shall be negotiated as a separate agreement after final charter contract negotiations;

(2) Sue and be sued in its own name;

(3) Own, rent, or lease its space;

(4) Participate in cocurricular activities to the same extent as noncharter public schools; and

(5) Participate in extracurricular activities to the same extent as noncharter public schools.

(e) A county board may not require any employee of the local school district to be employed in a charter school. A county board may not harass, threaten, discipline, discharge, retaliate or in any manner discriminate against any district employee involved directly or indirectly with an application to establish a charter school as authorized under this section.

(f) All personnel in a public charter school shall continue to accrue seniority with the county board in the same manner that they would accrue seniority if employed in a noncharter public school in the county for purposes of employment in noncharter public schools.

(g) Public charter school governing board. —

(1) To ensure compliance with this article, a public charter school shall be administered by a governing board accountable to the authorizer as set forth in the charter contract. A public charter school governing board shall consist of no fewer than five members.

(2) The governing board of a conversion public charter school authorized under this article shall consist of the following members elected or selected in a manner specified in the charter application:

(A) Two parents of students attending the public charter school;

(B) Two members who reside in the community served by the public charter school;

(C) Two faculty members employed at the public charter school;

(D) Two persons appointed by the authorizing county board; and

(E) One representative of the State Superintendent.

(3) Members of the governing board shall:

(A) Not be an employee of an education service provider that provides services to the public charter school; and

(B) File a full disclosure report to the authorizer identifying potential conflicts of interest, relationships with management organizations, and relationships with family members who have other business dealings with the school, the management organization of the school, or any other public charter school.

(4) Members of the governing board shall collectively possess expertise in leadership, curriculum and instruction, law, and finance.

(5) A member of the public charter school governing board shall be considered an officer of a school district under the provisions of §6-6-7 of this code, and may only be removed from office under the provisions of that section.

(6) The governing board shall be responsible for the operation of its public charter school, including, but not limited to, preparation of an annual budget, contracting for services, school curriculum, personnel matters, and achieving the objectives and goals of the public charter school's program.

(7) The governing board shall comply with open governmental proceedings requirements set forth in §6-9A-1 et seq. of this code.

**§18-5G-4. Enrollment in a public charter school; recruitment and retention plans.**

(a) A public charter school may enroll any student residing in the state. A student enrolled in a public charter school shall be included in the net enrollment of the county in which the school is located for the purposes of §18-9A-1 et seq., and shall be allocated to the public charter school in accordance with the State Board rule promulgated pursuant to section §18-5G-13 of this article.

(b) A conversion public charter school shall guarantee enrollment to all students who were previously enrolled in the noncharter public school and to all students who reside in the school's attendance area. All students who reside in the attendance area of a public school that converts to a public charter school may enroll in the public charter school if they choose to do so. The school shall adopt and maintain a policy that gives enrollment preference to students who reside within the attendance area as established prior to the conversion of the school. An enrollment preference also shall be given to students enrolled in the public charter school the previous school year and to siblings of students already enrolled in the public charter school. If the school has excess capacity after enrolling students within the attendance area and those with preference, students outside the attendance area are eligible for enrollment;

(c) Except as provided in subsection (b) of this section, if the capacity of a public charter school is insufficient to enroll all students who wish to attend any specific grade level at a public charter school, the school shall select students through a randomized and transparent lottery: *Provided*, That the state board shall promulgate a rule to guide student application and lottery procedures for public charter schools.

(d) Enrollment preference for public charter schools shall be given to students enrolled in the public charter school the previous year and to siblings of students already enrolled in the school. An enrollment preference for returning students shall exclude those students from entering into a lottery, as identified in §18-5G-4(b) of this code.

(e) A public charter school may allow an enrollment preference for students who meet federal eligibility requirements for free or reduced-price meals and at-risk students.

(f) A public charter school may give enrollment preference to children of a public charter school's governing board members and full-time employees, as long as they constitute no more than 10 percent of the school's total student population.

(g) Every charter school shall submit a recruitment and retention plan annually to its authorizer. The plan shall list deliberate, specific strategies the school will use to attract, enroll, and retain a student population that includes students who are, to the extent applicable:

(1) Limited English proficient;

(2) Special education;

(3) Low income;

(4) Below proficiency on the comprehensive statewide student assessment;

(5) At risk of dropping out of school;



(6) Have dropped out of school; or

(7) Any others who should be targeted to eliminate achievement gaps.

(h) If a student who was previously enrolled in a public charter school transfers enrollment to a noncharter public school in this state, the school to which the student transfers shall accept credits earned by the student in courses or instructional programs at the public charter school in a uniform and consistent manner and according to the same criteria that are used to accept academic credits from other noncharter public schools or that consider content competency when appropriate due to differences in curriculum delivery, instructional methods and strategies, or course designations and sequence.

**§18-5G-5. Application to establish public charter school.**

(a) To convert an existing noncharter public school to a public charter school, an applicant shall submit a charter application to an authorizer: Only a county board may authorize the conversion of an existing noncharter public school to a public charter school. Charter authorizers shall accept and document the date and time of receipt of all charter applications.

(b) The application shall contain, at a minimum, the following information:

(1) A mission statement and a vision statement for the public charter school, including specialized academic focus, if any, to be promoted and advanced through the establishment of the public charter school;

(2) A detailed description of the public charter school's proposed program;

(3) The student achievement goals for the public charter school's program and the chosen methods of evaluating whether students have attained the skills and knowledge specified for those goals;

(4) The school's plan for using data derived from student evaluations and assessments, including the statewide summative assessment, to drive instruction and promote continued school improvement;

(5) An explanation of how the school's proposed program is likely to improve the achievement of traditionally underperforming students in the local school district;

(6) The proposed governance structure of the school, including a list of members of the initial governing board, a draft of bylaws that include the description of the qualifications, terms, and methods of appointment or election of governing board members, and the organizational structure of the school that clearly presents lines of authority and reporting between the governing board, school administrators, staff, any related bodies such as advisory bodies or parent and teacher councils, and any external organizations that will play a role in managing the school;

(7) Plans and timelines for student enrollment, including policies and procedures for conducting transparent and random admission lotteries that are open to the public, and that are consistent with this article;

(8) A proposed five-year budget, including the start-up year and projections for four additional years with clearly stated assumptions;

(9) Proposed fiscal and internal control policies for the public charter school;

(10) Acknowledgement that the public charter school will participate in the state's accountability system;

(11) A proposed handbook that outlines the personnel policies of the public charter school, including the criteria to be used in the hiring of qualified teachers, school administrators, and other school employees, a description of staff responsibilities, and the school's plan to evaluate personnel on an annual basis;

(12) An explanation of proposed student discipline procedures, including disciplinary procedures for students with disabilities, which shall be consistent with the requirements of due process and with state and federal laws and regulations governing the placement of students with disabilities;

(13) A description of the facilities to be used by the public charter school, including the location of the school and how the facility supports the implementation of the school's program. The school shall obtain all required occupation and operation certificates and licenses prior to the first instructional day for students;

(14) The proposed ages and grade levels to be served by the public charter school, including the planned minimum and maximum enrollment per grade per year;

(15) The school calendar and school day schedule, which shall meet the requirements of §18-5-45 of this code;

(16) Types and amounts of insurance coverage to be obtained by the public charter school, which:

(A) Shall include adequate insurance for liability, property loss, and the personal injury of students comparable to noncharter public schools within the local school district operated by the county board; and

(B) May include coverage from the Board of Risk and Insurance Management pursuant to §29-12-5a of this code;

(17) A description of the food services to be provided to students attending the school;

(18) Process and procedures to be followed in the case of the closure or dissolution of the public charter school, including provisions for the transfer of students and student records to the appropriate local school district and an assurance and agreement to payment of net assets or equity, after payment of debts as specified in §18-5G-8 of this code;

(19) A code of ethics for the school setting forth the standards of conduct expected of its governing board, officers, and employees;

(20) The public charter school's plan for successfully serving students with disabilities, students who are English language learners, bilingual students, and students who are academically behind and gifted, including, but not limited to, the school's plan for compliance with all applicable federal and state laws and regulations;

(21) A description of cocurricular and extracurricular programs to be offered by the public charter school and how they will be funded and delivered;

(22) The process by which the school will resolve any disputes with the authorizer;

(23) A detailed start-up plan, including financing, tasks, timelines, and individuals responsible for carrying out the plan; and

(24) The public charter school's plan for parental involvement.

(c) If the applicant intends to contract with an education service provider for educational program implementation or comprehensive management, the application shall additionally require the applicant to provide the following information with respect to the educational service provider:

(1) Evidence of success in serving student populations similar to the targeted population, including demonstrated academic achievement as well as successful management of nonacademic school functions, if applicable;

(2) Student performance data and financial audit reports for all current and past public charter schools;

(3) Documentation of and explanation for any actions taken, legal or otherwise, against any of its public charter schools for academic, financial, or ethical concerns;

(4) The proposed duration of the service contract;

(5) The annual proposed fees and other amounts to be paid to the education service provider;

(6) The roles and responsibilities of the governing board, the school staff, and the education service provider;

(7) The scope of services and resources to be provided by the education service provider;

(8) Performance evaluation measures and timelines;

(9) Methods of contract oversight and enforcement;

(10) Investment disclosure;

(11) Conditions for renewal and termination of the contract; and

(12) Disclosure and explanation any existing or potential conflicts of interest between the governing board and the proposed education service provider or any affiliated business entities.

#### **§18-5G-6. Authorizer duties and responsibilities.**

(a) An authorizer shall:

(1) Demonstrate public accountability and transparency in all matters concerning its charter-authorizing practices, decisions, and expenditures;

(2) Approve new charter applications that meet the requirements of this section and §18-5G-5 of this code, demonstrate the ability to operate the school in an educationally and fiscally sound manner, and are likely to improve student achievement through the program detailed in the charter application;

(3) Decline to approve charter applications that fail to meet the requirements of §18-5G-5 of this code;

(4) Negotiate and execute in good faith a charter contract with each public charter school it authorizes;

(5) Monitor the performance and compliance of public charter schools according to the terms of the charter contract;

(6) Determine whether each charter contract it authorizes merits renewal or revocation; and

(7) Establish and maintain policies and practices consistent with the principles and professional standards for authorizers of public charter schools, including standards relating to:

(A) Organizational capacity and infrastructure;

(B) Evaluating applications;

(C) Ongoing public charter school oversight and evaluation; and

(D) Charter approval, renewal, and revocation decision-making.

(b) After an applicant submits a written application to establish a public charter school, the authorizer shall:

(1) Complete a thorough review process;

(2) Conduct an in-person interview with the applicant;

(3) Provide an opportunity in a public forum for local residents to provide input and learn about the charter application;

(4) Provide a detailed analysis of the application to the applicant or applicants;

(5) Allow an applicant a reasonable time to provide additional materials and amendments to its application to address any identified deficiencies; and

(6) Approve or deny a charter application based on established objective criteria or request additional information.

(c) In deciding to approve a charter application, the authorizer shall:

(1) Approve charter applications only to applicants that possess competence in all elements of the application requirements identified in this section and §18-5G-5 of this code;

(2) Base decisions on documented evidence collected through the application review process; and

(3) Follow charter-granting policies and practices that are transparent, based on merit, and avoid conflicts of interest.

(d) No later than 90 days following the filing of the charter application, the authorizer shall approve or deny the charter application. The authorizer shall provide its decision in writing, including an explanation stating the reasons for approval or denial of its decision during an open meeting. Any failure to act on a charter application within the time specified shall be deemed an approval by the authorizer.

(e) An authorizer's charter application approval shall be submitted to the West Virginia Department of Education.

(f) No public charter school may begin operations prior to July 1, 2020.

(g) Notwithstanding any provision of this code to the contrary, no civil liability shall attach to an authorizer or to any of its members or employees for any acts or omissions of the public charter school. Neither the county board of education nor the State of West Virginia shall be liable for the debts or financial obligations of a public charter school or any person or entity that operates a public charter school.

(h) To cover authorizer costs for overseeing public charter schools in accordance with this Act, each public charter school shall remit to its respective authorizer an oversight fee. The oversight fee shall be drawn from and calculated as a uniform percentage of the per student operational funding allocated to each public charter school under §18-5G-12 of this code, not to exceed one percent of each public charter school's per-student funding in a single school year. The state board shall establish a statewide formula for authorizer funding, which shall apply uniformly to every authorizer in the state. The state board may establish a sliding scale for authorizing funding, with the funding percentage decreasing after the authorizer has achieved a certain threshold, such as after a certain number of schools have been authorized or after a certain number of students are enrolled in the authorizer's public charter schools. The state board shall establish a cap on the total amount of funding that an authorizer may withhold from a full-time charter school. The state board shall annually review the effectiveness of the state formula for authorizer funding and shall adjust the formula if necessary to maximize public benefit and strengthen the implementation of this act.

**§18-5G-7. Charter contract requirements; term of contract.**

(a) Within 90 days of the approval of a charter application, the governing board and the authorizer shall negotiate and enter into a charter contract.

(b) The charter contract shall address, in detail, the following items:

(1) The term of the contract: *Provided*, That the contract term shall be no longer than five years;

(2) The agreements relating to each item required under §18-5G-5(b) and §18-5G-5(c) of this code;

(3) The rights and duties of the authorizer and the public charter school;

(4) The administrative relationship between the authorizer and the public charter school;

(5) The process the authorizer will use to provide ongoing oversight;

(6) The specific commitments of the authorizer relating to its obligations to oversee, monitor the progress of, and supervise the public charter school;

(7) The process and criteria the authorizer will use to annually monitor and evaluate the overall academic, operating, and fiscal conditions of the public charter school, including the process the authorizer will use to oversee the correction of any deficiencies found;

(8) The process for revision or amendment to the terms of the charter contract agreed to by the authorizer and the governing board;

(9) The process agreed to by the authorizer and the governing board that identifies how disputes between the authorizer and the board will be handled; and

(10) Any other terms and conditions agreed to by the authorizer and the governing board, including preopening conditions.

(c) The charter contract shall include provisions relating to the performance of the public charter school that set forth the academic and operational performance indicators, measures, and metrics to be used by the authorizer to evaluate the public charter school. At a minimum, the performance provisions shall include indicators, measures, and metrics for:

(1) Student academic proficiency;

(2) Student academic growth;

(3) Achievement gaps in both student proficiency and student growth between student subgroups, including race, sex, socioeconomic status, and areas of exceptionality;

(4) Student attendance;

(5) Student suspensions;

(6) Student withdrawals;

(7) Recurrent enrollment from year to year;

(8) Governing board's performance and stewardship, including compliance with all applicable statutes and terms of charter contract; and

(9) Additional valid and reliable indicators requested by the public charter school.

(d) The authorizer shall be responsible for collecting and reporting to the state board all state-required assessment and achievement data for the public charter school.

(e) The charter contract shall be signed by the chair of the governing board and the president of the county board. A copy of the charter contract shall be provided to the State Superintendent of Schools.

(f) No public charter school may commence operations without a charter contract that meets the requirements of this section, has been properly executed, and has been approved by the county board.

**§18-5G-8. Renewal or nonrenewal of charter contracts; revocation of charter contracts; rulemaking; right to appeal.**

(a) A charter contract may be renewed by the authorizer for a term of no more than five years. Authorizers may grant renewal with specific conditions for necessary improvements in the public charter school: *Provided*, That any specific condition imposed does not contradict the terms of this article.

(b) The State Board of Education shall promulgate a rule establishing the process for renewing or not renewing a charter contract. At a minimum, this rule shall include:

(1) A timeline for a governing board to submit an application for renewal to an authorizer;

(2) The information that must be included in an application for renewal;

(3) If the authorizer initially determines to deny a renewal application:

(A) Notification requirements to the governing board about the prospect of nonrenewal and the reasons for possible closure of the public charter school;

(B) An opportunity and timeframe for the governing board to provide a response to the notice of the nonrenewal;

(C) An opportunity for the governing board to submit documentation and provide testimony as to why the charter contract should be renewed; and

(D) An opportunity for a recorded public hearing, at the request of the governing board;

(4) That the authorizer shall consider the governing board's response, testimony, and documentation, as well as the recorded public hearing, prior to rendering a final decision on the nonrenewal of the charter contract;

(5) The information that must be included in the authorizer's final decision if it determines to deny a renewal application;

(6) A timeline for an authorizer to render a final decision on whether or not to revoke a charter contract;

(7) Approval of the authorizer's decision shall be adopted by the county board during an open meeting; and

(8) A provision that the failure of the authorizer to act on a renewal application within the designated timeframes shall be deemed an approval of the renewal application.

(c) A charter contract shall not be renewed if the authorizer determines that the public charter school has:

(1) Committed a material violation of any of the terms, conditions, standards, or procedures required under this article or the charter contract, and has persistently failed to correct the violation after fair and specific notice from the authorizer;

(2) Failed to meet or make significant progress toward the program performance expectations identified in the charter contract;

(3) Failed to meet generally accepted standards of fiscal management, and has failed to correct the violation after fair and specific notice from the authorizer; or

(4) Substantially violated any material provision of law from which the public charter school was not exempted and has failed to correct the violation after fair and specific notice from the authorizer.

(d) A charter contract shall include provisions for revoking the charter contract. At a minimum, these provisions shall include:

(1) The information that must be included in the authorizer's initial decision to revoke the charter contract;

(2) Notification requirements to the governing board about the authorizer's initial decision to revoke a charter contract and the reasons for the revocation;

(3) An opportunity and timeframe for the governing board to provide a response to the authorizer's initial decision to revoke the charter contract;

(4) An opportunity for the governing board to submit documentation and provide testimony as to why the charter contract should not be revoked;

(5) An opportunity for a recorded public hearing, at the request of the governing board;

(6) That the authorizer shall consider the governing board's response, testimony, and documentation, as well as the recorded public hearing, prior to rendering a final decision on the revocation of the charter contract;

(7) The information that must be included in the authorizer's final decision if it determines to revoke the charter contract;

(8) A timeline for an authorizer to render a final decision on whether or not to revoke a charter contract;

(9) Approval of the authorizer's decision shall be adopted during an open meeting; and

(10) A provision that the failure of the authorizer to act on a renewal application within the designated timeframes shall be deemed.

(e) Notwithstanding the process set forth in §18-5G-8(d) of this code, an authorizer shall take immediate action to revoke a charter contract if the health and safety of students attending the public charter school is threatened.

(f) An authorizer shall develop a public charter school closure protocol or protocol for transitioning a charter school to noncharter public school status. The protocol shall ensure timely notification to parents, orderly transition of students and student records to new schools when applicable, and proper disposition of school funds, property, and assets. The protocol shall specify tasks, timelines, and responsible parties, including delineating the respective duties of the public charter school and the authorizer. If a public charter school closes or transitions to noncharter public school status for any reason, the authorizer shall oversee and work with the closing or transitioning school to ensure a smooth and orderly closure or transition and transition for students and parents, as guided by the closure or school transition protocol. If a public charter school is subject to closure or transition, following exhaustion of any appeal allowed under §18-5G-10 of this code, an authorizer may remove at will at any time any or all of the members of the board of directors of the public charter school in connection with ensuring a smooth and orderly closure or transition. If the authorizer removes members of the board of directors such that the board of directors can no longer function, the authorizer shall be empowered to take any further necessary and proper acts connected with closure or transition of the public charter school in the name and interest of the public charter school.

#### **§18-5G-11. Prohibitions.**

Notwithstanding any provision in this article that may be interpreted to the contrary, a public charter school may not:



(1) Be home-school based; and

(2) Discriminate on any basis for which the noncharter public schools of this state may not discriminate: *Provided*, That nothing in this subsection may be construed to limit the formation of a public charter school that is dedicated to focusing education services on at-risk students, students with disabilities, and students who pose such severe disciplinary problems that they warrant a specific education program.

**§18-5G-12. State board rule relating to funding for charter school enrollment and other necessary provisions.**

(a) The state board shall promulgate a rule in accordance with §29A-3B-1 *et seq.* of this code setting forth requirements for public charter school funding. The rule shall include a requirement that 90 percent of the per pupil total basic foundation allowance follow the student to the public charter school, subject to the following:

(1) Notwithstanding §18-9A-1 *et seq.* of this code, the rule may provide for modifications to the calculations outlined in §18-9A-7 regarding the allowance for student transportation and in §18-9A-9(1) regarding the allowance for current expense for the purpose of providing additional state aid funding to county boards of education related to the operation of public charter schools;

(2) The rule shall designate which county school district is required to pay for a student attending a public charter school; and

(3) The rule shall require the Department of Education to follow federal requirements in ensuring that federal funding follows the student to a public charter school.

(b) The state board may promulgate a rule in accordance with §29A-3B-1 *et seq.* of this code to clarify, if necessary, the requirements of this article and address any unforeseen issues that might arise relating to the implementation of the requirements of this article.

(c) The state board may promulgate a rule in accordance with §29A-3B-1 *et seq.* of this code, if necessary, for ensuring the accountability of public charter schools for meeting the standards for student performance required of other public school students under §18-2E-5 of this code and the accountability of authorizers for ensuring that those standards are met in the schools authorized by it. If an authorizer fails to close a charter school that does not meet the standards, the authorizer shall appear before the State Board to justify its decision. The State Board may uphold or overturn the authorizer's decision and may revoke the authority of the authorizer to authorize charter schools.

**§18-5G-13. Access to public facilities.**

(a) A public charter school may request usage of public facilities from a local county board where the charter school is located. A local county board or other public entity shall make facilities available for use or lease to the charter school that are not a currently in use as an operating public school or which are available at the time the charter school seeks to use in whole or in part for a legitimate public school use.

(b) If a charter school seeks to lease the whole or part of a public facility, the cost of the lease must be at or under current market value.

(c) During the term of the lease, the charter school is solely responsible for the direct expenses related to the public facility lease, including utilities, insurance, maintenance, repairs and remodeling.

The county school board is responsible for any debt incurred or liens that are attached to the school building before the charter school leases the public facility.

**§18-5G-14. Reports.**

(a) An authorizer that has authorized a public charter school that is currently in operation shall submit to the state superintendent for presentation to the state board an annual report within 60 days of the end of each school fiscal year summarizing:

(1) The performance of the public charter schools overseen by the authorizer, according to the performance measures and expectations specified in the charter contracts;

(2) The authorizing duties and functions provided by the authorizer during the previous academic year.

(b) One year after public charter schools have been in operation, and each year thereafter, the State Superintendent shall issue to the Governor, the Legislature, and the general public, a report on the state's public charter school program, drawing from the annual reports submitted by authorizers pursuant to this section, as well as any additional relevant data compiled by the State Superintendent up to the school year ending in the preceding calendar year. The report must include an assessment of the public charter school program's successes, challenges, and areas for improvement in meeting the purposes of this chapter as well as any suggested changes in state law or policy necessary to strengthen the public charter school program.

**ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.**

**§18-7A-3. Definitions.**

As used in this article, unless the context clearly requires a different meaning:

(1) 'Accumulated contributions' means all deposits and all deductions from the gross salary of a contributor plus regular interest.

(2) 'Accumulated net benefit' means the aggregate amount of all benefits paid to or on behalf of a retired member.

(3) 'Actuarially equivalent' or 'of equal actuarial value' means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the retirement board in accordance with the provisions of this article: *Provided*, That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, 'actuarially equivalent' shall be computed using the mortality tables and interest rates required to comply with those requirements.

(4) 'Annuities' means the annual retirement payments for life granted beneficiaries in accordance with this article.

(5) 'Average final salary' means the average of the five highest fiscal year salaries earned as a member within the last 15 fiscal years of total service credit, including military service as provided in this article, or if total service is less than 15 years, the average annual salary for the period on which contributions were made: *Provided*, That salaries for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and Section 401(a)(17) of the Internal Revenue Code.

(6) 'Beneficiary' means the recipient of annuity payments made under the retirement system.

(7) 'Contributor' means a member of the retirement system who has an account in the teachers accumulation fund.

(8) 'Deposit' means a voluntary payment to his or her account by a member.

(9) 'Employer' means the agency of and within the state which has employed or employs a member.

(10) 'Employer error' means an omission, misrepresentation, or violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required. A deliberate act contrary to the provisions of this section by a participating public employer does not constitute employer error.

(11) 'Employment term' means employment for at least 10 months, a month being defined as 20 employment days.

(12) 'Gross salary' means the fixed annual or periodic cash wages paid by a participating public employer to a member for performing duties for the participating public employer for which the member was hired. Gross salary shall be allocated and reported in the fiscal year in which the work was done. Gross salary also includes retroactive payments made to a member to correct a clerical error, or made pursuant to a court order or final order of an administrative agency charged with enforcing federal or state law pertaining to the member's rights to employment or wages, with all retroactive salary payments to be allocated to and considered paid in the periods in which the work was or would have been done. Gross salary does not include lump sum payments for bonuses, early retirement incentives, severance pay or any other fringe benefit of any kind including, but not limited to, transportation allowances, automobiles or automobile allowances, or lump sum payments for unused, accrued leave of any type or character.

(13) 'Internal Revenue Code' means the Internal Revenue Code of 1986, as it has been amended.

(14) 'Member' means any person who has accumulated contributions standing to his or her credit in the state Teachers Retirement System. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited, or until cessation of membership pursuant to §18-7A-13 of this code.

(15) 'Members of the administrative staff of the public schools' means deans of instruction, deans of men, deans of women, and financial and administrative secretaries.

(16) 'Members of the extension staff of the public schools' means every agricultural agent, boys' and girls' club agent and every member of the agricultural extension staff whose work is not primarily stenographic, clerical, or secretarial.

(17) 'New entrant' means a teacher who is not a present teacher.

(18) 'Nonteaching member' means any person, except a teacher member, who is regularly employed for full-time service by: (A) Any county board of education; (B) the State Board of Education; (C) the Higher Education Policy Commission; (D) the West Virginia Council for Community and Technical College Education; ~~or~~ (E) a governing board, as defined in §18B-1-2 of this code; or (F) a public charter school established pursuant to §18-5G-1 et seq. of this code if the charter school

includes in its approved charter application a determination to participate in the retirement systems under this article and §18-7B-1 et seq. of this code, subject to the provisions of §18-7B-7a of this code: Provided, That any person whose employment with the Higher Education Policy Commission, the West Virginia Council for Community and Technical College Education or a governing board commences on or after July 1, 1991, is not considered a nonteaching member.

(19) 'Plan year' means the 12-month period commencing on July 1 and ending the following June 30 of any designated year.

(20) 'Present member' means a present teacher or nonteacher who is a member of the retirement system.

(21) 'Present teacher' means any person who was a teacher within the 35 years beginning July 1, 1934, and whose membership in the retirement system is currently active.

(22) 'Prior service' means all service as a teacher completed prior to July 1, 1941, and all service of a present member who was employed as a teacher, and did not contribute to a retirement account because he or she was legally ineligible for membership during the service.

(23) 'Public schools' means all publicly supported schools, including colleges and universities in this state.

(24) 'Refund beneficiary' means the estate of a deceased contributor or a person he or she has nominated as beneficiary of his or her contributions by written designation duly executed and filed with the retirement board.

(25) 'Regular interest' means interest at four percent compounded annually, or a higher earnable rate if set forth in the formula established in legislative rules, series seven of the Consolidated Public Retirement Board, 162 CSR 7.

(26) 'Regularly employed for full-time service' means employment in a regular position or job throughout the employment term regardless of the number of hours worked or the method of pay.

(27) 'Required beginning date' means April 1 of the calendar year following the later of: (A) The calendar year in which the member attains age 70 and one-half years; or (B) the calendar year in which the member retires or ceases covered employment under the system after having attained the age of 70 and one-half years.

(28) 'Retirant' means any member who commences an annuity payable by the retirement system.

(29) 'Retirement board' means the Consolidated Public Retirement Board created pursuant to §5-10D-1 et seq. of this code.

(30) 'Retirement system' means the state Teachers Retirement System established by this article.

(31) 'Teacher member' means the following persons, if regularly employed for full-time service: (A) Any person employed for instructional service in the public schools of West Virginia; (B) principals; (C) public school librarians; (D) superintendents of schools and assistant county superintendents of schools; (E) any county school attendance director holding a West Virginia teacher's certificate; (F) members of the research, extension, administrative, or library staffs of the public schools; (G) the State Superintendent of Schools, heads, and assistant heads of the divisions under his or her supervision, or any other employee under the State Superintendent performing services of an educational nature; (H) employees of the State Board of Education who are performing services of

an educational nature; (I) any person employed in a nonteaching capacity by the State Board of Education, any county board of education, the State Department of Education or the State Teachers Retirement Board, if that person was formerly employed as a teacher in the public schools; (J) all classroom teachers, principals, and educational administrators in schools under the supervision of the Division of Corrections and Rehabilitation, the Division of Health or the Division of Human Services; (K) an employee of the State Board of School Finance, if that person was formerly employed as a teacher in the public schools; ~~and~~ (L) any person designated as a 21st Century Learner Fellow pursuant to §18A-3-11 *et seq.* of this code who elects to remain a member of the State Teachers Retirement System provided in this article; and (M) any person employed by a public charter school established pursuant to §18-5G-1 *et seq.* of this code if the charter school includes in its approved charter application a determination to participate in the retirement systems under this article and §18-7B-1 *et seq.* of this code, subject to the provisions of §18-7B-7a of this code.

(32) 'Total service' means all service as a teacher or nonteacher while a member of the retirement system since last becoming a member and, in addition thereto, credit for prior service, if any.

Age in excess of 70 years shall be considered to be 70 years.

## **ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.**

### **§18-7B-2. Definitions.**

As used in this article, unless the context clearly requires a different meaning:

(1) 'Annual addition' means, for purposes of the limitations under Section 415(c) of the Internal Revenue Code, the sum credited to a member's account for any limitation year of: (A) Employer contributions; (B) employee contributions; and (C) forfeitures. Repayment of cashouts or contributions as described in Section 415(k)(3) of the Internal Revenue Code, rollover contributions and picked-up employee contributions to a defined benefit plan shall not be treated as annual additions, consistent with the requirements of Treasury Regulation §1.415(c)-1;

(2) 'Annuity account' or 'annuity' means an account established for each member to record the deposit of member contributions and employer contributions and interest, dividends or other accumulations credited on behalf of the member;

(3) 'Compensation' means the full compensation actually received by members for service whether or not a part of the compensation is received from other funds, federal or otherwise, than those provided by the state or its subdivisions: *Provided*, That annual compensation for determining contributions during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and Section 401(a)(17) of the Internal Revenue Code: *Provided, however*, That solely for purposes of applying the limitations of Section 415 of the Internal Revenue Code to any annual addition, 'compensation' has the meaning given it in §18-7B-13(d) of this code;

(4) 'Consolidated board' or 'board' means the Consolidated Public Retirement Board created and established pursuant to §5-10D-1 *et seq.* of this code;

(5) 'Defined contribution system' or 'system' means the Teachers' Defined Contribution Retirement System created and established by this article;

(6) 'Employer' means the agency of and within the State of West Virginia which has employed or employs a member;

(7) 'Employer contribution' means an amount deposited into the member's individual annuity account on a periodic basis coinciding with the employee's regular pay period by an employer from its own funds;

(8) 'Employment term' means employment for at least 10 months in any plan year with a month being defined as 20 employment days;

(9) 'Existing employer' means any employer who employed or employs a member of the system;

(10) 'Existing retirement system' means the State Teachers Retirement System established in §18B-7A-1 *et seq.* of this code;

(11) 'Internal Revenue Code' means the Internal Revenue Code of 1986, as it has been amended;

(12) 'Member' or 'employee' means the following persons, if regularly employed for full-time service: (A) Any person employed for instructional service in the public schools of West Virginia; (B) principals; (C) public school librarians; (D) superintendents of schools and assistant county superintendents of schools; (E) any county school attendance director holding a West Virginia teacher's certificate; (F) members of the research, extension, administrative, or library staffs of the public schools; (G) the State Superintendent of Schools, heads and assistant heads of the divisions under his or her supervision or any other employee under the state superintendent performing services of an educational nature; (H) employees of the State Board of Education who are performing services of an educational nature; (I) any person employed in a nonteaching capacity by the State Board of Education, any county board of education or the State Department of Education, if that person was formerly employed as a teacher in the public schools; (J) all classroom teachers, principals, and educational administrators in schools under the supervision of the Division of Corrections and the Department of Health and Human Resources; (K) any person who is regularly employed for full-time service by any county board of education or the State Board of Education; (L) the administrative staff of the public schools including deans of instruction, deans of men and deans of women, and financial and administrative secretaries; and (M) any person designated as a 21st Century Learner Fellow pursuant to §18A-3-11 of this code who elects to remain a member of the Teachers' Defined Contribution Retirement System established by this article; and (N) any person employed by a public charter school established pursuant to §18-5G-1 *et seq.* of this code if the charter school includes in its approved charter application a determination to participate in the retirement systems under this article, subject to the provisions of §18-7B-7a and §18-7A-1 *et seq.* of this code;

(13) 'Member contribution' means an amount reduced from the employee's regular pay periods, and deposited into the member's individual annuity account within the Teachers' Defined Contribution Retirement System;

(14) 'Permanent, total disability' means a mental or physical incapacity requiring absence from employment service for at least six months: *Provided*, That the incapacity is shown by an examination by a physician or physicians selected by the board: *Provided, however*, That for employees hired on or after July 1, 2005, 'permanent, total disability' means an inability to engage in substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death, or has lasted or can be expected to last for a continuous period of not less than 12 months and the incapacity is so severe that the member is likely to be permanently unable to perform the duties of the position the member occupied immediately prior to his or her disabling injury or illness;

(15) 'Plan year' means the 12 month period commencing on July 1 of any designated year and ending on the following June 30;

(16) 'Public schools' means all publicly supported schools, including normal schools, colleges and universities in this state;

(17) 'Regularly employed for full-time service' means employment in a regular position or job throughout the employment term regardless of the number of hours worked or the method of pay;

(18) 'Required beginning date' means April 1 of the calendar year following the later of: (A) The calendar year in which the member attains age 70 and one-half years; or (B) the calendar year in which the member retires or otherwise ceases employment with a participating employer after having attained the age of 70 and one-half years;

(19) 'Retirement' means a member's withdrawal from the active employment of a participating employer and completion of all conditions precedent to retirement;

(20) 'Year of employment service' means employment for at least 10 months, with a month being defined as 20 employment days: *Provided*, That no more than one year of service may be accumulated in any 12 month period.

#### **ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.**

##### **§18-8-4. Duties of attendance director and assistant directors; complaints, warrants and hearings.**

(a) The county attendance director and the assistants shall diligently promote regular school attendance. The director and assistants shall:

(1) Ascertain reasons for unexcused absences from school of students of compulsory school age and students who remain enrolled beyond the compulsory school age as defined under section one-a of this article;

(2) Take such steps as are, in their discretion, best calculated to encourage the attendance of students and to impart upon the parents and guardians the importance of attendance and the seriousness of failing to do so; and

(3) For the purposes of this article, the following definitions shall apply:

(A) 'Excused absence' shall be defined to include:

(i) Personal illness or injury of the student or in the family;

(ii) Personal illness or injury of the student's parent, guardian, custodian, or family member: *Provided*, That the excuse must provide reasonable explanation for why the student's absence was necessary and caused by the illness or injury in the family;

~~(iii)~~ Medical or dental appointment with written excuse from physician or dentist;

(iv) Chronic medical condition or disability that impacts attendance;

(v) Participation in home or hospital instruction due to an illness or injury or other extraordinary circumstance that warrants home or hospital confinement;

- (vi) Calamity, such as a fire or flood;
- (vii) Death in the family;
- (viii) School-approved or county-approved curricular or extra-curricular activities;
- ~~(ix) Judicial obligation or court appearance involving the student;~~
- (x) Military requirement for students enlisted or enlisting in the military;
- (xi) Personal or academic circumstances approved by the principal; and

(xii) Such other situations as may be further determined by the county board: *Provided*, That absences of students with disabilities shall be in accordance with the Individuals with Disabilities Education Improvement Act of 2004 and the federal and state regulations adopted in compliance therewith.

(B) 'Unexcused absence' shall be any absence not specifically included in the definition of 'excused absence'.

(b) In the case of three total unexcused absences of a student during a school year, the attendance director, or assistant, or principal shall ~~serve written notice to the parent, guardian or custodian of the student that the attendance of the student at school is required and that if the student has five unexcused absences, a conference with the principal or other designated representative will be required.~~ make meaningful contact with the parent, guardian, or custodian of the student to ascertain the reasons for the unexcused absences and what measures the school may employ to assist the student in attending and not incurring any additional unexcused absences.

(c) In the case of five total unexcused absences, the attendance director or assistant, or principal shall ~~serve written notice to the parent, guardian or custodian of the student that within five days of receipt of the notice the parent, guardian or custodian, accompanied by the student, shall report in person to the school the student attends for a conference with the principal or other designated representative of the school in order to discuss and correct the circumstances causing the unexcused absences of the student, including the adjustment of unexcused absences based upon such meeting.~~ again make meaningful contact with the parent, guardian, or custodian of the student to ascertain the reasons for the unexcused absences and what measures the school may employ to assist the student in attending school and not incurring any additional unexcused absences. Such measures may include, with approval of the principal, reducing the number of unexcused absences.

(d) In the case of 10 total unexcused absences of a student during a school year, the attendance director or assistant shall make a complaint against the parent, guardian, or custodian before a magistrate of the county. If it appears from the complaint that there is probable cause to believe that an offense has been committed and that the accused has committed it, a summons or a warrant for the arrest of the accused shall issue to any officer authorized by law to serve the summons or to arrest persons charged with offenses against the state. More than one parent, guardian, or custodian may be charged in a complaint. Initial service of a summons or warrant issued pursuant to the provisions of this section shall be attempted within 10 calendar days of receipt of the summons or warrant and subsequent attempts at service shall continue until the summons or warrant is executed or until the end of the school term during which the complaint is made, whichever is later.

(e) The magistrate court clerk, or the clerk of the circuit court performing the duties of the magistrate court as authorized in §50-1-8 of this code, shall assign the case to a magistrate within 10 days of execution of the summons or warrant. The hearing shall be held within 20 days of the



assignment to the magistrate, subject to lawful continuance. The magistrate shall provide to the accused at least 10 days' advance notice of the date, time, and place of the hearing.

(f) When any doubt exists as to the age of a student absent from school, the attendance director and assistants have authority to require a properly attested birth certificate or an affidavit from the parent, guardian, or custodian of the student, stating age of the student. In the performance of his or her duties, the county attendance director and assistants have authority to take without warrant any student absent from school in violation of the provisions of this article and to place the student in the school in which he or she is or should be enrolled.

(g) The county attendance director and assistants shall devote such time as is required by section three of this article to the duties of attendance director in accordance with this section during the instructional term and at such other times as the duties of an attendance director are required. All attendance directors and assistants hired for more than 200 days may be assigned other duties determined by the superintendent during the period in excess of 200 days. The county attendance director is responsible under direction of the county superintendent for efficiently administering school attendance in the county.

(h) In addition to those duties directly relating to the administration of attendance, the county attendance director and assistant directors also shall perform the following duties:

(1) Assist in directing the taking of the school census to see that it is taken at the time and in the manner provided by law;

(2) Confer with principals and teachers on the comparison of school census and enrollment for the detection of possible nonenrollees;

(3) Cooperate with existing state and federal agencies charged with enforcing child labor laws;

(4) Prepare a report for submission by the county superintendent to the State Superintendent of Schools on school attendance, at such times and in such detail as may be required. The state board shall promulgate a legislative rule pursuant to §29A-3B-1 *et seq.* of this code that sets forth student absences that are excluded for accountability purposes. The absences that are excluded by the rule include, but are not limited to, excused student absences, students not in attendance due to disciplinary measures, and absent students for whom the attendance director has pursued judicial remedies to compel attendance to the extent of his or her authority. The attendance director shall file with the county superintendent and county board at the close of each month a report showing activities of the school attendance office and the status of attendance in the county at the time;

(5) Promote attendance in the county by compiling data for schools and by furnishing suggestions and recommendations for publication through school bulletins and the press, or in such manner as the county superintendent may direct;

(6) Participate in school teachers' conferences with parents and students;

(7) Assist in such other ways as the county superintendent may direct for improving school attendance;

(8) Make home visits of students who have excessive unexcused absences, as provided above, or if requested by the chief administrator, principal, or assistant principal; and

(9) Serve as the liaison for homeless children and youth.

**ARTICLE 9A. PUBLIC SCHOOL SUPPORT.****§18-9A-2. Definitions.**

For the purpose of this article:

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

(b) 'County board' or 'board' means a county board of education.

(c) 'Professional salaries' means the state legally mandated salaries of the professional educators as provided in §18-4-1 *et seq.* of this code.

(d) 'Professional educator' shall be synonymous with and shall have the same meaning as 'teacher' as defined in §18-1-1 of this code, and includes technology integration specialists.

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

(f) 'Professional student support personnel' means a 'teacher' as defined in §18-1-1 of this code who is assigned and serves on a regular full-time basis as a counselor or as a school nurse with a bachelor's degree and who is licensed by the West Virginia Board of Examiners for Registered Professional Nurses. Professional student support personnel shall also include professional personnel providing direct social and emotional support services to students, including but not limited to, social workers and psychologists. For all purposes except for the determination of the allowance for professional educators pursuant to section four of this article, professional student support personnel are professional educators.

(g) 'Service personnel salaries' means the state legally mandated salaries for service personnel as provided in §18A-4-8a of this code.

(h) 'Service personnel' means all personnel as provided in §18A-4-8 of this code. For the purpose of computations under this article of ratios of service personnel to net enrollment, a service employee shall be counted as that number found by dividing his or her number of employment days in a fiscal year by 200: Provided, That the computation for any service person employed for three and one-half hours or less per day as provided in §18A-4-8a of this code shall be calculated as one half an employment day.

(i) 'Net enrollment' means the number of pupils enrolled in special education programs, kindergarten programs, and grades one to twelve, inclusive, of the public schools of the county. Net enrollment further shall include:

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

(A) Net enrollment includes no more than ~~4,000~~ 2,500 of those adults counted on the basis of full-time equivalency and apportioned annually to each county to support Advanced Career Education programs, as provided in §18-2E-11 of this code, in proportion to the adults participating in regular secondary vocational programs in the prior year counted on the basis of full-time equivalency: Provided, That beginning with the 2021 fiscal year and every year thereafter, a career technical

education center may only receive the funding for enrollment as authorized by this paragraph if the center has satisfied the requirements of §18-2E-11 of this code; and

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

(2) Students enrolled in early childhood education programs as provided in §18-5-44 of this code, counted on the basis of full-time equivalency;

(3) ~~No pupil shall~~ A pupil may not be counted more than once by reason of transfer within the county or from another county within the state, and no pupil shall be counted who attends school in this state from another state;

(4) The enrollment shall be modified to the equivalent of the instructional term and in accordance with the eligibility requirements and rules established by the state board; and

(5) ~~For the purposes of determining the county's basic foundation program only~~ For any county whose net enrollment as determined under all other provisions of this definition is less than 1,400, the net enrollment of the county shall be increased by an amount to be determined in accordance with the following ~~considered to be 1,400 for the purposes of determining the county's basic foundation program only. During the 2019-2020 interim period and every three interim periods thereafter, the Legislative Oversight Commission on Education Accountability shall review this subdivision to determine whether or not these provisions properly address the needs of counties with low enrollment and sparse population density.~~

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

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

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

~~(D) During the 2008-2009 interim period and every three interim periods thereafter, the Legislative Oversight Commission on Education Accountability shall review this subdivision to determine whether or not these provisions properly address the needs of counties with low enrollment and a sparse population density.~~

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

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

(l) 'Medium-density county' means a county whose ratio of net enrollment, excluding any increase in the net enrollment of counties, pursuant to subdivision (5), subsection (i) of this section, of the

definition of 'net enrollment', to the square miles of the county is equal to or greater than 10 but less than 20.

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

(n) 'Levies for general current expense purposes' means 90 percent of the levy rate for county boards of education ~~calculated or set by the Legislature as established in pursuant to §11-8-6f of this code.~~ The levy rate shall be assumed to be the rate established in that section and not an increased rate established by a county board.

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

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

(q) The amendments to this section during the 2019 regular session of the Legislature shall be effective for school years beginning on or after July 1, 2019, and the provisions of this section existing immediately prior to the 2019 regular session of the Legislature remain in effect for school years beginning prior to July 1, 2019.

#### **§18-9A-8. Foundation allowance for professional student support services.**

(a) The basic foundation allowance to the county for professional student support personnel shall be the amount of money determined in accordance with the following:

(1) The sum of the state minimum salaries, as determined in accordance with the provisions of §18-4-1 *et seq* of this code, for all state aid eligible school nurse and counselor positions in the county during the 2008 fiscal year which number shall be reduced in the same proportion as the number of professional educators allowed to be funded under §18-9A-4 of this code to the total number of professional educators employed that are state aid eligible. In performing this calculation, the numerator shall be the number of professional educators actually funded under section four of this article and the denominator shall be the total number of professional educators employed that are eligible to be funded under §18-9A-4 of this code;

(2) The amount derived from the calculation in §18-9A-8(a)(1) of this code is increased by one half percent;

(3) The amount derived from the calculation in §18-9A-8(a)(2) of this code is the basic foundation allowance to the county for professional student support personnel for the 2009 fiscal year;

(4) For fiscal years 2010, 2011, 2012 and 2013, the basic foundation allowance to the county for professional student support personnel increases by one-half percent per year over the allowance for the previous year; and

(5) For all fiscal years thereafter until fiscal year 2020, the basic foundation allowance to the county for professional student support personnel remains the same amount as in the 2013 fiscal year, plus any additional amount of funding necessary to cover the increases in the State Minimum

Salary Schedule set forth in §18A-4-2 of this code effective for the fiscal year beginning July 1, 2018, and thereafter.

(b) The additional positions for counselors that may be created as a result of the one percent increase provided pursuant to this section shall be assigned to schools where the counselor can:

- (1) Enhance student achievement;
- (2) Provide early intervention for students in grades prekindergarten through five; and
- (3) Enhance student development and career readiness.

(c) Effective for the 2019-20 fiscal year and thereafter, the basic foundation allowance to the county for professional student support personnel is the amount of money required to pay the state minimum salaries, in accordance with provisions of §18A-4-1 et seq. of this code, subject to the following:

(1) In making this computation, each county shall receive an allowance for four and seventy hundredths state aid eligible professional student support personnel positions to each 1,000 students in net enrollment;

(2) For any professional student support personnel positions, or fraction thereof, determined for a county pursuant to §18-9A-8(c)(1) of this code that exceed the number employed, the county's allowance for these positions shall be determined using the average state funded salary of professional student support personnel for the county;

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

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

(5) For the 2019-20 fiscal year only, the number of positions funded for each county by subdivision (1) cannot be less than the number of positions that would have been funded in accordance with the previous methodology for determining the number of professional student support personnel positions funded for each county.

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

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

- (1) For current expense:

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

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

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

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

(E) Each county's allowance for current expense is 70.25% of the county's state average costs per square footage per student for operations and maintenance amount as calculated in paragraph (C) of this subdivision: Provided, That effective July 1, 2019, each county's allowance for current expense is 71.25 percent of the county's state average costs per square footage per student for operations and maintenance amount as calculated in paragraph (c) of this subdivision; plus

(2) For professional educator substitutes or current expense, two and five-tenths percent of the computed state allocation for professional educators and professional student support personnel as determined in sections four and eight of this article. Distribution to the counties is made proportional to the number of professional educators and professional student support personnel authorized for the county in compliance with sections four and eight of this article; plus

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

(4) For academic materials, supplies, and equipment for use in instructional programs, \$200 multiplied by the number of professional instructional personnel and professional student support personnel employed in the schools of the county. Distribution is made to each county for allocation to the faculty senate of each school in the county on the basis of \$200 per professional instructional personnel employed at the school. 'Faculty Senate' means a faculty senate created pursuant to §18-5A-5 of this code. Decisions for the expenditure of such funds are made at the school level by the faculty senate in accordance with the provisions of ~~said~~ §18-5A-5 of this code and may not be used to supplant the current expense expenditures of the county. Beginning on September 1, 1994, and every September thereafter, county boards shall forward to each school for the use by faculty senates the appropriation specified in this section. Each school shall be responsible for keeping accurate records of expenditures.

#### **§18-9A-12. County basic foundation; total basic state aid allowance.**

(a) The basic foundation program for each county for the fiscal year shall be the sum of the amounts computed in accordance with the provisions of sections four, five, six, seven, eight, nine, and ten of this article. On the first working day of July in each year, the State Board shall determine the basic foundation program for each county for that fiscal year. Data used in the computations relating to net and adjusted enrollment, and the number of professional educators, shall be for the second month of the prior school term. Transportation expenditures used in these computations shall be for the most recent year in which data are available. The allocated state aid share of the county's

basic foundation program shall be the difference between the cost of its basic foundation program and the county's local share as determined in §18-9A-11 of this code except as provided in subsection (b) of this section: Provided, That for all fiscal years after 2018-2019, in calculating the allocated state aid share of the county's basic foundation program, when subtracting the amount of the county's local share, if the county's local share as determined in §18-9A-11 of this code is greater than the county's local share was determined to be for fiscal year 2015-2016, then the allocated state aid share of the county's basic foundation program shall be the difference between the cost of its basic foundation program and the county's 2015-2016 determined local share.

(b) The allocated state aid share shall be adjusted in the following circumstances in the following manner: *Provided*, That prior to such adjustment, the State Tax Commissioner shall provide the State Board, by January 15 of each year, a certified listing of those counties in which such adjustment shall be made pursuant to this subsection, together with the amount of revenue which will not be available to each county board in the ensuing fiscal year as a result of the circumstance:

(1) In those instances where the local share as computed under §18-9A-11 of this code is not reflective of local funds available because the county is under a final court order, or a final decision of a board of assessment appeals under §11-3-24b of this code, to refund or credit property taxes paid in prior years, the allocated state aid share shall be the county's basic foundation program, minus the local share as computed under §18-9A-11 of this code, plus the amount of property tax the county is unable to collect or must refund due to the final court order or final decision of a board of assessment appeals: *Provided*, That said adjustment shall not be made or shall only be made proportionately when the Legislature fails to fund, or funds only in part, the public school basic foundation support plan state share at a level sufficient to cover the reduction in state share: *Provided, however*, That nothing herein provided shall be construed to require or mandate any level of funding by the Legislature.

(2) In those instances where the local share as computed under §18-9A-11 of this code is not reflective of local funds available because the county is collecting tax based upon an assessed value which is less than that determined by the tax commissioner in the most recent published survey of property valuations in the state due to an error in the published survey, which error is certified to by the tax commissioner, the allocated state aid share shall be the county's basic foundation program, minus the local share as computed under §18-9A-11 of this code, plus the amount of property tax the county is unable to collect based on differences in the assessed valuation between those in the most recent published survey of valuation and the corrected assessed value actually levied upon by the county: *Provided*, That said adjustment shall not be made or shall only be made proportionately when the Legislature fails to fund or funds only in part the public school basic foundation support plan state share at a level sufficient to cover the reduction in state share: *Provided, however*, That nothing herein provided shall be construed to require or mandate any level of funding by the Legislature.

(3) In instances where a county is unable to collect property taxes from a taxpayer during the pendency of any court proceeding, the allocated state aid share shall be the county's basic foundation program minus the local share as computed under §18-9A-11 of this code, plus the amount the county is unable to collect as a result of the pending court proceedings as certified by the tax commissioner: *Provided*, That the county is required to reimburse the amount of allocated state aid share attributable to the amount of property tax it later receives upon completion of court proceedings, which shall be paid into the General Revenue Fund of the state: *Provided, however*, That said adjustment shall not be made or shall only be made proportionately when the Legislature fails to fund or funds only in part the public school basic foundation support plan state share at a level sufficient to cover the reduction in state share: *Provided further*, That nothing herein provided shall be construed to require or mandate any level of funding by the Legislature.

(c) The allocated state aid share shall be adjusted in any county receiving payments or contributions in lieu of property taxes. In instances where a county receives payments or contributions in lieu of property taxes, the allocated state aid share shall be the county's basic foundation program minus the local share as computed under §18-9A-11 of this code, plus any amounts added pursuant to subsection (b) of this section minus the payments or contributions in lieu of property taxes which are distributed by the sheriff to the county board of education. In determining the amount of such contribution or payment in lieu of taxes, each county commission shall provide to the State Tax Commissioner, by January 1 of each year, the total amount of such payments or contributions paid to the county and the proportion of the total amount that has been or will be distributed to the county board of education. The State Tax Commissioner then shall provide the State Board, by January 15 of each year, a certified listing of those counties in which an adjustment pursuant to this section shall be made, together with the amount of revenue which will be available to each county board in the ensuing fiscal year as a result of contribution or payment in lieu of taxes.

(d) Total basic state aid to the county shall be the computed state share of basic foundation support. After such computation is completed, the State Board shall immediately certify to each county board the amount of state aid allocated to the county for that fiscal year, subject to any qualifying provisions of this article.

## **ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.**

### **§18-20-5. Powers and duties of state superintendent.**

(a) The State Superintendent of Schools shall organize, promote, administer, and be responsible for:

(1) Stimulating and assisting county boards of ~~education~~ in establishing, organizing, and maintaining special schools, classes, regular class programs, home-teaching, and visiting-teacher services for exceptional children.

(2) Cooperating with all other public and private agencies engaged in relieving, caring for, curing, educating, and rehabilitating exceptional children, and in helping coordinate the services of such agencies.

(3) (A) Preparing the necessary rules, policies, ~~formula~~ and formulas for distribution of available appropriated funds, reporting forms, and procedures necessary to define minimum standards in providing suitable facilities for education of exceptional children and ensuring the employment, certification, and approval of qualified teachers and therapists subject to approval by the State Board of Education: *Provided*, That no state rule, policy, or standard under this article or any county board rule, policy, or standard governing special education may exceed the requirements of federal law or regulation.

(B) ~~An A~~ A separate appropriation shall be made to the Department of Education to be ~~distributed~~ disbursed to county boards and public charter schools authorized pursuant to §18-5G-1 et seq. of this code to ~~support children~~ assist them with serving exceptional children with high cost/high acuity special needs that exceed the capacity of county to provide with funds available. Each county board and public charter school shall apply to the state superintendent ~~for receipt of~~ to receive this funding in a manner set forth by the state superintendent that assesses and takes into account varying acuity levels of the exceptional students. Any remaining funds at the end of a fiscal year from the appropriation shall be carried over to the next fiscal year. When possible, federal funds shall be ~~distributed~~ disbursed to county boards and public charter schools for this purpose before any of the state appropriation is ~~distributed~~ disbursed. The state board shall promulgate a rule in



accordance with the provisions of §29A-3B-1 *et seq.* of this code that implements the provisions of this subdivision relating to ~~distributing~~ disbursing the funds to the county boards and public charter schools. The rule at least shall include a definition for 'children with high acuity needs'.

(4) Receiving from county boards ~~of education~~ and public charter schools, their applications, annual reports, and claims for reimbursement from such moneys as are appropriated by the Legislature, auditing such claims, and preparing vouchers to reimburse said counties the amounts reimbursable to them.

(5) Assuring that all exceptional children in the state, including children in mental health facilities, residential institutions, private schools and correctional facilities as provided in §18-2-13f of this code receive an education in accordance with state and federal laws: *Provided*, That the state superintendent shall also assure that adults in correctional facilities and regional jails receive an education to the extent funds are provided therefor.

(6) Performing other duties and assuming other responsibilities in connection with this program as needed.

~~(7) Receive the county plan for integrated classroom submitted by the county boards of education and submit a state plan, approved by the State Board of Education, to the Legislative Oversight Commission on Education Accountability no later than December 1, 1995~~

(b) Nothing contained in this section shall be construed to prevent any county board of ~~education~~ from establishing and maintaining special schools, classes, regular class programs, home-teaching, or visiting-teacher services for exceptional children out of funds available from local revenue.

## CHAPTER 18A. SCHOOL PERSONNEL.

### ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

#### §18A-4-2. State minimum salaries for teachers.

(a) It is the goal of the Legislature to increase the state minimum salary for teachers with zero years of experience and an A. B. degree, including the equity supplement, to at least \$43,000 by fiscal year 2019.

(b) For school year 2018–2019, ~~and continuing thereafter~~, each teacher shall receive the amount prescribed in the State Minimum Salary Schedule I as set forth in this section; specific additional amounts prescribed in this section or article; and any county supplement in effect in a county pursuant to §18A-4-5a of this code during the contract year: *Provided, That for the school year 2019-2020, and continuing thereafter, each teacher shall receive the amount prescribed in the State Minimum Salary Schedule II as set forth in this section; specific additional amounts prescribed in this section or article; and any county supplement in effect in a county pursuant to §18A-4-5a of this code during the contract year.*

## STATE MINIMUM SALARY SCHEDULE I

Years Exp	4 <sup>th</sup> Class	3 <sup>rd</sup> Class	2 <sup>nd</sup> Class	A.B.	A.B. + 15	M.A.	M.A. + 15	M.A. + 30	M.A. + 45	Doc- torate
0	29,937	30,626	30,892	32,335	33,096	34,863	35,624	36,385	37,146	38,181
1	30,265	30,954	31,220	32,853	33,614	35,382	36,143	36,903	37,664	38,699
2	30,594	31,282	31,548	33,372	34,133	35,900	36,661	37,422	38,183	39,218
3	30,922	31,610	31,876	33,891	34,651	36,419	37,180	37,940	38,701	39,736
4	31,494	32,182	32,448	34,653	35,414	37,182	37,943	38,703	39,464	40,499
5	31,822	32,510	32,776	35,172	35,933	37,700	38,461	39,222	39,983	41,018
6	32,150	32,838	33,104	35,690	36,451	38,219	38,980	39,740	40,501	41,536
7	32,478	33,167	33,432	36,209	36,970	38,737	39,498	40,259	41,020	42,055
8	32,806	33,495	33,761	36,727	37,488	39,256	40,017	40,777	41,538	42,573
9	33,134	33,823	34,089	37,246	38,007	39,774	40,535	41,296	42,057	43,092
10	33,463	34,151	34,417	37,766	38,526	40,294	41,055	41,816	42,576	43,611
11	33,791	34,479	34,745	38,284	39,045	40,813	41,573	42,334	43,095	44,130
12	34,119	34,807	35,073	38,803	39,563	41,331	42,092	42,853	43,613	44,648
13	34,447	35,135	35,401	39,321	40,082	41,850	42,610	43,371	44,132	45,167
14	34,775	35,463	35,729	39,840	40,600	42,368	43,129	43,890	44,650	45,685
15	35,103	35,791	36,057	40,358	41,119	42,887	43,647	44,408	45,169	46,204
16	35,431	36,119	36,385	40,877	41,637	43,405	44,166	44,927	45,687	46,722
17	35,759	36,448	36,713	41,395	42,156	43,924	44,685	45,445	46,206	47,241
18	36,087	36,776	37,042	41,914	42,675	44,442	45,203	45,964	46,725	47,760
19	36,415	37,104	37,370	42,432	43,193	44,961	45,722	46,482	47,243	48,278
20	36,743	37,432	37,698	42,951	43,712	45,479	46,240	47,001	47,762	48,797
21	37,072	37,760	38,026	43,469	44,230	45,998	46,759	47,519	48,280	49,315
22	37,400	38,088	38,354	43,988	44,749	46,516	47,277	48,038	48,799	49,834
23	37,728	38,416	38,682	44,507	45,267	47,035	47,796	48,556	49,317	50,352
24	38,056	38,744	39,010	45,025	45,786	47,554	48,314	49,075	49,836	50,871

25	38,384	39,072	39,338	45,544	46,304	48,072	48,833	49,594	50,354	51,389
26	38,712	39,400	39,666	46,062	46,823	48,591	49,351	50,112	50,873	51,908
27	39,040	39,728	39,994	46,581	47,341	49,109	49,870	50,631	51,391	52,426
28	39,368	40,057	40,322	47,099	47,860	49,628	50,388	51,149	51,910	52,945
29	39,696	40,385	40,651	47,618	48,378	50,146	50,907	51,668	52,428	53,463
30	40,024	40,713	40,979	48,136	48,897	50,665	51,425	52,186	52,947	53,982
31	40,353	41,041	41,307	48,655	49,416	51,183	51,944	52,705	53,465	54,500
32	40,681	41,369	41,635	49,173	49,934	51,702	52,463	53,223	53,984	55,019
33	41,009	41,697	41,963	49,692	50,453	52,220	52,981	53,742	54,503	55,538
34	41,337	42,025	42,291	50,210	50,971	52,739	53,500	54,260	55,021	56,056
35	41,665	42,353	42,619	50,729	51,490	53,257	54,018	54,779	55,540	56,575

STATE MINIMUM SALARY SCHEDULE II

<u>Years</u>	<u>4<sup>th</sup></u>	<u>3<sup>rd</sup></u>	<u>2<sup>nd</sup></u>	<u>A.B.</u>	<u>A.B.</u>	<u>M.A.</u>	<u>M.A.</u>	<u>MA.</u>	<u>M.A.</u>	<u>Doc-</u>
<u>Exp.</u>	<u>Class</u>	<u>Class</u>	<u>Class</u>		<u>+15</u>		<u>+15</u>	<u>+30</u>	<u>+45</u>	<u>torate</u>
<u>0</u>	<u>32,057</u>	<u>32,746</u>	<u>33,012</u>	<u>34,455</u>	<u>35,216</u>	<u>36,983</u>	<u>37,744</u>	<u>38,505</u>	<u>39,266</u>	<u>40,301</u>
<u>1</u>	<u>32,385</u>	<u>33,074</u>	<u>33,340</u>	<u>34,973</u>	<u>35,734</u>	<u>37,502</u>	<u>38,263</u>	<u>39,023</u>	<u>39,784</u>	<u>40,819</u>
<u>2</u>	<u>32,714</u>	<u>33,402</u>	<u>33,668</u>	<u>35,492</u>	<u>36,253</u>	<u>38,020</u>	<u>38,781</u>	<u>39,542</u>	<u>40,303</u>	<u>41,338</u>
<u>3</u>	<u>33,042</u>	<u>33,730</u>	<u>33,996</u>	<u>36,011</u>	<u>36,771</u>	<u>38,539</u>	<u>39,300</u>	<u>40,060</u>	<u>40,821</u>	<u>41,856</u>
<u>4</u>	<u>33,614</u>	<u>34,302</u>	<u>34,568</u>	<u>36,773</u>	<u>37,534</u>	<u>39,302</u>	<u>40,063</u>	<u>40,823</u>	<u>41,584</u>	<u>42,619</u>
<u>5</u>	<u>33,942</u>	<u>34,630</u>	<u>34,896</u>	<u>37,292</u>	<u>38,053</u>	<u>39,820</u>	<u>40,581</u>	<u>41,342</u>	<u>42,103</u>	<u>43,138</u>
<u>6</u>	<u>34,270</u>	<u>34,958</u>	<u>35,224</u>	<u>37,810</u>	<u>38,571</u>	<u>40,339</u>	<u>41,100</u>	<u>41,860</u>	<u>42,621</u>	<u>43,656</u>
<u>7</u>	<u>34,598</u>	<u>35,287</u>	<u>35,552</u>	<u>38,329</u>	<u>39,090</u>	<u>40,857</u>	<u>41,618</u>	<u>42,379</u>	<u>43,140</u>	<u>44,175</u>
<u>8</u>	<u>34,926</u>	<u>35,615</u>	<u>35,881</u>	<u>38,847</u>	<u>39,608</u>	<u>41,376</u>	<u>42,137</u>	<u>42,897</u>	<u>43,658</u>	<u>44,693</u>
<u>9</u>	<u>35,254</u>	<u>35,943</u>	<u>36,209</u>	<u>39,366</u>	<u>40,127</u>	<u>41,894</u>	<u>42,655</u>	<u>43,416</u>	<u>44,177</u>	<u>45,212</u>
<u>10</u>	<u>35,583</u>	<u>36,271</u>	<u>36,537</u>	<u>39,886</u>	<u>40,646</u>	<u>42,414</u>	<u>43,175</u>	<u>43,936</u>	<u>44,696</u>	<u>45,731</u>
<u>11</u>	<u>35,911</u>	<u>36,599</u>	<u>36,865</u>	<u>40,404</u>	<u>41,165</u>	<u>42,933</u>	<u>43,693</u>	<u>44,454</u>	<u>45,215</u>	<u>46,250</u>
<u>12</u>	<u>36,239</u>	<u>36,927</u>	<u>37,193</u>	<u>40,923</u>	<u>41,683</u>	<u>43,451</u>	<u>44,212</u>	<u>44,973</u>	<u>45,733</u>	<u>46,768</u>
<u>13</u>	<u>36,567</u>	<u>37,255</u>	<u>37,521</u>	<u>41,441</u>	<u>42,202</u>	<u>43,970</u>	<u>44,730</u>	<u>45,491</u>	<u>46,252</u>	<u>47,287</u>

<u>14</u>	<u>36,895</u>	<u>37,583</u>	<u>37,849</u>	<u>41,960</u>	<u>42,720</u>	<u>44,488</u>	<u>45,249</u>	<u>46,010</u>	<u>46,770</u>	<u>47,805</u>
<u>15</u>	<u>37,223</u>	<u>37,911</u>	<u>38,177</u>	<u>42,478</u>	<u>43,239</u>	<u>45,007</u>	<u>45,767</u>	<u>46,528</u>	<u>47,289</u>	<u>48,324</u>
<u>16</u>	<u>37,551</u>	<u>38,239</u>	<u>38,505</u>	<u>42,997</u>	<u>43,757</u>	<u>45,525</u>	<u>46,286</u>	<u>47,047</u>	<u>47,807</u>	<u>48,842</u>
<u>17</u>	<u>37,879</u>	<u>38,568</u>	<u>38,833</u>	<u>43,515</u>	<u>44,276</u>	<u>46,044</u>	<u>46,805</u>	<u>47,565</u>	<u>48,326</u>	<u>49,361</u>
<u>18</u>	<u>38,207</u>	<u>38,896</u>	<u>39,162</u>	<u>44,034</u>	<u>44,795</u>	<u>46,562</u>	<u>47,323</u>	<u>48,084</u>	<u>48,845</u>	<u>49,880</u>
<u>19</u>	<u>38,535</u>	<u>39,224</u>	<u>39,490</u>	<u>44,552</u>	<u>45,313</u>	<u>47,081</u>	<u>47,842</u>	<u>48,602</u>	<u>49,363</u>	<u>50,398</u>
<u>20</u>	<u>38,863</u>	<u>39,552</u>	<u>39,818</u>	<u>45,071</u>	<u>45,832</u>	<u>47,599</u>	<u>48,360</u>	<u>49,121</u>	<u>49,882</u>	<u>50,917</u>
<u>21</u>	<u>39,192</u>	<u>39,880</u>	<u>40,146</u>	<u>45,589</u>	<u>46,350</u>	<u>48,118</u>	<u>48,879</u>	<u>49,639</u>	<u>50,400</u>	<u>51,435</u>
<u>22</u>	<u>39,520</u>	<u>40,208</u>	<u>40,474</u>	<u>46,108</u>	<u>46,869</u>	<u>48,636</u>	<u>49,397</u>	<u>50,158</u>	<u>50,919</u>	<u>51,954</u>
<u>23</u>	<u>39,848</u>	<u>40,536</u>	<u>40,802</u>	<u>46,627</u>	<u>47,387</u>	<u>49,155</u>	<u>49,916</u>	<u>50,676</u>	<u>51,437</u>	<u>52,472</u>
<u>24</u>	<u>40,176</u>	<u>40,864</u>	<u>41,130</u>	<u>47,145</u>	<u>47,906</u>	<u>49,674</u>	<u>50,434</u>	<u>51,195</u>	<u>51,956</u>	<u>52,991</u>
<u>25</u>	<u>40,504</u>	<u>41,192</u>	<u>41,458</u>	<u>47,664</u>	<u>48,424</u>	<u>50,192</u>	<u>50,953</u>	<u>51,714</u>	<u>52,474</u>	<u>53,509</u>
<u>26</u>	<u>40,832</u>	<u>41,520</u>	<u>41,786</u>	<u>48,182</u>	<u>48,943</u>	<u>50,711</u>	<u>51,471</u>	<u>52,232</u>	<u>52,993</u>	<u>54,028</u>
<u>27</u>	<u>41,160</u>	<u>41,848</u>	<u>42,114</u>	<u>48,701</u>	<u>49,461</u>	<u>51,229</u>	<u>51,990</u>	<u>52,751</u>	<u>53,511</u>	<u>54,546</u>
<u>28</u>	<u>41,488</u>	<u>42,177</u>	<u>42,442</u>	<u>49,219</u>	<u>49,980</u>	<u>51,748</u>	<u>52,508</u>	<u>53,269</u>	<u>54,030</u>	<u>55,065</u>
<u>29</u>	<u>41,816</u>	<u>42,505</u>	<u>42,771</u>	<u>49,738</u>	<u>50,498</u>	<u>52,266</u>	<u>53,027</u>	<u>53,788</u>	<u>54,548</u>	<u>55,583</u>
<u>30</u>	<u>42,144</u>	<u>42,833</u>	<u>43,099</u>	<u>50,256</u>	<u>51,017</u>	<u>52,785</u>	<u>53,545</u>	<u>54,306</u>	<u>55,067</u>	<u>56,102</u>
<u>31</u>	<u>42,473</u>	<u>43,161</u>	<u>43,427</u>	<u>50,775</u>	<u>51,536</u>	<u>53,303</u>	<u>54,064</u>	<u>54,825</u>	<u>55,585</u>	<u>56,620</u>
<u>32</u>	<u>42,801</u>	<u>43,489</u>	<u>43,755</u>	<u>51,293</u>	<u>52,054</u>	<u>53,822</u>	<u>54,583</u>	<u>55,343</u>	<u>56,104</u>	<u>57,139</u>
<u>33</u>	<u>43,129</u>	<u>43,817</u>	<u>44,083</u>	<u>51,812</u>	<u>52,573</u>	<u>54,340</u>	<u>55,101</u>	<u>55,862</u>	<u>56,623</u>	<u>57,658</u>
<u>34</u>	<u>43,457</u>	<u>44,145</u>	<u>44,411</u>	<u>52,330</u>	<u>53,091</u>	<u>54,859</u>	<u>55,620</u>	<u>56,380</u>	<u>57,141</u>	<u>58,176</u>
<u>35</u>	<u>43,785</u>	<u>44,473</u>	<u>44,739</u>	<u>52,849</u>	<u>53,610</u>	<u>55,377</u>	<u>56,138</u>	<u>56,899</u>	<u>57,660</u>	<u>58,695</u>

(c) Six hundred dollars shall be paid annually to each classroom teacher who has at least 20 years of teaching experience. The payments: (i) Shall be in addition to any amounts prescribed in the applicable State Minimum Salary Schedule; (ii) shall be paid in equal monthly installments; and (iii) shall be considered a part of the state minimum salaries for teachers.

(d) Effective July 1, 2020, each classroom teacher providing math instruction in the teacher's certified area of study for at least 60 percent of the time the teacher is providing instruction to students shall be considered to have three additional years of experience only for the purposes of the salary schedule set forth in §18A-4-2(b) of this code.

~~(d) (e) To meet the objective of salary equity among the counties as set forth in §18A-4-5 of this code, In accordance with §18A-4-5 of this code, each teacher shall be paid an equity the supplement~~

amount as applicable for his or her classification of certification or classification of training and years of experience as follows, subject to the provisions of that section:

(1) For '4th Class' at zero years of experience, \$1,781. An additional \$38 shall be paid for each year of experience up to and including 35 years of experience;

(2) For '3rd Class' at zero years of experience, \$1,796. An additional \$67 shall be paid for each year of experience up to and including 35 years of experience;

(3) For '2nd Class' at zero years of experience, \$1,877. An additional \$69 shall be paid for each year of experience up to and including 35 years of experience;

(4) For 'A. B.' at zero years of experience, \$2,360. An additional \$69 shall be paid for each year of experience up to and including 35 years of experience;

(5) For 'A. B. + 15' at zero years of experience, \$2,452. An additional \$69 shall be paid for each year of experience up to and including 35 years of experience;

(6) For 'M. A.' at zero years of experience, \$2,644. An additional \$69 shall be paid for each year of experience up to and including 35 years of experience;

(7) For 'M. A. + 15' at zero years of experience, \$2,740. An additional \$69 shall be paid for each year of experience up to and including 35 years of experience;

(8) For 'M. A. + 30' at zero years of experience, \$2,836. An additional \$69 shall be paid for each year of experience up to and including 35 years of experience;

(9) For 'M. A. + 45' at zero years of experience, \$2,836. An additional \$69 shall be paid for each year of experience up to and including 35 years of experience; and

(10) For 'Doctorate' at zero years of experience, \$2,927. An additional \$69 shall be paid for each year of experience up to and including 35 years of experience.

These payments: (i) Shall be in addition to any amounts prescribed in the applicable State Minimum Salary Schedule, any specific additional amounts prescribed in this section and article and any county supplement in effect in a county pursuant to §18A-4-5a of this code; (ii) shall be paid in equal monthly installments; and (iii) shall be considered a part of the state minimum salaries for teachers.

#### **§18A-4-2d. Mathematics teacher incentive.**

(a) The Legislature recognizes that receiving quality math instruction is vital to a student's post-secondary success and that there is a shortage of certified math teachers to provide such instruction.

(b) To ensure that students are receiving the appropriate level of math instruction that will enable post-secondary success, the Department of Education shall develop or approve specialized mathematics courses and make the courses available to classroom teachers.

(c) Effective July 1, 2019, a classroom teacher who completes a specialized mathematics course established or approved pursuant to this section by May 1 of the fiscal year shall receive a one-time payment of \$2,000 from the Mathematics Incentive Program line item established for the Department of Education for this purpose, subject to appropriation by the Legislature. If the appropriations to the

Department of Education for this purpose are insufficient to compensate all applicable teachers, the Department of Education shall request a supplemental appropriation in an amount sufficient to compensate all such teachers. Additionally, if funds are still insufficient to compensate all applicable teachers, each applicable teacher shall receive their proportionate share of the funding available for the year. This one-time payment may not be counted as part of the teacher's average final salary for the purpose of calculating retirement and no retirement contribution will be withheld from the payment.

(d) A classroom teacher who completes the mathematics enrichment course established or approved by the Department of Education after May 1 of the fiscal year shall receive the one-time payment described in subsection (a) of this section during the subsequent fiscal year, subject to appropriation by the Legislature.

(e) The one-time payment provided for in this section may only be paid to a classroom teacher providing math instruction in the teacher's certified area of study for at least 60 percent of the time the teacher is providing instruction to students.

#### **§18A-4-5. Salary equity among the counties; state salary supplement.**

~~(a) For the purposes of this section, salary equity among the counties means that the salary potential of school employees employed by the various districts throughout the state does not differ by greater than ten percent between those offering the highest salaries and those offering the lowest salaries. In the case of professional educators, the difference shall be calculated using the average of the professional educator salary schedules, degree classifications B. A. through doctorate and the years of experience provided in the most recent state minimum salary schedule for teachers, in effect in the ten counties offering the highest salary schedules compared to the lowest salary schedule in effect among the fifty-five counties. In the case of school service personnel, the difference shall be calculated utilizing the average of the school service personnel salary schedules, pay grades A through H and the years of experience provided in the most recent state minimum pay scale pay grade for service personnel, in effect in the ten counties offering the highest salary schedules compared to the lowest salary schedule in effect among the fifty-five counties.~~

(a) The Legislature recognizes its constitutional responsibility to provide for a thorough and efficient system of education. To carry out this responsibility the Legislature enacted, and continues to update, as necessary, the public school support program as set forth in §18-9A-1, et seq. The public school support program is a non-discriminatory funding mechanism for financing the educational system in this state as it takes into account each county's specific characteristics, and ensures that all counties are provided equitable funding.

(b) The Legislature further finds that the purpose of the public school support program is not to deter counties from growing economically or from using county resources in a manner that best meets their specific educational needs and the desires of their citizens. To that end, counties must have the discretion and flexibility to use local county funds, not otherwise factored into the public school support program, to provide the best education possible to their students, including, but not limited to, providing salary supplements to teachers.

~~(b) (c) To meet the objective of salary equity among the counties, as defined in subsection (a) of this section, on and after July 1, 1984, subject to available state appropriations and the conditions set forth herein, each teacher and school service personnel shall receive an equity supplement amount as specified in sections two and eight-a, respectively, of this article in addition to the amount from the State Minimum Salary Schedules provided in those sections. State funds for this purpose shall be paid within the West Virginia public school support plan in accordance with §18-9A-1 et seq. of this code. The amount allocated for this supplement shall be apportioned between~~

teachers and school service personnel in direct proportion to that amount necessary to support the professional salaries and service personnel salaries statewide under §18-9A-4, §18-9A-5, and §18-9A-8 of this code.

~~(c) State funds for this purpose shall be paid within the West Virginia public school support plan in accordance with article nine-a, chapter eighteen of this code. The amount allocated for salary equity shall be apportioned between teachers and school service personnel in direct proportion to that amount necessary to support the professional salaries and service personnel salaries statewide under sections four, five and eight, article nine-a, chapter eighteen of this code. In the event the Department of Education determines that the objective of salary equity among the counties has not been met, it shall include in its budget request for the public school support plan for the next school year a request for funding sufficient to meet the objective of salary equity through an across-the-board increase in the equity supplement amount of the affected class of employees.~~

(d) Pursuant to this section, each teacher and service person shall receive from state funds the equity supplement amount indicated in ~~subsection (c), section two and subsection (f), section eight-a of this article §18A-4-2 and §18A-4-8a of this code,~~ as applicable, reduced by any amount provided by the county as a salary supplement for teachers and school service personnel on January 1, 1984.

(e) The amount received pursuant to this section shall not be decreased as a result of any county supplement increase instituted after January 1, 1984: *Provided,* That any amount received pursuant to this section may be reduced proportionately based upon the amount of funds appropriated for this purpose. No county may reduce any salary supplement that was in effect on January 1, 1984, except as permitted by sections five-a and five-b of this article.

#### **§18A-4-5a. County salary supplements for teachers.**

(a) County boards of education in fixing the salaries of teachers shall use at least the state minimum salaries established under the provisions of this article. The board may establish salary schedules which shall be in excess of the state minimums fixed by this article, such county schedules to be uniform throughout the county as to the classification of training, experience, responsibility and other requirements subject to the following:

(1) Counties may fix higher salaries for teachers placed in special instructional assignments, for those assigned to or employed for duties other than regular instructional duties, and for teachers of one-teacher schools; and they

(2) Counties may provide additional compensation for any teacher assigned duties in addition to the teacher's regular instructional duties wherein such noninstructional duties are not a part of the scheduled hours of the regular school day; Uniformity also shall apply to such additional salary increments or compensation for all persons performing like assignments and duties within the county: *Provided,* That

(3) Counties may provide additional compensation for teachers who are assigned and fully certified to teach in a subject area in which the county board finds it has a critical need and shortage of fully certified teachers;

(4) Counties may provide additional compensation or other financial assistance to teachers who teach in schools that are in remote geographical locations or have experienced high rates of turnover in experienced teachers; and

(5) Counties may provide additional compensation to teachers who, in addition to regularly assigned teaching duties, are assigned as a master teacher, mentor, academic coach, or other title

whose duties include providing strong school-based support and supervision to assist licensure candidates in a clinical internship, beginning teachers, and other teachers at the school to improve their professional practice as set forth in the county's comprehensive system of support for teacher and leader induction and professional growth provided for in section §18A-3C-3 of this code.

(b) In establishing ~~such~~ local salary schedules authorized in subsection (a) of this section, ~~a county shall~~ a county may not reduce local funds allocated for salaries in effect on January 1, 1990, and used in supplementing the state minimum salaries as provided for in this article, unless forced to do so by defeat of a special levy, or a loss in assessed values or events over which it has no control and for which the county board has received approval from the state board prior to making such reduction.

(c) Counties may provide, in a uniform manner, benefits for teachers which require an appropriation from local funds including, but not limited to, dental, optical, health and income protection insurance, vacation time and retirement plans excluding the state Teachers Retirement System. Nothing herein shall prohibit the maintenance nor result in the reduction of any benefits in effect on January 1, 1984, by any county board of education.

**§18A-4-7a. Employment, promotion, and transfer of professional personnel; Seniority qualifications.**

(a) A county board of education shall make decisions affecting the filling of vacancies in professional positions of employment on the basis of the applicant with the highest qualifications: *Provided*, That the county superintendent shall be hired under separate criteria pursuant to §18-4-2 of this code.

(b) In judging qualifications for the filling of vacancies of professional positions of employment, consideration shall be given to each of the following:

(1) Appropriate certification, licensure, or both;

(2) Amount of experience relevant to the position or, in the case of a classroom teaching position, the amount of teaching experience in the required certification area;

(3) The amount of course work, degree level, or both in the relevant field and degree level generally;

(4) Academic achievement;

(5) In the case of a principal or classroom teaching position, certification by the National Board for Professional Teaching Standards;

(6) Specialized training relevant to performing the duties of the job;

(7) Past performance evaluations conducted pursuant to §18A-2-12 and §18A-3C-2 of this code or, in the case of a classroom teacher, past evaluations of the applicant's performance in the teaching profession;

(8) Seniority;

(9) Other measures or indicators upon which the relative qualifications of the applicant may fairly be judged;



(10) In the case of a classroom teaching position, the recommendation of the principal of the school at which the applicant will be performing a majority of his or her duties; and

(11) In the case of a classroom teaching position, the recommendation, if any, resulting from the process established pursuant to the provisions of §18-5A-5 of this code by the faculty senate of the school at which the employee will be performing a majority of his or her duties.

(c) When filling of a vacancy pursuant to this section, a county board is entitled to determine the appropriate weight to apply to each of the criterion when assessing an applicant's qualifications: *Provided*, That if one or more permanently employed instructional personnel apply for a classroom teaching position and meet the standards set forth in the job posting, each criterion under subsection (b) of this section shall be given equal weight except that the criterion in subdivisions (10) and (11) of said subsection shall each be double weighted.

(d) For a classroom teaching position, if the principal and faculty senate recommend the same applicant pursuant to subdivisions (10) and (11), subsection (b) of this section, and the superintendent concurs with those recommendations, then the other provisions of subsections (b) and (c) of this section do not apply and the county board shall appoint that applicant notwithstanding any other provision of this code to the contrary.

(e) The state board shall promulgate a rule, including an emergency rule if necessary, in accordance with ~~the provisions of §29A-3B-1 et seq.~~ article three-b, chapter twenty-nine-a of this code to implement and interpret ~~the provisions of~~ this section. The rule may provide for a classroom teacher who directly participates in making recommendations pursuant to this section to be compensated at the appropriate daily rate during periods of participation beyond his or her individual contract.

(f) The recommendations of the principal and faculty senate made pursuant to subdivisions (10) and (11), subsection (b) of this section shall be based on a determination as to which applicant is the most highly qualified for the position: *Provided*, That nothing in this subsection may require principals or faculty senates to assign any amount of weight to any factor in making a recommendation.

(g) With the exception of guidance counselors, the seniority of classroom teachers, as defined in section one, article one of this chapter, shall be determined on the basis of the length of time the employee has been employed as a regular full-time certified and/or licensed professional educator by the county board of education and shall be granted in all areas that the employee is certified, licensed or both.

(h) Upon completion of 133 days of employment in any one school year, substitute teachers, except retired teachers and other retired professional educators employed as substitutes, shall accrue seniority exclusively for the purpose of applying for employment as a permanent, full-time professional employee. One hundred thirty-three days or more of said employment shall be prorated and shall vest as a fraction of the school year worked by the permanent, full-time teacher.

(i) Guidance counselors and all other professional employees, as defined in section one, article one of this chapter, except classroom teachers, shall gain seniority in their nonteaching area of professional employment on the basis of the length of time the employee has been employed by the county board of education in that area: *Provided*, That if an employee is certified as a classroom teacher, the employee accrues classroom teaching seniority for the time that employee is employed in another professional area. For the purposes of accruing seniority under this subsection, employment as principal, supervisor or central office administrator, as defined in §18A-1-1 of this code, shall be considered one area of employment.

(j) Employment for a full employment term equals one year of seniority, but an employee may not accrue more than one year of seniority during any given fiscal year. Employment for less than the full employment term shall be prorated. ~~A random selection system established by the employees and approved by the county board shall be used to determine the priority if two or more employees accumulate identical seniority. *Provided*, That when two or more principals have accumulated identical seniority.~~ All decisions on reductions in force shall be based on qualifications as set forth in a county board policy. Furthermore, for the purposes of this subsection and subsections (k) through (s), inclusive, of this section, the word 'qualifications' means the qualifications set forth in county board policy and only means qualifications set forth in subsection (b) of this section to the extent those qualifications are set forth in county board policy: *Provided*, That in defining the word 'qualifications' in its policy, the county board:

(1) Shall consider including the criteria set forth in subsection (b) of this section;

(2) Shall consider other criteria set forth in subsection (b) of this section to the extent they are included in the county board policy only after considering personnel whose last performance evaluation conducted pursuant to §18A-2-12 or §18A-3C-2 of this code as applicable, is less than satisfactory; and

(3) May not include salary as one of the criteria in the definition.

(k) Whenever a county board is required to reduce the number of professional personnel in its employment, the employee ~~with the least amount of seniority who is least qualified, as set forth in county board policy,~~ shall be properly notified and released from employment pursuant to ~~the provisions of §18A-2-2 of this code. The provisions of this~~ This subsection are is subject to the following:

(1) All persons employed in a certification area to be reduced who are employed under a temporary permit shall be properly notified and released before a fully certified employee in such a position is subject to release;

(2) Notwithstanding any provision of this code to the contrary, for any vacancy in an established, existing or newly created position that, on or before March 1, is known to exist for the ensuing school year, upon recommendation of the superintendent, the board shall appoint the successful applicant from among all qualified applicants. All employees subject to release shall be considered applicants for the positions for which they are qualified and shall be considered before posting such vacancies for application by nonemployees;

(3) An employee subject to release shall be employed in any other professional position where the employee is certified and was previously employed or to any lateral area for which the employee is certified, licensed or both: ~~if the employees seniority is greater than the seniority of any other employee in that area of certification, licensure or both~~ *Provided*, That the employee is the most qualified person for that position;

(4) If an employee subject to release holds certification, licensure or both in more than one lateral area and if the employee's ~~seniority is~~ qualifications are greater than the ~~seniority-qualifications~~ of any other employee in one or more of those areas of certification, licensure, or both, the employee subject to release shall be employed in the professional position held by the employee ~~with the least seniority who is least qualified~~ in any of those areas of certification, licensure, or both; and

(5) If, prior to August 1 of the year, a reduction in force is approved, the reason for any particular reduction in force no longer exists as determined by the county board in its sole and exclusive judgment, the board shall rescind the reduction in force or transfer and shall notify the released

employee in writing of his or her right to be restored to his or her position of employment. Within five days of being so notified, the released employee shall notify the board, in writing, of his or her intent to resume his or her position of employment or the right to be restored shall terminate. Notwithstanding any other provision of this subdivision, if there is another employee on the preferred recall list with proper certification and ~~higher seniority~~ has greater qualifications, that person shall be placed in the position restored as a result of the reduction in force being rescinded.

(l) For the purpose of this article, all positions which meet the definition of 'classroom teacher' as defined in section one, article one of this chapter shall be lateral positions. For all other professional positions, the county board of education shall adopt a policy by October 31, 1993, and may modify the policy thereafter as necessary, which defines which positions shall be lateral positions. In adopting the policy, the board ~~shall~~ may give consideration to the rank of each position in terms of title; nature of responsibilities; salary level; and certification, licensure or both, ~~and~~ along with the days in the period of employment.

(m) All professional personnel whose ~~seniority~~ lesser qualifications, as determined by county board policy, with the county board is insufficient to allow their retention by the county board during a reduction in workforce shall be placed upon a preferred recall list. As to any professional position opening within the area where they had previously been employed or to any lateral area for which they have certification, licensure or both, the employee shall be recalled on the basis of ~~seniority~~ qualifications if no regular, full-time professional personnel, or those returning from leaves of absence with greater ~~seniority~~ are qualified qualifications, apply for and accept the position.

~~(n) Before position openings that are known or expected to extend for twenty consecutive employment days or longer for professional personnel may be filled by the board, the board shall be required to notify all qualified professional personnel on the preferred list and give them an opportunity to apply, but failure to apply shall not cause the employee to forfeit any right to recall. The notice shall be sent by certified mail to the last known address of the employee and it shall be the duty of each professional personnel to notify the board of continued availability annually, of any change in address or of any change in certification, licensure or both. The board shall annually notify professional personnel on the preferred list of the job application procedures and any websites used to advertise vacancies. The notice shall be sent by certified mail via the U.S. Postal Service to the last known address of the employee, and it shall be the duty of each professional person to notify the board of continued availability annually of any change in address, or of any change in certification, licensure or both.~~

(o) Openings in established, existing, or newly created positions shall be processed as follows:

(1) Boards shall be required to post and date notices of each opening at least once. At their discretion, boards may post an opening for a position other than classroom teacher more than once in order to attract more qualified applicants. At their discretion, boards may ~~post~~ repost an opening for a classroom teacher one additional time after the first posting in order to attract more qualified applicants ~~only if fewer than three individuals apply during the first posting~~ subject to the following:

(A) Each notice shall be posted in conspicuous working places for all professional personnel to observe for at least five working days which may include any website maintained by the county board;

(B) At least one notice shall be posted within 20 working days of the position openings and shall include the job description;

(C) Any special criteria or skills that are required by the position shall be specifically stated in the job description and directly related to the performance of the job;

(D) Postings for vacancies made pursuant to this section shall be written so as to ensure that the largest possible pool of qualified applicants may apply; and

(E) Job postings may not require criteria which are not necessary for the successful performance of the job and may not be written with the intent to favor a specific applicant;

(2) No vacancy may be filled until after the five-day minimum posting period of the most recent posted notice of the vacancy;

(3) If one or more applicants under all the postings for a vacancy meets the qualifications listed in the job posting, the successful applicant to fill the vacancy shall be selected by the board within 30 working days of the end of the first posting period;

(4) A position held by a teacher who is certified, licensed, or both, who has been issued a permit for full-time employment and is working toward certification in the permit area shall not be subject to posting if the certificate is awarded within five years; and

(5) Nothing provided herein may prevent the county board of education from eliminating a position due to lack of need.

(p) Notwithstanding any other provision of the code to the contrary, where the total number of classroom teaching positions in an elementary school does not increase from one school year to the next, but there exists in that school a need to realign the number of teachers in one or more grade levels, kindergarten through six, teachers at the school may be reassigned to grade levels for which they are certified without that position being posted: *Provided*, That the employee and the county board mutually agree to the reassignment.

(q) Reductions in classroom teaching positions in elementary schools shall be determined pursuant to the considerations set forth in county board policy and processed as follows:

(1) When the total number of classroom teaching positions in an elementary school needs to be reduced, the reduction shall be made on the basis of seniority qualifications with the least senior qualified classroom teacher being recommended for transfer; and

(2) When a specified grade level needs to be reduced and the least senior qualified employee in the school is not in that grade level, the senior least qualified classroom teacher in the grade level that needs to be reduced shall be reassigned to the position made vacant by the transfer of the senior least qualified classroom teacher in the school without that position being posted: *Provided*, That the employee is certified, licensed or both and agrees to the reassignment.

(r) Any board failing to comply with ~~the provisions of~~ this article may be compelled to do so by mandamus and shall be liable to any party prevailing against the board for court costs and reasonable attorney fees as determined and established by the court. Further, employees denied promotion or employment in violation of this section shall be awarded the job, pay and any applicable benefits retroactive to the date of the violation and payable entirely from local funds. Further, the board shall be liable to any party prevailing against the board for any court reporter costs including copies of transcripts.

~~(s) The county board shall compile, update annually on July 1 and make available by electronic or other means to all employees a list of all professional personnel employed by the county, their areas of certification and their seniority.~~

(t) ~~(s)~~ Notwithstanding any other provision of this code to the contrary, upon recommendation of the principal and approval by the classroom teacher and county board, a classroom teacher assigned to the school may at any time be assigned to a new or existing classroom teacher position at the school without the position being posted.

(t) The amendments to this section during the 2019 regular session of the Legislature shall be effective for school years beginning on or after July 1, 2019, and the provisions of this section existing immediately prior to the 2019 regular session of the Legislature remain in effect for school years beginning prior to July 1, 2019.

**§18A-4-8a. Service personnel minimum monthly salaries.**

(a) The minimum monthly pay for each service employee shall be as follows:

(1) For school year 2018–2019, ~~and continuing thereafter~~, the minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the State Minimum Pay Scale Pay Grade Schedule I and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one-half the amount indicated in the State Minimum Pay Scale Pay Grade set forth in this subdivision: Provided, That for school year 2019-2020, and continuing thereafter, the minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the State Minimum Pay Scale Pay Grade Schedule II and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one-half the amount indicated in the State Minimum Pay Scale Pay Grade set forth in this subdivision.

STATE MINIMUM PAY SCALE PAY GRADE SCHEDULE I

Years	PAY GRADE							
Exp.	A	B	C	D	E	F	G	H
0	1,770	1,791	1,833	1,886	1,939	2,002	2,034	2,107
1	1,802	1,824	1,865	1,918	1,972	2,035	2,066	2,140
2	1,835	1,856	1,898	1,951	2,004	2,067	2,099	2,172
3	1,867	1,889	1,931	1,984	2,037	2,100	2,132	2,205
4	1,900	1,922	1,963	2,016	2,069	2,133	2,164	2,239
5	1,933	1,954	1,996	2,049	2,102	2,165	2,197	2,271
6	1,965	1,987	2,030	2,082	2,135	2,198	2,230	2,304
7	1,999	2,019	2,062	2,114	2,167	2,231	2,262	2,337

8	2,032	2,052	2,095	2,147	2,200	2,263	2,295	2,369
9	2,064	2,085	2,128	2,181	2,233	2,296	2,327	2,402
10	2,097	2,118	2,160	2,213	2,265	2,330	2,361	2,435
11	2,130	2,151	2,193	2,246	2,298	2,362	2,394	2,467
12	2,162	2,184	2,225	2,279	2,332	2,395	2,426	2,500
13	2,195	2,216	2,258	2,311	2,364	2,427	2,459	2,533
14	2,228	2,249	2,291	2,344	2,397	2,460	2,492	2,565
15	2,260	2,282	2,323	2,376	2,429	2,493	2,524	2,598
16	2,293	2,314	2,356	2,409	2,462	2,525	2,557	2,631
17	2,325	2,347	2,390	2,442	2,495	2,558	2,590	2,664
18	2,358	2,380	2,422	2,474	2,527	2,591	2,622	2,697
19	2,392	2,412	2,455	2,507	2,560	2,623	2,655	2,729
20	2,424	2,445	2,488	2,541	2,593	2,656	2,688	2,763
21	2,457	2,477	2,520	2,573	2,625	2,689	2,720	2,797
22	2,490	2,511	2,553	2,606	2,658	2,722	2,754	2,829
23	2,522	2,544	2,586	2,639	2,692	2,756	2,788	2,863
24	2,555	2,576	2,618	2,671	2,724	2,790	2,821	2,897
25	2,588	2,609	2,651	2,704	2,758	2,822	2,855	2,929
26	2,620	2,642	2,683	2,738	2,792	2,856	2,887	2,963
27	2,653	2,674	2,716	2,770	2,824	2,888	2,921	2,996
28	2,686	2,707	2,750	2,804	2,858	2,922	2,955	3,030
29	2,718	2,741	2,783	2,836	2,891	2,956	2,987	3,064
30	2,752	2,773	2,817	2,870	2,924	2,988	3,021	3,097
31	2,785	2,807	2,851	2,904	2,958	3,022	3,055	3,130
32	2,819	2,840	2,883	2,937	2,990	3,056	3,087	3,164
33	2,853	2,873	2,917	2,971	3,024	3,088	3,121	3,197
34	2,885	2,907	2,951	3,005	3,058	3,122	3,155	3,230
35	2,919	2,941	2,983	3,037	3,090	3,156	3,188	3,264
36	2,953	2,974	3,017	3,071	3,125	3,189	3,222	3,296

37	2,985	3,008	3,051	3,105	3,159	3,223	3,255	3,330
38	3,019	3,040	3,083	3,137	3,191	3,256	3,288	3,364
39	3,053	3,074	3,117	3,171	3,225	3,289	3,322	3,396
40	3,085	3,108	3,150	3,204	3,259	3,323	3,355	3,430

STATE MINIMUM PAY SCALE PAY GRADE SCHEDULE IIYearsExp.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>
<u>0</u>	<u>1,885</u>	<u>1,906</u>	<u>1,948</u>	<u>2,001</u>	<u>2,054</u>	<u>2,117</u>	<u>2,149</u>	<u>2,222</u>
<u>1</u>	<u>1,917</u>	<u>1,939</u>	<u>1,980</u>	<u>2,033</u>	<u>2,087</u>	<u>2,150</u>	<u>2,181</u>	<u>2,255</u>
<u>2</u>	<u>1,950</u>	<u>1,971</u>	<u>2,013</u>	<u>2,066</u>	<u>2,119</u>	<u>2,182</u>	<u>2,214</u>	<u>2,287</u>
<u>3</u>	<u>1,982</u>	<u>2,004</u>	<u>2,046</u>	<u>2,099</u>	<u>2,152</u>	<u>2,215</u>	<u>2,247</u>	<u>2,320</u>
<u>4</u>	<u>2,015</u>	<u>2,037</u>	<u>2,078</u>	<u>2,131</u>	<u>2,184</u>	<u>2,248</u>	<u>2,279</u>	<u>2,354</u>
<u>5</u>	<u>2,048</u>	<u>2,069</u>	<u>2,111</u>	<u>2,164</u>	<u>2,217</u>	<u>2,280</u>	<u>2,312</u>	<u>2,386</u>
<u>6</u>	<u>2,080</u>	<u>2,102</u>	<u>2,145</u>	<u>2,197</u>	<u>2,250</u>	<u>2,313</u>	<u>2,345</u>	<u>2,419</u>
<u>7</u>	<u>2,114</u>	<u>2,134</u>	<u>2,177</u>	<u>2,229</u>	<u>2,282</u>	<u>2,346</u>	<u>2,377</u>	<u>2,452</u>
<u>8</u>	<u>2,147</u>	<u>2,167</u>	<u>2,210</u>	<u>2,262</u>	<u>2,315</u>	<u>2,378</u>	<u>2,410</u>	<u>2,484</u>
<u>9</u>	<u>2,179</u>	<u>2,200</u>	<u>2,243</u>	<u>2,296</u>	<u>2,348</u>	<u>2,411</u>	<u>2,442</u>	<u>2,517</u>
<u>10</u>	<u>2,212</u>	<u>2,233</u>	<u>2,275</u>	<u>2,328</u>	<u>2,380</u>	<u>2,445</u>	<u>2,476</u>	<u>2,550</u>
<u>11</u>	<u>2,245</u>	<u>2,266</u>	<u>2,308</u>	<u>2,361</u>	<u>2,413</u>	<u>2,477</u>	<u>2,509</u>	<u>2,582</u>
<u>12</u>	<u>2,277</u>	<u>2,299</u>	<u>2,340</u>	<u>2,394</u>	<u>2,447</u>	<u>2,510</u>	<u>2,541</u>	<u>2,615</u>
<u>13</u>	<u>2,310</u>	<u>2,331</u>	<u>2,373</u>	<u>2,426</u>	<u>2,479</u>	<u>2,542</u>	<u>2,574</u>	<u>2,648</u>
<u>14</u>	<u>2,343</u>	<u>2,364</u>	<u>2,406</u>	<u>2,459</u>	<u>2,512</u>	<u>2,575</u>	<u>2,607</u>	<u>2,680</u>
<u>15</u>	<u>2,375</u>	<u>2,397</u>	<u>2,438</u>	<u>2,491</u>	<u>2,544</u>	<u>2,608</u>	<u>2,639</u>	<u>2,713</u>
<u>16</u>	<u>2,408</u>	<u>2,429</u>	<u>2,471</u>	<u>2,524</u>	<u>2,577</u>	<u>2,640</u>	<u>2,672</u>	<u>2,746</u>
<u>17</u>	<u>2,440</u>	<u>2,462</u>	<u>2,505</u>	<u>2,557</u>	<u>2,610</u>	<u>2,673</u>	<u>2,705</u>	<u>2,779</u>
<u>18</u>	<u>2,473</u>	<u>2,495</u>	<u>2,537</u>	<u>2,589</u>	<u>2,642</u>	<u>2,706</u>	<u>2,737</u>	<u>2,812</u>
<u>19</u>	<u>2,507</u>	<u>2,527</u>	<u>2,570</u>	<u>2,622</u>	<u>2,675</u>	<u>2,738</u>	<u>2,770</u>	<u>2,844</u>

<u>20</u>	<u>2,539</u>	<u>2,560</u>	<u>2,603</u>	<u>2,656</u>	<u>2,708</u>	<u>2,771</u>	<u>2,803</u>	<u>2,878</u>
<u>21</u>	<u>2,572</u>	<u>2,592</u>	<u>2,635</u>	<u>2,688</u>	<u>2,740</u>	<u>2,804</u>	<u>2,835</u>	<u>2,912</u>
<u>22</u>	<u>2,605</u>	<u>2,626</u>	<u>2,668</u>	<u>2,721</u>	<u>2,773</u>	<u>2,837</u>	<u>2,869</u>	<u>2,944</u>
<u>23</u>	<u>2,637</u>	<u>2,659</u>	<u>2,701</u>	<u>2,754</u>	<u>2,807</u>	<u>2,871</u>	<u>2,903</u>	<u>2,978</u>
<u>24</u>	<u>2,670</u>	<u>2,691</u>	<u>2,733</u>	<u>2,786</u>	<u>2,839</u>	<u>2,905</u>	<u>2,936</u>	<u>3,012</u>
<u>25</u>	<u>2,703</u>	<u>2,724</u>	<u>2,766</u>	<u>2,819</u>	<u>2,873</u>	<u>2,937</u>	<u>2,970</u>	<u>3,044</u>
<u>26</u>	<u>2,735</u>	<u>2,757</u>	<u>2,798</u>	<u>2,853</u>	<u>2,907</u>	<u>2,971</u>	<u>3,002</u>	<u>3,078</u>
<u>27</u>	<u>2,768</u>	<u>2,789</u>	<u>2,831</u>	<u>2,885</u>	<u>2,939</u>	<u>3,003</u>	<u>3,036</u>	<u>3,111</u>
<u>28</u>	<u>2,801</u>	<u>2,822</u>	<u>2,865</u>	<u>2,919</u>	<u>2,973</u>	<u>3,037</u>	<u>3,070</u>	<u>3,145</u>
<u>29</u>	<u>2,833</u>	<u>2,856</u>	<u>2,898</u>	<u>2,951</u>	<u>3,006</u>	<u>3,071</u>	<u>3,102</u>	<u>3,179</u>
<u>30</u>	<u>2,867</u>	<u>2,888</u>	<u>2,932</u>	<u>2,985</u>	<u>3,039</u>	<u>3,103</u>	<u>3,136</u>	<u>3,212</u>
<u>31</u>	<u>2,900</u>	<u>2,922</u>	<u>2,966</u>	<u>3,019</u>	<u>3,073</u>	<u>3,137</u>	<u>3,170</u>	<u>3,245</u>
<u>32</u>	<u>2,934</u>	<u>2,955</u>	<u>2,998</u>	<u>3,052</u>	<u>3,105</u>	<u>3,171</u>	<u>3,202</u>	<u>3,279</u>
<u>33</u>	<u>2,968</u>	<u>2,988</u>	<u>3,032</u>	<u>3,086</u>	<u>3,139</u>	<u>3,203</u>	<u>3,236</u>	<u>3,312</u>
<u>34</u>	<u>3,000</u>	<u>3,022</u>	<u>3,066</u>	<u>3,120</u>	<u>3,173</u>	<u>3,237</u>	<u>3,270</u>	<u>3,345</u>
<u>35</u>	<u>3,034</u>	<u>3,056</u>	<u>3,098</u>	<u>3,152</u>	<u>3,205</u>	<u>3,271</u>	<u>3,303</u>	<u>3,379</u>
<u>36</u>	<u>3,068</u>	<u>3,089</u>	<u>3,132</u>	<u>3,186</u>	<u>3,240</u>	<u>3,304</u>	<u>3,337</u>	<u>3,411</u>
<u>37</u>	<u>3,100</u>	<u>3,123</u>	<u>3,166</u>	<u>3,220</u>	<u>3,274</u>	<u>3,338</u>	<u>3,370</u>	<u>3,445</u>
<u>38</u>	<u>3,134</u>	<u>3,155</u>	<u>3,198</u>	<u>3,252</u>	<u>3,306</u>	<u>3,371</u>	<u>3,403</u>	<u>3,479</u>
<u>39</u>	<u>3,168</u>	<u>3,189</u>	<u>3,232</u>	<u>3,286</u>	<u>3,340</u>	<u>3,404</u>	<u>3,437</u>	<u>3,511</u>
<u>40</u>	<u>3,200</u>	<u>3,223</u>	<u>3,265</u>	<u>3,319</u>	<u>3,374</u>	<u>3,438</u>	<u>3,470</u>	<u>3,545</u>

(2) Each service employee shall receive the amount prescribed in the State Minimum Pay Scale Pay Grade in accordance with the provisions of this subsection according to their class title and pay grade as set forth in this subdivision:

CLASS TITLE	PAY GRADE
Accountant I .....	D
Accountant II .....	E
Accountant III .....	F
Accounts Payable Supervisor .....	G
Aide I .....	A



Aide II .....	B
Aide III .....	C
Aide IV .....	D
Audiovisual Technician .....	C
Auditor .....	G
Autism Mentor .....	F
Braille Specialist .....	E
Bus Operator .....	D
Buyer .....	F
Cabinetmaker .....	G
Cafeteria Manager .....	D
Carpenter I .....	E
Carpenter II .....	F
Chief Mechanic .....	G
Clerk I .....	B
Clerk II .....	C
Computer Operator .....	E
Cook I .....	A
Cook II .....	B
Cook III .....	C
Crew Leader .....	F
Custodian I .....	A
Custodian II .....	B
Custodian III .....	C
Custodian IV .....	D
Director or Coordinator of Services .....	H
Draftsman .....	D

Early Childhood Classroom Assistant Teacher I .....	E
Early Childhood Classroom Assistant Teacher II .....	E
Early Childhood Classroom Assistant Teacher III .....	F
Educational Sign Language Interpreter I .....	F
Educational Sign Language Interpreter II .....	G
Electrician I .....	F
Electrician II .....	G
Electronic Technician I .....	F
Electronic Technician II .....	G
Executive Secretary .....	G
Food Services Supervisor .....	G
Foreman .....	G
General Maintenance .....	C
Glazier .....	D
Graphic Artist .....	D
Groundsman .....	B
Handyman .....	B
Heating and Air Conditioning Mechanic I .....	E
Heating and Air Conditioning Mechanic II .....	G
Heavy Equipment Operator .....	E
Inventory Supervisor .....	D
Key Punch Operator .....	B
Licensed Practical Nurse .....	F
Locksmith .....	G
Lubrication Man .....	C
Machinist .....	F
Mail Clerk .....	D

Maintenance Clerk .....	C
Mason .....	G
Mechanic .....	F
Mechanic Assistant .....	E
Office Equipment Repairman I .....	F
Office Equipment Repairman II .....	G
Painter .....	E
Paraprofessional .....	F
Payroll Supervisor .....	G
Plumber I .....	E
Plumber II .....	G
Printing Operator .....	B
Printing Supervisor .....	D
Programmer .....	H
Roofing/Sheet Metal Mechanic .....	F
Sanitation Plant Operator .....	G
School Bus Supervisor .....	E
Secretary I .....	D
Secretary II .....	E
Secretary III .....	F
Sign Support Specialist .....	E
Supervisor of Maintenance .....	H
Supervisor of Transportation .....	H
Switchboard Operator-Receptionist .....	D
Truck Driver .....	D
Warehouse Clerk .....	C
Watchman .....	B

Welder ..... F

WVEIS Data Entry and Administrative Clerk ..... B

(b) An additional \$12 per month is added to the minimum monthly pay of each service person who holds a high school diploma or its equivalent.

(c) An additional \$11 per month also is added to the minimum monthly pay of each service person for each of the following:

(1) A service person who holds 12 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(2) A service person who holds 24 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(3) A service person who holds 36 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(4) A service person who holds 48 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(5) A service employee who holds 60 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(6) A service person who holds 72 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(7) A service person who holds 84 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(8) A service person who holds 96 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(9) A service person who holds 108 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(10) A service person who holds 120 college hours or comparable credit obtained in a trade or vocational school as approved by the state board.

(d) An additional \$40 per month also is added to the minimum monthly pay of each service person for each of the following:

(1) A service person who holds an associate’s degree;

(2) A service person who holds a bachelor’s degree;

(3) A service person who holds a master’s degree;

(4) A service person who holds a doctorate degree.

(e) An additional \$11 per month is added to the minimum monthly pay of each service person for each of the following:

- (1) A service person who holds a bachelor's degree plus 15 college hours;
- (2) A service person who holds a master's degree plus 15 college hours;
- (3) A service person who holds a master's degree plus 30 college hours;
- (4) A service person who holds a master's degree plus 45 college hours; and
- (5) A service person who holds a master's degree plus 60 college hours.

(f) ~~To meet the objective of salary equity among the counties, each~~ Each service person is paid ~~an equity~~ a supplement, as set forth in §18A-4-5 of this code, of \$164 per month, subject to the provisions of that section. These payments: (i) Are in addition to any amounts prescribed in the applicable State Minimum Pay Scale Pay Grade, any specific additional amounts prescribed in this section and article, and any county supplement in effect in a county pursuant to §18A-4-5b of this code; (ii) are paid in equal monthly installments; and (iii) are considered a part of the state minimum salaries for service personnel.

(g) When any part of a school service person's daily shift of work is performed between the hours of 6:00 p.m. and 5:00 a.m. the following day, the employee is paid no less than an additional \$10 per month and one half of the pay is paid with local funds.

(h) Any service person required to work on any legal school holiday is paid at a rate one and one-half times the person's usual hourly rate.

(i) Any full-time service personnel required to work in excess of their normal working day during any week which contains a school holiday for which they are paid is paid for the additional hours or fraction of the additional hours at a rate of one and one-half times their usual hourly rate and paid entirely from county board funds.

(j) A service person may not have his or her daily work schedule changed during the school year without the employee's written consent and the person's required daily work hours may not be changed to prevent the payment of time and one-half wages or the employment of another employee.

(k) The minimum hourly rate of pay for extra duty assignments as defined in §18A-4-8b of this code is no less than one-seventh of the person's daily total salary for each hour the person is involved in performing the assignment and paid entirely from local funds: *Provided*, That an alternative minimum hourly rate of pay for performing extra duty assignments within a particular category of employment may be used if the alternate hourly rate of pay is approved both by the county board and by the affirmative vote of a two-thirds majority of the regular full-time persons within that classification category of employment within that county: *Provided, however*, That the vote is by secret ballot if requested by a service person within that classification category within that county. The salary for any fraction of an hour the employee is involved in performing the assignment is prorated accordingly. When performing extra duty assignments, persons who are regularly employed on a one-half day salary basis shall receive the same hourly extra duty assignment pay computed as though the person were employed on a full-day salary basis.

(l) The minimum pay for any service personnel engaged in the removal of asbestos material or related duties required for asbestos removal is their regular total daily rate of pay and no less than an additional \$3 per hour or no less than \$5 per hour for service personnel supervising asbestos removal responsibilities for each hour these employees are involved in asbestos-related duties. Related duties required for asbestos removal include, but are not limited to, travel, preparation of the work site, removal of asbestos, decontamination of the work site, placing and removal of equipment,

and removal of structures from the site. If any member of an asbestos crew is engaged in asbestos-related duties outside of the employee's regular employment county, the daily rate of pay is no less than the minimum amount as established in the employee's regular employment county for asbestos removal and an additional \$30 per each day the employee is engaged in asbestos removal and related duties. The additional pay for asbestos removal and related duties shall be payable entirely from county funds. Before service personnel may be used in the removal of asbestos material or related duties, they shall have completed a federal Environmental Protection Act-approved training program and be licensed. The employer shall provide all necessary protective equipment and maintain all records required by the Environmental Protection Act.

(m) For the purpose of qualifying for additional pay as provided in §18A-5-8 of this code, an aide is considered to be exercising the authority of a supervisory aide and control over pupils if the aide is required to supervise, control, direct, monitor, escort, or render service to a child or children when not under the direct supervision of a certified professional person within the classroom, library, hallway, lunchroom, gymnasium, school building, school grounds, or wherever supervision is required. For purposes of this section, 'under the direct supervision of a certified professional person' means that certified professional person is present, with and accompanying the aide.

#### **§18A-4-10. Personal leave for illness and other causes; leave banks; substitutes.**

(a) *Personal Leave.*

(1) ~~At the beginning of the employment term, any full-time employee of a county board is entitled annually to at least one and one-half days personal leave for each employment month or major fraction thereof in the first one-half of the employee's employment term. At the beginning of the second one-half of the employment term, any full-time employee of a county board is entitled to at least one and one-half days personal leave for each employment month or major fraction thereof in the second one-half of the employee's employment term.~~ Unused leave shall be accumulative without limitation and is transferable within the state. A change in job assignment during the school year does not affect the employee's rights or benefits.

(2) A regular full-time employee who is absent from assigned duties due to accident, sickness, death in the immediate family, or life threatening illness of the employee's spouse, parents or child, or other cause authorized or approved by the board, shall be paid the full salary from his or her regular budgeted salary appropriation during the period which the employee is absent, but not to exceed the total amount of leave to which the employee ~~is entitled.~~

(3) Each employee is permitted to use three days of leave annually without regard to the cause for the absence. Personal leave without cause may not be used on consecutive work days unless authorized or approved by the employee's principal or immediate supervisor, as appropriate. The employee shall give notice of leave without cause to the principal or immediate supervisor at least 24 hours in advance, except that in the case of sudden and unexpected circumstances, notice shall be given as soon as reasonably practicable. The principal or immediate supervisor may deny use of the day if, at the time notice is given, either 15 percent of the employees or three employees, whichever is greater, under the supervision of the principal or immediate supervisor, have previously given notice of their intention to use that day for leave. Personal leave may not be used in connection with a concerted work stoppage or strike. Where the cause for leave originated prior to the beginning of the employment term, the employee shall be paid for time lost after the start of the employment term, but not to exceed the total amount of leave to which the employee is entitled. ~~If an employee uses personal leave which the employee has not yet accumulated on a monthly basis is not yet entitled and subsequently leaves the employment, the employee is required to reimburse the board for the salary or wages paid for the unaccumulated leave.~~

(4) The State Board shall maintain a rule to restrict the payment of personal leave benefits and the charging of personal leave time used to an employee receiving a workers' compensation benefit from a claim filed against and billed to the county board by which the person is employed. If an employee is awarded this benefit, the employee shall receive personal leave compensation only to the extent the compensation is required, when added to the workers' compensation benefit, to equal the amount of compensation regularly paid the employee. If personal leave compensation equal to the employee's regular pay is paid prior to the award of the workers' compensation benefit, the amount which, when added to the benefit, is in excess of the employee's regular pay shall be deducted from the employee's subsequent pay. The employee's accrued personal leave days shall be charged only for such days as equal the amount of personal leave compensation required to compensate the employee at the employee's regular rate of pay.

(5) The county board may establish reasonable rules for reporting and verification of absences for cause. If any error in reporting absences occurs, the county board may make necessary salary adjustments:

(A) In the next pay after the employee has returned to duty; or

(B) In the final pay if the absence occurs during the last month of the employment term.

(b) *Leave Banks.*

(1) Each county board shall establish a personal leave bank that is available to all school personnel. The board may establish joint or separate banks for professional personnel and school service personnel. Each employee may contribute up to two days of personal leave per school year. An employee may not be coerced or compelled to contribute to a personal leave bank.

(2) The personal leave bank shall be established and operated pursuant to a rule adopted by the county board. The rule:

(A) May limit the maximum number of days used by an employee;

(B) Shall limit the use of leave bank days to an active employee with fewer than five days accumulated personal leave who is absent from work due to accident or illness of the employee; and

(C) Shall prohibit the use of days to:

(i) Qualify for or add to service for any retirement system administered by the state; or

(ii) Extend insurance coverage pursuant to §5-16-13 of this code.

(D) Shall require that each personal leave day contributed:

(i) Is deducted from the number of personal leave days to which the donor employee is entitled by this section;

(ii) Is not deducted from the personal leave days without cause to which a donor employee is entitled if sufficient general personal leave days are otherwise available to the donor employee;

(iii) Is credited to the receiving employee as one full personal leave day;

(iv) May not be credited for more or less than a full day by calculating the value of the leave according to the hourly wage of each employee; and

(v) May be used only for an absence due to the purpose for which the leave was transferred. Any transferred days remaining when the catastrophic medical emergency ends revert back to the leave bank.

(3) The administration, subject to county board approval, may use its discretion as to the need for a substitute where limited absence may prevail, when an allowable absence does not:

(i) Directly affect the instruction of the students; or

(ii) Require a substitute employee because of the nature of the work and the duration of the cause for the absence.

(4) If funds in any fiscal year, including transfers, are insufficient to pay the full cost of substitutes for meeting the provisions of this section, the remainder shall be paid on or before August 31 from the budget of the next fiscal year.

(5) A county board may supplement the leave provisions in any manner it considers advisable in accordance with applicable rules of the state Board and the provisions of this chapter and chapter eighteen of this code.

(c) (1) Any full-time employee of a county board who has not utilized more than four personal leave days during the 200-day employment term shall receive a bonus of \$500 at the end of the school year.

(2) If the appropriations to the Department of Education for this purpose are insufficient to compensate all applicable full-time employees, the Department of Education shall request a supplemental appropriation in an amount sufficient to compensate all applicable employees. This payment may not be counted as part of the final average salary for the purpose of calculating retirement.

(d) The amendments to this section during the 2019 regular session of the Legislature shall be effective for school years beginning on or after July 1, 2019, and the provisions of this section existing immediately prior to the 2019 regular session of the Legislature remain in effect for school years beginning prior to July 1, 2019.

## **ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.**

### **§18A-5-2. Holidays; closing of schools; time lost because of such; special Saturday classes.**

(a) Schools shall be closed on Saturdays and on the following days which are designated as legal school holidays: Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Christmas Day, New Year's Day, Martin Luther King's birthday, Memorial Day and West Virginia Day. Schools also shall be closed on any day on which a primary election, general election or special election is held throughout the state or school district and on any day appointed and set apart by the president or the Governor as a holiday of special observance by the people of the state.

(b) When any of the above designated holidays, except a special election, falls on Saturday, the schools shall be closed on the preceding Friday. When any designated holiday falls on Sunday, the schools shall be closed on the following Monday.

(c) Special classes may be conducted on Saturdays for pupils and by teachers and service personnel. Saturday classes shall be conducted on a voluntary basis and teachers and service personnel shall be remunerated in ratio to the regularly contracted pay.



(d) Any school or schools may be closed by proper authorities on account of the prevalence of contagious disease, conditions of weather or any other calamitous cause over which the board has no control.

(1) Under any or all of the above provisions, the time lost by the school closings may not be counted as days of employment and may not be counted as meeting a part of the requirements of the minimum term of one hundred eighty days of instruction. A school employee's pay per pay period may not change as a result of a school closing not being counted as a day of employment, and the employee shall be paid the same amount during any pay period in which a school closing occurs that the employee would have been paid during the pay period if a school closing had not occurred.

(2) On the day or days when a school or schools are closed, county boards may provide appropriate alternate work schedules for professional and service personnel affected by the closing of any school or schools under any or all of the provisions of this subsection. Professional and service personnel shall receive pay the same as if school were in session.

(3) Insofar as funds are available or can be made available during the school year, the board may extend the employment term for the purpose of making up time that might affect the instructional term.

(e) In addition to any other provisions of this chapter, the board further is authorized to provide in its annual budget for meetings, workshops, vacation time or other holidays through extended employment of personnel at the same rate of pay.

#### **CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS AND STATE AID.**

#### **ARTICLE 4. UNDERWOOD-SMITH TEACHER TEACHING SCHOLARSHIP SCHOLARS PROGRAM.**

##### **§18C-4-1. ~~Scholarship and loan assistance fund~~ Underwood-Smith Teaching Scholars Program Fund created; purposes; funding.**

(a) It is the purpose of this article ~~and article four-a of this chapter~~ to improve the quality of education in the public schools of West Virginia by encouraging and enabling individuals who have demonstrated outstanding academic abilities to pursue teaching careers in the public schools in this state in mathematics, science, or special education at the ~~preschool~~ elementary, middle, or secondary levels. ~~in the public schools of this state. In addition, of those individuals who have demonstrated outstanding academic abilities to pursue teaching careers, for scholarships initially awarded for the fall semester, 2014, and thereafter~~ Particular efforts shall be made in the scholarship selection criteria and procedures to reflect the state's present and projected ~~subject and geographic~~ areas of critical need.

(b) In consultation with the State Board of Education and the State Superintendent of Schools the commission shall propose legislative rules in accordance with the provisions of ~~article three-a, chapter twenty-nine-a of this code §29A-3A-1, et seq.~~ The rules shall provide for the administration of the Underwood-Smith Teacher ~~Scholarship and Loan Assistance programs~~ Teaching Scholars Program by the vice chancellor for administration in furtherance of the purposes of this article, ~~and article four-a of this chapter~~ including, but not limited to, the following:

(1) Establishing scholarship selection criteria and procedures;

(2) Establishing criteria and procedures for identifying ~~subject areas~~ public schools or geographic areas in critical need of teachers;

(3) Requiring scholarship recipients to teach in a public school in this state in mathematics, science, or special education at the elementary, middle, or secondary level in a geographic area of critical need pursuant to the provisions of §18C-4-3 of this code;

~~Awarding loan assistance, including establishing conditions under which partial awards may be granted for less than a full year of teaching in an area of critical need;~~

~~(4) Determining eligibility for loan assistance renewal;~~

~~(5) Establishing procedures ensuring that loan assistance funds are paid directly to the proper lending entity; and~~

~~(6) (4) Establishing criteria for determining participant compliance or noncompliance with terms of the agreement and establishing procedures to address noncompliance including, but not limited to, repayment, deferral and excusal; and~~

~~(7) (5) Developing model agreements.~~

(c) The commission and State Board of Education jointly shall ensure that Underwood-Smith Teaching Scholars recipients receive additional academic support and training from mathematics, science, or special education mentors beginning with the freshman year and continuing through degree completion and the teaching obligation.

~~(d) There is created in the State Treasury a special revolving fund in the State Treasury to be known as The Underwood-Smith Teacher Scholarship and Loan Assistance Fund is continued in the State Treasury as a special revolving fund and is hereafter to be known as the Underwood-Smith Teaching Scholars Program Fund. The fund shall be administered by the vice chancellor for administration solely for granting scholarships and loan assistance to teachers and prospective teachers in accordance with this article and article four-a of this chapter. Any moneys which may be appropriated by the Legislature, or received by the vice chancellor for administration from other sources, for the purposes of this article and article four-a of this chapter shall be deposited in the fund. Any moneys remaining in the fund at the close of a fiscal year shall be carried forward for use in the next fiscal year. Any moneys repaid to the vice chancellor for administration by reason of default of a scholarship or loan assistance agreement under this article or article four-a of this chapter also shall be deposited in the fund. Fund balances shall be invested with the state's consolidated investment fund, and any and all interest earnings on these investments shall be used solely for the purposes for which moneys invested were appropriated or otherwise received.~~

~~(e) (e) The vice chancellor for administration may accept and expend any gift, grant, contribution, bequest, endowment, or other money for the purposes of this article and article four-a of this chapter and shall make a reasonable effort to encourage external support for the scholarship and loan assistance programs program.~~

~~(e) (f) For the purpose of encouraging support for the scholarship and loan assistance programs program from private sources, the vice chancellor for administration may set aside no more than half of the funds appropriated by the Legislature for Underwood-Smith Teacher Scholarships and Loan Assistance Teaching Scholar awards to be used to match two state dollars to each private dollar from a nonstate source contributed on behalf of a specific institution of higher education in this state.~~

(g) In recognition of the high academic achievement necessary to receive an award under this article, each recipient shall be distinguished as an 'Underwood-Smith Teaching Scholar' in a manner befitting the distinction as determined by the commission.

**§18C-4-2. Selection criteria and procedures for awarding scholarships.**

(a) ~~The Governor shall designate the Higher Education Student Financial Aid Advisory Board created by section five, article one of this chapter §18C-1-5 of this code to shall select the recipients of Underwood-Smith teacher scholarships~~ Teaching Scholars who meet the eligibility criteria set forth in subsection (b) of this section.

(b) Eligibility for an Underwood-Smith ~~Teacher Scholarship~~ Teaching Scholars award shall be limited to students who meet the following criteria:

(1) Have graduated or are graduating from high school and rank in the top ten percent of their graduating class or the top ten percent statewide of those West Virginia students taking the ACT test with a cumulative grade point average of at least 3.25 on a 4.0 scale, and:

(A) For mathematics and science majors, met the college algebra ready assessment standards and college readiness English, reading, and writing standards as established by the commission; or

(B) For special education majors, met the college statistics readiness standards and college readiness English, reading, and writing standards as established by the commission;

(2) Agree to teach in the subject area of mathematics, science or special education in a public school in the state in a geographic area of critical need pursuant to the provisions of §18C-4-3 of this code; and

(3) In the case of a student pursuing a certificate in special education, have a cumulative grade point average of at least 3.25 on a 4.0 scale possible scale of four after successfully completing two years of course work at an approved institution of higher education in West Virginia; are public school aides or paraprofessionals as defined in section eight, article four, chapter eighteen-a of this code and who have a cumulative grade point average of at least 3.25 on a possible scale of four after successfully completing two years of course work at an approved institution of higher education in West Virginia; or

(4) ~~Are graduate students at the master's degree level; who have graduated or are graduating in the top ten percent of their college graduating class.~~

(c) To be eligible for an award, a non-citizen of the United States shall hold a valid Employment Authorization Document (EAD), or work permit, issued by the United States Citizenship and Immigration Services (USCIS).

(d) In accordance with the rules of the commission, the vice chancellor for administration shall develop criteria and procedures for the selection of scholarship recipients. The selection criteria shall reflect the purposes of this article and shall specify the areas in which particular efforts will be made in the selection of scholars as set forth in ~~section one of this article~~ §18C-4-1 of this code. Selection procedures and criteria also may include, but are not limited to, the grade point average of the applicant, involvement in extracurricular activities, financial need, current academic standing and an expression of interest in teaching as demonstrated by an essay written by the applicant. These criteria and procedures further may require the applicant to furnish letters of recommendation from teachers and others. It is the intent of the Legislature that academic abilities be the primary criteria for selecting scholarship recipients. ~~However, the qualified applicants with the highest academic abilities who intend to pursue teaching careers in areas of critical need and shortage pursuant to section one of this article shall be given priority.~~

~~(d)~~ (e) In developing the selection criteria and procedures to be used by the Higher Education Student Financial Aid Advisory Board, the vice chancellor for administration shall solicit the views of public and private education agencies and institutions and other interested parties. Input from interested parties shall be solicited by means of written and published selection criteria and procedures in final form for implementation and may be solicited by means of public hearings on the present and projected teacher needs of the state or any other methods the vice chancellor for administration may determine to be appropriate to gather the information.

~~(e)~~ (f) The vice chancellor for administration shall make application forms for Underwood-Smith ~~Teacher Scholarships~~ Teaching Scholars available to public and private high schools in the state and in other locations convenient to applicants, parents and others, and shall make an effort to attract students from low-income backgrounds, ethnic or racial minority students, students with disabilities, and women or minority students who show interest in pursuing teaching careers in mathematics, ~~and science~~ and special education and who are under-represented in those fields.

### **§18C-4-3. Scholarship agreement.**

(a) Each recipient of an Underwood-Smith ~~teacher scholarship~~ Teaching Scholars award shall enter into an agreement with the vice chancellor for administration under which the recipient shall meet the following conditions:

(1) Provide the commission with evidence of compliance with subsection (a), section four of this article;

(2) ~~Beginning within a ten-year period~~ one year after completing the teacher education program for which the scholarship was awarded, ~~(A) teach full-time in the subject area of mathematics, science, or special education at the elementary, middle, or secondary level, or special education at the elementary, middle or secondary level, in a geographic area of critical need, under contract with a county board of education in a public education program in the state, for a period of not fewer than two five consecutive years for each year the four academic years~~ for which a scholarship was received. ~~or~~

~~(B) Teach full-time under contract for not less than one year for each year for which a scholarship was received with a county board of education in this state in a teacher shortage area pursuant to section one of this article, in an exceptional children program in this state, in a school having less than average academic results or in a school in an economically disadvantaged area of this state; or~~

~~(C) Within the ten-year period, while seeking and unable to secure a full-time teaching position under contract with a county board of education which satisfies the conditions of paragraph (A) of this subdivision:~~

~~(i) Teach full-time in a private school, parochial or other school approved for the instruction of students of compulsory school age pursuant to section one, article eight, chapter eighteen of this code; or~~

~~(ii) Teach in an institution of higher education in this state as defined in section two, article one, chapter eighteen-b of this code or in a post-secondary vocational education program in this state for a period of not fewer than two years for each year for which a scholarship was received; or~~

~~(iii) Perform alternative service or employment in this state pursuant to rules promulgated by the commission, in federal, state, county or local supported programs with an educational component, including mental or physical health care, or with bona fide tax exempt charitable organizations dedicated to the above, for a period of not fewer than two years for each year for which a scholarship~~

~~was received.~~ Any teaching time accrued during the required five-year period as a substitute teacher for a county board of education ~~under paragraph (A) or (B) of this subdivision~~ in the subject area of mathematics, science, or special education at the elementary, middle, or secondary level, or special education at the elementary, middle or secondary level, shall be credited pro rata in accordance with rules promulgated by the commission; or

(3) Repay all or part of an Underwood-Smith ~~teacher scholarship~~ Teaching Scholars award received under this article plus interest and, if applicable, reasonable collection fees in accordance with ~~subsection (c), section four of this article, except as provided in subsection (d) of section four of this article~~ §18C-4-4 of this code.

(b) Scholarship agreements shall disclose fully the terms and conditions under which assistance under this article is provided and under which repayment may be required. The agreements shall include the following:

(1) A description of the conditions and procedures to be established under ~~section four of this article~~ §18C-4-4 of this code; and

(2) A description of the appeals procedure required to be established under ~~section four of this article~~ §18C-4-4 of this code.

(c) ~~Individuals who were~~ The scholarship terms, conditions, requirements, and agreements applicable to awarded an Underwood-Smith teacher scholarship recipient prior to the effective date of this section ~~may apply the provisions of paragraph (A), (B) or (C), subdivision (2), subsection (a) of this section to teaching or other service performed by them after July 1, 1997 shall continue in effect and are not altered by the reenactment of this section during the 2019 regular session of the Legislature.~~

#### **§18C-4-4. Renewal conditions; noncompliance; deferral; excusal.**

(a) The recipient of an Underwood-Smith ~~Teacher Scholarship~~ Teaching Scholars award is eligible for scholarship renewal only during those periods when the recipient meets the following conditions:

(1) Is enrolled as a full-time student in an accredited institution of higher education in this state;

(2) Is pursuing a course program of study leading to teacher certification in mathematics, science, or special education at the preschool elementary, middle or secondary level; ~~in this state~~

(3) Is maintaining satisfactory progress as determined by the institution of higher education the recipient is attending; ~~and~~

(4) Is maintaining a cumulative grade point average of at least 3.25 on a 4.0 scale; and

(5) Is complying with such other standards as the commission may establish by rule.

(b) Recipients found to be in noncompliance with the agreement entered into under ~~section three of this article~~ §18C-4-3 of this code shall be required to repay the amount of the scholarship awards received, plus interest, and, where applicable, reasonable collection fees, on a schedule and at a rate of interest prescribed in the program guidelines. Guidelines also shall provide for proration of the amount to be repaid by a recipient who teaches for part of the period required under subsection (a), ~~section three of this article~~ §18C-4-3 of this code and for appeal procedures under which a recipient may appeal any determination of noncompliance.

(c) A recipient is not in violation of the agreement entered into under ~~section three of this article §18C-4-3 of this code~~ during any period in which the recipient is meeting any of the following conditions:

(1) Pursuing a full-time course of study at an accredited institution of higher education;

(2) Serving, not in excess of four years, as a member of the armed services of the United States;

~~(3) Seeking and unable to find full-time employment in accordance with paragraph (A), subdivision (2), subsection (a), section three of this article and is fulfilling any of the alternatives specified in paragraph (B) or (C) of that subdivision;~~

(4) Satisfying the provisions of ~~additional~~ any repayment exemptions that may be prescribed by the commission by rule; or

~~(5)~~ (4) Failing to comply with the terms of the agreement due to death or permanent or temporary disability as established by sworn affidavit of a qualified physician.

(d) The rules adopted by the commission may provide guidelines under which the vice chancellor for administration may extend the time period for beginning or fulfilling the teaching obligation to ~~fifteen years~~ if extenuating circumstances exist.

#### **§18C-4-5. Amount and duration of scholarship; relation to other assistance.**

(a) ~~Subject to subsection (b) of this section, each recipient of An Underwood-Smith teacher scholarship is eligible to receive assistance of up to \$5,000 for each academic year of higher education. Teaching Scholars award shall be used in preparation for becoming a preschool, an elementary, middle or secondary mathematics, science, or special education teacher in the public schools of this state. The annual award is equal to the lesser of the cost of tuition or \$7,800 and an institution may not charge a scholar any tuition and mandatory fees above that covered by this award and other federal, state, and institutional scholarships and grants. No individual may receive scholarship assistance for more than~~

(b) An Underwood-Smith Teaching Scholars award is available for a maximum of four academic years for the completion of a bachelor's degree and two additional academic years for completion of a master's degree certification in special education that meets the requirements set by the State Board of Education.

~~(b) No individual shall~~

(c) An individual may not receive a scholarship award under this article which exceeds the cost of attendance at the institution the individual is attending. The cost of attendance shall be based upon the actual cost of tuition and fees, and reasonable allowances for books, educational supplies, room and board and other expenses necessitated by individual circumstances, in accordance with the program guidelines. For the purposes of establishing an award amount, the ~~senior administrator~~ vice chancellor for administration shall take into account the amount of financial aid assistance the recipient has or will receive from all other sources. If the amount of the Underwood-Smith ~~teacher scholarship assistance~~ Teaching Scholars award and the amount of assistance awards which the recipient has received from all other sources exceed the cost of attendance, the institution's financial aid officer, in consultation with the scholar, will determine what aid is to be reduced and shall do so in a manner to the best advantage of the scholar.

(d) The amendments to this article during the 2019 regular session of the Legislature shall be effective for school years beginning on or after July 1, 2019, and the provisions of this article existing immediately prior to the 2019 regular session of the Legislature remain in effect for school years beginning prior to July 1, 2019.

#### **ARTICLE 4A. UNDERWOOD-SMITH TEACHER LOAN ASSISTANCE PROGRAM.**

##### **§18C-4A-1. Selection criteria and procedures for loan assistance.**

(a) The Governor shall designate the Higher Education Student Financial Aid Advisory Board created by section five, article one of this chapter to select recipients to receive Underwood-Smith Teacher Loan Assistance Awards.

(b) To be eligible for a loan award, a teacher shall agree to teach, or shall currently be teaching, a subject area of critical need or in a school or geographic area of the state identified as an area of critical need. The advisory board shall make decisions regarding loan assistance pursuant to section one, article four of this chapter.

(c) In accordance with the rule promulgated pursuant to section one, article four of this chapter, the Vice Chancellor for Administration shall develop additional eligibility criteria and procedures for the administration of the loan program.

(d) The Vice Chancellor for Administration shall make available program application forms to public and private schools in the state via the website of the commission and the State Department of Education and in other locations convenient to potential applicants.

(e) The provisions of this section expire effective July 1, 2019.

##### **§18C-4A-2. Loan assistance agreement.**

(a) Before receiving an award, each eligible teacher shall enter into an agreement with the Vice Chancellor for Administration and shall meet the following criteria:

(1) Provide the commission with evidence of compliance with subsection (b), section four, article four of this chapter;

(2) Teach in a subject area of critical need or in a school or geographic area of critical need full time under contract with a county board for a period of two school years for each year for which loan assistance is received pursuant to this article. The Vice Chancellor for Administration may grant a partial award to an eligible recipient whose contract term is for less than a full school year pursuant to criteria established by commission rule.

(3) Acknowledge that an award is to be paid to the recipient's student loan institution, not directly to the recipient, and only after the commission determines that the recipient has complied with all terms of the agreement; and

(4) Repay all or part of an award received pursuant to this article if the award is not paid to the student loan institution or if the recipient does not comply with the other terms of the agreement.

(b) Each loan agreement shall disclose fully the terms and conditions under which an award may be granted pursuant to this article and under which repayment may be required. The agreement also is subject to and shall include the terms and conditions established by section five, article four of this chapter.

(c) The provisions of this section expire effective July 1, 2019.

**§18C-4A-3. Amount and duration of loan assistance; limits.**

(a) Each award recipient is eligible to receive loan assistance of up to \$3,000 annually, subject to limits set forth in subsection (b) of this section:

(1) If the recipient has taught for a full school year under contract with a county board in a subject area of critical need or in a school or geographic area of critical need; and

(2) If the recipient otherwise has complied with the terms of the agreement and with applicable provisions of this article and article four of this chapter, and any rules promulgated pursuant thereto.

(b) The recipient is eligible for renewal of loan assistance only during periods when the recipient is under contract with a county board to teach in a subject area of critical need or in a school or geographic area of critical need and complies with other criteria and conditions established by rule, except that a teacher who is teaching under a contract in a position that no longer meets the definition of critical need under rules established in accordance with section one, article four of this chapter is eligible for renewal of loan assistance until the teacher leaves his or her current position.

(c) A recipient may not receive loan assistance pursuant to this article which accumulates in excess of \$15,000.

(d) The provisions of this section expire effective July 1, 2019.

**CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**

**ARTICLE 12. STATE INSURANCE.**

**§29-12-5a. Liability insurance for county boards of education, their employees and members, the county superintendent of schools, public charter schools electing to obtain coverage, and for employees and officers of the state Department of Corrections- written notice of coverage to insureds.**

(a) In accordance with the provisions of this article, the state Board of Risk and Insurance Management shall provide appropriate professional or other liability insurance for all county boards of education, teachers, supervisory and administrative staff members, service personnel, county superintendents of schools, and school board members and for all employees and officers of the state ~~Department of Corrections~~ Division of Corrections and Rehabilitation: *Provided*, That the Board of Risk and Insurance Management is not required to provide insurance for every property, activity, or responsibility of county boards of education, teachers, supervisory and administrative staff members, service personnel, county superintendents of schools, and school board members, and for all employees and officers of the state ~~Department of Corrections~~ Division of Corrections and Rehabilitation.

(b) Insurance provided by the Board of Risk and Insurance Management pursuant to the provisions of §29-12-5a(a) of this code shall cover claims, demands, actions, suits, or judgments by reason of alleged negligence or other acts resulting in bodily injury or property damage to any person within or without any school building or correctional institution if, at the time of the alleged injury, the teacher, supervisor, administrator, service personnel employee, county superintendent, school board member, or employee or officer of the ~~Department of Corrections~~ Division of Corrections and Rehabilitation was acting in the discharge of his or her duties, within the scope of his or her office, position or employment, under the direction of the county board of education, or Commissioner of the the



Division of Corrections and Rehabilitation, or in an official capacity as a county superintendent or as a school board member or as Commissioner of the Division of Corrections and Rehabilitation.

(c) Insurance coverage provided by the Board of Risk and Insurance Management pursuant to §29-12-5a(a) of this code shall be in an amount to be determined by the state Board of Risk and Insurance Management, but in no event less than ~~\$1 million~~ for each occurrence. In addition, each county board of education shall purchase, through the Board of Risk and Insurance Management, excess coverage of at least \$5 million for each occurrence. The cost of this excess coverage will be paid by the respective county boards of education. Any insurance purchased under this section shall be obtained from a company licensed to do business in this state.

(d) The insurance policy provided by the Board of Risk and Insurance Management pursuant to §29-12-5a(a) of this code shall include comprehensive coverage, personal injury coverage, malpractice coverage, corporal punishment coverage, legal liability coverage, as well as a provision for the payment of the cost of attorney's fees in connection with any claim, demand, action, suit, or judgment arising from such alleged negligence or other act resulting in bodily injury under the conditions specified in this section.

(e) The county superintendent and other school personnel shall be defended by the county board or an insurer in the case of suit, unless the act or omission shall not have been within the course or scope of employment or official responsibility or was motivated by malicious or criminal intent.

(f) At least annually, beginning with the 2019-2020 school year, the county board shall provide written notice of insurance coverage to each of its insureds, including teachers, supervisors, administrators, service personnel employees, county superintendent, and school board members. The notice shall identify the coverages, monetary limits of insurance, and duty to defend for each occurrence as provided to insureds by the Board of Risk and Insurance Management under this section. The written notice may be sent via email, or via first-class mail to the insured's last mailing address known to the county board. The written notice shall also include contact information for the Board of Risk and Insurance Management.

(g) The provisions of this section apply to public charter schools that have been authorized pursuant to §18-5G-1 et seq. of this code and have included in their approved charter application a determination to obtain insurance coverage from the Board of Risk and Insurance Management pursuant to this section. If a public charter school elects to obtain coverage pursuant to this section:

(1) Any provision in this section applicable to a county board also applies to a charter school governing board;

(2) Any provision in this section applicable to a school board member also applies to a member of a charter school governing board; and

(3) Any provision of this section applicable to teachers, supervisory and administrative staff members, and service personnel employed by a county board also applies to teachers, supervisory and administrative staff members, and service personnel employed by a public charter school."

Delegates Bates, Hornbuckle, Hartman and Miley moved to amend the amendment on page eleven, following the chapter heading, by inserting a new section, to read as follows:

**"ARTICLE 2. STATE BOARD OF EDUCATION.**

**§18-2-42. Education Adequacy Cost Study.**

(a) Not later than ten days after the effective date of this subsection, the State Board of Education shall issue a request for proposals to conduct an adequacy cost study of public school funding in West Virginia. Upon receipt and consideration of the proposals, the State Board of Education shall select a person or organization that has expertise in public education funding to conduct the study. The study shall consist of an analysis and estimation of the cost associated with achieving adequate educational outcomes to fulfill the demands of a thorough and efficient education, with consideration given to how costs vary by setting, location, and student backgrounds and characteristics.

(b) By December 15, 2019, a preliminary report on the adequacy cost study shall be submitted to the State Board of Education and to the Legislature's Joint Committee on Government and Finance. No later than December 15, 2021, a final report on the adequacy cost study shall be submitted to the State Board of Education and to the Legislature's Joint Committee on Government and Finance."

On the adoption of the amendment to the amendment, Delegate Bates demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken **(Roll No. 139)**, and there were—yeas 49, nays 50, absent and not voting 1, with the yeas and absent and not voting being as follows:

Yeas: Angelucci, Barrett, Bates, Boggs, N. Brown, S. Brown, Byrd, Campbell, Canestraro, Caputo, Dean, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hansen, Hartman, Hicks, Hornbuckle, Howell, Lavender-Bowe, Linville, Longstreth, Lovejoy, C. Martin, McGeehan, Miley, Miller, Pack, Paynter, Pethel, Pushkin, Pyles, Queen, Robinson, Rodighiero, Rowe, Skaff, Sponaule, Stagers, Swartzmiller, C. Thompson, R. Thompson, Tomblin and Walker.

Absent and Not Voting: Kump.

So, a majority of the members present and voting not having voted in the affirmative, the amendment was rejected.

On motion of Delegate Espinosa, the amendment was amended on page sixty-three, following line forty-five, by striking out section §18-9A-12 in its entirety, and inserting in lieu thereof section §18-9A-10 to read as follows:

**“§18-9A-10. Foundation allowance to improve instructional programs; instructional technology; and dual credit, advanced placement and international baccalaureate; teacher and leader induction and professional growth; and allocations of growth in local share .**

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

(1) For instructional improvement, in accordance with county and school electronic strategic improvement plans required by §18-2E-5 of this code, an amount equal to ten percent of the increase in the local share amount for the next school year shall be added to the amount of the appropriation for this purpose for the immediately preceding school year. The sum of these amounts shall be allocated to the counties as follows:

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

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

Moneys allocated by this subdivision shall be used to improve instructional programs according to the county and school strategic improvement plans required by §18-2E-5 of this code and approved by the state board.

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

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

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

(2) For the purposes of improving instructional technology, an amount equal to twenty percent of the increase in the local share amount for the next school year shall be added to the amount of the appropriation for this purpose for the immediately preceding school year. The sum of these amounts shall be allocated to the counties as follows:

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

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

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

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

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

(4) For the purpose of supporting county-level implementation of the comprehensive systems for teacher and leader induction and professional growth pursuant to §18A-3C-3 of this code, an amount equal to twenty percent of the increase in the local share amount for the next school year shall be added to the amount of the appropriation for this purpose for the immediately preceding school year.

The sum of these amounts shall be allocated to the counties in a manner established by the State Board which takes into account the following factors:

(A) The number of full-time-equivalent teachers employed by the county with zero years of experience;

(B) The total number of full-time-equivalent teachers employed by the county with one year of experience, with two years of experience and with three years of experience;

(C) The number of full-time-equivalent principals, assistant principals and vocational administrators employed by the county who are in their first or second year of employment as a principal, assistant principal or vocational administrator;

(D) The number of full-time-equivalent principals, assistant principals and vocational administrators employed by the county who are in their first year in an assignment at a school with a programmatic level in which they have not previously served as a principal, assistant principal or vocational administrator; and

(E) Needs identified in the strategic plans for continuous improvement of schools and school systems including those identified through the performance evaluations of professional personnel.

Notwithstanding any provision of this subsection to the contrary, no county may receive an allocation for the purposes of this subdivision which is less than the county's total 2016-2017 allocation from the Teacher Mentor and Principals Mentorship appropriations to the Department of Education. Moneys allocated by this subdivision shall be used for implementation of the comprehensive systems for teacher and leader induction and professional growth pursuant to §18A-3C-3 of this code; plus

(5) For school year 2019-20, and thereafter, all of the increases in the local share amount for the next school year remaining after subtracting the amounts as otherwise provided for in this section, shall be allocated to each county board in the amount attributable to the growth in local share of the county: *Provided*, That no county shall receive less than \$150,000; plus

~~(5)~~ (6) An amount not less than the amount required to meet debt service requirements on any revenue bonds issued prior to January 1, 1994, and the debt service requirements on any revenue bonds issued for the purpose of refunding revenue bonds issued prior to January 1, 1994, shall be paid by the Department of Education in accordance with the expenditure schedule approved by the state budget office into the School Building Capital Improvements Fund created by §18-9D-6 of this code and shall be used solely for the purposes of that article. The School Building Capital Improvements Fund shall not be utilized to meet the debt services requirement on any revenue bonds or revenue refunding bonds for which moneys contained within the School Building Debt Service Fund have been pledged for repayment pursuant to that section.

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

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

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

~~(c) When the school improvement bonds secured by funds from the School Building Capital Improvements Fund mature, the State Board of Education shall annually deposit an amount equal to \$24,000,000 from the funds allocated in this section into the School Construction Fund created pursuant to the provisions of §18-9D-6 of this code to continue funding school facility construction and improvements.~~

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

Delegate Linville moved to amend the amendment on page eight, section six-f, line thirty-two, by striking out subsection (c) in its entirety and re-lettering the remaining subsections accordingly.

Pursuant to House Rule 119, the Speaker announced that an amendment submitted by Delegate Sypolt would be considered prior to the amendment offered by Delegate Linville.

Delegate Sypolt moved to amend the amendment on page eight, section §11-8-6f, line forty-one, following the words "voters of the county", by inserting the words "at a general election".

On the adoption of the amendment to the amendment, Delegate Sypolt demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 140**), and there were—yeas 94, nays 5, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Cowles, Kessinger, Staggers, C. Thompson and Zukoff.

Absent and Not Voting: Kump.

So, a majority of the members present and voting having voted in the affirmative, the amendment to the amendment was adopted.

The House then returned to further consideration of the amendment by Delegate Linville.

On the adoption of the amendment to the amendment, Delegate Linville demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 141**), and there were—yeas 50, nays 49, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Speaker Hanshaw, Atkinson, Azinger, Barrett, Bibby, S. Brown, Cadle, Capito, Cooper, Cowles, Criss, Doyle, Ellington, Espinosa, Foster, Graves, Hamrick, Hanna, Hardy, Harshbarger, Hartman, Higginbotham, Hill, Hollen, Hott, Householder, Howell, Jennings, J. Kelly, Lavender-Bowe, Malcolm, Mandt, Nelson, Pack, Phillips, Pyles, Queen, Rowan, Rowe, Shott, Steele, Storch, Summers, Swartzmiller, Sypolt, Waxman, Westfall, Wilson and Worrell.

Absent and Not Voting: Kump.

So, a majority of the members present and voting having voted in the affirmative, the amendment was adopted.

Delegates Skaff, Evans, Nelson, Miley, Doyle, Westfall and Graves moved to amend the Finance Committee amendment on page ninety-nine, section ten, line eight-four, by striking out the number "500" and inserting in lieu thereof, the number "1,000".

During debate on the amendment, Delegate D. Kelly moved to reconsider the adoption of the amendment by Delegate Linville.

The Speaker replied that the Delegate's motion would be considered at the conclusion of action on the pending amendment.

On the adoption of the amendment to the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 142**), and there were—yeas 65, nays 33, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Speaker Hanshaw, Anderson, Atkinson, Azinger, Bibby, Butler, Cadle, Cowles, Criss, Espinosa, Fast, Foster, Hanna, Hardy, Harshbarger, Higginbotham, Hill, Hollen, Hott, Householder, D. Jeffries, Jennings, D. Kelly, J. Kelly, Kessinger, Malcolm, Phillips, Porterfield, Rowan, Summers, Sypolt, Waxman and Wilson.

Absent and Not Voting: Kump and Storch.

So, a majority of the members present and voting having voted in the affirmative, the amendment to the amendment was adopted.

The question now being on the motion by Delegate D. Kelly that the House reconsider its action by which it adopted the amendment by Delegate Linville, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 143**), and there were—yeas 51, nays 47, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Anderson, Angelucci, Bates, Boggs, N. Brown, Byrd, Campbell, Canestraro, Caputo, Dean, Diserio, Estep-Burton, Evans, Fast, Fleischauer, Fluharty, Hanna, Hansen, Hicks, D. Jeffries, J. Jeffries, Lavender-Bowe, Linville, Longstreth, Lovejoy, C. Martin, P. Martin, Maynard, McGeehan, Miller, Paynter, Porterfield, Pushkin, Pyles, Robinson, Rodighiero, Rohrbach, Skaff, Sponaugle, Staggars, Swartzmiller, C. Thompson, R. Thompson, Toney, Walker, Williams and Zukoff.

Absent and Not Voting: Kump and Tomblin.

So, a majority of the members present and voting having voted in the affirmative, the motion to reconsider the amendment was adopted.

The question now being on the adoption of the amendment by Delegate Linville, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 144**), and there were—yeas 47, nays 52, absent and not voting 1, with the yeas and absent and not voting being as follows:

Yeas: Anderson, Angelucci, Bates, Boggs, N. Brown, Byrd, Campbell, Canestraro, Caputo, Dean, Diserio, Estep-Burton, Evans, Fast, Fleischauer, Hansen, Hicks, Hornbuckle, Householder, J. Jeffries, Lavender-Bowe, Linville, Longstreth, Lovejoy, C. Martin, P. Martin, Maynard, McGeehan, Miley, Miller, Paynter, Pethtel, Pushkin, Pyles, Robinson, Rodighiero, Rohrbach, Sponaugle, Staggers, Swartzmiller, C. Thompson, R. Thompson, Tomblin, Toney and Walker.

Absent and Not Voting: Kump.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was rejected.

At 2:19 p.m., the House of Delegates recessed until 2:39 p.m.

\* \* \* \* \*

**Afternoon Session**

\* \* \* \* \*

The House of Delegates was called to order by the Honorable Roger Hanshaw, Speaker.

Delegates Skaff and Miley moved to amend the amendment on page eighteen, section 18b, line four, following the period, by inserting the following:

“Each county board should provide counseling services for each pupil enrolled in the county public schools based on the American School Counselor Association suggested guidelines for student to counselors ratios as funds are available.”

On the adoption of the amendment to the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 145**), and there were—yeas 46, nays 50, absent and not voting 4, with the yeas and absent and not voting being as follows:

Yeas: Angelucci, Barrett, Bates, Boggs, N. Brown, S. Brown, Byrd, Campbell, Canestraro, Caputo, Dean, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hansen, Hartman, Hornbuckle, Lavender-Bowe, Longstreth, Lovejoy, Mandt, Miley, Miller, Paynter, Pethtel, Pushkin, Pyles, Queen, Robinson, Rodighiero, Rowe, Skaff, Sponaugle, Staggers, Swartzmiller, C. Thompson, R. Thompson, Toney, Walker, Westfall and Williams.

Absent and Not Voting: Hicks, Kump, Porterfield and Tomblin.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was rejected.

Delegates Sponaugle, Hornbuckle, Miley and Williams moved to amend the amendment on page 56, section 2, line 2, by inserting the following: “(a) Law enforcement personnel” means state or local law enforcement personnel hired on as a per diem or salaried employee to provide security services to the school during the hours the school is open to students during a normal school day. Law enforcement personnel includes but is not limited to local city police, deputy sheriffs or other officers assigned by any law enforcement agency to the school to provide security for students at the school.”; And by re-lettering subsequent definitions accordingly.

And,

On page 61, Section 8, line 50, following the period, by inserting a new subsection (d), to read as follows:

(d) Effective for the 2019-20 fiscal year and thereafter, the basic foundation allowance to the county for law enforcement personnel is the amount of money required to pay the state minimum salaries, in accordance with provisions of §18A-4-1 et seq. of this code, subject to the following:

(1) In making this computation, each county shall receive an allowance for four and seventy hundredths state aid eligible law enforcement personnel positions to each 1,000 students in net enrollment;

(2) For any law enforcement personnel positions, or fraction thereof, determined for a county pursuant to §18-9A-8(c)(1) of this code that exceed the number employed, the county's allowance for these positions shall be determined using the average state funded salary of law enforcement support personnel for the county: *Provided*, That if law enforcement personnel are obtained through a contractual arrangement with an outside law enforcement agency, the county average state funded salary of the professional student personnel shall be used;

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

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

(5) For the 2019-20 fiscal year only, the number of positions funded for each county by subdivision (1) cannot be less than the number of positions that would have been funded in accordance with the previous methodology for determining the number of professional student support personnel positions funded for each county.

(6) The County is authorized to reimburse the law enforcement agency for the costs of providing a salaried employee to the school or may hire and pay law enforcement personnel as per diem employees outside his or her normal work hours to serve as law enforcement personnel, as provided in this section."

Delegate Steele was debating the amendment to the amendment and moved the previous question.

Delegate Caputo rose to a point of order regarding a member not being permitted to move the previous question if that member had spoken on the question.

The Speaker replied that the point was well taken.

Subsequently,

Delegate Wilson moved the previous question, which demand was sustained.

On this question, the yeas and nays were taken (**Roll No. 146**), and there were—yeas 53, nays 46, absent and not voting 1, with the nays and absent and not voting being as follows:



Nays: Anderson, Angelucci, Barrett, Bates, Boggs, N. Brown, S. Brown, Byrd, Campbell, Canestraro, Caputo, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hansen, Hardy, Hartman, Hicks, Hornbuckle, Hott, Lavender-Bowe, Longstreth, Lovejoy, Malcolm, McGeehan, Miley, Pethtel, Pushkin, Pyles, Queen, Robinson, Rodighiero, Rowe, Skaff, Sponaugle, Staggers, Swartzmiller, C. Thompson, R. Thompson, Walker, Westfall, Williams and Zukoff.

Absent and Not Voting: Kump.

So, a majority of the members present and voting having voted in the affirmative, the previous question was ordered.

Delegate Sponaugle then asked unanimous consent to be permitted to offer a reformed amendment to the amendment, which consent was not granted, objection being heard.

Delegate Sponaugle then moved to be permitted to offer a reformed amendment.

On this question, the yeas and nays were demanded, which demand was sustained.

Having been ordered, the yeas and nays were taken (**Roll No. 147**), and there were—yeas 93, nays 6, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Cadle, Cooper, Cowles, Ellington, Hollen and Porterfield.

Absent and Not Voting: Kump.

So, a majority of the members present and voting having voted in the affirmative, the motion prevailed.

Consent having been granted, Delegates Sponaugle, Hornbuckle, Miley and Williams offered the following reformed amendment to the amendment on page fifty-six, section two, line two, by inserting the following:

“(a) Law enforcement personnel” means state or local law enforcement personnel hired on as a per diem or salaried employee to provide security services to the school during the hours the school is open to students during a normal school day. Law enforcement personnel includes but is not limited to local city police, deputy sheriffs or other officers assigned by any law enforcement agency to the school to provide security for students at the school.”; And by re-lettering subsequent definitions accordingly” and a semicolon.

And,

On page sixty-one, section eight, line fifty, following the period, by inserting a new subsection (d), to read as follows:

“(d) Effective for the 2019-20 fiscal year and thereafter, the basic foundation allowance to the county for law enforcement personnel is the amount of money required to pay the state minimum salaries, in accordance with provisions of §18A-4-1 et seq. of this code, subject to the following:

(1) In making this computation, each county shall receive an allowance sufficient to provide for one law enforcement officer for each school in the county;

(2) For any law enforcement personnel positions, or fraction thereof, determined for a county pursuant to §18-9A-8(c)(1) of this code that exceed the number employed, the county’s allowance

for these positions shall be determined using the average state funded salary of law enforcement support personnel for the county, less any federal or other funds received to cover such costs: *Provided*, That if law enforcement personnel are obtained through a contractual arrangement with an outside law enforcement agency, the county average state funded salary of the professional student personnel shall be used;

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

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

(5) For the 2019-20 fiscal year only, the number of positions funded for each county by subdivision (1) cannot be less than the number of positions that would have been funded in accordance with the previous methodology for determining the number of professional student support personnel positions funded for each county.

(6) The County is authorized to reimburse the law enforcement agency for the costs of providing a salaried employee to the school or may hire and pay law enforcement personnel as per diem employees outside his or her normal work hours to serve as law enforcement personnel, as provided in this section."

On the adoption of the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 148**), and there were—yeas 82, nays 17, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Bibby, Butler, Cadle, Cooper, Cowles, Ellington, Fast, Foster, Graves, Hardy, Harshbarger, Householder, D. Jeffries, Malcolm, Porterfield, Waxman and Wilson.

Absent and Not Voting: Kump.

So, a majority of the members present and voting having voted in the affirmative, the amendment to the amendment was adopted.

Delegate Hanna moved to amend the amendment on page fifty-eight, section §18-9A-2, line fifty-four, by striking out the number "1,400" and inserting in lieu thereof the number "1,500".

And,

On line fifty-five, by striking out the number "1,400" and inserting in lieu thereof the number "1,500".

On the adoption of the amendment to the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 149**), and there were—yeas 39, nays 58, absent and not voting 3, with the yeas and absent and not voting being as follows:

Yeas: Angelucci, Barrett, Bates, Boggs, N. Brown, Byrd, Campbell, Canestraro, Caputo, Diserio, Evans, Fleischauer, Fluharty, Hanna, Hansen, Hartman, Hicks, Hill, Hornbuckle, Lavender-Bowe, Lovejoy, C. Martin, P. Martin, Miley, Miller, Paynter, Pethtel, Phillips, Pyles, Queen, Skaff, Sponaugle, Staggers, Steele, C. Thompson, R. Thompson and Tomblin.

Absent and Not Voting: S. Brown, Kump and Worrell.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was rejected.

Delegate Storch moved to amend the amendment on page one hundred one, section §18C-4-1, on line nine, following the words “areas of critical need”, by striking the period and inserting in lieu thereof a colon and the words “*Provided*, That nothing in this article shall prohibit any individual who has demonstrated outstanding academic abilities from eligibility for an award from the Underwood-Smith Teacher Scholarship and Loan Assistance Fund under the provisions of this article as they existed prior to reenactment of this article during the 2019 Regular Session of the Legislature to pursue a teaching career in the field of music education.”

On the adoption of the amendment to the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 150**), and there were—yeas 60, nays 37, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: Speaker Hanshaw, Anderson, Atkinson, Bibby, Butler, Cadle, Cooper, Cowles, Criss, Ellington, Espinosa, Fast, Foster, Hardy, Harshbarger, Higginbotham, Hill, Hollen, Hott, Householder, D. Jeffries, J. Jeffries, Jennings, J. Kelly, Kessinger, C. Martin, P. Martin, Maynard, Pack, Paynter, Phillips, Porterfield, Rowan, Shott, Summers, Sypolt and Wilson.

Absent and Not Voting: S. Brown, Kump and Worrell.

So, a majority of the members present and voting having voted in the affirmative, the amendment was adopted.

Delegate Shott moved to amend the amendment on page seventy-seven, section seven-a, following line thirty-seven, by striking out section 7a in its entirety and inserting in lieu thereof the following:

**“§18A-4-7a. Employment, promotion, and transfer of professional personnel; Seniority qualifications.”**

(a) A county board of education shall make decisions affecting the filling of vacancies in professional positions of employment on the basis of the applicant with the highest qualifications: *Provided*, That the county superintendent shall be hired under separate criteria pursuant to §18-4-2 of this code.

(b) In judging qualifications for the filling of vacancies of professional positions of employment, consideration shall be given to each of the following:

(1) Appropriate certification, licensure, or both;

(2) Amount of experience relevant to the position or, in the case of a classroom teaching position, the amount of teaching experience in the required certification area;

(3) The amount of course work, degree level, or both in the relevant field and degree level generally;

(4) Academic achievement;

(5) In the case of a principal or classroom teaching position, certification by the National Board for Professional Teaching Standards;

(6) Specialized training relevant to performing the duties of the job;

(7) Past performance evaluations conducted pursuant to §18A-2-12 and §18A-3C-2 of this code or, in the case of a classroom teacher, past evaluations of the applicant's performance in the teaching profession;

(8) Seniority;

(9) Other measures or indicators upon which the relative qualifications of the applicant may fairly be judged;

(10) In the case of a classroom teaching position, the recommendation of the principal of the school at which the applicant will be performing a majority of his or her duties; and

(11) In the case of a classroom teaching position, the recommendation, if any, resulting from the process established pursuant to the provisions of §18-5A-5 of this code by the faculty senate of the school at which the employee will be performing a majority of his or her duties.

(c) When filling of a vacancy pursuant to this section, a county board is entitled to determine the appropriate weight to apply to each of the criterion when assessing an applicant's qualifications: *Provided*, That if one or more permanently employed instructional personnel apply for a classroom teaching position and meet the standards set forth in the job posting, each criterion under subsection (b) of this section shall be given equal weight except that the criterion in subdivisions (10) and (11) of said subsection shall each be double weighted.

(d) For a classroom teaching position, if the principal and faculty senate recommend the same applicant pursuant to subdivisions (10) and (11), subsection (b) of this section, and the superintendent concurs with those recommendations, then the other provisions of subsections (b) and (c) of this section do not apply and the county board shall appoint that applicant notwithstanding any other provision of this code to the contrary.

(e) The state board shall promulgate a rule, including an emergency rule if necessary, in accordance with ~~the provisions of §29A-3B-1 et seq.~~ article three-b, chapter twenty-nine-a of this code to implement and interpret ~~the provisions of~~ this section. The rule may provide for a classroom teacher who directly participates in making recommendations pursuant to this section to be compensated at the appropriate daily rate during periods of participation beyond his or her individual contract.

(f) The recommendations of the principal and faculty senate made pursuant to subdivisions (10) and (11), subsection (b) of this section shall be based on a determination as to which applicant is the most highly qualified for the position: *Provided*, That nothing in this subsection may require principals or faculty senates to assign any amount of weight to any factor in making a recommendation.

(g) With the exception of guidance counselors, the seniority of classroom teachers, as defined in section one, article one of this chapter, shall be determined on the basis of the length of time the

employee has been employed as a regular full-time certified and/or licensed professional educator by the county board of education and shall be granted in all areas that the employee is certified, licensed or both.

(h) Upon completion of 133 days of employment in any one school year, substitute teachers, except retired teachers and other retired professional educators employed as substitutes, shall accrue seniority exclusively for the purpose of applying for employment as a permanent, full-time professional employee. One hundred thirty-three days or more of said employment shall be prorated and shall vest as a fraction of the school year worked by the permanent, full-time teacher.

(i) Guidance counselors and all other professional employees, as defined in section one, article one of this chapter, except classroom teachers, shall gain seniority in their nonteaching area of professional employment on the basis of the length of time the employee has been employed by the county board of education in that area: *Provided*, That if an employee is certified as a classroom teacher, the employee accrues classroom teaching seniority for the time that employee is employed in another professional area. For the purposes of accruing seniority under this subsection, employment as principal, supervisor or central office administrator, as defined in §18A-1-1 of this code, shall be considered one area of employment.

(j) Employment for a full employment term equals one year of seniority, but an employee may not accrue more than one year of seniority during any given fiscal year. Employment for less than the full employment term shall be prorated. If two or more employees with the same certification establish an identical seniority date as a result of initial employment as a regular teacher on or after July 1, 2019, the priority between these employees shall be determined by a random selection system established by the employees and approved by the the county board. A board shall conduct the random selection within 30 days of the time the employees with the same certification establish an identical seniority date. All employees with an identical date and the same certification shall participate in the random selection. As long as the affected employees hold the identical seniority date within a certification, the initial random selection conducted by the board shall be permanent for the duration of the employment of the employees by the board. A random selection system established by the employees and approved by the county board shall be used to determine the priority if two or more employees accumulate identical seniority: *Provided*, That when two or more principals have accumulated identical seniority.

(k) All decisions on reductions in force shall be based on qualifications as set forth in a county board policy. Furthermore, for the purposes of this subsection and subsections (l) through (t), inclusive, of this section, the word "qualifications" means the qualifications set forth in county board policy and only means qualifications set forth in subsection (b) of this section to the extent those qualifications are set forth in county board policy: *Provided*, That in defining the word 'qualifications' in its policy, the county board:

(1) Shall consider including the criteria set forth in subsection (b) of this section;

(2) Shall consider other criteria set forth in subsection (b) of this section to the extent they are included in the county board policy only after considering personnel whose last performance evaluation conducted pursuant to §18A-2-12 or §18A-3C-2 of this code as applicable, is less than satisfactory; and

(3) May not include salary as one of the criteria in the definition.

~~(l)~~ (l) Whenever a county board is required to reduce the number of professional personnel in its employment, the employee with the least amount of seniority who is least qualified, as set forth in

county board policy, shall be properly notified and released from employment pursuant to the provisions of §18A-2-2 of this code. ~~The provisions of this~~ This subsection are ~~is~~ subject to the following:

(1) All persons employed in a certification area to be reduced who are employed under a temporary permit shall be properly notified and released before a fully certified employee in such a position is subject to release;

(2) Notwithstanding any provision of this code to the contrary, for any vacancy in an established, existing or newly created position that, on or before March 1, is known to exist for the ensuing school year, upon recommendation of the superintendent, the board shall appoint the successful applicant from among all qualified applicants. All employees subject to release shall be considered applicants for the positions for which they are qualified and shall be considered before posting such vacancies for application by nonemployees;

(3) An employee subject to release shall be employed in any other professional position where the employee is certified and was previously employed or to any lateral area for which the employee is certified, licensed or both: ~~if the employees seniority is greater than the seniority of any other employee in that area of certification, licensure or both~~ Provided, That the employee is the most qualified person for that position;

(4) If an employee subject to release holds certification, licensure or both in more than one lateral area and if the employee's ~~seniority is~~ qualifications are greater than the ~~seniority~~ qualifications of any other employee in one or more of those areas of certification, licensure, or both, the employee subject to release shall be employed in the professional position held by the employee ~~with the least seniority who is least qualified~~ in any of those areas of certification, licensure, or both; and

(5) If, prior to August 1 of the year, a reduction in force is approved, the reason for any particular reduction in force no longer exists as determined by the county board in its sole and exclusive judgment, the board shall rescind the reduction in force or transfer and shall notify the released employee in writing of his or her right to be restored to his or her position of employment. Within five days of being so notified, the released employee shall notify the board, in writing, of his or her intent to resume his or her position of employment or the right to be restored shall terminate. Notwithstanding any other provision of this subdivision, if there is another employee on the preferred recall list with proper certification and ~~higher seniority~~ has greater qualifications, that person shall be placed in the position restored as a result of the reduction in force being rescinded.

~~(j)~~ (m) For the purpose of this article, all positions which meet the definition of "classroom teacher" as defined in section one, article one of this chapter shall be lateral positions. For all other professional positions, the county board of education shall adopt a policy by October 31, 1993, and may modify the policy thereafter as necessary, which defines which positions shall be lateral positions. In adopting the policy, the board ~~shall~~ may give consideration to the rank of each position in terms of title; nature of responsibilities; salary level; and certification, licensure or both, ~~and along with the~~ days in the period of employment.

~~(m)~~ (n) All professional personnel whose ~~seniority~~ lesser qualifications, as determined by county board policy, with the county board is insufficient to allow their retention by the county board during a reduction in workforce shall be placed upon a preferred recall list. As to any professional position opening within the area where they had previously been employed or to any lateral area for which they have certification, licensure or both, the employee shall be recalled on the basis of ~~seniority~~ qualifications if no regular, full-time professional personnel, or those returning from leaves of absence with greater ~~seniority~~ are qualified qualifications, apply for and accept the position.

~~(n)~~ (o) ~~Before position openings that are known or expected to extend for twenty consecutive employment days or longer for professional personnel may be filled by the board, the board shall be required to notify all qualified professional personnel on the preferred list and give them an opportunity to apply, but failure to apply shall not cause the employee to forfeit any right to recall. The notice shall be sent by certified mail to the last known address of the employee and it shall be the duty of each professional personnel to notify the board of continued availability annually, of any change in address or of any change in certification, licensure or both. The board shall annually notify professional personnel on the preferred list of the job application procedures and any websites used to advertise vacancies. The notice shall be sent by certified mail via the U.S. Postal Service to the last known address of the employee, and it shall be the duty of each professional person to notify the board of continued availability annually of any change in address, or of any change in certification, licensure or both.~~

~~(e)~~ (p) Openings in established, existing, or newly created positions shall be processed as follows:

(1) Boards shall be required to post and date notices of each opening at least once. At their discretion, boards may post an opening for a position other than classroom teacher more than once in order to attract more qualified applicants. At their discretion, boards may ~~post~~ repost an opening for a classroom teacher one additional time after the first posting in order to attract more qualified applicants ~~only if fewer than three individuals apply during the first posting~~ subject to the following:

(A) Each notice shall be posted in conspicuous working places for all professional personnel to observe for at least five working days which may include any website maintained by the county board;

(B) At least one notice shall be posted within 20 working days of the position openings and shall include the job description;

(C) Any special criteria or skills that are required by the position shall be specifically stated in the job description and directly related to the performance of the job;

(D) Postings for vacancies made pursuant to this section shall be written so as to ensure that the largest possible pool of qualified applicants may apply; and

(E) Job postings may not require criteria which are not necessary for the successful performance of the job and may not be written with the intent to favor a specific applicant;

(2) No vacancy may be filled until after the five-day minimum posting period of the most recent posted notice of the vacancy;

(3) If one or more applicants under all the postings for a vacancy meets the qualifications listed in the job posting, the successful applicant to fill the vacancy shall be selected by the board within 30 working days of the end of the first posting period;

(4) A position held by a teacher who is certified, licensed, or both, who has been issued a permit for full-time employment and is working toward certification in the permit area shall not be subject to posting if the certificate is awarded within five years; and

(5) Nothing provided herein may prevent the county board of education from eliminating a position due to lack of need.

~~(p)~~ (q) Notwithstanding any other provision of the code to the contrary, where the total number of classroom teaching positions in an elementary school does not increase from one school year to the next, but there exists in that school a need to realign the number of teachers in one or more grade

levels, kindergarten through six, teachers at the school may be reassigned to grade levels for which they are certified without that position being posted: *Provided*, That the employee and the county board mutually agree to the reassignment.

~~(q)~~ (r) Reductions in classroom teaching positions in elementary schools shall be determined pursuant to the considerations set forth in county board policy and processed as follows:

(1) When the total number of classroom teaching positions in an elementary school needs to be reduced, the reduction shall be made on the basis of ~~seniority~~ qualifications with the least ~~senior~~ qualified classroom teacher being recommended for transfer; and

(2) When a specified grade level needs to be reduced and the least ~~senior~~ qualified employee in the school is not in that grade level, the ~~senior~~ least qualified classroom teacher in the grade level that needs to be reduced shall be reassigned to the position made vacant by the transfer of the ~~senior~~ least qualified classroom teacher in the school without that position being posted: *Provided*, That the employee is certified, licensed or both and agrees to the reassignment.

~~(r)~~ (s) Any board failing to comply with ~~the provisions of~~ this article may be compelled to do so by mandamus and shall be liable to any party prevailing against the board for court costs and reasonable attorney fees as determined and established by the court. Further, employees denied promotion or employment in violation of this section shall be awarded the job, pay and any applicable benefits retroactive to the date of the violation and payable entirely from local funds. Further, the board shall be liable to any party prevailing against the board for any court reporter costs including copies of transcripts.

~~(s) The county board shall compile, update annually on July 1 and make available by electronic or other means to all employees a list of all professional personnel employed by the county, their areas of certification and their seniority.~~

(t) Notwithstanding any other provision of this code to the contrary, upon recommendation of the principal and approval by the classroom teacher and county board, a classroom teacher assigned to the school may at any time be assigned to a new or existing classroom teacher position at the school without the position being posted.

(u) The amendments to this section during the 2019 regular session of the Legislature shall be effective for school years beginning on or after July 1, 2019, and the provisions of this section existing immediately prior to the 2019 regular session of the Legislature remain in effect for school years beginning prior to July 1, 2019."

Subsequently,

In the absence of objection, further consideration of the amendment to the amendment was moved to the foot all amendments.

Delegate J. Jeffries moved to amend the amendment on page eleven, following the chapter heading, following line fifteen, by inserting a new article to read as follows:

**"ARTICLE 4. COUNTY SUPERINTENDENT OF SCHOOLS.**

**§18-4-4. COMPENSATION.**

On or before June 1 of the year in which the superintendent is appointed, the board shall fix the annual salary of the superintendent for the period of appointment for the term beginning on the



following July 1. The board shall pay the salary from the general current expense fund of the district. The salary of any superintendent may not exceed \$130,000.”

On the adoption of the amendment to the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 151**), and there were—yeas 10, nays 89, absent and not voting 1, with the yeas and absent and not voting being as follows:

Yeas: Butler, Foster, Hanna, J. Jeffries, Linville, P. Martin, Maynard, McGeehan, Robinson and Wilson.

Absent and Not Voting: Kump.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was rejected.

Delegates Espinosa, Cowles, Bibby and Wilson moved to amend the amendment on page twenty-one, following line ten, by striking out article §18-5G-1 *et seq.* in its entirety and inserting in lieu thereof a new article §18-5G-1 *et seq.* to read as follows:

#### **“ARTICLE 5G. PUBLIC CHARTER SCHOOLS.**

##### **§18-5G-1. Legislative purpose and intent.**

(a) The West Virginia Legislature hereby authorizes a pilot program under which public charter schools may be authorized to allow new, innovative, and more flexible ways of educating all children who choose to attend and advance a renewed commitment to the mission, goals, and diversity of public education. The purposes of this public charter school initiative are to:

(1) Improve student learning by creating more diverse public schools with high standards for student performance;

(2) Provide innovative educational methods and practices through programs that engage students in the learning process, thus resulting in higher student achievement;

(3) Enable schools to establish a distinctive school curriculum, a specialized academic theme, or method of instruction; and

(4) Allow schools enhanced freedom and flexibility in exchange for exceptional levels of results-driven accountability.

##### **§18-5G-2. Definitions.**

The following words used in this article and any proceedings pursuant thereto have the following meanings unless the context clearly indicates a different meaning:

(1) ‘Applicant’ means any group or entity with 501(c)(3) tax-exempt status or that has submitted an application for 501(c)(3) tax-exempt status that develops and submits an application for a public charter school to an authorizer: *Provided*, That in the case of a conversion public charter school, ‘Applicant’ means an organization or group comprised primarily of parents and others who reside within the community served by a noncharter public school who:

(A) Have obtained 501(c)(3) tax-exempt status or have submitted an application for 501(c)(3) tax-exempt status;

(B) Develop and submit an application to become a conversion public charter school to the county board of the county wherein the school is located;

(C) May include as partner organizations a public or private institution or institutions of higher education and partners in business and industry; and

(D) Include in the application for conversion to a public charter school, in addition to the other requirements of this article, the demonstrated support for the proposed conversion to a public charter school as evidenced by:

(A) A petition for conversion signed by a majority of the employees of the school proposed for conversion; and

(B) A petition for conversion signed by a majority of the parents, guardians or custodians of the students enrolled in the school proposed for conversion.

(2) 'Authorizer' means the entity authorized under this article to review and approve or deny charter applications, enter into charter contracts with applicants, oversee public charter schools, and determine whether to renew, not renew, or revoke charter contracts. Authorizers include:

(A) A county school board in the county in which a public charter school is proposed to be located;

(B) Two or more county school boards representing the several counties which a public charter school is proposed to serve; or

(C) The West Virginia Public Charter School Commission established pursuant to §18-5G-10 of this code: *Provided*, That the Commission may authorize a public charter schools only upon the request by a county board that the Commission assume the role of authorizer;

(3) 'Charter application' means a proposal from an applicant to an authorizer to enter into a charter contract whereby the proposed school obtains public charter school status;

(4) 'Charter contract' or 'contract' means a fixed-term, renewable contract between a public charter school's governing board and an authorizer that identifies the roles, powers, responsibilities, operational duties, accountability, and performance expectations for each party to the contract, consistent with the requirements of this article;

(6) 'Conversion public charter school' means a public charter school that existed as a noncharter public school before becoming a public charter school;

(7) 'County board' means a county board of education;

(8) 'Education service provider' means an education management organization, school design provider, or any other partner entity with which a public charter school contracts for educational design, implementation, or comprehensive management;

(9) 'Governing board' means a board of directors as provided for in §18-5G-3 of this code;

(10) 'Noncharter public school' means a public school other than a public charter school established pursuant to this article;

(11) 'Parent' means a parent, guardian, or other person or entity having legal custody over a child;

(12) 'Public charter school' means a public school established pursuant to this article that:

(A) Is a public school and is part of the state's system of public education but is exempt from all statutes and administrative regulations applicable to the state board, a county board, or a school unless expressly stated otherwise in this article: *Provided*, That nothing in this article prohibits a public charter school from complying with any statute, state board policy, or county board policy applicable to noncharter public schools;

(B) Is a public corporate body, exercising public power through its governing board, including the power in name to contract and be contracted with, sue and be sued, and adopt bylaws not inconsistent with this article;

(C) Has autonomy over decisions relating to finance, personnel, scheduling, curriculum, and instruction consistent with this article and its charter contract;

(D) Is governed by a governing board that is independent of a county board except as otherwise provided in this article;

(E) Is established and operating under the terms of a charter contract between the public charter school's governing board and its authorizer;

(F) Is a public school to which parents choose to send their children;

(G) Is a public school that admits students on the basis of a random and open lottery if more students apply for admission than can be accommodated, pursuant to and subject to §18-5G-4 of this code;

(H) Offers a comprehensive instructional program that meets or exceeds the student performance standards adopted pursuant to §18-2E-5 of this code; and

(I) Operates under the oversight of its authorizer in accordance with its charter contract;

(13) 'State board' means the West Virginia Board of Education; and

(14) 'Student' means any person that is eligible for attendance in a public school in West Virginia.

### **§18-5G-3. Authorization for the establishment of public charter schools; governing board.**

(a) The authorization for the establishment of public charter schools in this state is limited as a pilot project to five public charter schools: *Provided*, That the West Virginia Schools for the Deaf and the Blind may be an applicant to the West Virginia Board of Education to become a public charter school and if authorized by the West Virginia Board of Education, this public charter school is not within the five school limit. The West Virginia Board of Education may request the West Virginia Public Charter School Commission to assume the role of authorizer.

(b) No elected official may profit or receive any monetary consideration from a charter school: *Provided*, That this prohibition does not apply with respect to the employment of an elected official who was employed by a school prior to conversion to a public charter school.

(c) A public charter school authorized under this article is part of the state's system of public education but is exempt from all statutes and administrative regulations applicable to the state board,

a county board, or a school unless expressly stated otherwise in this article. A public charter school shall:

(1) Adhere to the same immunization, civil rights, and disability rights requirements applicable to noncharter public schools;

(2) Have no entrance requirements or charge any tuition or fees: *Provided*, That a public charter school may require the payment of fees on the same basis and to the same extent as noncharter public schools.

(3) Have no power to levy taxes.

(4) Be governed by a governing board as specified in subsection (d) of this section;

(5) Provide instructional time that is at least equal to the number of days or their equivalent required by §18-5-45 of this code;

(6) Require criminal background checks for staff and volunteers, including members of its governing board, as required of all noncharter public school employees and volunteers;

(7) Prohibit contractors and service providers or their employees from making direct, unaccompanied contact with students or accessing school grounds unaccompanied when students are present if it cannot be verified that the contractors, service providers, or their employees have not been previously convicted of a qualifying offense pursuant to §18-5-15c of this code;

(8) Ensure student participation in the required state summative assessment pursuant to §18-2E-5 of this code;

(9) Adhere to generally accepted accounting principles and adhere to the same financial audits, audit procedures, and audit requirements applicable to noncharter public schools;

(10) Utilize the same system for reporting student information data and financial data as is utilized by noncharter public schools;

(11) Comply with the Freedom of Information Act as set forth in §29B-1-1 *et seq.* of this code;

(12) Report data using the West Virginia Education Information System or successor data reporting system that noncharter public schools use;

(13) Operate under the oversight of its authorizer in accordance with its charter contract;

(14) As a public corporate body, have the powers necessary for carrying out the terms of its charter contract, including, but not limited to the power to:

(A) Receive and disburse funds for school purposes;

(B) Secure appropriate insurance and enter into contracts and leases;

(C) Contract with an education service provider, so long as the governing board retains final oversight and authority over the school;

(D) Pledge, assign, or encumber its assets to be used as collateral for loans or extensions of credit;

(E) Solicit and accept any gifts or grants for school purposes, subject to applicable laws and the terms of its charter; and

(F) Acquire real property for use as its facilities or facilities from public or private sources;

(15) Enroll students in the public charter school pursuant to §18-5G-4 of this code;

(16) Require any education service provider contracted with the governing board to provide a monthly detailed budget to the board;

(17) Serve one or more of grades and limit admission to students within the grade levels served; and

(18) Provide programs and services to a student with a disability in accordance with the student's individualized education program and all federal and state laws, rules, and regulations. A public charter school shall deliver the services directly or contract with another provider to deliver the services.

(d) A public charter school authorized under this article may:

(1) Negotiate and contract with its authorizer or any third party for the use, operation, and maintenance of a building and grounds, liability insurance, and the provision of any service, activity, or undertaking that the public charter school is required to perform in order to carry out the educational program described in its charter contract. Any services for which a public charter school contracts with a school district shall be provided by the district at cost and shall be negotiated as a separate agreement after final charter contract negotiations;

(2) Sue and be sued in its own name;

(3) Own, rent, or lease its space;

(4) Participate in cocurricular activities to the same extent as noncharter public schools; and

(5) Participate in extracurricular activities to the same extent as noncharter public schools.

(e) Nothing in this article prohibits a public charter school from complying with any statute, state board policy, or county board policy applicable to noncharter public schools.

(f) A county board may not require any employee of the local school district to be employed in a charter school. A county board may not harass, threaten, discipline, discharge, retaliate or in any manner discriminate against any district employee involved directly or indirectly with an application to establish a charter school as authorized under this section.

(g) All personnel employed by a public charter school shall continue to accrue seniority with the county board in the same manner that they would accrue seniority if employed in a noncharter public school in the county, but only for purposes of employment in noncharter public schools.

(g) Public charter school governing board. —

(1) To ensure compliance with this article, a public charter school shall be administered by a governing board accountable to the authorizer as set forth in the charter contract. A public charter school governing board shall consist of no fewer than five members.

(2) The governing board of a conversion public charter school authorized under this article shall consist of the following members elected or selected in a manner specified in the charter application:

(2) The governing board shall consist of at least two parents of students attending the public charter school operating under the governing board; and

(3) Members of the governing board shall:

(A) Not be an employee of the public charter school administered by the governing board;

(B) Not be an employee of an education service provider that provides services to the public charter school; and

(C) File a full disclosure report to the authorizer identifying potential conflicts of interest, relationships with management organizations, and relationships with family members who have other business dealings with the school, the management organization of the school, or any other public charter school.

(4) Members of the governing board shall collectively possess expertise in leadership, curriculum and instruction, law, and finance.

(5) A member of the public charter school governing board shall be considered an officer of a school district under the provisions of §6-6-7 of this code, and may only be removed from office under the provisions of that section.

(6) The governing board shall be responsible for the operation of its public charter school, including, but not limited to, preparation of an annual budget, contracting for services, school curriculum, personnel matters, and achieving the objectives and goals of the public charter school's program.

(7) The governing board shall comply with open governmental proceedings requirements set forth in §6-9A-1 *et seq.* of this code.

#### **§18-5G-4. Enrollment in a public charter school; recruitment and retention plans.**

(a) A public charter school may enroll any student residing in the state. A student enrolled in a public charter school shall be included in the net enrollment of the county in which the school is located for the purposes of §18-9A-1 *et seq.* and shall be allocated to the public charter school in accordance with the State Board rule promulgated pursuant to section §18-5G-13 of this article.

(b) A conversion public charter school shall guarantee enrollment to all students who were previously enrolled in the noncharter public school and to all students who reside in the school's attendance area. All students who reside in the attendance area of a public school that converts to a public charter school may enroll in the public charter school if they choose to do so. The school shall adopt and maintain a policy that gives enrollment preference to students who reside within the attendance area as established prior to the conversion of the school. An enrollment preference also shall be given to students enrolled in the public charter school the previous school year and to siblings of students already enrolled in the public charter school. If the school has excess capacity after enrolling students within the attendance area and those with preference, students outside the attendance area are eligible for enrollment;

(c) Except as provided in subsection (b) of this section, if the capacity of a public charter school is insufficient to enroll all students who wish to attend any specific grade level at a public charter

school, the school shall select students through a randomized and transparent lottery: *Provided*, That the state board shall promulgate a rule to guide student application and lottery procedures for public charter schools.

(d) Enrollment preference for public charter schools shall be given to students enrolled in the public charter school the previous year and to siblings of students already enrolled in the school. An enrollment preference for returning students shall exclude those students from entering into a lottery, as identified in §18-5G-4(b) of this code.

(e) A public charter school may allow an enrollment preference for students who meet federal eligibility requirements for free or reduced-price meals and at-risk students.

(f) A public charter school may give enrollment preference to children of a public charter school's governing board members and full-time employees, as long as they constitute no more than 10 percent of the school's total student population.

(g) Every charter school shall submit a recruitment and retention plan annually to its authorizer. The plan shall list deliberate, specific strategies the school will use to attract, enroll, and retain a student population that includes students who are, to the extent applicable:

(1) Limited English proficient;

(2) Special education;

(3) Low income;

(4) Below proficiency on the comprehensive statewide student assessment;

(5) At risk of dropping out of school;

(6) Have dropped out of school; or

(7) Any others who should be targeted to eliminate achievement gaps.

(h) If a student who was previously enrolled in a public charter school transfers enrollment to a noncharter public school in this state, the school to which the student transfers shall accept credits earned by the student in courses or instructional programs at the public charter school in a uniform and consistent manner and according to the same criteria that are used to accept academic credits from other noncharter public schools or that consider content competency when appropriate due to differences in curriculum delivery, instructional methods and strategies, or course designations and sequence.

#### **§18-5G-5. Application to establish public charter school.**

(a) To establish a new public charter school or to convert an existing noncharter public school to a public charter school, an applicant shall submit a charter application to an authorizer: *Provided*, That only a county board may authorize the conversion of an existing noncharter public school to a public charter school. Charter authorizers shall accept and document the date and time of receipt of all charter applications.

(b) The application shall contain, at a minimum, the following information:

(1) A mission statement and a vision statement for the public charter school, including specialized academic focus, if any, to be promoted and advanced through the establishment of the public charter school;

(2) A detailed description of the public charter school's proposed program;

(3) The student achievement goals for the public charter school's program and the chosen methods of evaluating whether students have attained the skills and knowledge specified for those goals;

(4) The school's plan for using data derived from student evaluations and assessments, including the statewide summative assessment, to drive instruction and promote continued school improvement;

(5) An explanation of how the school's proposed program is likely to improve the achievement of traditionally underperforming students in the local school district;

(6) The proposed governance structure of the school, including a list of members of the initial governing board, a draft of bylaws that include the description of the qualifications, terms, and methods of appointment or election of governing board members, and the organizational structure of the school that clearly presents lines of authority and reporting between the governing board, school administrators, staff, any related bodies such as advisory bodies or parent and teacher councils, and any external organizations that will play a role in managing the school;

(7) Plans and timelines for student enrollment, including policies and procedures for conducting transparent and random admission lotteries that are open to the public, and that are consistent with this article;

(8) A proposed five-year budget, including the start-up year and projections for four additional years with clearly stated assumptions;

(9) Proposed fiscal and internal control policies for the public charter school;

(10) Acknowledgement that the public charter school will participate in the state's accountability system;

(11) A proposed handbook that outlines the personnel policies of the public charter school, including the criteria to be used in the hiring of qualified teachers, school administrators, and other school employees, a description of staff responsibilities, and the school's plan to evaluate personnel on an annual basis;

(12) An explanation of proposed student discipline procedures, including disciplinary procedures for students with disabilities, which shall be consistent with the requirements of due process and with state and federal laws and regulations governing the placement of students with disabilities;

(13) A description of the facilities to be used by the public charter school, including the location of the school and how the facility supports the implementation of the school's program. The school shall obtain all required occupation and operation certificates and licenses prior to the first instructional day for students;

(14) The proposed ages and grade levels to be served by the public charter school, including the planned minimum and maximum enrollment per grade per year;



(15) The school calendar and school day schedule, which shall meet the requirements of §18-5-45 of this code;

(16) Types and amounts of insurance coverage to be obtained by the public charter school, which:

(A) Shall include adequate insurance for liability, property loss, and the personal injury of students comparable to noncharter public schools within the local school district operated by the county board; and

(B) May include coverage from the Board of Risk and Insurance Management pursuant to §29-12-5a of this code;

(17) A description of the food services to be provided to students attending the school;

(18) Process and procedures to be followed in the case of the closure or dissolution of the public charter school, including provisions for the transfer of students and student records to the appropriate local school district and an assurance and agreement to payment of net assets or equity, after payment of debts as specified in §18-5G-8 of this code;

(19) A code of ethics for the school setting forth the standards of conduct expected of its governing board, officers, and employees;

(20) The public charter school's plan for successfully serving students with disabilities, students who are English language learners, bilingual students, and students who are academically behind and gifted, including, but not limited to, the school's plan for compliance with all applicable federal and state laws and regulations;

(21) A description of cocurricular and extracurricular programs to be offered by the public charter school and how they will be funded and delivered;

(22) The process by which the school will resolve any disputes with the authorizer;

(23) A detailed start-up plan, including financing, tasks, timelines, and individuals responsible for carrying out the plan; and

(24) The public charter school's plan for parental involvement.

(c) If the applicant intends to contract with an education service provider for educational program implementation or comprehensive management, the application shall additionally require the applicant to provide the following information with respect to the educational service provider:

(1) Evidence of success in serving student populations similar to the targeted population, including demonstrated academic achievement as well as successful management of nonacademic school functions, if applicable;

(2) Student performance data and financial audit reports for all current and past public charter schools;

(3) Documentation of and explanation for any actions taken, legal or otherwise, against any of its public charter schools for academic, financial, or ethical concerns;

(4) The proposed duration of the service contract;

(5) The annual proposed fees and other amounts to be paid to the education service provider;

(6) The roles and responsibilities of the governing board, the school staff, and the education service provider;

(7) The scope of services and resources to be provided by the education service provider;

(8) Performance evaluation measures and timelines;

(9) Methods of contract oversight and enforcement;

(10) Investment disclosure;

(11) Conditions for renewal and termination of the contract; and

(12) Disclosure and explanation any existing or potential conflicts of interest between the governing board and the proposed education service provider or any affiliated business entities.

**§18-5G-6. Authorizer duties and responsibilities.**

(a) An authorizer shall:

(1) Demonstrate public accountability and transparency in all matters concerning its charter-authorizing practices, decisions, and expenditures;

(2) Approve new charter applications that meet the requirements of this section and §18-5G-5 of this code, demonstrate the ability to operate the school in an educationally and fiscally sound manner, and are likely to improve student achievement through the program detailed in the charter application;

(3) Decline to approve charter applications that fail to meet the requirements of §18-5G-5 of this code;

(4) Negotiate and execute in good faith a charter contract with each public charter school it authorizes;

(5) Monitor the performance and compliance of public charter schools according to the terms of the charter contract;

(6) Determine whether each charter contract it authorizes merits renewal or revocation; and

(7) Establish and maintain policies and practices consistent with the principles and professional standards for authorizers of public charter schools, including standards relating to:

(A) Organizational capacity and infrastructure;

(B) Evaluating applications;

(C) Ongoing public charter school oversight and evaluation; and

(D) Charter approval, renewal, and revocation decision-making.

(b) After an applicant submits a written application to establish a public charter school, the authorizer shall:

(1) Complete a thorough review process;

(2) Conduct an in-person interview with the applicant;

(3) Provide an opportunity in a public forum for local residents to provide input and learn about the charter application;

(4) Provide a detailed analysis of the application to the applicant or applicants;

(5) Allow an applicant a reasonable time to provide additional materials and amendments to its application to address any identified deficiencies; and

(6) Approve or deny a charter application based on established objective criteria or request additional information.

(c) In deciding to approve a charter application, the authorizer shall:

(1) Approve charter applications only to applicants that possess competence in all elements of the application requirements identified in this section and §18-5G-5 of this code;

(2) Base decisions on documented evidence collected through the application review process; and

(3) Follow charter-granting policies and practices that are transparent, based on merit, and avoid conflicts of interest.

(d) No later than 90 days following the filing of the charter application, the authorizer shall approve or deny the charter application. The authorizer shall provide its decision in writing, including an explanation stating the reasons for approval or denial of its decision during an open meeting. Any failure to act on a charter application within the time specified shall be deemed an approval by the authorizer.

(e) An authorizer's charter application approval shall be submitted to the West Virginia Department of Education.

(f) No public charter school may begin operations prior to July 1, 2020.

(g) Notwithstanding any provision of this code to the contrary, no civil liability shall attach to an authorizer or to any of its members or employees for any acts or omissions of the public charter school. Neither the county board of education nor the State of West Virginia shall be liable for the debts or financial obligations of a public charter school or any person or entity that operates a public charter school.

(h) To cover authorizer costs for overseeing public charter schools in accordance with this Act, each public charter school shall remit to its respective authorizer an oversight fee. The oversight fee shall be drawn from and calculated as a uniform percentage of the per student operational funding allocated to each public charter school under §18-5G-12 of this code, not to exceed one percent of each public charter school's per-student funding in a single school year. The state board shall establish a statewide formula for authorizer funding, which shall apply uniformly to every authorizer in the state. The state board may establish a sliding scale for authorizing funding, with the funding percentage decreasing after the authorizer has achieved a certain threshold, such as after a certain number of schools have been authorized or after a certain number of students are enrolled in the authorizer's public charter schools. The state board shall establish a cap on the total amount of

funding that an authorizer may withhold from a full-time charter school. The state board shall annually review the effectiveness of the state formula for authorizer funding and shall adjust the formula if necessary to maximize public benefit and strengthen the implementation of this act.

**§18-5G-7. Charter contract requirements; term of contract.**

(a) Within 90 days of the approval of a charter application, the governing board and the authorizer shall negotiate and enter into a charter contract.

(b) The charter contract shall address, in detail, the following items:

(1) The term of the contract: *Provided*, That the contract term shall be no longer than five years;

(2) The agreements relating to each item required under §18-5G-5(b) and §18-5G-5(c) of this code;

(3) The rights and duties of the authorizer and the public charter school;

(4) The administrative relationship between the authorizer and the public charter school;

(5) The process the authorizer will use to provide ongoing oversight;

(6) The specific commitments of the authorizer relating to its obligations to oversee, monitor the progress of, and supervise the public charter school;

(7) The process and criteria the authorizer will use to annually monitor and evaluate the overall academic, operating, and fiscal conditions of the public charter school, including the process the authorizer will use to oversee the correction of any deficiencies found;

(8) The process for revision or amendment to the terms of the charter contract agreed to by the authorizer and the governing board;

(9) The process agreed to by the authorizer and the governing board that identifies how disputes between the authorizer and the board will be handled; and

(10) Any other terms and conditions agreed to by the authorizer and the governing board, including preopening conditions.

(c) The charter contract shall include provisions relating to the performance of the public charter school that set forth the academic and operational performance indicators, measures, and metrics to be used by the authorizer to evaluate the public charter school. At a minimum, the performance provisions shall include indicators, measures, and metrics for:

(1) Student academic proficiency;

(2) Student academic growth;

(3) Achievement gaps in both student proficiency and student growth between student subgroups, including race, sex, socioeconomic status, and areas of exceptionality;

(4) Student attendance;

(5) Student suspensions;

(6) Student withdrawals;

(7) Recurrent enrollment from year to year;

(8) Governing board's performance and stewardship, including compliance with all applicable statutes and terms of charter contract; and

(9) Additional valid and reliable indicators requested by the public charter school.

(d) The authorizer shall be responsible for collecting and reporting to the state board all state-required assessment and achievement data for the public charter school.

(e) The charter contract shall be signed by the chair of the governing board and the president of the county board, presidents of the county boards, as applicable, or by the chairman of the West Virginia Public Charter School Commission for the charter schools for which the Commission is serving as the authorizer.

(f) No public charter school may commence operations without a charter contract that meets the requirements of this section, has been properly executed, and has been approved by the county board.

(g) A copy of the charter contract shall be provided to the State Superintendent of Schools.

**§18-5G-8. Renewal or nonrenewal of charter contracts; revocation of charter contracts; rulemaking; right to appeal.**

(a) A charter contract may be renewed by the authorizer for a term of no more than five years. Authorizers may grant renewal with specific conditions for necessary improvements in the public charter school: *Provided*, That any specific condition imposed does not contradict the terms of this article.

(b) The State Board of Education shall promulgate a rule establishing the process for renewing or not renewing a charter contract. At a minimum, this rule shall include:

(1) A timeline for a governing board to submit an application for renewal to an authorizer;

(2) The information that must be included in an application for renewal;

(3) If the authorizer initially determines to deny a renewal application:

(A) Notification requirements to the governing board about the prospect of nonrenewal and the reasons for possible closure of the public charter school;

(B) An opportunity and timeframe for the governing board to provide a response to the notice of the nonrenewal;

(C) An opportunity for the governing board to submit documentation and provide testimony as to why the charter contract should be renewed; and

(D) An opportunity for a recorded public hearing, at the request of the governing board;

(4) That the authorizer shall consider the governing board's response, testimony, and documentation, as well as the recorded public hearing, prior to rendering a final decision on the nonrenewal of the charter contract;

(5) The information that must be included in the authorizer's final decision if it determines to deny a renewal application;

(6) A timeline for an authorizer to render a final decision on whether or not to revoke a charter contract;

(7) Approval of the authorizer's decision shall be adopted by the county board or boards, or by the West Virginia Public Charter School Commission, during an open meeting; and

(8) A provision that the failure of the authorizer to act on a renewal application within the designated timeframes shall be deemed an approval of the renewal application.

(c) A charter contract shall not be renewed if the authorizer determines that the public charter school has:

(1) Committed a material violation of any of the terms, conditions, standards, or procedures required under this article or the charter contract, and has persistently failed to correct the violation after fair and specific notice from the authorizer;

(2) Failed to meet or make significant progress toward the program performance expectations identified in the charter contract;

(3) Failed to meet generally accepted standards of fiscal management, and has failed to correct the violation after fair and specific notice from the authorizer; or

(4) Substantially violated any material provision of law from which the public charter school was not exempted and has failed to correct the violation after fair and specific notice from the authorizer.

(d) A charter contract shall include provisions for revoking the charter contract. At a minimum, these provisions shall include:

(1) The information that must be included in the authorizer's initial decision to revoke the charter contract;

(2) Notification requirements to the governing board about the authorizer's initial decision to revoke a charter contract and the reasons for the revocation;

(3) An opportunity and timeframe for the governing board to provide a response to the authorizer's initial decision to revoke the charter contract;

(4) An opportunity for the governing board to submit documentation and provide testimony as to why the charter contract should not be revoked;

(5) An opportunity for a recorded public hearing, at the request of the governing board;

(6) That the authorizer shall consider the governing board's response, testimony, and documentation, as well as the recorded public hearing, prior to rendering a final decision on the revocation of the charter contract;

(7) The information that must be included in the authorizer's final decision if it determines to revoke the charter contract;

(8) A timeline for an authorizer to render a final decision on whether or not to revoke a charter contract;

(9) Approval of the authorizer's decision shall be adopted during an open meeting; and

(10) A provision that the failure of the authorizer to act on a renewal application within the designated timeframes shall be deemed.

(e) Notwithstanding the process set forth in §18-5G-8(d) of this code, an authorizer shall take immediate action to revoke a charter contract if the health and safety of students attending the public charter school is threatened.

(f) An authorizer shall develop a public charter school closure protocol or protocol for transitioning a charter school to noncharter public school status. The protocol shall ensure timely notification to parents, orderly transition of students and student records to new schools when applicable, and proper disposition of school funds, property, and assets. The protocol shall specify tasks, timelines, and responsible parties, including delineating the respective duties of the public charter school and the authorizer. If a public charter school closes or transitions to noncharter public school status for any reason, the authorizer shall oversee and work with the closing or transitioning school to ensure a smooth and orderly closure or transition and transition for students and parents, as guided by the closure or school transition protocol. If a public charter school is subject to closure or transition, following exhaustion of any appeal allowed under §18-5G-10 of this code, an authorizer may remove at will at any time any or all of the members of the board of directors of the public charter school in connection with ensuring a smooth and orderly closure or transition. If the authorizer removes members of the board of directors such that the board of directors can no longer function, the authorizer shall be empowered to take any further necessary and proper acts connected with closure or transition of the public charter school in the name and interest of the public charter school.

**§18-5G-9. West Virginia Public Charter School Commission; members; appointments; meetings.**

(a) There is hereby created the West Virginia Public Charter School Commission which shall report directly to and be responsible to the state board, separate from the Department of Education, for carrying out its duties in accordance with this article. The mission of the Commission is to assist county boards in the authorization of high-quality public charter schools throughout the state that provide more options for students to attain a thorough and efficient education, particularly through schools designed to expand the opportunities for at-risk students. The commission and public charter schools authorized in accordance with this article are subject to the general supervision of the state board solely for the purposes of accountability for meeting the standards for student performance required of other public school students under §18-2E-5 of this code. Except as otherwise authorized in this article, no other governmental agency or entity may assume any charter authorizing function or duty in any form.

(b) The commission shall consist of seven voting members, as follows:

(1) The State Superintendent of Schools, or designee;

(2) The Chancellor of the Higher Education Policy Commission, or designee;

(3) The Chancellor for Community and Technical College Education, or designee; and

(4) Four members appointed by the Governor, with the advice and consent of the Senate.

(c) The chair of the House Committee on Education and the chair of the Senate Committee on Education shall serve as nonvoting ex officio members of the commission.

(d) Each appointed member shall represent the public interest and must satisfy the following requirements:

(1) Be a citizen of the state;

(2) Possess experience and expertise in public or nonprofit governance, management and finance, public school leadership, assessment, curriculum or instruction, or public education law; and

(3) Have demonstrated an understanding of, and commitment to, charter schooling as a strategy for strengthening public education.

(e) No more than three of the appointed members of the commission may be of the same political party. No more than two of the appointed members may be residents of the same congressional district. No person may be appointed who holds any other public office or public employment under the government of this state or any of its political subdivisions, or who is an appointee or employee of any charter school governing board or an immediate family member of an employee under the jurisdiction of the commission or any charter school governing board. No person may be appointed who is engaged in, or employed by a person or company whose primary function involves, the sale of services and activities to public charter schools or charter school governing boards.

(f) The initial appointments made pursuant to this section shall be for staggered one- and two-year terms. Thereafter, all appointments shall be for a term of two years. The initial appointments shall be made before February 1, 2020. The commission shall meet as soon as practical after February 1, 2020, upon the call of the Governor, and shall organize for business by selecting a chairman and adopting bylaws. Subsequent meetings shall be called by the chairman.

(g) An appointed member of the commission may be removed from office by the Governor for official misconduct, incompetence, neglect of duty, or gross immorality. A member may also be removed if the member's personal incapacity renders the member incapable or unfit to discharge the duties of the office or if the member is absent from a number of meetings of the commission as determined and specified by the commission in its bylaws. Whenever an appointed member vacancy on the commission exists, the Governor shall appoint, with the advice and consent of the Senate, a qualified person for the remainder of the vacated term.

(h) Except in the case of gross negligence or reckless disregard of the safety and well-being of another person, the commission and members of the commission in their official capacity are immune from civil liability with respect to all activities related to a public charter school approved by the commission. The official actions of the members of the commission who are serving in an ex officio capacity by virtue of their designation or employment in another position are commission member actions only, and may not be construed as official actions or positions of such member's employing entity.

(i) The commission may appoint an executive director and may employ such additional staff as may be necessary. The executive director shall serve at the will and pleasure of the commission. The executive director must demonstrate an understanding of and commitment to charter schooling as a strategy for strengthening public education and must possess an understanding of state and federal education law.



(j) The commission shall meet as needed, but at least bi-annually. From funds appropriated or otherwise made available for such purpose, its members shall be reimbursed for reasonable and necessary expenses actually incurred in the performance of official duties upon submission of an itemized statement in a manner consistent with guidelines of the Travel Management Office of the Department of Administration.

#### **§18-5G-10. Prohibitions.**

Notwithstanding any provision in this article that may be interpreted to the contrary, a public charter school may not:

(1) Be home-school based; and

(2) Discriminate on any basis for which the noncharter public schools of this state may not discriminate: *Provided*, That nothing in this subsection may be construed to limit the formation of a public charter school that is dedicated to focusing education services on at-risk students, students with disabilities, and students who pose such severe disciplinary problems that they warrant a specific education program.

#### **§18-5G-11. State board rule relating to funding for charter school enrollment and other necessary provisions.**

(a) The state board shall promulgate a rule in accordance with §29A-3B-1 *et seq.* of this code setting forth requirements for public charter school funding. The rule shall include a requirement that 90 percent of the per pupil total basic foundation allowance follow the student to the public charter school, subject to the following:

(1) Notwithstanding §18-9A-1 *et seq.* of this code, the rule may provide for modifications to the calculations outlined in §18-9A-7 regarding the allowance for student transportation and in §18-9A-9(1) regarding the allowance for current expense for the purpose of providing additional state aid funding to county boards of education related to the operation of public charter schools;

(2) The rule shall designate which county school district is required to pay for a student attending a public charter school; and

(3) The rule shall require the Department of Education to follow federal requirements in ensuring that federal funding follows the student to a public charter school.

(b) The state board may promulgate a rule in accordance with §29A-3B-1 *et seq.* of this code to clarify, if necessary, the requirements of this article and address any unforeseen issues that might arise relating to the implementation of the requirements of this article.

(c) The state board may promulgate a rule in accordance with §29A-3B-1 *et seq.* of this code, if necessary, for ensuring the accountability of public charter schools for meeting the standards for student performance required of other public school students under §18-2E-5 of this code and the accountability of authorizers for ensuring that those standards are met in the schools authorized by it. If an authorizer fails to close a charter school that does not meet the standards, the authorizer shall appear before the State Board to justify its decision. The State Board may uphold or overturn the authorizer's decision and may revoke the authority of the authorizer to authorize charter schools.

#### **§18-5G-12. Access to public facilities.**

(a) A public charter school may request usage of public facilities from a local county board where the charter school is located. A local county board or other public entity shall make facilities available for use or lease to the charter school that are not a currently in use as an operating public school or which are available at the time the charter school seeks to use in whole or in part for a legitimate public school use.

(b) If a charter school seeks to lease the whole or part of a public facility, the cost of the lease must be at or under current market value.

(c) During the term of the lease, the charter school is solely responsible for the direct expenses related to the public facility lease, including utilities, insurance, maintenance, repairs and remodeling. The county school board is responsible for any debt incurred or liens that are attached to the school building before the charter school leases the public facility.

### **§18-5G-13. Reports.**

(a) An authorizer that has authorized a public charter school that is currently in operation shall submit to the state superintendent for presentation to the state board an annual report within 60 days of the end of each school fiscal year summarizing:

(1) The performance of the public charter schools overseen by the authorizer, according to the performance measures and expectations specified in the charter contracts;

(2) The authorizing duties and functions provided by the authorizer during the previous academic year.

(b) One year after public charter schools have been in operation, and each year thereafter, the State Superintendent shall issue to the Governor, the Legislature, and the general public, a report on the state's public charter school program, drawing from the annual reports submitted by authorizers pursuant to this section, as well as any additional relevant data compiled by the State Superintendent up to the school year ending in the preceding calendar year. The report must include an assessment of the public charter school program's successes, challenges, and areas for improvement in meeting the purposes of this chapter as well as any suggested changes in state law or policy necessary to strengthen the public charter school program."

During debate, Delegate McGeehan moved that the House of Delegates recess until 8:45 p.m., which motion did not prevail.

On the adoption of the amendment to the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 152**), and there were—yeas 40, nays 59, absent and not voting 1, with the yeas and absent and not voting being as follows:

Yeas: Anderson, Atkinson, Azinger, Bibby, Butler, Cadle, Capito, Cowles, Criss, Ellington, Espinosa, Fast, Foster, Graves, Hamrick, Hanna, Hardy, Harshbarger, Higginbotham, Hill, Hollen, Hott, Householder, D. Jeffries, Jennings, J. Kelly, Kessinger, Malcolm, C. Martin, P. Martin, Nelson, Phillips, Porterfield, Rowan, Shott, Summers, Sypolt and Hanshaw (Mr. Speaker).

Absent and Not Voting: Kump.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was rejected.

Delegates Waxman, Espinosa, Wilson and Bibby moved to amend the bill page sixty-eight, following section §18-20-5, by inserting a new article, designated §18-31-1 *et seq.* to read as follows:

**“ARTICLE 31. EDUCATION SAVINGS ACCOUNT PROGRAM.**

**§18-31-1. Short title.**

This article shall be known as the ‘Education Savings Account Act’ or ‘ESA Act’. The program created by the ESA Act shall be known as the ‘Education Savings Account Program’ or ‘ESA Program’.

**§18-31-2. Definitions.**

The following words have the meanings ascribed to them unless the context clearly indicates a different meaning:

(1) ‘Account’ or ‘ESA’ means an education savings account, awarded pursuant to this article, to which funds are allocated by the treasurer to the parent or parents of an ESA student in order to pay qualifying education expenses to educate the student pursuant to the requirements and conditions of this article;

(2) ‘Curriculum’ means a complete course of study for a particular content area or grade level, including any supplemental materials required by the curriculum;

(3) ‘Education service provider’ means a person or organization that receives payments from education savings accounts to provide educational goods and services to ESA students;

(4) ‘Eligible student’ means a student who has attended a West Virginia public elementary or secondary school in the prior school year and who:

(i) Possesses and Individualized Education Plan (IEP) written in accordance with rules established by the State Board;

(ii) Was determined IDEA eligible by a multidisciplinary evaluation team;

(iii) possesses a 504 plan;

(iv) Is medically diagnosed by a licensed physician in one of the IDEA disability categories under 20 USC 1401(3)(A); or

(v) Was the victim of a prohibited incident of harassment, intimidation or bullying pursuant to §18-2C-1, *et seq.*, of this code.

(5) ‘ESA student’ means a student who receives an account pursuant to this article;

(6) ‘Parent’ means a biological parent, legal guardian, custodian, or other person with legal authority to act on behalf of an eligible student or ESA student;

(7) ‘Participating school’ means any private school that provides education to elementary and/or secondary students and has notified the treasurer of its intention to participate in the program and comply with the program’s requirements;

(8) ‘Resident school district’ means the county school district in which the student resides; and

(9) 'Treasurer' means the West Virginia State Treasurer's Office or an organization that the Treasurer has contracted with to carry out any or all portions of this article.

**§18-31-3. Basic elements of the Education Savings Account Program.**

(a) The amount of funds deposited in an account pursuant to this article shall be an amount equivalent to 75 percent of the prior year's statewide average net state aid allotted per pupil based on net enrollment adjusted for state aid purposes. These funds shall be derived from a line item appropriation established for the purposes of this article.

(b) In exchange for the parent's agreement pursuant to §18-31-4(c)(4) of this code, the Department of Education shall transfer the amount determined pursuant §18-31-3(a) of this code to the treasurer for deposit into a West Virginia ESA.

(c) The State Superintendent of Schools shall, by rule, determine how the fund transfer to the treasurer shall be accomplished.

(d) Parents of an ESA student shall agree to use the funds deposited in their student's ESA only for the following qualifying expenses to educate the ESA student:

(1) Tuition and/or fees at a private school;

(2) Tuition and/or fees for nonpublic online learning programs;

(3) Tutoring services provided by a tutoring facility or a tutor who is:

(i) A teacher licensed in any state;

(ii) Has taught at an eligible postsecondary institution;

(iii) Is a subject matter expert; or

(iv) Is otherwise approved by the West Virginia Department of Education;

(4) Services contracted for, and provided by, a public district, charter, or magnet school, including without limitation, individual classes and extracurricular activities and programs;

(5) Textbooks, curriculum, or other instructional materials, including without limitation, any supplemental materials or associated online instruction required by either a curriculum or an education service provider;

(6) Computer hardware or other technological devices that are used solely for a student's educational needs and approved by the Treasurer or licensed physician;

(7) Educational software and applications that are used solely for a student's educational needs and approved by the Treasurer or licensed physician;

(8) School uniforms;

(9) Fees for nationally standardized assessments, advanced placement examinations, any examinations related to college or university admission, and tuition and/or fees for preparatory courses for the aforementioned exams;

(10) Fees for summer education programs and specialized after-school education programs, but not after-school childcare;

(11) Tuition, fees, instructional materials, and examination fees at a career or technical school or education provider;

(12) Educational services and therapies, including, but not limited to, occupational, behavioral, physical, speech-language, and audiology therapies;

(13) Tuition and fees at an institution of higher education;

(14) Fees for transportation paid to a fee-for-service transportation provider for the student to travel to and from an education service provider; or

(15) Any other educational expense approved by the treasurer.

(e) The funds in an ESA may only be used for educational purposes in accordance with §18-31-3(d) of this code.

(f) ESA funds may not be refunded, rebated, or shared with a parent or ESA student in any manner. Any refund or rebate for goods or services purchased with ESA funds shall be credited directly to the student's ESA.

(g) Parents are allowed to make payments for the costs of educational goods and services not covered by the funds in their student's ESA. However, personal deposits into an ESA is not permitted.

(h) Funds deposited in an ESA do not constitute taxable income to the parent or the ESA student.

(i) An ESA shall remain in force, and any unused funds shall roll over from quarter-to-quarter and from year-to-year until the parent withdraws the ESA student from the ESA Program or until the ESA student graduates from college with a bachelor's degree, unless the ESA is closed because of a substantial misuse of funds. However, if an ESA student has not enrolled in a postsecondary institution within four years after graduating from high school, or if an ESA student turns 24 years of age, whichever occurs first, the ESA shall be closed and any unused funds revert to the treasurer and be allocated to fund other ESAs.

(j) Nothing in this article requires that an ESA student must be enrolled, full or part-time, in either a private school or nonpublic online school.

#### **§18-31-4. Application for an Education Savings Account.**

(a) A parent may apply to the treasurer to establish an ESA for an eligible student at any point on or after July 1, 2019. The household income of an eligible student shall be less than \$150,000 per year to qualify for the education savings account program. For purposes of this article, the household income shall be the adjusted gross income claimed for federal income tax purposes by the biological parent or parents, legal guardian or guardians, custodian or custodians, or person or persons with legal authority to act on behalf of an eligible student plus any income of the eligible student. The treasurer shall develop a process for verifying the income of any applicant for the education savings account.

(b) The treasurer shall accept and approve applications year-round and shall establish procedures for approving applications in an expeditious manner: *Provided*, That the number of education savings accounts may not exceed 2,500 total at any one time.

(c) The treasurer shall create a standard form that parents can submit to establish their student's eligibility for the ESA Program and shall ensure that the application is readily available and may be submitted through various sources, including the Internet.

(d) The treasurer shall approve an application for an ESA if:

(1) The parent submits an application for an ESA in accordance with any application procedures established by the treasurer and the treasurer verifies the enrollment status and eligibility of the student through the West Virginia Department of Education;

(2) The student on whose behalf the parent is applying is an eligible student;

(3) Funds are available for the ESA; and

(4) The parent signs an agreement with the treasurer, promising:

(A) To provide an education for the eligible student in at least the subjects of reading, language, mathematics, science, and social studies;

(B) Not to enroll the ESA student, full-time, in a district school, an Innovation in Education School, or a West Virginia School for the Deaf and Blind;

(C) To use the funds in the ESA only for qualifying expenses to educate the eligible student as established by the ESA Program; and

(D) To comply with the rules and requirements of the ESA Program and all applicable federal and state law and regulations.

(E) To afford the ESA student opportunities for educational enrichment such as organized athletics, art, music, or literature.

(e) Upon notice to the treasurer, an ESA student may choose to stop receiving ESA funding and enroll full-time in a public school.

(f) Enrolling as a full-time student in a public school shall result in the immediate suspension of payment of additional funds into the student's ESA; however, the ESA shall remain open and active for the parent to make qualifying expenditures to educate the student from funds remaining in the ESA. When or if no funds remain in the student's ESA or the student turns 24, the treasurer may close the ESA.

(g) If an eligible student decides to return to the ESA Program, they must reapply.

(h) The treasurer may adopt rules and policies to provide the least disruptive process for ESA students who desire to stop receiving ESA payments and enroll full-time in a public school.

#### **§18-31-5. Responsibilities of the Treasurer.**

In addition to the treasurer's duties, obligations, and authority stated in other parts of this article, the treasurer has the following duties, obligations, and authority:

(1) The treasurer shall maintain an updated list of participating schools and shall ensure that the list is publicly available through various sources, including the Internet.

(2) The treasurer shall provide parents with a written explanation of the allowable uses of ESA funds, the responsibilities of parents, the duties of the treasurer and the role of any private financial management firms or other private organizations that the treasurer may contract with to administer the ESA Program or any aspect of the ESA Program.

(3) The treasurer shall ensure that parents of students with a disability receive notice that participation in the ESA Program is a parental placement under 20 U.S.C. § 1412 of the Individuals with Disabilities Education Act (IDEA) along with an explanation of the rights that parentally placed students possess under (IDEA) and any applicable state laws and regulations.

(4) The treasurer shall contract with private organizations to administer the ESA Program. This includes, but is not limited to, private financial management firms to manage ESAs.

(5) The treasurer may deduct an amount from education savings accounts to cover the costs of administering the ESA Program, up to a maximum of five percent annually in the first two years of the ESA Program and up to a maximum of three percent annually thereafter.

(6) The treasurer shall implement or contract with a private organization to implement a commercially viable, cost effective, and parent-friendly system for payment for services from ESAs to education service providers by electronic or online funds transfer and by debit card. The treasurer shall not adopt a system that relies exclusively on requiring parents to be reimbursed for out-of-pocket expenses, but rather shall provide maximum flexibility to parents by facilitating direct payments to education service providers as well as requests for preapproval of and reimbursements for qualifying expenses, including expenses pursuant to §18-31-3(d)(15) of this code.

(7) The treasurer shall also seek to implement a commercially viable, cost-effective, and parent-friendly system for publicly rating, reviewing, and sharing information about education service providers, ideally as part of the same system that facilitates the electronic or online funds transfers so as to create a one-stop-shop for parents and ESA students.

(8) If an education service provider requires partial payment of tuition or fees prior to the start of the academic year to reserve space for an ESA student admitted to the education service provider, such partial payment may be paid by the treasurer prior to the start of the school year in which the ESA is awarded, and deducted in an equitable manner from subsequent ESA deposits to ensure adequate funds remain available throughout the school year; but if an ESA student decides not to use the education service provider, the partial reservation payment must be returned to the treasurer by such education service provider and credited to the student's ESA.

(9) The treasurer shall continue making deposits into a student's ESA until:

(A) The treasurer determines that the ESA student is no longer an eligible student;

(B) The treasurer determines that there was substantial misuse of the funds in the ESA;

(C) The parent or ESA student withdraws from the ESA Program;

(D) The ESA student enrolls full-time in a public school; or

(E) The ESA student graduates from high school.

(10) The treasurer shall coordinate with the State Auditor to conduct or contract for the auditing of individual ESAs, and shall, at a minimum, conduct random audits of ESAs on an annual basis.

(11) The treasurer shall have the authority to make any parent or ESA student ineligible for the ESA Program in the event of intentional and substantial misuse of ESA funds.

(A) The treasurer shall create procedures to ensure that a fair process exists to determine whether an intentional and substantial misuse of ESA funds has occurred.

(B) The treasurer shall have the authority to refer suspected cases of intentional and substantial misuse of ESA funds to the Attorney General for investigation if evidence of fraudulent use of ESA funds is obtained.

(C) A parent or ESA student may appeal the treasurer's decision to make a parent or ESA student ineligible for the ESA Program to the Parent Review Committee pursuant to §18-31-6 of this code.

(12) The treasurer may bar an education service provider from accepting payments from ESAs if the treasurer determines that the education service provider has:

(A) Intentionally and substantially misrepresented information or failed to refund any overpayments in a timely manner; or

(B) Routinely failed to provide students with promised educational goods or services.

(13) The treasurer shall create procedures to ensure that a fair process exists to determine whether an education service provider may be barred from receiving payment from ESAs.

(A) If the treasurer bars an education service provider from receiving payments from ESAs, it shall notify parents and ESA students of its decision as quickly as possible.

(B) Education service providers may appeal the treasurer's decision to bar them from receiving payments from ESAs to the Parent Review Committee pursuant to §18-31-6 of this code.

(14) The treasurer may accept gifts and grants from any source to cover administrative costs, to inform the public about the ESA Program, or to fund additional ESAs.

(15) The treasurer shall adopt rules and policies in accordance with §29A-3A-1 *et seq.* and §29A-3B-1 *et seq.* that are necessary for the administration of this article and to meet the duties and responsibilities set forth herein.

(16) The treasurer may adopt rules and policies in accordance with §29A-3A-1 *et seq.* and §29A-3B-1 *et seq.* that are not inconsistent with this article and that are necessary for the administration of this article, including:

(A) Establishing or contracting for the establishment of an online anonymous fraud reporting service;

(B) Establishing an anonymous telephone hotline for fraud reporting;

(C) Policies that require a surety bond for education service providers receiving more than \$100,000 in ESA funds;

(D) Procedures for refunding payments from education service providers back to ESAs; and



(E) Procedures for entering into reciprocal agreements with other state ESA agencies or entities, whether public or private, to recognize and allow education service providers approved in other states to receive payments from ESAs under this article.

(17) The treasurer shall create procedures for verifying the eligibility and enrollment status of students through the West Virginia Department of Education.

(18) Any rules or policies adopted by the treasurer should avoid excessive bureaucracy and overly prescriptive mandates and instead focus on easing parental involvement and encouraging education service providers to provide parents and ESA students with a broad array of educational options.

#### **§18-31-6. Parent Review Committee.**

(a) There is created the Parent Review Committee to assist the treasurer in determining whether questionable expenditures meet the requirements to be considered qualifying expenses to educate the ESA student pursuant to §18-31-3(d) of this code, and to provide recommendations to the treasurer about how to implement, administer, and improve the ESA Program.

(b) (1) The Parent Review Committee:

(A) Consists of seven members who are parents of ESA students and represent no fewer than four counties in the state; and

(B) Shall be appointed by the State Treasurer and serve at the State Treasurer's pleasure for one calendar year and may be reappointed; and

(2) The State Treasurer, or the treasurer's designee, serves as the nonvoting chair of the committee.

(c) The treasurer may request the committee to meet, in person or virtually, to determine whether an expenditure of ESA funds is or was a qualifying expense to educate an ESA student pursuant to §18-31-3(d) of this code. The committee may deny or approve questionable expenditures by a majority vote.

(d) The treasurer may also request the committee to meet, in person or virtually, to review appeals of:

(1) Parents or ESA students who have been found ineligible due to intentional and substantial misuse of ESA funds; and

(2) Education service provider denials pursuant to §18-31-7 of this code, and to provide a recommendation to the treasurer as to whether an education service provider should be allowed to receive, or continue receiving, payments from ESAs.

#### **§18-31-7. Requirements for and rights of education service providers.**

(a) To be eligible to accept payments from an ESA, an education service provider shall:

(1) Submit notice to the treasurer that they wish to participate in the ESA Program;

(2) Provide parents with a receipt for all qualifying educational expenses;

(3) Agree not to refund, rebate, or share ESA funds with parents or ESA students in any manner, except that funds may be remitted or refunded to an ESA in accordance with procedures established by the treasurer;

(4) Certify that it will not discriminate on any basis prohibited by 42 U.S.C. §1981; and

(5) Agree to submit any employee who will have contact with ESA students to a criminal background check.

(b) This article does not limit the independence or autonomy of an education service provider or makes the actions of an education service provider the actions of the state government.

(c) Education service providers shall be given maximum freedom to provide for the educational needs of ESA students without governmental control.

(d) This article does not expand the regulatory authority of the state, its officers, or any school district to impose any additional regulation of education service providers beyond those necessary to enforce the requirements of the program.

#### **§18-31-8. Responsibilities of resident school districts.**

The resident school district shall provide an education service provider that has enrolled an ESA student with a complete copy of the student's school records, while complying with the Family Educational Rights and Privacy Act of 1974 (20 USC Section 1232 g).

#### **§18-31-9. Legal proceedings.**

(a) In any legal proceeding challenging the application of this article to a participating entity, the state bears the burden of establishing that the challenged action, rule, or requirement is necessary and does not impose any undue burden on education service providers.

(b) No liability arises on the part of the treasurer or the state or of any county school district based on the award or use of an ESA awarded pursuant to this article.

(c) If any part of this article is challenged in a state court as violating either the state or federal constitutions, parents of eligible and/or ESA students are permitted to intervene in the lawsuit for the purposes of defending the article's constitutionality. However, for the purposes of judicial administration, a court may limit the number of parents permitted to intervene or require that all parents file a joint brief, so long as they are not required to join any brief filed on behalf of any named state defendant.

### **ARTICLE 2. SCHOOL PERSONNEL.**

#### **§18A-2-8. Suspension and dismissal of school personnel by board; appeal.**

(a) Notwithstanding any other provisions of law, a board may suspend or dismiss any person in its employment at any time for: Immorality, incompetency, cruelty, insubordination, intemperance, willful neglect of duty, unsatisfactory performance, a finding of abuse by the Department of Health and Human Resources in accordance with §49-1-1 et seq. of this code, a misdemeanor with a rational nexus between the conduct and performance of the employee's job, the conviction of a felony or a guilty plea or a plea of nolo contendere to a felony charge.

(b) A charge of unsatisfactory performance shall not be made except as the result of an employee performance evaluation pursuant to section twelve of this article. The charges shall be stated in writing served upon the employee within two days of presentation of the charges to the board.

(c) The affected employee shall be given an opportunity, within five days of receiving the written notice, to request, in writing, a level three hearing and appeals pursuant to the provisions of §6C-2-1 *et seq.* of this code, except that dismissal for a finding of abuse or the conviction of a felony or guilty plea or plea of nolo contendere to a felony charge is not by itself a grounds for a grievance proceeding. An employee charged with the commission of a felony, a misdemeanor with a rational nexus between the conduct and performance of the employee's job, or child abuse may be reassigned to duties which do not involve direct interaction with pupils pending final disposition of the charges.

(d) A county board of education has the duty and authority to provide a safe and secure environment in which students may learn and prosper; therefore, it may take necessary steps to suspend or dismiss any person in its employment at any time should the health, safety, and welfare of students be jeopardized or the learning environment of other students has been impacted.

### **ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.**

#### **§18A-3-6. Grounds for revocation of certificates; recalling certificates for correction.**

(a) The state superintendent may, after ten days' notice and upon proper evidence, revoke the certificates of any teacher for any of the following causes: Intemperance; untruthfulness; cruelty; immorality; a finding of abuse by the Department of Health and Human Resources in accordance with §49-1-1 *et seq.* of this code; the conviction of a felony or a guilty plea or a plea of no contest to a felony charge; the conviction, guilty plea or plea of no contest to any charge involving sexual misconduct with a minor or a student; or for using fraudulent, unapproved or insufficient credit to obtain the certificates: *Provided*, That the certificates of a teacher may not be revoked for any matter for which the teacher was disciplined, less than dismissal, by the county board that employs the teacher, nor for which the teacher is meeting or has met an improvement plan determined by the county board, unless it can be proven by clear and convincing evidence that the teacher has committed one of the offenses listed in this subsection and his or her actions render him or her unfit to teach: *Provided, however*, That in order for any conduct of a teacher involving intemperance; cruelty; immorality; or using fraudulent, unapproved or insufficient credit to obtain the certificates to constitute grounds for the revocation of the certificates of the teacher, there must be a rational nexus between the conduct of the teacher and the performance of his or her job. The state superintendent may designate the West Virginia commission for professional teaching standards or members thereof to conduct hearings on revocations or certificate denials and make recommendations for action by the state superintendent: *Provided further*, That a teacher convicted under §61-8D-5 or a finding of abuse under §49-1-1 *et seq.* of this code shall have his or her certificate or license automatically revoked.

(b) It shall be the duty of any county superintendent who knows of any acts on the part of any teacher for which a certificate may be revoked in accordance with this section to report the same, together with all the facts and evidence, to the state superintendent for such action as in the state superintendent's judgment may be proper.

(c) If a certificate has been granted through an error, oversight, or misinformation, the state superintendent has authority to recall the certificate and make such corrections as will conform to the requirements of law and the state board."

On the adoption of the amendment to the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 153**), and there were—yeas 37, nays 62, absent and not voting 1, with the yeas and absent and not voting being as follows:

Yeas: Atkinson, Azinger, Bibby, Butler, Cadle, Capito, Cowles, Criss, Ellington, Espinosa, Fast, Foster, Graves, Hamrick, Hanna, Hardy, Harshbarger, Higginbotham, Hill, Hollen, Householder, Howell, D. Jeffries, Jennings, Kessinger, Malcolm, C. Martin, P. Martin, Pack, Phillips, Porterfield, Shott, Summers, Sypolt and Hanshaw (Mr. Speaker).

Absent and Not Voting: Kump.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was rejected.

On motion of Delegates Espinosa, Cowles, Bibby and Wilson, the amendment to the amendment was on page 68, following the chapter heading “Chapter 18A. School Personnel.”, by inserting two new sections to read as follows:

## **“ARTICLE 2. SCHOOL PERSONNEL.**

### **§18A-2-8. Suspension and dismissal of school personnel by board; appeal.**

(a) Notwithstanding any other provisions of law, a board may suspend or dismiss any person in its employment at any time for: Immorality, incompetency, cruelty, insubordination, intemperance, willful neglect of duty, unsatisfactory performance, a finding of abuse by the Department of Health and Human Resources in accordance with §49-1-1 et seq. of this code, a misdemeanor with a rational nexus between the conduct and performance of the employee’s job, the conviction of a felony or a guilty plea or a plea of nolo contendere to a felony charge.

(b) A charge of unsatisfactory performance shall not be made except as the result of an employee performance evaluation pursuant to section twelve of this article. The charges shall be stated in writing served upon the employee within two days of presentation of the charges to the board.

(c) The affected employee shall be given an opportunity, within five days of receiving the written notice, to request, in writing, a level three hearing and appeals pursuant to the provisions of §6C-2-1 et seq. of this code, except that dismissal for a finding of abuse or the conviction of a felony or guilty plea or plea of nolo contendere to a felony charge is not by itself a grounds for a grievance proceeding. An employee charged with the commission of a felony, a misdemeanor with a rational nexus between the conduct and performance of the employee’s job, or child abuse may be reassigned to duties which do not involve direct interaction with pupils pending final disposition of the charges.

(d) A county board of education has the duty and authority to provide a safe and secure environment in which students may learn and prosper; therefore, it may take necessary steps to suspend or dismiss any person in its employment at any time should the health, safety, and welfare of students be jeopardized or the learning environment of other students has been impacted.

## **ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.**

### **§18A-3-6. Grounds for revocation of certificates; recalling certificates for correction.**

(a) The state superintendent may, after ten days' notice and upon proper evidence, revoke the certificates of any teacher for any of the following causes: Intemperance; untruthfulness; cruelty; immorality; a finding of abuse by the Department of Health and Human Resources in accordance with §49-1-1 et seq. of this code; the conviction of a felony or a guilty plea or a plea of no contest to a felony charge; the conviction, guilty plea or plea of no contest to any charge involving sexual misconduct with a minor or a student; or for using fraudulent, unapproved or insufficient credit to obtain the certificates: *Provided*, That the certificates of a teacher may not be revoked for any matter for which the teacher was disciplined, less than dismissal, by the county board that employs the teacher, nor for which the teacher is meeting or has met an improvement plan determined by the county board, unless it can be proven by clear and convincing evidence that the teacher has committed one of the offenses listed in this subsection and his or her actions render him or her unfit to teach: *Provided, however*, That in order for any conduct of a teacher involving intemperance; cruelty; immorality; or using fraudulent, unapproved or insufficient credit to obtain the certificates to constitute grounds for the revocation of the certificates of the teacher, there must be a rational nexus between the conduct of the teacher and the performance of his or her job. The state superintendent may designate the West Virginia commission for professional teaching standards or members thereof to conduct hearings on revocations or certificate denials and make recommendations for action by the state superintendent: *Provided further*, That a teacher convicted under §61-8D-5 or a finding of abuse under §49-1-1 et seq. of this code shall have his or her certificate or license automatically revoked.

(b) It shall be the duty of any county superintendent who knows of any acts on the part of any teacher for which a certificate may be revoked in accordance with this section to report the same, together with all the facts and evidence, to the state superintendent for such action as in the state superintendent's judgment may be proper.

(c) If a certificate has been granted through an error, oversight, or misinformation, the state superintendent has authority to recall the certificate and make such corrections as will conform to the requirements of law and the state board."

Delegates Bates, Barrett, Boggs, Estep-Burton, Longstreth, Rowe, Hornbuckle, Pethtel, Sponaule, Williams and Hartman moved to amend the amendment, by deleting the following sections from the amendment:

On pages one through seven, by striking out §5-16-2 from the amendment.

On pages twenty-one through forty-three, by striking out Chapter 18, Article 5G in its entirety.

On pages forty-three through forty-eight, by striking out §18-7A-3 in its entirety.

On pages forty-eight through fifty-one, by striking out §18-7B-2 in its entirety.

And,

On pages sixty through sixty-nine, by striking out §18-20-5 in its entirety.

The House then proceeded to consideration of amendments to sections affected by the previously reported amendment.

Delegate Wilson moved to amend the bill on pages twenty-one through forty-three, by striking out all of §18-5G-1 et seq. and inserting in lieu thereof a new §18-5G-1 et seq., to read as follows:

**"ARTICLE 5G. PUBLIC CHARTER SCHOOLS.**

**§18-5G-1. Legislative purpose and intent.**

The West Virginia Legislature hereby authorizes the establishment of two (2) public charter schools per county to benefit students, parents, teachers, and community members by creating new, innovative, and more flexible ways of educating all children within the public school system and by advancing a renewed commitment to the mission, goals, and diversity of public education. The purposes of the public charter school initiative are to:

(a) Improve student learning by creating more diverse public schools with high standards for student performance;

(b) Provide innovative educational methods and practices through programs that engage students in the learning process, thus resulting in higher student achievement;

(c) Enable schools to establish a distinctive school curriculum, a specialized academic theme, or method of instruction; and

(d) Allow schools enhanced freedom and flexibility in exchange for exceptional levels of results-driven accountability.

**§18-5G-2. Definitions.**

The following words used in this article and any proceedings pursuant thereto have the following meanings unless the context clearly indicates a different meaning:

(1) "Applicant" means any group or entity with 501(c)(3) tax-exempt status or that has submitted an application for 501(c)(3) tax-exempt status that develops and submits an application for a public charter school to an authorizer;

(2) "Authorizer" means the entity authorized under this article to review and approve or deny charter applications, enter into charter contracts with applicants, oversee public charter schools, and determine whether to renew, not renew, or revoke charter contracts. Authorizers include:

(A) A county school board in the county in which a public charter school is proposed to be located;

(B) Two or more county school boards representing the several counties which a public charter school is proposed to serve; or

(C) Any accredited West Virginia public or private institution of higher education; or

(3) "Charter application" means a proposal from an applicant to an authorizer to enter into a charter contract whereby the proposed school obtains public charter school status;

(4) "Charter contract" or "contract" means a fixed-term, renewable contract between a public charter school's governing board and an authorizer that identifies the roles, powers, responsibilities, operational duties, accountability, and performance expectations for each party to the contract, consistent with the requirements of this article;

(5) "County board" means a county board of education;

(6) "Education service provider" means an education management organization, school design provider, or any other partner entity with which a public charter school contracts for educational design, implementation, or comprehensive management;

(7) "Governing board" means the independent board of directors for a public charter school that is a party to the charter contract with the authorizer and whose members have been elected or selected pursuant to the charter application;

(8) "Noncharter public school" means a public school other than a public charter school established pursuant to this article;

(9) "Parent" means a parent, guardian, or other person or entity having legal custody over a child;

(10) "Public charter school" means a public school established pursuant to this article that:

(A) Is a public corporate body, exercising public power through its governing board, including the power in name to contract and be contracted with, sue and be sued, and adopt bylaws not inconsistent with this article;

(B) Has autonomy over decisions relating to finance, personnel, scheduling, curriculum, and instruction consistent with this article and its charter contract;

(C) Is governed by a governing board that is independent of a county board except as otherwise provided in this article;

(D) Is established and operating under the terms of a charter contract between the public charter school's governing board and its authorizer;

(E) Is a public school to which parents choose to send their children;

(F) Is a public school that admits students on the basis of a random and open lottery if more students apply for admission than can be accommodated, pursuant to and subject to §18-5G-4 of this code;

(G) Offers a comprehensive instructional program that meets or exceeds the student performance standards adopted pursuant to §18-2E-5 of this code; and

(H) Operates under the oversight of its authorizer in accordance with its charter contract;

(11) "State board" means the West Virginia Board of Education;

(12) "Student" means any person that is eligible for attendance in a public school in West Virginia; and

(13) "Virtual public charter school" means a public charter school that offers education services primarily or completely through an online program.

### **§18-5G-3. Authorization for the establishment of public charter schools; governing board.**

(a) A public charter school shall be part of the state's system of public education but shall be exempt from all statutes and administrative regulations applicable to the state board, a county board, or a school unless expressly stated otherwise in this article, subject to the following:

(1) Public charter schools shall adhere to the same immunization, civil rights, and disability rights requirements applicable to noncharter public schools; and

(2) Nothing in this article prohibits a public charter school from complying with any statute, state board policy, or county board policy applicable to noncharter public schools.

(b) A public charter school shall not have entrance requirements or charge tuition or fees: Provided, That a public charter school may require the payment of fees on the same basis and to the same extent as noncharter public schools.

(c) A public charter school shall not have the power to levy taxes.

(d) A public charter school shall:

(1) Be governed by a governing board;

(2) Provide instructional time that is at least equal to the number of days or their equivalent required by §18-5-45 of this code;

(3) Require criminal background checks for staff and volunteers, including members of its governing board, as required of all noncharter public school employees and volunteers;

(4) Prohibit contractors and service providers or their employees from making direct, unaccompanied contact with students or accessing school grounds unaccompanied when students are present if it cannot be verified that the contractors, service providers, or their employees have not been previously convicted of a qualifying offense pursuant to §18-5-15c of this code;

(5) Ensure student participation in the required state summative assessment pursuant to §18-2E-5 of this code;

(6) Adhere to generally accepted accounting principles and adhere to the same financial audits, audit procedures, and audit requirements applicable to noncharter public schools;

(7) Utilize the same system for reporting student information data and financial data as is utilized by noncharter public schools;

(8) Comply with the Freedom of Information Act as set forth in §29B-1-1 *et seq.* of this code;

(9) Report data using the West Virginia Education Information System or successor data reporting system that noncharter public schools use;

(10) Operate under the oversight of its authorizer in accordance with its charter contract;

(11) As a public corporate body, have the powers necessary for carrying out the terms of its charter contract, including, but not limited to the power to:

(A) Receive and disburse funds for school purposes;

(B) Secure appropriate insurance and enter into contracts and leases;

(C) Contract with an education service provider, so long as the governing board retains final oversight and authority over the school;

(D) Pledge, assign, or encumber its assets to be used as collateral for loans or extensions of credit;



(E) Solicit and accept any gifts or grants for school purposes, subject to applicable laws and the terms of its charter; and

(F) Acquire real property for use as its facilities or facilities from public or private sources;

(12) Enroll students in the public charter school pursuant to §18-5G-4 of this code;

(13) Require any education service provider contracted with the governing board to provide a monthly detailed budget to the board;

(14) Serve one or more of grades pre-K through 12 and limit admission to students within the grade levels served; and

(15) Provide programs and services to a student with a disability in accordance with the student's individualized education program and all federal and state laws, rules, and regulations. A public charter school shall deliver the services directly or contract with another provider to deliver the services.

(e) A public charter school may:

(1) Negotiate and contract with its authorizer or any third party for the use, operation, and maintenance of a building and grounds, liability insurance, and the provision of any service, activity, or undertaking that the public charter school is required to perform in order to carry out the educational program described in its charter contract. Any services for which a public charter school contracts with a school district shall be provided by the district at cost and shall be negotiated as a separate agreement after final charter contract negotiations;

(2) Sue and be sued in its own name;

(3) Own, rent, or lease its space;

(4) Participate in cocurricular activities to the same extent as noncharter public schools; and

(5) Participate in extracurricular activities to the same extent as noncharter public schools.

(f) *Public charter school governing board.* —

(1) To ensure compliance with this article, a public charter school shall be administered by a governing board accountable to the authorizer as set forth in the charter contract. A public charter school governing board shall consist of no fewer than five members.

(2) The governing board shall consist of at least:

(A) Two parents of students attending the public charter school operating under the governing board; and

~~(B) One member of the county board over the school district in which the public charter school is located if the county board elects to appoint a member: *Provided, That refusal by any county board members to sit on the governing board shall not preclude the establishment of a charter school.*~~

(3) Members of the governing board shall:

(A) Not be an employee of the public charter school administered by the governing board;

(B) Not be an employee of an education service provider that provides services to the public charter school; and

(C) File a full disclosure report to the authorizer identifying potential conflicts of interest, relationships with management organizations, and relationships with family members who are employed by the public charter school or have other business dealings with the school, the management organization of the school, or any other public charter school.

(4) Members of the governing board shall collectively possess expertise in leadership, curriculum and instruction, law, and finance.

(5) A member of the public charter school governing board shall be considered an officer of a school district under the provisions of §6-6-7 of this code, and shall be removed from office under the provisions of that section.

(6) The governing board shall be responsible for the operation of its public charter school, including, but not limited to, preparation of an annual budget, contracting for services, school curriculum, personnel matters, and achieving the objectives and goals of the public charter school's program.

(7) The governing board shall comply with open governmental proceedings requirements set forth in §6-9A-1 *et seq.* of this code.

#### **§18-5G-4. Enrollment in a public charter school; recruitment and retention plans.**

(a) A public charter school may enroll any student residing in the state.

(b) If capacity is insufficient to enroll all students who wish to attend any specific grade level at a public charter school, the school shall select students through a randomized and transparent lottery: *Provided*, That the state board shall promulgate a rule to guide student application and lottery procedures for public charter schools.

(c) Enrollment preference for public charter schools shall be given to students enrolled in the public charter school the previous year and to siblings of students already enrolled in the school. An enrollment preference for returning students shall exclude those students from entering into a lottery, as identified in §18-5G-4(c) of this code.

(d) A public charter school may allow an enrollment preference for students who meet federal eligibility requirements for free or reduced-price meals and at-risk students.

(e) A public charter school may give enrollment preference to children of a public charter school's governing board members and full-time employees, as long as they constitute no more than 10 percent of the school's total student population.

(f) Every charter school shall submit a recruitment and retention plan annually to its authorizer. The plan shall list deliberate, specific strategies the school will use to attract, enroll, and retain a student population that includes students who are, to the extent applicable:

(1) Limited English proficient;

(2) Special education;

(3) Low income;

(4) Below proficiency on the comprehensive statewide student assessment;

(5) At risk of dropping out of school;

(6) Have dropped out of school; or

(7) Any others who should be targeted to eliminate achievement gaps.

(g) A noncharter public school converting partially or entirely to a public charter school shall adopt and maintain a policy giving enrollment preference to students who reside within the former attendance area of that public school.

#### **§18-5G-5. Application to establish public charter school.**

(a) To establish a new public charter school or to convert an existing noncharter public school to a public charter school, an applicant shall submit a charter application to an authorizer: *Provided*, That only a county board may authorize the conversion of an existing noncharter public school to a public charter school. Charter authorizers shall accept and document the date and time of receipt of all charter applications.

(b) The application shall contain, at a minimum, the following information:

(1) A mission statement and a vision statement for the public charter school, including specialized academic focus, if any, to be promoted and advanced through the establishment of the public charter school;

(2) A detailed description of the public charter school's proposed program;

(3) The student achievement goals for the public charter school's program and the chosen methods of evaluating whether students have attained the skills and knowledge specified for those goals;

(4) The school's plan for using data derived from student evaluations and assessments, including the statewide summative assessment, to drive instruction and promote continued school improvement;

(5) An explanation of how the school's proposed program is likely to improve the achievement of traditionally underperforming students in the local school district;

(6) The proposed governance structure of the school, including a list of members of the initial governing board, a draft of bylaws that include the description of the qualifications, terms, and methods of appointment or election of governing board members, and the organizational structure of the school that clearly presents lines of authority and reporting between the governing board, school administrators, staff, any related bodies such as advisory bodies or parent and teacher councils, and any external organizations that will play a role in managing the school;

(7) Plans and timelines for student enrollment, including policies and procedures for conducting transparent and random admission lotteries that are open to the public, and that are consistent with this article;

(8) A proposed five-year budget, including the start-up year and projections for four additional years with clearly stated assumptions;

(9) Proposed fiscal and internal control policies for the public charter school;

(10) Acknowledgement that the public charter school will participate in the state's accountability system;

(11) A proposed handbook that outlines the personnel policies of the public charter school, including the criteria to be used in the hiring of qualified teachers, school administrators, and other school employees, a description of staff responsibilities, and the school's plan to evaluate personnel on an annual basis;

(12) An explanation of proposed student discipline procedures, including disciplinary procedures for students with disabilities, which shall be consistent with the requirements of due process and with state and federal laws and regulations governing the placement of students with disabilities;

(13) A description of the facilities to be used by the public charter school, including the location of the school and how the facility supports the implementation of the school's program. The school shall obtain all required occupation and operation certificates and licenses prior to the first instructional day for students;

(14) The proposed ages and grade levels to be served by the public charter school, including the planned minimum and maximum enrollment per grade per year;

(15) The school calendar and school day schedule, which shall meet the requirements of §18-5-45 of this code;

(16) Types and amounts of insurance coverage to be obtained by the public charter school, which:

(A) Shall include adequate insurance for liability, property loss, and the personal injury of students comparable to noncharter public schools within the local school district operated by the county board; and

(B) May include coverage from the Board of Risk and Insurance Management pursuant to §29-12-5a of this code;

(17) A description of the food services to be provided to students attending the school;

(18) Process and procedures to be followed in the case of the closure or dissolution of the public charter school, including provisions for the transfer of students and student records to the appropriate local school district and an assurance and agreement to payment of net assets or equity, after payment of debts as specified in §18-5G-8 of this code;

(19) A code of ethics for the school setting forth the standards of conduct expected of its governing board, officers, and employees;

(20) The public charter school's plan for successfully serving students with disabilities, students who are English language learners, bilingual students, and students who are academically behind and gifted, including, but not limited to, the school's plan for compliance with all applicable federal and state laws and regulations;

(21) A description of cocurricular and extracurricular programs to be offered by the public charter school and how they will be funded and delivered;

(22) The process by which the school will resolve any disputes with the authorizer;

(23) A detailed start-up plan, including financing, tasks, timelines, and individuals responsible for carrying out the plan;

(24) The public charter school's plan for parental involvement.

(c) If the applicant intends to contract with an education service provider for educational program implementation or comprehensive management, the application shall additionally require the applicant to provide the following information with respect to the educational service provider:

(1) Evidence of success in serving student populations similar to the targeted population, including demonstrated academic achievement as well as successful management of nonacademic school functions, if applicable;

(2) Student performance data and financial audit reports for all current and past public charter schools;

(3) Documentation of and explanation for any actions taken, legal or otherwise, against any of its public charter schools for academic, financial, or ethical concerns;

(4) The proposed duration of the service contract;

(5) The annual proposed fees and other amounts to be paid to the education service provider;

(6) The roles and responsibilities of the governing board, the school staff, and the education service provider;

(7) The scope of services and resources to be provided by the education service provider;

(8) Performance evaluation measures and timelines;

(9) Methods of contract oversight and enforcement;

(10) Investment disclosure;

(11) Conditions for renewal and termination of the contract; and

(12) Disclosure and explanation any existing or potential conflicts of interest between the governing board and the proposed education service provider or any affiliated business entities.

#### **§18-5G-6. Authorizer duties and responsibilities.**

(a) An authorizer shall:

(1) Demonstrate public accountability and transparency in all matters concerning its charter-authorizing practices, decisions, and expenditures;

(2) Approve new charter applications that meet the requirements of this section and §18-5G-5 of this code, demonstrate the ability to operate the school in an educationally and fiscally sound manner, and are likely to improve student achievement through the program detailed in the charter application;

(3) Decline to approve charter applications that fail to meet the requirements of §18-5G-5 of this code;

(4) Negotiate and execute in good faith a charter contract with each public charter school it authorizes;

(5) Monitor the performance and compliance of public charter schools according to the terms of the charter contract;

(6) Determine whether each charter contract it authorizes merits renewal or revocation; and

(7) Establish and maintain policies and practices consistent with the principles and professional standards for authorizers of public charter schools, including standards relating to:

(A) Organizational capacity and infrastructure;

(B) Evaluating applications;

(C) Ongoing public charter school oversight and evaluation; and

(D) Charter approval, renewal, and revocation decision-making.

(b) After an applicant submits a written application to establish a public charter school, the authorizer shall:

(1) Complete a thorough review process;

(2) Conduct an in-person interview with the applicant;

(3) Provide an opportunity in a public forum for local residents to provide input and learn about the charter application;

(4) Provide a detailed analysis of the application to the applicant or applicants;

(5) Allow an applicant a reasonable time to provide additional materials and amendments to its application to address any identified deficiencies; and

(6) Approve or deny a charter application based on established objective criteria or request additional information.

(c) In deciding to approve a charter application, the authorizer shall:

(1) Approve charter applications only to applicants that possess competence in all elements of the application requirements identified in this section and §18-5G-5 of this code;

(2) Base decisions on documented evidence collected through the application review process; and

(3) Follow charter-granting policies and practices that are transparent, based on merit, and avoid conflicts of interest.

(d) No later than 90 days following the filing of the charter application, the authorizer shall approve or deny the charter application. The authorizer shall provide its decision in writing, including an explanation stating the reasons for approval or denial of its decision during an open meeting. Any failure to act on a charter application within the time specified shall be deemed an approval by the authorizer.

(e) An authorizer's charter application approval shall be submitted to the West Virginia Department of Education.

(f) No public charter school may begin operations prior to July 1, 2019.

(g) An applicant whose charter application has been denied may appeal the authorizer's decision to the West Virginia Public Charter School Commission pursuant to §18-5G-10 of this code: *Provided*, That if public charter school authorization is sought directly from the commission, the commission's decision is final.

(h) Notwithstanding any provision of this code to the contrary, no civil liability shall attach to an authorizer or to any of its members or employees for any acts or omissions of the public charter school. Neither the county board of education nor the State of West Virginia shall be liable for the debts or financial obligations of a public charter school or any person or entity that operates a public charter school.

(i) To cover authorizer costs for overseeing public charter schools in accordance with this Act, each public charter school shall remit to its respective authorizer an oversight fee. The oversight fee shall be drawn from and calculated as a uniform percentage of the per student operational funding allocated to each public charter school under §18-5G-13 of this code, not to exceed one percent of each public charter school's per-student funding in a single school year. The state board shall establish a statewide formula for authorizer funding, which shall apply uniformly to every authorizer in the state. The state board may establish a sliding scale for authorizing funding, with the funding percentage decreasing after the authorizer has achieved a certain threshold, such as after a certain number of schools have been authorized or after a certain number of students are enrolled in the authorizer's public charter schools. The state board shall establish a cap on the total amount of funding that an authorizer may withhold from a full-time charter school. The state board shall annually review the effectiveness of the state formula for authorizer funding and shall adjust the formula if necessary to maximize public benefit and strengthen the implementation of this act.

#### **§18-5G-7. Charter contract requirements; term of contract.**

(a) Within 90 days of the approval of a charter application, the governing board and the authorizer shall negotiate and enter into a charter contract.

(b) The charter contract shall address, in detail, the following items:

(1) The term of the contract: *Provided*, That the contract term shall be no longer than five years;

(2) The agreements relating to each item required under §18-5G-5(b) and §18-5G-5(c) of this code;

(3) The rights and duties of the authorizer and the public charter school;

(4) The administrative relationship between the authorizer and the public charter school;

(5) The process the authorizer will use to provide ongoing oversight;

(6) The specific commitments of the authorizer relating to its obligations to oversee, monitor the progress of, and supervise the public charter school;

(7) The process and criteria the authorizer will use to annually monitor and evaluate the overall academic, operating, and fiscal conditions of the public charter school, including the process the authorizer will use to oversee the correction of any deficiencies found;

(8) The process for revision or amendment to the terms of the charter contract agreed to by the authorizer and the governing board;

(9) The process agreed to by the authorizer and the governing board that identifies how disputes between the authorizer and the board will be handled; and

(10) Any other terms and conditions agreed to by the authorizer and the governing board, including preopening conditions.

(c) The charter contract shall include provisions relating to the performance of the public charter school that set forth the academic and operational performance indicators, measures, and metrics to be used by the authorizer to evaluate the public charter school. At a minimum, the performance provisions shall include indicators, measures, and metrics for:

(1) Student academic proficiency;

(2) Student academic growth;

(3) Achievement gaps in both student proficiency and student growth between student subgroups, including race, sex, socioeconomic status, and areas of exceptionality;

(4) Student attendance;

(5) Student suspensions;

(6) Student withdrawals;

(7) Recurrent enrollment from year to year;

(8) Governing board's performance and stewardship, including compliance with all applicable statutes and terms of charter contract; and

(9) Additional valid and reliable indicators requested by the public charter school.

(d) The authorizer shall be responsible for collecting and reporting to the state board all state-required assessment and achievement data for the public charter school.

(e) The charter contract shall be signed by the chair of the governing board and the president of the county board, presidents of the county boards, or the president of the public or private institution of higher education, as applicable. A copy of the charter contract shall be provided to the State Superintendent of Schools.

(f) No public charter school may commence operations without a charter contract that meets the requirements of this section, has been properly executed, and has been approved by, as applicable, a county board, county boards, or the institutional board of governors of a public or private institution of higher education that has such a board. For any public or private institution of higher education that does not have an institutional board of governors, the charter contract instead shall be approved by the level of authority immediately above the president or other chief administrator of the institution.



**§18-5G-8. Renewal or nonrenewal of charter contracts; revocation of charter contracts; rulemaking; right to appeal.**

(a) A charter contract may be renewed by the authorizer for a term of no more than five years. Authorizers may grant renewal with specific conditions for necessary improvements in the public charter school: *Provided*, That any specific condition imposed does not contradict the terms of this article.

(b) The State Board of Education shall promulgate a rule establishing the process for renewing or not renewing a charter contract. At a minimum, this rule shall include:

(1) A timeline for a governing board to submit an application for renewal to an authorizer;

(2) The information that must be included in an application for renewal;

(3) If the authorizer initially determines to deny a renewal application:

(A) Notification requirements to the governing board about the prospect of nonrenewal and the reasons for possible closure of the public charter school;

(B) An opportunity and timeframe for the governing board to provide a response to the notice of the nonrenewal;

(C) An opportunity for the governing board to submit documentation and provide testimony as to why the charter contract should be renewed; and

(D) An opportunity for a recorded public hearing, at the request of the governing board;

(4) That the authorizer shall consider the governing board's response, testimony, and documentation, as well as the recorded public hearing, prior to rendering a final decision on the nonrenewal of the charter contract;

(5) The information that must be included in the authorizer's final decision if it determines to deny a renewal application;

(6) A timeline for an authorizer to render a final decision on whether or not to revoke a charter contract;

(7) Approval of the authorizer's decision shall be adopted by the county board, county boards, or institutional board of governors, as applicable, during an open meeting, subject to the following:

(A) If the authorizer is a public or private institution of higher education that has no institutional board of governors, the decision shall be adopted during an open meeting of the institution's level of authority immediately above the president or other chief administrator of the institution; and

(B) If the level of authority immediately above the president or other chief administrator is an individual, the open meeting requirement of this subdivision does not apply; and

(8) A provision that the failure of the authorizer to act on a renewal application within the designated timeframes shall be deemed an approval of the renewal application.

(c) A charter contract shall not be renewed if the authorizer determines that the public charter school has:

(1) Committed a material violation of any of the terms, conditions, standards, or procedures required under this article or the charter contract, and has persistently failed to correct the violation after fair and specific notice from the authorizer;

(2) Failed to meet or make significant progress toward the program performance expectations identified in the charter contract;

(3) Failed to meet generally accepted standards of fiscal management, and has failed to correct the violation after fair and specific notice from the authorizer; or

(4) Substantially violated any material provision of law from which the public charter school was not exempted and has failed to correct the violation after fair and specific notice from the authorizer.

(d) A charter contract shall include provisions for revoking the charter contract. At a minimum, these provisions shall include:

(1) The information that must be included in the authorizer's initial decision to revoke the charter contract;

(2) Notification requirements to the governing board about the authorizer's initial decision to revoke a charter contract and the reasons for the revocation;

(3) An opportunity and timeframe for the governing board to provide a response to the authorizer's initial decision to revoke the charter contract;

(4) An opportunity for the governing board to submit documentation and provide testimony as to why the charter contract should not be revoked;

(5) An opportunity for a recorded public hearing, at the request of the governing board;

(6) That the authorizer shall consider the governing board's response, testimony, and documentation, as well as the recorded public hearing, prior to rendering a final decision on the revocation of the charter contract;

(7) The information that must be included in the authorizer's final decision if it determines to revoke the charter contract;

(8) A timeline for an authorizer to render a final decision on whether or not to revoke a charter contract;

(9) Approval of the authorizer's decision shall be adopted during an open meeting, subject to the following:

(A) If the authorizer is a public or private institution of higher education that has no institutional board of governors, the decision shall be adopted during an open meeting of the institution's level of authority immediately above the president or other chief administrator of the institution; and

(B) If the level of authority immediately above the president or other chief administrator is an individual, the open meeting requirement of this subdivision does not apply; and

(10) A provision that the failure of the authorizer to act on a renewal application within the designated timeframes shall be deemed.

(e) Notwithstanding the process set forth in §18-5G-8(d) of this code, an authorizer shall take immediate action to revoke a charter contract if the health and safety of students attending the public charter school is threatened. A governing board whose charter contract has been revoked pursuant to this provision may appeal the authorizer's action to the West Virginia Public Charter School Commission, subject to the following:

(1) The charter contract shall remain revoked unless and until the Commission directs otherwise; and

(2) If the Commission is the authorizer that revokes the charter contract, the Commission's decision is final.

(f) A governing board whose charter contract has not been renewed or has been revoked may appeal the authorizer's final decision to the West Virginia Public Charter School Commission pursuant to §18-5G-10 of this code: *Provided*, That if the Commission is the authorizer that fails to renew or revokes a charter contract, the Commission's decision is final.

(g) An authorizer shall develop a public charter school closure protocol or protocol for transitioning a charter school to noncharter public school status. The protocol shall ensure timely notification to parents, orderly transition of students and student records to new schools when applicable, and proper disposition of school funds, property, and assets. The protocol shall specify tasks, timelines, and responsible parties, including delineating the respective duties of the public charter school and the authorizer. If a public charter school closes or transitions to noncharter public school status for any reason, the authorizer shall oversee and work with the closing or transitioning school to ensure a smooth and orderly closure or transition and transition for students and parents, as guided by the closure or school transition protocol. If a public charter school is subject to closure or transition, following exhaustion of any appeal allowed under §18-5G-10 of this code, an authorizer may remove at will at any time any or all of the members of the board of directors of the public charter school in connection with ensuring a smooth and orderly closure or transition. If the authorizer removes members of the board of directors such that the board of directors can no longer function, the authorizer shall be empowered to take any further necessary and proper acts connected with closure or transition of the public charter school in the name and interest of the public charter school.

#### **§18-5G-9. Appeal of authorizer's decision to West Virginia Public Charter School Commission.**

(a) A charter applicant or governing board of an existing public charter school may appeal a decision of an authorizer concerning the denial of a charter application, the nonrenewal of a charter contract, or the revocation of a charter contract to the authorizer within 30 days of the authorizer's decision.

(b) The State Board of Education shall promulgate a rule establishing the process and timeline for appeals filed pursuant to §18-5G-10(a) of this code.

(c) If the authorizer finds that the application, applicant, and public charter school, as applicable, meet the requirements of this Act, the authorizer shall approve the application, or renew or reinstate the charter contract.

#### **§18-5G-10. Prohibitions.**

Notwithstanding any provision in this article that may be interpreted to the contrary, a public charter school shall not:

(1) Be home-school based; and

(2) Discriminate on any basis for which the noncharter public schools of this state may not discriminate: *Provided*, That nothing in this subsection may be construed to limit the formation of a public charter school that is dedicated to focusing education services on at-risk students, students with disabilities, and students who pose such severe disciplinary problems that they warrant a specific education program.

**§18-5G-11. State board rule relating to funding for charter school enrollment and other necessary provisions.**

(a) The state board shall promulgate a rule in accordance with §29A-3B-1 *et seq.* of this code setting forth requirements for public charter school funding. The rule shall include a requirement that 90 percent of the per pupil total basic foundation allowance follow the student to the public charter school, subject to the following:

(1) Notwithstanding §18-9A-1 *et seq.* of this code, the rule may provide for modifications to the calculations outlined in §18-9A-7 regarding the allowance for student transportation and in §18-9A-9(1) regarding the allowance for current expense for the purpose of providing additional state aid funding to county boards of education related to the operation of public charter schools;

(2) The rule shall designate which county school district is required to pay for a student attending a public charter school; and

(3) The rule shall require the Department of Education to follow federal requirements in ensuring that federal funding follows the student to a public charter school.

(b) The state board may promulgate a rule in accordance with §29A-3B-1 *et seq.* of this code to clarify, if necessary, the requirements of this article and address any unforeseen issues that might arise relating to the implementation of the requirements of this article.

**§18-5G-12. Access to public facilities.**

(a) A public charter school may request usage of public facilities from a local county board where the charter school is located. A local county board or other public entity shall make facilities available to the charter school that are either not used in whole or in part for classroom instruction at the time the charter school seeks to use or lease the public facility.

(b) If a charter school seeks to lease the whole or part of a public facility, the cost of the lease must be at or under current market value.

(c) During the term of the lease, the charter school is solely responsible for the direct expenses related to the public facility lease, including utilities, insurance, maintenance, repairs and remodeling. The county school board is responsible for any debt incurred or liens that are attached to the school building before the charter school leases the public facility.

**§18-5G-13. Reports.**

(a) An authorizer that has authorized a public charter school that is currently in operation shall submit to the state superintendent for presentation to the state board and the West Virginia Public Charter School Commission an annual report within 60 days of the end of each school fiscal year summarizing:

(1) The performance of the public charter schools overseen by the authorizer, according to the performance measures and expectations specified in the charter contracts;

(2) The authorizing duties and functions provided by the authorizer during the previous academic year.

(b) One year after public charter schools have been in operation, and each year thereafter, the State Superintendent shall issue to the Governor, the Legislature, and the general public, a report on the state's public charter school program, drawing from the annual reports submitted by authorizers pursuant to this section, as well as any additional relevant data compiled by the State Superintendent up to the school year ending in the preceding calendar year. The report must include an assessment of the public charter school program's successes, challenges, and areas for improvement in meeting the purposes of this chapter as well as any suggested changes in state law or policy necessary to strengthen the public charter school program."

On the adoption of the amendment to the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 154**), and there were—yeas 31, nays 68, absent and not voting 1, with the yeas and absent and not voting being as follows:

Yeas: Atkinson, Azinger, Bibby, Butler, Cadle, Cowles, Espinosa, Fast, Foster, Graves, Hamrick, Hardy, Harshbarger, Higginbotham, Hollen, Householder, Howell, D. Jeffries, Jennings, Kessinger, Malcolm, C. Martin, P. Martin, Pack, Porterfield, Summers, Sypolt, Waxman and Hanshaw (Mr. Speaker).

Absent and Not Voting: Kump.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was rejected.

Delegate Wilson moved to amend the bill on pages 21 through 43, by striking out all of §18-5G-1 *et seq.* and inserting in lieu thereof a new §18-5G-1 *et seq.*, to read as follows:

**"ARTICLE 5G. PUBLIC CHARTER SCHOOLS.**

**§18-5G-1. Legislative purpose and intent.**

The West Virginia Legislature hereby authorizes the establishment of one (1) public charter school per county to benefit students, parents, teachers, and community members by creating new, innovative, and more flexible ways of educating all children within the public school system and by advancing a renewed commitment to the mission, goals, and diversity of public education. The purposes of the public charter school initiative are to:

(a) Improve student learning by creating more diverse public schools with high standards for student performance;

(b) Provide innovative educational methods and practices through programs that engage students in the learning process, thus resulting in higher student achievement;

(c) Enable schools to establish a distinctive school curriculum, a specialized academic theme, or method of instruction; and

(d) Allow schools enhanced freedom and flexibility in exchange for exceptional levels of results-driven accountability.

**§18-5G-2. Definitions.**

The following words used in this article and any proceedings pursuant thereto have the following meanings unless the context clearly indicates a different meaning:

(1) "Applicant" means any group or entity with 501(c)(3) tax-exempt status or that has submitted an application for 501(c)(3) tax-exempt status that develops and submits an application for a public charter school to an authorizer;

(2) "Authorizer" means the entity authorized under this article to review and approve or deny charter applications, enter into charter contracts with applicants, oversee public charter schools, and determine whether to renew, not renew, or revoke charter contracts. Authorizers include:

(A) A county school board in the county in which a public charter school is proposed to be located;

(B) Two or more county school boards representing the several counties which a public charter school is proposed to serve; or

(C) Any accredited West Virginia public or private institution of higher education; or

(3) "Charter application" means a proposal from an applicant to an authorizer to enter into a charter contract whereby the proposed school obtains public charter school status;

(4) "Charter contract" or "contract" means a fixed-term, renewable contract between a public charter school's governing board and an authorizer that identifies the roles, powers, responsibilities, operational duties, accountability, and performance expectations for each party to the contract, consistent with the requirements of this article;

(5) "County board" means a county board of education;

(6) "Education service provider" means an education management organization, school design provider, or any other partner entity with which a public charter school contracts for educational design, implementation, or comprehensive management;

(7) "Governing board" means the independent board of directors for a public charter school that is a party to the charter contract with the authorizer and whose members have been elected or selected pursuant to the charter application;

(8) "Noncharter public school" means a public school other than a public charter school established pursuant to this article;

(9) "Parent" means a parent, guardian, or other person or entity having legal custody over a child;

(10) "Public charter school" means a public school established pursuant to this article that:

(A) Is a public corporate body, exercising public power through its governing board, including the power in name to contract and be contracted with, sue and be sued, and adopt bylaws not inconsistent with this article;

(B) Has autonomy over decisions relating to finance, personnel, scheduling, curriculum, and instruction consistent with this article and its charter contract;

(C) Is governed by a governing board that is independent of a county board except as otherwise provided in this article;

(D) Is established and operating under the terms of a charter contract between the public charter school's governing board and its authorizer;

(E) Is a public school to which parents choose to send their children;

(F) Is a public school that admits students on the basis of a random and open lottery if more students apply for admission than can be accommodated, pursuant to and subject to §18-5G-4 of this code;

(G) Offers a comprehensive instructional program that meets or exceeds the student performance standards adopted pursuant to §18-2E-5 of this code; and

(H) Operates under the oversight of its authorizer in accordance with its charter contract;

(11) "State board" means the West Virginia Board of Education;

(12) "Student" means any person that is eligible for attendance in a public school in West Virginia; and

(13) "Virtual public charter school" means a public charter school that offers education services primarily or completely through an online program.

**§18-5G-3. Authorization for the establishment of public charter schools; governing board.**

(a) A public charter school shall be part of the state's system of public education but shall be exempt from all statutes and administrative regulations applicable to the state board, a county board, or a school unless expressly stated otherwise in this article, subject to the following:

(1) Public charter schools shall adhere to the same immunization, civil rights, and disability rights requirements applicable to noncharter public schools; and

(2) Nothing in this article prohibits a public charter school from complying with any statute, state board policy, or county board policy applicable to noncharter public schools.

(b) A public charter school shall not have entrance requirements or charge tuition or fees: *Provided*, That a public charter school may require the payment of fees on the same basis and to the same extent as noncharter public schools.

(c) A public charter school shall not have the power to levy taxes.

(d) A public charter school shall:

(1) Be governed by a governing board;

(2) Provide instructional time that is at least equal to the number of days or their equivalent required by §18-5-45 of this code;

(3) Require criminal background checks for staff and volunteers, including members of its governing board, as required of all noncharter public school employees and volunteers;

(4) Prohibit contractors and service providers or their employees from making direct, unaccompanied contact with students or accessing school grounds unaccompanied when students are present if it cannot be verified that the contractors, service providers, or their employees have not been previously convicted of a qualifying offense pursuant to §18-5-15c of this code;

(5) Ensure student participation in the required state summative assessment pursuant to §18-2E-5 of this code;

(6) Adhere to generally accepted accounting principles and adhere to the same financial audits, audit procedures, and audit requirements applicable to noncharter public schools;

(7) Utilize the same system for reporting student information data and financial data as is utilized by noncharter public schools;

(8) Comply with the Freedom of Information Act as set forth in §29B-1-1 *et seq.* of this code;

(9) Report data using the West Virginia Education Information System or successor data reporting system that noncharter public schools use;

(10) Operate under the oversight of its authorizer in accordance with its charter contract;

(11) As a public corporate body, have the powers necessary for carrying out the terms of its charter contract, including, but not limited to the power to:

(A) Receive and disburse funds for school purposes;

(B) Secure appropriate insurance and enter into contracts and leases;

(C) Contract with an education service provider, so long as the governing board retains final oversight and authority over the school;

(D) Pledge, assign, or encumber its assets to be used as collateral for loans or extensions of credit;

(E) Solicit and accept any gifts or grants for school purposes, subject to applicable laws and the terms of its charter; and

(F) Acquire real property for use as its facilities or facilities from public or private sources;

(12) Enroll students in the public charter school pursuant to §18-5G-4 of this code;

(13) Require any education service provider contracted with the governing board to provide a monthly detailed budget to the board;

(14) Serve one or more of grades pre-K through 12 and limit admission to students within the grade levels served; and

(15) Provide programs and services to a student with a disability in accordance with the student's individualized education program and all federal and state laws, rules, and regulations. A public charter school shall deliver the services directly or contract with another provider to deliver the services.

(e) A public charter school may:

(1) Negotiate and contract with its authorizer or any third party for the use, operation, and maintenance of a building and grounds, liability insurance, and the provision of any service, activity, or undertaking that the public charter school is required to perform in order to carry out the educational program described in its charter contract. Any services for which a public charter school contracts



with a school district shall be provided by the district at cost and shall be negotiated as a separate agreement after final charter contract negotiations;

(2) Sue and be sued in its own name;

(3) Own, rent, or lease its space;

(4) Participate in cocurricular activities to the same extent as noncharter public schools; and

(5) Participate in extracurricular activities to the same extent as noncharter public schools.

(f) *Public charter school governing board.* —

(1) To ensure compliance with this article, a public charter school shall be administered by a governing board accountable to the authorizer as set forth in the charter contract. A public charter school governing board shall consist of no fewer than five members.

(2) The governing board shall consist of at least:

(A) Two parents of students attending the public charter school operating under the governing board; and

~~(B) One member of the county board over the school district in which the public charter school is located if the county board elects to appoint a member: *Provided*, That refusal by any county board members to sit on the governing board shall not preclude the establishment of a charter school.~~

(3) Members of the governing board shall:

(A) Not be an employee of the public charter school administered by the governing board;

(B) Not be an employee of an education service provider that provides services to the public charter school; and

(C) File a full disclosure report to the authorizer identifying potential conflicts of interest, relationships with management organizations, and relationships with family members who are employed by the public charter school or have other business dealings with the school, the management organization of the school, or any other public charter school.

(4) Members of the governing board shall collectively possess expertise in leadership, curriculum and instruction, law, and finance.

(5) A member of the public charter school governing board shall be considered an officer of a school district under the provisions of §6-6-7 of this code, and shall be removed from office under the provisions of that section.

(6) The governing board shall be responsible for the operation of its public charter school, including, but not limited to, preparation of an annual budget, contracting for services, school curriculum, personnel matters, and achieving the objectives and goals of the public charter school's program.

(7) The governing board shall comply with open governmental proceedings requirements set forth in §6-9A-1 *et seq.* of this code.

**§18-5G-4. Enrollment in a public charter school; recruitment and retention plans.**

(a) A public charter school may enroll any student residing in the state.

(b) If capacity is insufficient to enroll all students who wish to attend any specific grade level at a public charter school, the school shall select students through a randomized and transparent lottery: *Provided*, That the state board shall promulgate a rule to guide student application and lottery procedures for public charter schools.

(c) Enrollment preference for public charter schools shall be given to students enrolled in the public charter school the previous year and to siblings of students already enrolled in the school. An enrollment preference for returning students shall exclude those students from entering into a lottery, as identified in §18-5G-4(c) of this code.

(d) A public charter school may allow an enrollment preference for students who meet federal eligibility requirements for free or reduced-price meals and at-risk students.

(e) A public charter school may give enrollment preference to children of a public charter school's governing board members and full-time employees, as long as they constitute no more than 10 percent of the school's total student population.

(f) Every charter school shall submit a recruitment and retention plan annually to its authorizer. The plan shall list deliberate, specific strategies the school will use to attract, enroll, and retain a student population that includes students who are, to the extent applicable:

(1) Limited English proficient;

(2) Special education;

(3) Low income;

(4) Below proficiency on the comprehensive statewide student assessment;

(5) At risk of dropping out of school;

(6) Have dropped out of school; or

(7) Any others who should be targeted to eliminate achievement gaps.

(g) A noncharter public school converting partially or entirely to a public charter school shall adopt and maintain a policy giving enrollment preference to students who reside within the former attendance area of that public school.

**§18-5G-5. Application to establish public charter school.**

(a) To establish a new public charter school or to convert an existing noncharter public school to a public charter school, an applicant shall submit a charter application to an authorizer: *Provided*, That only a county board may authorize the conversion of an existing noncharter public school to a public charter school. Charter authorizers shall accept and document the date and time of receipt of all charter applications.

(b) The application shall contain, at a minimum, the following information:

(1) A mission statement and a vision statement for the public charter school, including specialized academic focus, if any, to be promoted and advanced through the establishment of the public charter school;

(2) A detailed description of the public charter school's proposed program;

(3) The student achievement goals for the public charter school's program and the chosen methods of evaluating whether students have attained the skills and knowledge specified for those goals;

(4) The school's plan for using data derived from student evaluations and assessments, including the statewide summative assessment, to drive instruction and promote continued school improvement;

(5) An explanation of how the school's proposed program is likely to improve the achievement of traditionally underperforming students in the local school district;

(6) The proposed governance structure of the school, including a list of members of the initial governing board, a draft of bylaws that include the description of the qualifications, terms, and methods of appointment or election of governing board members, and the organizational structure of the school that clearly presents lines of authority and reporting between the governing board, school administrators, staff, any related bodies such as advisory bodies or parent and teacher councils, and any external organizations that will play a role in managing the school;

(7) Plans and timelines for student enrollment, including policies and procedures for conducting transparent and random admission lotteries that are open to the public, and that are consistent with this article;

(8) A proposed five-year budget, including the start-up year and projections for four additional years with clearly stated assumptions;

(9) Proposed fiscal and internal control policies for the public charter school;

(10) Acknowledgement that the public charter school will participate in the state's accountability system;

(11) A proposed handbook that outlines the personnel policies of the public charter school, including the criteria to be used in the hiring of qualified teachers, school administrators, and other school employees, a description of staff responsibilities, and the school's plan to evaluate personnel on an annual basis;

(12) An explanation of proposed student discipline procedures, including disciplinary procedures for students with disabilities, which shall be consistent with the requirements of due process and with state and federal laws and regulations governing the placement of students with disabilities;

(13) A description of the facilities to be used by the public charter school, including the location of the school and how the facility supports the implementation of the school's program. The school shall obtain all required occupation and operation certificates and licenses prior to the first instructional day for students;

(14) The proposed ages and grade levels to be served by the public charter school, including the planned minimum and maximum enrollment per grade per year;

(15) The school calendar and school day schedule, which shall meet the requirements of §18-5-45 of this code;

(16) Types and amounts of insurance coverage to be obtained by the public charter school, which:

(A) Shall include adequate insurance for liability, property loss, and the personal injury of students comparable to noncharter public schools within the local school district operated by the county board; and

(B) May include coverage from the Board of Risk and Insurance Management pursuant to §29-12-5a of this code;

(17) A description of the food services to be provided to students attending the school;

(18) Process and procedures to be followed in the case of the closure or dissolution of the public charter school, including provisions for the transfer of students and student records to the appropriate local school district and an assurance and agreement to payment of net assets or equity, after payment of debts as specified in §18-5G-8 of this code;

(19) A code of ethics for the school setting forth the standards of conduct expected of its governing board, officers, and employees;

(20) The public charter school's plan for successfully serving students with disabilities, students who are English language learners, bilingual students, and students who are academically behind and gifted, including, but not limited to, the school's plan for compliance with all applicable federal and state laws and regulations;

(21) A description of cocurricular and extracurricular programs to be offered by the public charter school and how they will be funded and delivered;

(22) The process by which the school will resolve any disputes with the authorizer;

(23) A detailed start-up plan, including financing, tasks, timelines, and individuals responsible for carrying out the plan;

(24) The public charter school's plan for parental involvement.

(c) If the applicant intends to contract with an education service provider for educational program implementation or comprehensive management, the application shall additionally require the applicant to provide the following information with respect to the educational service provider:

(1) Evidence of success in serving student populations similar to the targeted population, including demonstrated academic achievement as well as successful management of nonacademic school functions, if applicable;

(2) Student performance data and financial audit reports for all current and past public charter schools;

(3) Documentation of and explanation for any actions taken, legal or otherwise, against any of its public charter schools for academic, financial, or ethical concerns;

(4) The proposed duration of the service contract;

(5) The annual proposed fees and other amounts to be paid to the education service provider;

(6) The roles and responsibilities of the governing board, the school staff, and the education service provider;

(7) The scope of services and resources to be provided by the education service provider;

(8) Performance evaluation measures and timelines;

(9) Methods of contract oversight and enforcement;

(10) Investment disclosure;

(11) Conditions for renewal and termination of the contract; and

(12) Disclosure and explanation any existing or potential conflicts of interest between the governing board and the proposed education service provider or any affiliated business entities.

**§18-5G-6. Authorizer duties and responsibilities.**

(a) An authorizer shall:

(1) Demonstrate public accountability and transparency in all matters concerning its charter-authorizing practices, decisions, and expenditures;

(2) Approve new charter applications that meet the requirements of this section and §18-5G-5 of this code, demonstrate the ability to operate the school in an educationally and fiscally sound manner, and are likely to improve student achievement through the program detailed in the charter application;

(3) Decline to approve charter applications that fail to meet the requirements of §18-5G-5 of this code;

(4) Negotiate and execute in good faith a charter contract with each public charter school it authorizes;

(5) Monitor the performance and compliance of public charter schools according to the terms of the charter contract;

(6) Determine whether each charter contract it authorizes merits renewal or revocation; and

(7) Establish and maintain policies and practices consistent with the principles and professional standards for authorizers of public charter schools, including standards relating to:

(A) Organizational capacity and infrastructure;

(B) Evaluating applications;

(C) Ongoing public charter school oversight and evaluation; and

(D) Charter approval, renewal, and revocation decision-making.

(b) After an applicant submits a written application to establish a public charter school, the authorizer shall:

- (1) Complete a thorough review process;
  - (2) Conduct an in-person interview with the applicant;
  - (3) Provide an opportunity in a public forum for local residents to provide input and learn about the charter application;
  - (4) Provide a detailed analysis of the application to the applicant or applicants;
  - (5) Allow an applicant a reasonable time to provide additional materials and amendments to its application to address any identified deficiencies; and
  - (6) Approve or deny a charter application based on established objective criteria or request additional information.
- (c) In deciding to approve a charter application, the authorizer shall:
- (1) Approve charter applications only to applicants that possess competence in all elements of the application requirements identified in this section and §18-5G-5 of this code;
  - (2) Base decisions on documented evidence collected through the application review process; and
  - (3) Follow charter-granting policies and practices that are transparent, based on merit, and avoid conflicts of interest.
- (d) No later than 90 days following the filing of the charter application, the authorizer shall approve or deny the charter application. The authorizer shall provide its decision in writing, including an explanation stating the reasons for approval or denial of its decision during an open meeting. Any failure to act on a charter application within the time specified shall be deemed an approval by the authorizer.
- (e) An authorizer's charter application approval shall be submitted to the West Virginia Department of Education.
- (f) No public charter school may begin operations prior to July 1, 2019.
- (g) An applicant whose charter application has been denied may appeal the authorizer's decision to the West Virginia Public Charter School Commission pursuant to §18-5G-10 of this code: *Provided*, That if public charter school authorization is sought directly from the commission, the commission's decision is final.
- (h) Notwithstanding any provision of this code to the contrary, no civil liability shall attach to an authorizer or to any of its members or employees for any acts or omissions of the public charter school. Neither the county board of education nor the State of West Virginia shall be liable for the debts or financial obligations of a public charter school or any person or entity that operates a public charter school.
- (i) To cover authorizer costs for overseeing public charter schools in accordance with this Act, each public charter school shall remit to its respective authorizer an oversight fee. The oversight fee shall be drawn from and calculated as a uniform percentage of the per student operational funding allocated to each public charter school under §18-5G-13 of this code, not to exceed one percent of each public charter school's per-student funding in a single school year. The state board shall establish a statewide formula for authorizer funding, which shall apply uniformly to every authorizer

in the state. The state board may establish a sliding scale for authorizing funding, with the funding percentage decreasing after the authorizer has achieved a certain threshold, such as after a certain number of schools have been authorized or after a certain number of students are enrolled in the authorizer's public charter schools. The state board shall establish a cap on the total amount of funding that an authorizer may withhold from a full-time charter school. The state board shall annually review the effectiveness of the state formula for authorizer funding and shall adjust the formula if necessary to maximize public benefit and strengthen the implementation of this act.

**§18-5G-7. Charter contract requirements; term of contract.**

(a) Within 90 days of the approval of a charter application, the governing board and the authorizer shall negotiate and enter into a charter contract.

(b) The charter contract shall address, in detail, the following items:

(1) The term of the contract: *Provided*, That the contract term shall be no longer than five years;

(2) The agreements relating to each item required under §18-5G-5(b) and §18-5G-5(c) of this code;

(3) The rights and duties of the authorizer and the public charter school;

(4) The administrative relationship between the authorizer and the public charter school;

(5) The process the authorizer will use to provide ongoing oversight;

(6) The specific commitments of the authorizer relating to its obligations to oversee, monitor the progress of, and supervise the public charter school;

(7) The process and criteria the authorizer will use to annually monitor and evaluate the overall academic, operating, and fiscal conditions of the public charter school, including the process the authorizer will use to oversee the correction of any deficiencies found;

(8) The process for revision or amendment to the terms of the charter contract agreed to by the authorizer and the governing board;

(9) The process agreed to by the authorizer and the governing board that identifies how disputes between the authorizer and the board will be handled; and

(10) Any other terms and conditions agreed to by the authorizer and the governing board, including preopening conditions.

(c) The charter contract shall include provisions relating to the performance of the public charter school that set forth the academic and operational performance indicators, measures, and metrics to be used by the authorizer to evaluate the public charter school. At a minimum, the performance provisions shall include indicators, measures, and metrics for:

(1) Student academic proficiency;

(2) Student academic growth;

(3) Achievement gaps in both student proficiency and student growth between student subgroups, including race, sex, socioeconomic status, and areas of exceptionality;

(4) Student attendance;

(5) Student suspensions;

(6) Student withdrawals;

(7) Recurrent enrollment from year to year;

(8) Governing board's performance and stewardship, including compliance with all applicable statutes and terms of charter contract; and

(9) Additional valid and reliable indicators requested by the public charter school.

(d) The authorizer shall be responsible for collecting and reporting to the state board all state-required assessment and achievement data for the public charter school.

(e) The charter contract shall be signed by the chair of the governing board and the president of the county board, presidents of the county boards, or the president of the public or private institution of higher education, as applicable. A copy of the charter contract shall be provided to the State Superintendent of Schools.

(f) No public charter school may commence operations without a charter contract that meets the requirements of this section, has been properly executed, and has been approved by, as applicable, a county board, county boards, or the institutional board of governors of a public or private institution of higher education that has such a board. For any public or private institution of higher education that does not have an institutional board of governors, the charter contract instead shall be approved by the level of authority immediately above the president or other chief administrator of the institution.

**§18-5G-8. Renewal or nonrenewal of charter contracts; revocation of charter contracts; rulemaking; right to appeal.**

(a) A charter contract may be renewed by the authorizer for a term of no more than five years. Authorizers may grant renewal with specific conditions for necessary improvements in the public charter school: *Provided*, That any specific condition imposed does not contradict the terms of this article.

(b) The State Board of Education shall promulgate a rule establishing the process for renewing or not renewing a charter contract. At a minimum, this rule shall include:

(1) A timeline for a governing board to submit an application for renewal to an authorizer;

(2) The information that must be included in an application for renewal;

(3) If the authorizer initially determines to deny a renewal application:

(A) Notification requirements to the governing board about the prospect of nonrenewal and the reasons for possible closure of the public charter school;

(B) An opportunity and timeframe for the governing board to provide a response to the notice of the nonrenewal;

(C) An opportunity for the governing board to submit documentation and provide testimony as to why the charter contract should be renewed; and



(D) An opportunity for a recorded public hearing, at the request of the governing board;

(4) That the authorizer shall consider the governing board's response, testimony, and documentation, as well as the recorded public hearing, prior to rendering a final decision on the nonrenewal of the charter contract;

(5) The information that must be included in the authorizer's final decision if it determines to deny a renewal application;

(6) A timeline for an authorizer to render a final decision on whether or not to revoke a charter contract;

(7) Approval of the authorizer's decision shall be adopted by the county board, county boards, or institutional board of governors, as applicable, during an open meeting, subject to the following:

(A) If the authorizer is a public or private institution of higher education that has no institutional board of governors, the decision shall be adopted during an open meeting of the institution's level of authority immediately above the president or other chief administrator of the institution; and

(B) If the level of authority immediately above the president or other chief administrator is an individual, the open meeting requirement of this subdivision does not apply; and

(8) A provision that the failure of the authorizer to act on a renewal application within the designated timeframes shall be deemed an approval of the renewal application.

(c) A charter contract shall not be renewed if the authorizer determines that the public charter school has:

(1) Committed a material violation of any of the terms, conditions, standards, or procedures required under this article or the charter contract, and has persistently failed to correct the violation after fair and specific notice from the authorizer;

(2) Failed to meet or make significant progress toward the program performance expectations identified in the charter contract;

(3) Failed to meet generally accepted standards of fiscal management, and has failed to correct the violation after fair and specific notice from the authorizer; or

(4) Substantially violated any material provision of law from which the public charter school was not exempted and has failed to correct the violation after fair and specific notice from the authorizer.

(d) A charter contract shall include provisions for revoking the charter contract. At a minimum, these provisions shall include:

(1) The information that must be included in the authorizer's initial decision to revoke the charter contract;

(2) Notification requirements to the governing board about the authorizer's initial decision to revoke a charter contract and the reasons for the revocation;

(3) An opportunity and timeframe for the governing board to provide a response to the authorizer's initial decision to revoke the charter contract;

(4) An opportunity for the governing board to submit documentation and provide testimony as to why the charter contract should not be revoked;

(5) An opportunity for a recorded public hearing, at the request of the governing board;

(6) That the authorizer shall consider the governing board's response, testimony, and documentation, as well as the recorded public hearing, prior to rendering a final decision on the revocation of the charter contract;

(7) The information that must be included in the authorizer's final decision if it determines to revoke the charter contract;

(8) A timeline for an authorizer to render a final decision on whether or not to revoke a charter contract;

(9) Approval of the authorizer's decision shall be adopted during an open meeting, subject to the following:

(A) If the authorizer is a public or private institution of higher education that has no institutional board of governors, the decision shall be adopted during an open meeting of the institution's level of authority immediately above the president or other chief administrator of the institution; and

(B) If the level of authority immediately above the president or other chief administrator is an individual, the open meeting requirement of this subdivision does not apply; and

(10) A provision that the failure of the authorizer to act on a renewal application within the designated timeframes shall be deemed.

(e) Notwithstanding the process set forth in §18-5G-8(d) of this code, an authorizer shall take immediate action to revoke a charter contract if the health and safety of students attending the public charter school is threatened. A governing board whose charter contract has been revoked pursuant to this provision may appeal the authorizer's action to the West Virginia Public Charter School Commission, subject to the following:

(1) The charter contract shall remain revoked unless and until the Commission directs otherwise; and

(2) If the Commission is the authorizer that revokes the charter contract, the Commission's decision is final.

(f) A governing board whose charter contract has not been renewed or has been revoked may appeal the authorizer's final decision to the West Virginia Public Charter School Commission pursuant to §18-5G-10 of this code: *Provided*, That if the Commission is the authorizer that fails to renew or revokes a charter contract, the Commission's decision is final.

(g) An authorizer shall develop a public charter school closure protocol or protocol for transitioning a charter school to noncharter public school status. The protocol shall ensure timely notification to parents, orderly transition of students and student records to new schools when applicable, and proper disposition of school funds, property, and assets. The protocol shall specify tasks, timelines, and responsible parties, including delineating the respective duties of the public charter school and the authorizer. If a public charter school closes or transitions to noncharter public school status for any reason, the authorizer shall oversee and work with the closing or transitioning school to ensure a smooth and orderly closure or transition and transition for students and parents, as guided by the

closure or school transition protocol. If a public charter school is subject to closure or transition, following exhaustion of any appeal allowed under §18-5G-10 of this code, an authorizer may remove at will at any time any or all of the members of the board of directors of the public charter school in connection with ensuring a smooth and orderly closure or transition. If the authorizer removes members of the board of directors such that the board of directors can no longer function, the authorizer shall be empowered to take any further necessary and proper acts connected with closure or transition of the public charter school in the name and interest of the public charter school.

**§18-5G-9. Appeal of authorizer's decision to West Virginia Public Charter School Commission.**

(a) A charter applicant or governing board of an existing public charter school may appeal a decision of an authorizer concerning the denial of a charter application, the nonrenewal of a charter contract, or the revocation of a charter contract to the authorizer within 30 days of the authorizer's decision.

(b) The State Board of Education shall promulgate a rule establishing the process and timeline for appeals filed pursuant to §18-5G-10(a) of this code.

(c) If the authorizer finds that the application, applicant, and public charter school, as applicable, meet the requirements of this Act, the authorizer shall approve the application, or renew or reinstate the charter contract.

**§18-5G-10. Prohibitions.**

Notwithstanding any provision in this article that may be interpreted to the contrary, a public charter school shall not:

(1) Be home-school based; and

(2) Discriminate on any basis for which the noncharter public schools of this state may not discriminate: *Provided*, That nothing in this subsection may be construed to limit the formation of a public charter school that is dedicated to focusing education services on at-risk students, students with disabilities, and students who pose such severe disciplinary problems that they warrant a specific education program.

**§18-5G-11. State board rule relating to funding for charter school enrollment and other necessary provisions.**

(a) The state board shall promulgate a rule in accordance with §29A-3B-1 *et seq.* of this code setting forth requirements for public charter school funding. The rule shall include a requirement that 90 percent of the per pupil total basic foundation allowance follow the student to the public charter school, subject to the following:

(1) Notwithstanding §18-9A-1 *et seq.* of this code, the rule may provide for modifications to the calculations outlined in §18-9A-7 regarding the allowance for student transportation and in §18-9A-9(1) regarding the allowance for current expense for the purpose of providing additional state aid funding to county boards of education related to the operation of public charter schools;

(2) The rule shall designate which county school district is required to pay for a student attending a public charter school; and

(3) The rule shall require the Department of Education to follow federal requirements in ensuring that federal funding follows the student to a public charter school.

(b) The state board may promulgate a rule in accordance with §29A-3B-1 et seq. of this code to clarify, if necessary, the requirements of this article and address any unforeseen issues that might arise relating to the implementation of the requirements of this article.

**§18-5G-12. Access to public facilities.**

(a) A public charter school may request usage of public facilities from a local county board where the charter school is located. A local county board or other public entity shall make facilities available to the charter school that are either not used in whole or in part for classroom instruction at the time the charter school seeks to use or lease the public facility.

(b) If a charter school seeks to lease the whole or part of a public facility, the cost of the lease must be at or under current market value.

(c) During the term of the lease, the charter school is solely responsible for the direct expenses related to the public facility lease, including utilities, insurance, maintenance, repairs and remodeling. The county school board is responsible for any debt incurred or liens that are attached to the school building before the charter school leases the public facility.

**§18-5G-13. Reports.**

(a) An authorizer that has authorized a public charter school that is currently in operation shall submit to the state superintendent for presentation to the state board and the West Virginia Public Charter School Commission an annual report within 60 days of the end of each school fiscal year summarizing:

(1) The performance of the public charter schools overseen by the authorizer, according to the performance measures and expectations specified in the charter contracts;

(2) The authorizing duties and functions provided by the authorizer during the previous academic year.

(b) One year after public charter schools have been in operation, and each year thereafter, the State Superintendent shall issue to the Governor, the Legislature, and the general public, a report on the state's public charter school program, drawing from the annual reports submitted by authorizers pursuant to this section, as well as any additional relevant data compiled by the State Superintendent up to the school year ending in the preceding calendar year. The report must include an assessment of the public charter school program's successes, challenges, and areas for improvement in meeting the purposes of this chapter as well as any suggested changes in state law or policy necessary to strengthen the public charter school program."

On the adoption of the amendment to the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 155**), and there were—yeas 27, nays 72, absent and not voting 1, with the yeas and absent and not voting being as follows:

Yeas: Azinger, Bibby, Butler, Capito, Cowles, Ellington, Espinosa, Fast, Foster, Graves, Hamrick, Hardy, Harshbarger, Higginbotham, Hollen, Householder, D. Jeffries, Jennings, Malcolm, Porterfield, Shott, Summers, Sypolt, Waxman and Hanshaw (Mr. Speaker).

Absent and Not Voting: Kump.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was rejected.

Delegate Wilson moved to amend the bill on pages twenty-one through forty-three, by striking out all of §18-5G-1 *et seq.* and inserting in lieu thereof a new §18-5G-1 *et seq.*, to read as follows:

**“ARTICLE 5G. PUBLIC CHARTER SCHOOLS.**

**§18-5G-1. Legislative purpose and intent.**

The West Virginia Legislature hereby authorizes the establishment of twenty-five (25) public charter schools to benefit students, parents, teachers, and community members by creating new, innovative, and more flexible ways of educating all children within the public school system and by advancing a renewed commitment to the mission, goals, and diversity of public education. The purposes of the public charter school initiative are to:

(a) Improve student learning by creating more diverse public schools with high standards for student performance;

(b) Provide innovative educational methods and practices through programs that engage students in the learning process, thus resulting in higher student achievement;

(c) Enable schools to establish a distinctive school curriculum, a specialized academic theme, or method of instruction; and

(d) Allow schools enhanced freedom and flexibility in exchange for exceptional levels of results-driven accountability.

**§18-5G-2. Definitions.**

The following words used in this article and any proceedings pursuant thereto have the following meanings unless the context clearly indicates a different meaning:

(1) ‘Applicant’ means any group or entity with 501(c)(3) tax-exempt status or that has submitted an application for 501(c)(3) tax-exempt status that develops and submits an application for a public charter school to an authorizer;

(2) ‘Authorizer’ means the entity authorized under this article to review and approve or deny charter applications, enter into charter contracts with applicants, oversee public charter schools, and determine whether to renew, not renew, or revoke charter contracts. Authorizers include:

(A) A county school board in the county in which a public charter school is proposed to be located;

(B) Two or more county school boards representing the several counties which a public charter school is proposed to serve; or

(C) Any accredited West Virginia public or private institution of higher education; or

(3) ‘Charter application’ means a proposal from an applicant to an authorizer to enter into a charter contract whereby the proposed school obtains public charter school status;

(4) ‘Charter contract’ or ‘contract’ means a fixed-term, renewable contract between a public charter school’s governing board and an authorizer that identifies the roles, powers, responsibilities,

operational duties, accountability, and performance expectations for each party to the contract, consistent with the requirements of this article;

(5) 'County board' means a county board of education;

(6) 'Education service provider' means an education management organization, school design provider, or any other partner entity with which a public charter school contracts for educational design, implementation, or comprehensive management;

(7) 'Governing board' means the independent board of directors for a public charter school that is a party to the charter contract with the authorizer and whose members have been elected or selected pursuant to the charter application;

(8) 'Noncharter public school' means a public school other than a public charter school established pursuant to this article;

(9) 'Parent' means a parent, guardian, or other person or entity having legal custody over a child;

(10) 'Public charter school' means a public school established pursuant to this article that:

(A) Is a public corporate body, exercising public power through its governing board, including the power in name to contract and be contracted with, sue and be sued, and adopt bylaws not inconsistent with this article;

(B) Has autonomy over decisions relating to finance, personnel, scheduling, curriculum, and instruction consistent with this article and its charter contract;

(C) Is governed by a governing board that is independent of a county board except as otherwise provided in this article;

(D) Is established and operating under the terms of a charter contract between the public charter school's governing board and its authorizer;

(E) Is a public school to which parents choose to send their children;

(F) Is a public school that admits students on the basis of a random and open lottery if more students apply for admission than can be accommodated, pursuant to and subject to §18-5G-4 of this code;

(G) Offers a comprehensive instructional program that meets or exceeds the student performance standards adopted pursuant to §18-2E-5 of this code; and

(H) Operates under the oversight of its authorizer in accordance with its charter contract;

(11) "State board" means the West Virginia Board of Education;

(12) "Student" means any person that is eligible for attendance in a public school in West Virginia;  
and

(13) 'Virtual public charter school' means a public charter school that offers education services primarily or completely through an online program.

**§18-5G-3. Authorization for the establishment of public charter schools; governing board.**

(a) A public charter school shall be part of the state's system of public education but shall be exempt from all statutes and administrative regulations applicable to the state board, a county board, or a school unless expressly stated otherwise in this article, subject to the following:

(1) Public charter schools shall adhere to the same immunization, civil rights, and disability rights requirements applicable to noncharter public schools; and

(2) Nothing in this article prohibits a public charter school from complying with any statute, state board policy, or county board policy applicable to noncharter public schools.

(b) A public charter school shall not have entrance requirements or charge tuition or fees: *Provided*, That a public charter school may require the payment of fees on the same basis and to the same extent as noncharter public schools.

(c) A public charter school shall not have the power to levy taxes.

(d) A public charter school shall:

(1) Be governed by a governing board;

(2) Provide instructional time that is at least equal to the number of days or their equivalent required by §18-5-45 of this code;

(3) Require criminal background checks for staff and volunteers, including members of its governing board, as required of all noncharter public school employees and volunteers;

(4) Prohibit contractors and service providers or their employees from making direct, unaccompanied contact with students or accessing school grounds unaccompanied when students are present if it cannot be verified that the contractors, service providers, or their employees have not been previously convicted of a qualifying offense pursuant to §18-5-15c of this code;

(5) Ensure student participation in the required state summative assessment pursuant to §18-2E-5 of this code;

(6) Adhere to generally accepted accounting principles and adhere to the same financial audits, audit procedures, and audit requirements applicable to noncharter public schools;

(7) Utilize the same system for reporting student information data and financial data as is utilized by noncharter public schools;

(8) Comply with the Freedom of Information Act as set forth in §29B-1-1 *et seq.* of this code;

(9) Report data using the West Virginia Education Information System or successor data reporting system that noncharter public schools use;

(10) Operate under the oversight of its authorizer in accordance with its charter contract;

(11) As a public corporate body, have the powers necessary for carrying out the terms of its charter contract, including, but not limited to the power to:

(A) Receive and disburse funds for school purposes;

(B) Secure appropriate insurance and enter into contracts and leases;

(C) Contract with an education service provider, so long as the governing board retains final oversight and authority over the school;

(D) Pledge, assign, or encumber its assets to be used as collateral for loans or extensions of credit;

(E) Solicit and accept any gifts or grants for school purposes, subject to applicable laws and the terms of its charter; and

(F) Acquire real property for use as its facilities or facilities from public or private sources;

(12) Enroll students in the public charter school pursuant to §18-5G-4 of this code;

(13) Require any education service provider contracted with the governing board to provide a monthly detailed budget to the board;

(14) Serve one or more of grades pre-K through 12 and limit admission to students within the grade levels served; and

(15) Provide programs and services to a student with a disability in accordance with the student's individualized education program and all federal and state laws, rules, and regulations. A public charter school shall deliver the services directly or contract with another provider to deliver the services.

(e) A public charter school may:

(1) Negotiate and contract with its authorizer or any third party for the use, operation, and maintenance of a building and grounds, liability insurance, and the provision of any service, activity, or undertaking that the public charter school is required to perform in order to carry out the educational program described in its charter contract. Any services for which a public charter school contracts with a school district shall be provided by the district at cost and shall be negotiated as a separate agreement after final charter contract negotiations;

(2) Sue and be sued in its own name;

(3) Own, rent, or lease its space;

(4) Participate in cocurricular activities to the same extent as noncharter public schools; and

(5) Participate in extracurricular activities to the same extent as noncharter public schools.

(f) *Public charter school governing board.* —

(1) To ensure compliance with this article, a public charter school shall be administered by a governing board accountable to the authorizer as set forth in the charter contract. A public charter school governing board shall consist of no fewer than five members.

(2) The governing board shall consist of at least:

(A) Two parents of students attending the public charter school operating under the governing board; and



~~(B) One member of the county board over the school district in which the public charter school is located if the county board elects to appoint a member: *Provided*, That refusal by any county board members to sit on the governing board shall not preclude the establishment of a charter school.~~

(3) Members of the governing board shall:

(A) Not be an employee of the public charter school administered by the governing board;

(B) Not be an employee of an education service provider that provides services to the public charter school; and

(C) File a full disclosure report to the authorizer identifying potential conflicts of interest, relationships with management organizations, and relationships with family members who are employed by the public charter school or have other business dealings with the school, the management organization of the school, or any other public charter school.

(4) Members of the governing board shall collectively possess expertise in leadership, curriculum and instruction, law, and finance.

(5) A member of the public charter school governing board shall be considered an officer of a school district under the provisions of §6-6-7 of this code, and shall be removed from office under the provisions of that section.

(6) The governing board shall be responsible for the operation of its public charter school, including, but not limited to, preparation of an annual budget, contracting for services, school curriculum, personnel matters, and achieving the objectives and goals of the public charter school's program.

(7) The governing board shall comply with open governmental proceedings requirements set forth in §6-9A-1 *et seq.* of this code.

#### **§18-5G-4. Enrollment in a public charter school; recruitment and retention plans.**

(a) A public charter school may enroll any student residing in the state.

(b) If capacity is insufficient to enroll all students who wish to attend any specific grade level at a public charter school, the school shall select students through a randomized and transparent lottery: *Provided*, That the state board shall promulgate a rule to guide student application and lottery procedures for public charter schools.

(c) Enrollment preference for public charter schools shall be given to students enrolled in the public charter school the previous year and to siblings of students already enrolled in the school. An enrollment preference for returning students shall exclude those students from entering into a lottery, as identified in §18-5G-4(c) of this code.

(d) A public charter school may allow an enrollment preference for students who meet federal eligibility requirements for free or reduced-price meals and at-risk students.

(e) A public charter school may give enrollment preference to children of a public charter school's governing board members and full-time employees, as long as they constitute no more than 10 percent of the school's total student population.

(f) Every charter school shall submit a recruitment and retention plan annually to its authorizer. The plan shall list deliberate, specific strategies the school will use to attract, enroll, and retain a student population that includes students who are, to the extent applicable:

(1) Limited English proficient;

(2) Special education;

(3) Low income;

(4) Below proficiency on the comprehensive statewide student assessment;

(5) At risk of dropping out of school;

(6) Have dropped out of school; or

(7) Any others who should be targeted to eliminate achievement gaps.

(g) A noncharter public school converting partially or entirely to a public charter school shall adopt and maintain a policy giving enrollment preference to students who reside within the former attendance area of that public school.

#### **§18-5G-5. Application to establish public charter school.**

(a) To establish a new public charter school or to convert an existing noncharter public school to a public charter school, an applicant shall submit a charter application to an authorizer: *Provided*, That only a county board may authorize the conversion of an existing noncharter public school to a public charter school. Charter authorizers shall accept and document the date and time of receipt of all charter applications.

(b) The application shall contain, at a minimum, the following information:

(1) A mission statement and a vision statement for the public charter school, including specialized academic focus, if any, to be promoted and advanced through the establishment of the public charter school;

(2) A detailed description of the public charter school's proposed program;

(3) The student achievement goals for the public charter school's program and the chosen methods of evaluating whether students have attained the skills and knowledge specified for those goals;

(4) The school's plan for using data derived from student evaluations and assessments, including the statewide summative assessment, to drive instruction and promote continued school improvement;

(5) An explanation of how the school's proposed program is likely to improve the achievement of traditionally underperforming students in the local school district;

(6) The proposed governance structure of the school, including a list of members of the initial governing board, a draft of bylaws that include the description of the qualifications, terms, and methods of appointment or election of governing board members, and the organizational structure of the school that clearly presents lines of authority and reporting between the governing board, school

administrators, staff, any related bodies such as advisory bodies or parent and teacher councils, and any external organizations that will play a role in managing the school;

(7) Plans and timelines for student enrollment, including policies and procedures for conducting transparent and random admission lotteries that are open to the public, and that are consistent with this article;

(8) A proposed five-year budget, including the start-up year and projections for four additional years with clearly stated assumptions;

(9) Proposed fiscal and internal control policies for the public charter school;

(10) Acknowledgement that the public charter school will participate in the state's accountability system;

(11) A proposed handbook that outlines the personnel policies of the public charter school, including the criteria to be used in the hiring of qualified teachers, school administrators, and other school employees, a description of staff responsibilities, and the school's plan to evaluate personnel on an annual basis;

(12) An explanation of proposed student discipline procedures, including disciplinary procedures for students with disabilities, which shall be consistent with the requirements of due process and with state and federal laws and regulations governing the placement of students with disabilities;

(13) A description of the facilities to be used by the public charter school, including the location of the school and how the facility supports the implementation of the school's program. The school shall obtain all required occupation and operation certificates and licenses prior to the first instructional day for students;

(14) The proposed ages and grade levels to be served by the public charter school, including the planned minimum and maximum enrollment per grade per year;

(15) The school calendar and school day schedule, which shall meet the requirements of §18-5-45 of this code;

(16) Types and amounts of insurance coverage to be obtained by the public charter school, which:

(A) Shall include adequate insurance for liability, property loss, and the personal injury of students comparable to noncharter public schools within the local school district operated by the county board; and

(B) May include coverage from the Board of Risk and Insurance Management pursuant to §29-12-5a of this code;

(17) A description of the food services to be provided to students attending the school;

(18) Process and procedures to be followed in the case of the closure or dissolution of the public charter school, including provisions for the transfer of students and student records to the appropriate local school district and an assurance and agreement to payment of net assets or equity, after payment of debts as specified in §18-5G-8 of this code;

(19) A code of ethics for the school setting forth the standards of conduct expected of its governing board, officers, and employees;

(20) The public charter school's plan for successfully serving students with disabilities, students who are English language learners, bilingual students, and students who are academically behind and gifted, including, but not limited to, the school's plan for compliance with all applicable federal and state laws and regulations;

(21) A description of cocurricular and extracurricular programs to be offered by the public charter school and how they will be funded and delivered;

(22) The process by which the school will resolve any disputes with the authorizer;

(23) A detailed start-up plan, including financing, tasks, timelines, and individuals responsible for carrying out the plan;

(24) The public charter school's plan for parental involvement.

(c) If the applicant intends to contract with an education service provider for educational program implementation or comprehensive management, the application shall additionally require the applicant to provide the following information with respect to the educational service provider:

(1) Evidence of success in serving student populations similar to the targeted population, including demonstrated academic achievement as well as successful management of nonacademic school functions, if applicable;

(2) Student performance data and financial audit reports for all current and past public charter schools;

(3) Documentation of and explanation for any actions taken, legal or otherwise, against any of its public charter schools for academic, financial, or ethical concerns;

(4) The proposed duration of the service contract;

(5) The annual proposed fees and other amounts to be paid to the education service provider;

(6) The roles and responsibilities of the governing board, the school staff, and the education service provider;

(7) The scope of services and resources to be provided by the education service provider;

(8) Performance evaluation measures and timelines;

(9) Methods of contract oversight and enforcement;

(10) Investment disclosure;

(11) Conditions for renewal and termination of the contract; and

(12) Disclosure and explanation any existing or potential conflicts of interest between the governing board and the proposed education service provider or any affiliated business entities.

**§18-5G-6. Authorizer duties and responsibilities.**

(a) An authorizer shall:

(1) Demonstrate public accountability and transparency in all matters concerning its charter-authorizing practices, decisions, and expenditures;

(2) Approve new charter applications that meet the requirements of this section and §18-5G-5 of this code, demonstrate the ability to operate the school in an educationally and fiscally sound manner, and are likely to improve student achievement through the program detailed in the charter application;

(3) Decline to approve charter applications that fail to meet the requirements of §18-5G-5 of this code;

(4) Negotiate and execute in good faith a charter contract with each public charter school it authorizes;

(5) Monitor the performance and compliance of public charter schools according to the terms of the charter contract;

(6) Determine whether each charter contract it authorizes merits renewal or revocation; and

(7) Establish and maintain policies and practices consistent with the principles and professional standards for authorizers of public charter schools, including standards relating to:

(A) Organizational capacity and infrastructure;

(B) Evaluating applications;

(C) Ongoing public charter school oversight and evaluation; and

(D) Charter approval, renewal, and revocation decision-making.

(b) After an applicant submits a written application to establish a public charter school, the authorizer shall:

(1) Complete a thorough review process;

(2) Conduct an in-person interview with the applicant;

(3) Provide an opportunity in a public forum for local residents to provide input and learn about the charter application;

(4) Provide a detailed analysis of the application to the applicant or applicants;

(5) Allow an applicant a reasonable time to provide additional materials and amendments to its application to address any identified deficiencies; and

(6) Approve or deny a charter application based on established objective criteria or request additional information.

(c) In deciding to approve a charter application, the authorizer shall:

(1) Approve charter applications only to applicants that possess competence in all elements of the application requirements identified in this section and §18-5G-5 of this code;

(2) Base decisions on documented evidence collected through the application review process; and

(3) Follow charter-granting policies and practices that are transparent, based on merit, and avoid conflicts of interest.

(d) No later than 90 days following the filing of the charter application, the authorizer shall approve or deny the charter application. The authorizer shall provide its decision in writing, including an explanation stating the reasons for approval or denial of its decision during an open meeting. Any failure to act on a charter application within the time specified shall be deemed an approval by the authorizer.

(e) An authorizer's charter application approval shall be submitted to the West Virginia Department of Education.

(f) No public charter school may begin operations prior to July 1, 2019.

(g) An applicant whose charter application has been denied may appeal the authorizer's decision to the West Virginia Public Charter School Commission pursuant to §18-5G-10 of this code: *Provided*, That if public charter school authorization is sought directly from the commission, the commission's decision is final.

(h) Notwithstanding any provision of this code to the contrary, no civil liability shall attach to an authorizer or to any of its members or employees for any acts or omissions of the public charter school. Neither the county board of education nor the State of West Virginia shall be liable for the debts or financial obligations of a public charter school or any person or entity that operates a public charter school.

(i) To cover authorizer costs for overseeing public charter schools in accordance with this Act, each public charter school shall remit to its respective authorizer an oversight fee. The oversight fee shall be drawn from and calculated as a uniform percentage of the per student operational funding allocated to each public charter school under §18-5G-13 of this code, not to exceed one percent of each public charter school's per-student funding in a single school year. The state board shall establish a statewide formula for authorizer funding, which shall apply uniformly to every authorizer in the state. The state board may establish a sliding scale for authorizing funding, with the funding percentage decreasing after the authorizer has achieved a certain threshold, such as after a certain number of schools have been authorized or after a certain number of students are enrolled in the authorizer's public charter schools. The state board shall establish a cap on the total amount of funding that an authorizer may withhold from a full-time charter school. The state board shall annually review the effectiveness of the state formula for authorizer funding and shall adjust the formula if necessary to maximize public benefit and strengthen the implementation of this act.

#### **§18-5G-7. Charter contract requirements; term of contract.**

(a) Within 90 days of the approval of a charter application, the governing board and the authorizer shall negotiate and enter into a charter contract.

(b) The charter contract shall address, in detail, the following items:

(1) The term of the contract: *Provided*, That the contract term shall be no longer than five years;

(2) The agreements relating to each item required under §18-5G-5(b) and §18-5G-5(c) of this code;

(3) The rights and duties of the authorizer and the public charter school;

(4) The administrative relationship between the authorizer and the public charter school;

(5) The process the authorizer will use to provide ongoing oversight;

(6) The specific commitments of the authorizer relating to its obligations to oversee, monitor the progress of, and supervise the public charter school;

(7) The process and criteria the authorizer will use to annually monitor and evaluate the overall academic, operating, and fiscal conditions of the public charter school, including the process the authorizer will use to oversee the correction of any deficiencies found;

(8) The process for revision or amendment to the terms of the charter contract agreed to by the authorizer and the governing board;

(9) The process agreed to by the authorizer and the governing board that identifies how disputes between the authorizer and the board will be handled; and

(10) Any other terms and conditions agreed to by the authorizer and the governing board, including preopening conditions.

(c) The charter contract shall include provisions relating to the performance of the public charter school that set forth the academic and operational performance indicators, measures, and metrics to be used by the authorizer to evaluate the public charter school. At a minimum, the performance provisions shall include indicators, measures, and metrics for:

(1) Student academic proficiency;

(2) Student academic growth;

(3) Achievement gaps in both student proficiency and student growth between student subgroups, including race, sex, socioeconomic status, and areas of exceptionality;

(4) Student attendance;

(5) Student suspensions;

(6) Student withdrawals;

(7) Recurrent enrollment from year to year;

(8) Governing board's performance and stewardship, including compliance with all applicable statutes and terms of charter contract; and

(9) Additional valid and reliable indicators requested by the public charter school.

(d) The authorizer shall be responsible for collecting and reporting to the state board all state-required assessment and achievement data for the public charter school.

(e) The charter contract shall be signed by the chair of the governing board and the president of the county board, presidents of the county boards, or the president of the public or private institution

of higher education, as applicable. A copy of the charter contract shall be provided to the State Superintendent of Schools.

(f) No public charter school may commence operations without a charter contract that meets the requirements of this section, has been properly executed, and has been approved by, as applicable, a county board, county boards, or the institutional board of governors of a public or private institution of higher education that has such a board. For any public or private institution of higher education that does not have an institutional board of governors, the charter contract instead shall be approved by the level of authority immediately above the president or other chief administrator of the institution.

**§18-5G-8. Renewal or nonrenewal of charter contracts; revocation of charter contracts; rulemaking; right to appeal.**

(a) A charter contract may be renewed by the authorizer for a term of no more than five years. Authorizers may grant renewal with specific conditions for necessary improvements in the public charter school: *Provided*, That any specific condition imposed does not contradict the terms of this article.

(b) The State Board of Education shall promulgate a rule establishing the process for renewing or not renewing a charter contract. At a minimum, this rule shall include:

(1) A timeline for a governing board to submit an application for renewal to an authorizer;

(2) The information that must be included in an application for renewal;

(3) If the authorizer initially determines to deny a renewal application:

(A) Notification requirements to the governing board about the prospect of nonrenewal and the reasons for possible closure of the public charter school;

(B) An opportunity and timeframe for the governing board to provide a response to the notice of the nonrenewal;

(C) An opportunity for the governing board to submit documentation and provide testimony as to why the charter contract should be renewed; and

(D) An opportunity for a recorded public hearing, at the request of the governing board;

(4) That the authorizer shall consider the governing board's response, testimony, and documentation, as well as the recorded public hearing, prior to rendering a final decision on the nonrenewal of the charter contract;

(5) The information that must be included in the authorizer's final decision if it determines to deny a renewal application;

(6) A timeline for an authorizer to render a final decision on whether or not to revoke a charter contract;

(7) Approval of the authorizer's decision shall be adopted by the county board, county boards, or institutional board of governors, as applicable, during an open meeting, subject to the following:



(A) If the authorizer is a public or private institution of higher education that has no institutional board of governors, the decision shall be adopted during an open meeting of the institution's level of authority immediately above the president or other chief administrator of the institution; and

(B) If the level of authority immediately above the president or other chief administrator is an individual, the open meeting requirement of this subdivision does not apply; and

(8) A provision that the failure of the authorizer to act on a renewal application within the designated timeframes shall be deemed an approval of the renewal application.

(c) A charter contract shall not be renewed if the authorizer determines that the public charter school has:

(1) Committed a material violation of any of the terms, conditions, standards, or procedures required under this article or the charter contract, and has persistently failed to correct the violation after fair and specific notice from the authorizer;

(2) Failed to meet or make significant progress toward the program performance expectations identified in the charter contract;

(3) Failed to meet generally accepted standards of fiscal management, and has failed to correct the violation after fair and specific notice from the authorizer; or

(4) Substantially violated any material provision of law from which the public charter school was not exempted and has failed to correct the violation after fair and specific notice from the authorizer.

(d) A charter contract shall include provisions for revoking the charter contract. At a minimum, these provisions shall include:

(1) The information that must be included in the authorizer's initial decision to revoke the charter contract;

(2) Notification requirements to the governing board about the authorizer's initial decision to revoke a charter contract and the reasons for the revocation;

(3) An opportunity and timeframe for the governing board to provide a response to the authorizer's initial decision to revoke the charter contract;

(4) An opportunity for the governing board to submit documentation and provide testimony as to why the charter contract should not be revoked;

(5) An opportunity for a recorded public hearing, at the request of the governing board;

(6) That the authorizer shall consider the governing board's response, testimony, and documentation, as well as the recorded public hearing, prior to rendering a final decision on the revocation of the charter contract;

(7) The information that must be included in the authorizer's final decision if it determines to revoke the charter contract;

(8) A timeline for an authorizer to render a final decision on whether or not to revoke a charter contract;

(9) Approval of the authorizer's decision shall be adopted during an open meeting, subject to the following:

(A) If the authorizer is a public or private institution of higher education that has no institutional board of governors, the decision shall be adopted during an open meeting of the institution's level of authority immediately above the president or other chief administrator of the institution; and

(B) If the level of authority immediately above the president or other chief administrator is an individual, the open meeting requirement of this subdivision does not apply; and

(10) A provision that the failure of the authorizer to act on a renewal application within the designated timeframes shall be deemed.

(e) Notwithstanding the process set forth in §18-5G-8(d) of this code, an authorizer shall take immediate action to revoke a charter contract if the health and safety of students attending the public charter school is threatened. A governing board whose charter contract has been revoked pursuant to this provision may appeal the authorizer's action to the West Virginia Public Charter School Commission, subject to the following:

(1) The charter contract shall remain revoked unless and until the Commission directs otherwise; and

(2) If the Commission is the authorizer that revokes the charter contract, the Commission's decision is final.

(f) A governing board whose charter contract has not been renewed or has been revoked may appeal the authorizer's final decision to the West Virginia Public Charter School Commission pursuant to §18-5G-10 of this code: *Provided*, That if the Commission is the authorizer that fails to renew or revokes a charter contract, the Commission's decision is final.

(g) An authorizer shall develop a public charter school closure protocol or protocol for transitioning a charter school to noncharter public school status. The protocol shall ensure timely notification to parents, orderly transition of students and student records to new schools when applicable, and proper disposition of school funds, property, and assets. The protocol shall specify tasks, timelines, and responsible parties, including delineating the respective duties of the public charter school and the authorizer. If a public charter school closes or transitions to noncharter public school status for any reason, the authorizer shall oversee and work with the closing or transitioning school to ensure a smooth and orderly closure or transition and transition for students and parents, as guided by the closure or school transition protocol. If a public charter school is subject to closure or transition, following exhaustion of any appeal allowed under §18-5G-10 of this code, an authorizer may remove at will at any time any or all of the members of the board of directors of the public charter school in connection with ensuring a smooth and orderly closure or transition. If the authorizer removes members of the board of directors such that the board of directors can no longer function, the authorizer shall be empowered to take any further necessary and proper acts connected with closure or transition of the public charter school in the name and interest of the public charter school.

#### **§18-5G-9. Appeal of authorizer's decision to West Virginia Public Charter School Commission.**

(a) A charter applicant or governing board of an existing public charter school may appeal a decision of an authorizer concerning the denial of a charter application, the nonrenewal of a charter contract, or the revocation of a charter contract to the authorizer within 30 days of the authorizer's decision.

(b) The State Board of Education shall promulgate a rule establishing the process and timeline for appeals filed pursuant to §18-5G-10(a) of this code.

(c) If the authorizer finds that the application, applicant, and public charter school, as applicable, meet the requirements of this Act, the authorizer shall approve the application, or renew or reinstate the charter contract.

#### **§18-5G-10. Prohibitions.**

Notwithstanding any provision in this article that may be interpreted to the contrary, a public charter school shall not:

(1) Be home-school based; and

(2) Discriminate on any basis for which the noncharter public schools of this state may not discriminate: *Provided*, That nothing in this subsection may be construed to limit the formation of a public charter school that is dedicated to focusing education services on at-risk students, students with disabilities, and students who pose such severe disciplinary problems that they warrant a specific education program.

#### **§18-5G-11. State board rule relating to funding for charter school enrollment and other necessary provisions.**

(a) The state board shall promulgate a rule in accordance with §29A-3B-1 *et seq.* of this code setting forth requirements for public charter school funding. The rule shall include a requirement that 90 percent of the per pupil total basic foundation allowance follow the student to the public charter school, subject to the following:

(1) Notwithstanding §18-9A-1 *et seq.* of this code, the rule may provide for modifications to the calculations outlined in §18-9A-7 regarding the allowance for student transportation and in §18-9A-9(1) regarding the allowance for current expense for the purpose of providing additional state aid funding to county boards of education related to the operation of public charter schools;

(2) The rule shall designate which county school district is required to pay for a student attending a public charter school; and

(3) The rule shall require the Department of Education to follow federal requirements in ensuring that federal funding follows the student to a public charter school.

(b) The state board may promulgate a rule in accordance with §29A-3B-1 *et seq.* of this code to clarify, if necessary, the requirements of this article and address any unforeseen issues that might arise relating to the implementation of the requirements of this article.

#### **§18-5G-12. Access to public facilities.**

(a) A public charter school may request usage of public facilities from a local county board where the charter school is located. A local county board or other public entity shall make facilities available to the charter school that are either not used in whole or in part for classroom instruction at the time the charter school seeks to use or lease the public facility.

(b) If a charter school seeks to lease the whole or part of a public facility, the cost of the lease must be at or under current market value.

(c) During the term of the lease, the charter school is solely responsible for the direct expenses related to the public facility lease, including utilities, insurance, maintenance, repairs and remodeling. The county school board is responsible for any debt incurred or liens that are attached to the school building before the charter school leases the public facility.

**§18-5G-13. Reports.**

(a) An authorizer that has authorized a public charter school that is currently in operation shall submit to the state superintendent for presentation to the state board and the West Virginia Public Charter School Commission an annual report within 60 days of the end of each school fiscal year summarizing:

(1) The performance of the public charter schools overseen by the authorizer, according to the performance measures and expectations specified in the charter contracts;

(2) The authorizing duties and functions provided by the authorizer during the previous academic year.

(b) One year after public charter schools have been in operation, and each year thereafter, the State Superintendent shall issue to the Governor, the Legislature, and the general public, a report on the state's public charter school program, drawing from the annual reports submitted by authorizers pursuant to this section, as well as any additional relevant data compiled by the State Superintendent up to the school year ending in the preceding calendar year. The report must include an assessment of the public charter school program's successes, challenges, and areas for improvement in meeting the purposes of this chapter as well as any suggested changes in state law or policy necessary to strengthen the public charter school program."

On the adoption of the amendment to the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 156**), and there were—yeas 24, nays 75, absent and not voting 1, with the yeas and absent and not voting being as follows:

Yeas: Azinger, Bibby, Butler, Capito, Cowles, Espinosa, Fast, Foster, Graves, Hamrick, Hardy, Harshbarger, Hollen, Householder, D. Jeffries, Jennings, Malcolm, Porterfield, Shott, Summers, Sypolt and Hanshaw (Mr. Speaker).

Absent and Not Voting: Kump.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was rejected.

Delegate Wilson moved to amend the bill on pages 21 through 43, by striking out all of §18-5G-1 *et seq.* and inserting in lieu thereof a new §18-5G-1 *et seq.*, to read as follows:

**"ARTICLE 5G. PUBLIC CHARTER SCHOOLS.**

**§18-5G-1. Legislative purpose and intent.**

The West Virginia Legislature hereby authorizes the establishment of twenty (20) public charter schools to benefit students, parents, teachers, and community members by creating new, innovative, and more flexible ways of educating all children within the public school system and by advancing a

renewed commitment to the mission, goals, and diversity of public education. The purposes of the public charter school initiative are to:

(a) Improve student learning by creating more diverse public schools with high standards for student performance;

(b) Provide innovative educational methods and practices through programs that engage students in the learning process, thus resulting in higher student achievement;

(c) Enable schools to establish a distinctive school curriculum, a specialized academic theme, or method of instruction; and

(d) Allow schools enhanced freedom and flexibility in exchange for exceptional levels of results-driven accountability.

### **§18-5G-2. Definitions.**

The following words used in this article and any proceedings pursuant thereto have the following meanings unless the context clearly indicates a different meaning:

(1) 'Applicant' means any group or entity with 501(c)(3) tax-exempt status or that has submitted an application for 501(c)(3) tax-exempt status that develops and submits an application for a public charter school to an authorizer;

(2) 'Authorizer' means the entity authorized under this article to review and approve or deny charter applications, enter into charter contracts with applicants, oversee public charter schools, and determine whether to renew, not renew, or revoke charter contracts. Authorizers include:

(A) A county school board in the county in which a public charter school is proposed to be located;

(B) Two or more county school boards representing the several counties which a public charter school is proposed to serve; or

(C) ~~Any accredited West Virginia public or private institution of higher education; or~~

(3) 'Charter application' means a proposal from an applicant to an authorizer to enter into a charter contract whereby the proposed school obtains public charter school status;

(4) 'Charter contract' or 'contract' means a fixed-term, renewable contract between a public charter school's governing board and an authorizer that identifies the roles, powers, responsibilities, operational duties, accountability, and performance expectations for each party to the contract, consistent with the requirements of this article;

(5) 'County board' means a county board of education;

(6) 'Education service provider' means an education management organization, school design provider, or any other partner entity with which a public charter school contracts for educational design, implementation, or comprehensive management;

(7) 'Governing board' means the independent board of directors for a public charter school that is a party to the charter contract with the authorizer and whose members have been elected or selected pursuant to the charter application;

(8) 'Noncharter public school' means a public school other than a public charter school established pursuant to this article;

(9) 'Parent' means a parent, guardian, or other person or entity having legal custody over a child;

(10) 'Public charter school' means a public school established pursuant to this article that:

(A) Is a public corporate body, exercising public power through its governing board, including the power in name to contract and be contracted with, sue and be sued, and adopt bylaws not inconsistent with this article;

(B) Has autonomy over decisions relating to finance, personnel, scheduling, curriculum, and instruction consistent with this article and its charter contract;

(C) Is governed by a governing board that is independent of a county board except as otherwise provided in this article;

(D) Is established and operating under the terms of a charter contract between the public charter school's governing board and its authorizer;

(E) Is a public school to which parents choose to send their children;

(F) Is a public school that admits students on the basis of a random and open lottery if more students apply for admission than can be accommodated, pursuant to and subject to §18-5G-4 of this code;

(G) Offers a comprehensive instructional program that meets or exceeds the student performance standards adopted pursuant to §18-2E-5 of this code; and

(H) Operates under the oversight of its authorizer in accordance with its charter contract;

(11) 'State board' means the West Virginia Board of Education;

(12) 'Student' means any person that is eligible for attendance in a public school in West Virginia; and

(13) 'Virtual public charter school' means a public charter school that offers education services primarily or completely through an online program.

**§18-5G-3. Authorization for the establishment of public charter schools; governing board.**

(a) A public charter school shall be part of the state's system of public education but shall be exempt from all statutes and administrative regulations applicable to the state board, a county board, or a school unless expressly stated otherwise in this article, subject to the following:

(1) Public charter schools shall adhere to the same immunization, civil rights, and disability rights requirements applicable to noncharter public schools; and

(2) Nothing in this article prohibits a public charter school from complying with any statute, state board policy, or county board policy applicable to noncharter public schools.

(b) A public charter school shall not have entrance requirements or charge tuition or fees: *Provided*, That a public charter school may require the payment of fees on the same basis and to the same extent as noncharter public schools.

(c) A public charter school shall not have the power to levy taxes.

(d) A public charter school shall:

(1) Be governed by a governing board;

(2) Provide instructional time that is at least equal to the number of days or their equivalent required by §18-5-45 of this code;

(3) Require criminal background checks for staff and volunteers, including members of its governing board, as required of all noncharter public school employees and volunteers;

(4) Prohibit contractors and service providers or their employees from making direct, unaccompanied contact with students or accessing school grounds unaccompanied when students are present if it cannot be verified that the contractors, service providers, or their employees have not been previously convicted of a qualifying offense pursuant to §18-5-15c of this code;

(5) Ensure student participation in the required state summative assessment pursuant to §18-2E-5 of this code;

(6) Adhere to generally accepted accounting principles and adhere to the same financial audits, audit procedures, and audit requirements applicable to noncharter public schools;

(7) Utilize the same system for reporting student information data and financial data as is utilized by noncharter public schools;

(8) Comply with the Freedom of Information Act as set forth in §29B-1-1 *et seq.* of this code;

(9) Report data using the West Virginia Education Information System or successor data reporting system that noncharter public schools use;

(10) Operate under the oversight of its authorizer in accordance with its charter contract;

(11) As a public corporate body, have the powers necessary for carrying out the terms of its charter contract, including, but not limited to the power to:

(A) Receive and disburse funds for school purposes;

(B) Secure appropriate insurance and enter into contracts and leases;

(C) Contract with an education service provider, so long as the governing board retains final oversight and authority over the school;

(D) Pledge, assign, or encumber its assets to be used as collateral for loans or extensions of credit;

(E) Solicit and accept any gifts or grants for school purposes, subject to applicable laws and the terms of its charter; and

(F) Acquire real property for use as its facilities or facilities from public or private sources;

(12) Enroll students in the public charter school pursuant to §18-5G-4 of this code;

(13) Require any education service provider contracted with the governing board to provide a monthly detailed budget to the board;

(14) Serve one or more of grades pre-K through 12 and limit admission to students within the grade levels served; and

(15) Provide programs and services to a student with a disability in accordance with the student's individualized education program and all federal and state laws, rules, and regulations. A public charter school shall deliver the services directly or contract with another provider to deliver the services.

(e) A public charter school may:

(1) Negotiate and contract with its authorizer or any third party for the use, operation, and maintenance of a building and grounds, liability insurance, and the provision of any service, activity, or undertaking that the public charter school is required to perform in order to carry out the educational program described in its charter contract. Any services for which a public charter school contracts with a school district shall be provided by the district at cost and shall be negotiated as a separate agreement after final charter contract negotiations;

(2) Sue and be sued in its own name;

(3) Own, rent, or lease its space;

(4) Participate in cocurricular activities to the same extent as noncharter public schools; and

(5) Participate in extracurricular activities to the same extent as noncharter public schools.

(f) *Public charter school governing board.* —

(1) To ensure compliance with this article, a public charter school shall be administered by a governing board accountable to the authorizer as set forth in the charter contract. A public charter school governing board shall consist of no fewer than five members.

(2) The governing board shall consist of at least:

(A) Two parents of students attending the public charter school operating under the governing board; and

~~(B) One member of the county board over the school district in which the public charter school is located if the county board elects to appoint a member: *Provided*, That refusal by any county board members to sit on the governing board shall not preclude the establishment of a charter school.~~

(3) Members of the governing board shall:

(A) Not be an employee of the public charter school administered by the governing board;

(B) Not be an employee of an education service provider that provides services to the public charter school; and



(C) File a full disclosure report to the authorizer identifying potential conflicts of interest, relationships with management organizations, and relationships with family members who are employed by the public charter school or have other business dealings with the school, the management organization of the school, or any other public charter school.

(4) Members of the governing board shall collectively possess expertise in leadership, curriculum and instruction, law, and finance.

(5) A member of the public charter school governing board shall be considered an officer of a school district under the provisions of §6-6-7 of this code, and shall be removed from office under the provisions of that section.

(6) The governing board shall be responsible for the operation of its public charter school, including, but not limited to, preparation of an annual budget, contracting for services, school curriculum, personnel matters, and achieving the objectives and goals of the public charter school's program.

(7) The governing board shall comply with open governmental proceedings requirements set forth in §6-9A-1 et seq. of this code.

#### **§18-5G-4. Enrollment in a public charter school; recruitment and retention plans.**

(a) A public charter school may enroll any student residing in the state.

(b) If capacity is insufficient to enroll all students who wish to attend any specific grade level at a public charter school, the school shall select students through a randomized and transparent lottery: *Provided*, That the state board shall promulgate a rule to guide student application and lottery procedures for public charter schools.

(c) Enrollment preference for public charter schools shall be given to students enrolled in the public charter school the previous year and to siblings of students already enrolled in the school. An enrollment preference for returning students shall exclude those students from entering into a lottery, as identified in §18-5G-4(c) of this code.

(d) A public charter school may allow an enrollment preference for students who meet federal eligibility requirements for free or reduced-price meals and at-risk students.

(e) A public charter school may give enrollment preference to children of a public charter school's governing board members and full-time employees, as long as they constitute no more than 10 percent of the school's total student population.

(f) Every charter school shall submit a recruitment and retention plan annually to its authorizer. The plan shall list deliberate, specific strategies the school will use to attract, enroll, and retain a student population that includes students who are, to the extent applicable:

(1) Limited English proficient;

(2) Special education;

(3) Low income;

(4) Below proficiency on the comprehensive statewide student assessment;

(5) At risk of dropping out of school;

(6) Have dropped out of school; or

(7) Any others who should be targeted to eliminate achievement gaps.

(g) A noncharter public school converting partially or entirely to a public charter school shall adopt and maintain a policy giving enrollment preference to students who reside within the former attendance area of that public school.

**§18-5G-5. Application to establish public charter school.**

(a) To establish a new public charter school or to convert an existing noncharter public school to a public charter school, an applicant shall submit a charter application to an authorizer: *Provided*, That only a county board may authorize the conversion of an existing noncharter public school to a public charter school. Charter authorizers shall accept and document the date and time of receipt of all charter applications.

(b) The application shall contain, at a minimum, the following information:

(1) A mission statement and a vision statement for the public charter school, including specialized academic focus, if any, to be promoted and advanced through the establishment of the public charter school;

(2) A detailed description of the public charter school's proposed program;

(3) The student achievement goals for the public charter school's program and the chosen methods of evaluating whether students have attained the skills and knowledge specified for those goals;

(4) The school's plan for using data derived from student evaluations and assessments, including the statewide summative assessment, to drive instruction and promote continued school improvement;

(5) An explanation of how the school's proposed program is likely to improve the achievement of traditionally underperforming students in the local school district;

(6) The proposed governance structure of the school, including a list of members of the initial governing board, a draft of bylaws that include the description of the qualifications, terms, and methods of appointment or election of governing board members, and the organizational structure of the school that clearly presents lines of authority and reporting between the governing board, school administrators, staff, any related bodies such as advisory bodies or parent and teacher councils, and any external organizations that will play a role in managing the school;

(7) Plans and timelines for student enrollment, including policies and procedures for conducting transparent and random admission lotteries that are open to the public, and that are consistent with this article;

(8) A proposed five-year budget, including the start-up year and projections for four additional years with clearly stated assumptions;

(9) Proposed fiscal and internal control policies for the public charter school;

(10) Acknowledgement that the public charter school will participate in the state's accountability system;

(11) A proposed handbook that outlines the personnel policies of the public charter school, including the criteria to be used in the hiring of qualified teachers, school administrators, and other school employees, a description of staff responsibilities, and the school's plan to evaluate personnel on an annual basis;

(12) An explanation of proposed student discipline procedures, including disciplinary procedures for students with disabilities, which shall be consistent with the requirements of due process and with state and federal laws and regulations governing the placement of students with disabilities;

(13) A description of the facilities to be used by the public charter school, including the location of the school and how the facility supports the implementation of the school's program. The school shall obtain all required occupation and operation certificates and licenses prior to the first instructional day for students;

(14) The proposed ages and grade levels to be served by the public charter school, including the planned minimum and maximum enrollment per grade per year;

(15) The school calendar and school day schedule, which shall meet the requirements of §18-5-45 of this code;

(16) Types and amounts of insurance coverage to be obtained by the public charter school, which:

(A) Shall include adequate insurance for liability, property loss, and the personal injury of students comparable to noncharter public schools within the local school district operated by the county board; and

(B) May include coverage from the Board of Risk and Insurance Management pursuant to §29-12-5a of this code;

(17) A description of the food services to be provided to students attending the school;

(18) Process and procedures to be followed in the case of the closure or dissolution of the public charter school, including provisions for the transfer of students and student records to the appropriate local school district and an assurance and agreement to payment of net assets or equity, after payment of debts as specified in §18-5G-8 of this code;

(19) A code of ethics for the school setting forth the standards of conduct expected of its governing board, officers, and employees;

(20) The public charter school's plan for successfully serving students with disabilities, students who are English language learners, bilingual students, and students who are academically behind and gifted, including, but not limited to, the school's plan for compliance with all applicable federal and state laws and regulations;

(21) A description of cocurricular and extracurricular programs to be offered by the public charter school and how they will be funded and delivered;

(22) The process by which the school will resolve any disputes with the authorizer;

(23) A detailed start-up plan, including financing, tasks, timelines, and individuals responsible for carrying out the plan;

(24) The public charter school's plan for parental involvement.

(c) If the applicant intends to contract with an education service provider for educational program implementation or comprehensive management, the application shall additionally require the applicant to provide the following information with respect to the educational service provider:

(1) Evidence of success in serving student populations similar to the targeted population, including demonstrated academic achievement as well as successful management of nonacademic school functions, if applicable;

(2) Student performance data and financial audit reports for all current and past public charter schools;

(3) Documentation of and explanation for any actions taken, legal or otherwise, against any of its public charter schools for academic, financial, or ethical concerns;

(4) The proposed duration of the service contract;

(5) The annual proposed fees and other amounts to be paid to the education service provider;

(6) The roles and responsibilities of the governing board, the school staff, and the education service provider;

(7) The scope of services and resources to be provided by the education service provider;

(8) Performance evaluation measures and timelines;

(9) Methods of contract oversight and enforcement;

(10) Investment disclosure;

(11) Conditions for renewal and termination of the contract; and

(12) Disclosure and explanation any existing or potential conflicts of interest between the governing board and the proposed education service provider or any affiliated business entities.

**§18-5G-6. Authorizer duties and responsibilities.**

(a) An authorizer shall:

(1) Demonstrate public accountability and transparency in all matters concerning its charter-authorizing practices, decisions, and expenditures;

(2) Approve new charter applications that meet the requirements of this section and §18-5G-5 of this code, demonstrate the ability to operate the school in an educationally and fiscally sound manner, and are likely to improve student achievement through the program detailed in the charter application;

(3) Decline to approve charter applications that fail to meet the requirements of §18-5G-5 of this code;

(4) Negotiate and execute in good faith a charter contract with each public charter school it authorizes;

(5) Monitor the performance and compliance of public charter schools according to the terms of the charter contract;

(6) Determine whether each charter contract it authorizes merits renewal or revocation; and

(7) Establish and maintain policies and practices consistent with the principles and professional standards for authorizers of public charter schools, including standards relating to:

(A) Organizational capacity and infrastructure;

(B) Evaluating applications;

(C) Ongoing public charter school oversight and evaluation; and

(D) Charter approval, renewal, and revocation decision-making.

(b) After an applicant submits a written application to establish a public charter school, the authorizer shall:

(1) Complete a thorough review process;

(2) Conduct an in-person interview with the applicant;

(3) Provide an opportunity in a public forum for local residents to provide input and learn about the charter application;

(4) Provide a detailed analysis of the application to the applicant or applicants;

(5) Allow an applicant a reasonable time to provide additional materials and amendments to its application to address any identified deficiencies; and

(6) Approve or deny a charter application based on established objective criteria or request additional information.

(c) In deciding to approve a charter application, the authorizer shall:

(1) Approve charter applications only to applicants that possess competence in all elements of the application requirements identified in this section and §18-5G-5 of this code;

(2) Base decisions on documented evidence collected through the application review process; and

(3) Follow charter-granting policies and practices that are transparent, based on merit, and avoid conflicts of interest.

(d) No later than 90 days following the filing of the charter application, the authorizer shall approve or deny the charter application. The authorizer shall provide its decision in writing, including an explanation stating the reasons for approval or denial of its decision during an open meeting. Any failure to act on a charter application within the time specified shall be deemed an approval by the authorizer.

(e) An authorizer's charter application approval shall be submitted to the West Virginia Department of Education.

(f) No public charter school may begin operations prior to July 1, 2019.

(g) An applicant whose charter application has been denied may appeal the authorizer's decision to the West Virginia Public Charter School Commission pursuant to §18-5G-10 of this code: *Provided*, That if public charter school authorization is sought directly from the commission, the commission's decision is final.

(h) Notwithstanding any provision of this code to the contrary, no civil liability shall attach to an authorizer or to any of its members or employees for any acts or omissions of the public charter school. Neither the county board of education nor the State of West Virginia shall be liable for the debts or financial obligations of a public charter school or any person or entity that operates a public charter school.

(i) To cover authorizer costs for overseeing public charter schools in accordance with this Act, each public charter school shall remit to its respective authorizer an oversight fee. The oversight fee shall be drawn from and calculated as a uniform percentage of the per student operational funding allocated to each public charter school under §18-5G-13 of this code, not to exceed one percent of each public charter school's per-student funding in a single school year. The state board shall establish a statewide formula for authorizer funding, which shall apply uniformly to every authorizer in the state. The state board may establish a sliding scale for authorizing funding, with the funding percentage decreasing after the authorizer has achieved a certain threshold, such as after a certain number of schools have been authorized or after a certain number of students are enrolled in the authorizer's public charter schools. The state board shall establish a cap on the total amount of funding that an authorizer may withhold from a full-time charter school. The state board shall annually review the effectiveness of the state formula for authorizer funding and shall adjust the formula if necessary to maximize public benefit and strengthen the implementation of this act.

**§18-5G-7. Charter contract requirements; term of contract.**

(a) Within 90 days of the approval of a charter application, the governing board and the authorizer shall negotiate and enter into a charter contract.

(b) The charter contract shall address, in detail, the following items:

(1) The term of the contract: *Provided*, That the contract term shall be no longer than five years;

(2) The agreements relating to each item required under §18-5G-5(b) and §18-5G-5(c) of this code;

(3) The rights and duties of the authorizer and the public charter school;

(4) The administrative relationship between the authorizer and the public charter school;

(5) The process the authorizer will use to provide ongoing oversight;

(6) The specific commitments of the authorizer relating to its obligations to oversee, monitor the progress of, and supervise the public charter school;

(7) The process and criteria the authorizer will use to annually monitor and evaluate the overall academic, operating, and fiscal conditions of the public charter school, including the process the authorizer will use to oversee the correction of any deficiencies found;

(8) The process for revision or amendment to the terms of the charter contract agreed to by the authorizer and the governing board;

(9) The process agreed to by the authorizer and the governing board that identifies how disputes between the authorizer and the board will be handled; and

(10) Any other terms and conditions agreed to by the authorizer and the governing board, including preopening conditions.

(c) The charter contract shall include provisions relating to the performance of the public charter school that set forth the academic and operational performance indicators, measures, and metrics to be used by the authorizer to evaluate the public charter school. At a minimum, the performance provisions shall include indicators, measures, and metrics for:

(1) Student academic proficiency;

(2) Student academic growth;

(3) Achievement gaps in both student proficiency and student growth between student subgroups, including race, sex, socioeconomic status, and areas of exceptionality;

(4) Student attendance;

(5) Student suspensions;

(6) Student withdrawals;

(7) Recurrent enrollment from year to year;

(8) Governing board's performance and stewardship, including compliance with all applicable statutes and terms of charter contract; and

(9) Additional valid and reliable indicators requested by the public charter school.

(d) The authorizer shall be responsible for collecting and reporting to the state board all state-required assessment and achievement data for the public charter school.

(e) The charter contract shall be signed by the chair of the governing board and the president of the county board, presidents of the county boards, or the president of the public or private institution of higher education, as applicable. A copy of the charter contract shall be provided to the State Superintendent of Schools.

(f) No public charter school may commence operations without a charter contract that meets the requirements of this section, has been properly executed, and has been approved by, as applicable, a county board, county boards, or the institutional board of governors of a public or private institution of higher education that has such a board. For any public or private institution of higher education that does not have an institutional board of governors, the charter contract instead shall be approved by the level of authority immediately above the president or other chief administrator of the institution.

**§18-5G-8. Renewal or nonrenewal of charter contracts; revocation of charter contracts; rulemaking; right to appeal.**

(a) A charter contract may be renewed by the authorizer for a term of no more than five years. Authorizers may grant renewal with specific conditions for necessary improvements in the public charter school: *Provided*, That any specific condition imposed does not contradict the terms of this article.

(b) The State Board of Education shall promulgate a rule establishing the process for renewing or not renewing a charter contract. At a minimum, this rule shall include:

(1) A timeline for a governing board to submit an application for renewal to an authorizer;

(2) The information that must be included in an application for renewal;

(3) If the authorizer initially determines to deny a renewal application:

(A) Notification requirements to the governing board about the prospect of nonrenewal and the reasons for possible closure of the public charter school;

(B) An opportunity and timeframe for the governing board to provide a response to the notice of the nonrenewal;

(C) An opportunity for the governing board to submit documentation and provide testimony as to why the charter contract should be renewed; and

(D) An opportunity for a recorded public hearing, at the request of the governing board;

(4) That the authorizer shall consider the governing board's response, testimony, and documentation, as well as the recorded public hearing, prior to rendering a final decision on the nonrenewal of the charter contract;

(5) The information that must be included in the authorizer's final decision if it determines to deny a renewal application;

(6) A timeline for an authorizer to render a final decision on whether or not to revoke a charter contract;

(7) Approval of the authorizer's decision shall be adopted by the county board, county boards, or institutional board of governors, as applicable, during an open meeting, subject to the following:

(A) If the authorizer is a public or private institution of higher education that has no institutional board of governors, the decision shall be adopted during an open meeting of the institution's level of authority immediately above the president or other chief administrator of the institution; and

(B) If the level of authority immediately above the president or other chief administrator is an individual, the open meeting requirement of this subdivision does not apply; and

(8) A provision that the failure of the authorizer to act on a renewal application within the designated timeframes shall be deemed an approval of the renewal application.

(c) A charter contract shall not be renewed if the authorizer determines that the public charter school has:



(1) Committed a material violation of any of the terms, conditions, standards, or procedures required under this article or the charter contract, and has persistently failed to correct the violation after fair and specific notice from the authorizer;

(2) Failed to meet or make significant progress toward the program performance expectations identified in the charter contract;

(3) Failed to meet generally accepted standards of fiscal management, and has failed to correct the violation after fair and specific notice from the authorizer; or

(4) Substantially violated any material provision of law from which the public charter school was not exempted and has failed to correct the violation after fair and specific notice from the authorizer.

(d) A charter contract shall include provisions for revoking the charter contract. At a minimum, these provisions shall include:

(1) The information that must be included in the authorizer's initial decision to revoke the charter contract;

(2) Notification requirements to the governing board about the authorizer's initial decision to revoke a charter contract and the reasons for the revocation;

(3) An opportunity and timeframe for the governing board to provide a response to the authorizer's initial decision to revoke the charter contract;

(4) An opportunity for the governing board to submit documentation and provide testimony as to why the charter contract should not be revoked;

(5) An opportunity for a recorded public hearing, at the request of the governing board;

(6) That the authorizer shall consider the governing board's response, testimony, and documentation, as well as the recorded public hearing, prior to rendering a final decision on the revocation of the charter contract;

(7) The information that must be included in the authorizer's final decision if it determines to revoke the charter contract;

(8) A timeline for an authorizer to render a final decision on whether or not to revoke a charter contract;

(9) Approval of the authorizer's decision shall be adopted during an open meeting, subject to the following:

(A) If the authorizer is a public or private institution of higher education that has no institutional board of governors, the decision shall be adopted during an open meeting of the institution's level of authority immediately above the president or other chief administrator of the institution; and

(B) If the level of authority immediately above the president or other chief administrator is an individual, the open meeting requirement of this subdivision does not apply; and

(10) A provision that the failure of the authorizer to act on a renewal application within the designated timeframes shall be deemed.

(e) Notwithstanding the process set forth in §18-5G-8(d) of this code, an authorizer shall take immediate action to revoke a charter contract if the health and safety of students attending the public charter school is threatened. A governing board whose charter contract has been revoked pursuant to this provision may appeal the authorizer's action to the West Virginia Public Charter School Commission, subject to the following:

(1) The charter contract shall remain revoked unless and until the Commission directs otherwise; and

(2) If the Commission is the authorizer that revokes the charter contract, the Commission's decision is final.

(f) A governing board whose charter contract has not been renewed or has been revoked may appeal the authorizer's final decision to the West Virginia Public Charter School Commission pursuant to §18-5G-10 of this code: *Provided*, That if the Commission is the authorizer that fails to renew or revokes a charter contract, the Commission's decision is final.

(g) An authorizer shall develop a public charter school closure protocol or protocol for transitioning a charter school to noncharter public school status. The protocol shall ensure timely notification to parents, orderly transition of students and student records to new schools when applicable, and proper disposition of school funds, property, and assets. The protocol shall specify tasks, timelines, and responsible parties, including delineating the respective duties of the public charter school and the authorizer. If a public charter school closes or transitions to noncharter public school status for any reason, the authorizer shall oversee and work with the closing or transitioning school to ensure a smooth and orderly closure or transition and transition for students and parents, as guided by the closure or school transition protocol. If a public charter school is subject to closure or transition, following exhaustion of any appeal allowed under §18-5G-10 of this code, an authorizer may remove at will at any time any or all of the members of the board of directors of the public charter school in connection with ensuring a smooth and orderly closure or transition. If the authorizer removes members of the board of directors such that the board of directors can no longer function, the authorizer shall be empowered to take any further necessary and proper acts connected with closure or transition of the public charter school in the name and interest of the public charter school.

#### **§18-5G-9. Appeal of authorizer's decision to West Virginia Public Charter School Commission.**

(a) A charter applicant or governing board of an existing public charter school may appeal a decision of an authorizer concerning the denial of a charter application, the nonrenewal of a charter contract, or the revocation of a charter contract to the authorizer within 30 days of the authorizer's decision.

(b) The State Board of Education shall promulgate a rule establishing the process and timeline for appeals filed pursuant to §18-5G-10(a) of this code.

(c) If the authorizer finds that the application, applicant, and public charter school, as applicable, meet the requirements of this Act, the authorizer shall approve the application, or renew or reinstate the charter contract.

#### **§18-5G-10. Prohibitions.**

Notwithstanding any provision in this article that may be interpreted to the contrary, a public charter school shall not:

(1) Be home-school based; and

(2) Discriminate on any basis for which the noncharter public schools of this state may not discriminate: *Provided*, That nothing in this subsection may be construed to limit the formation of a public charter school that is dedicated to focusing education services on at-risk students, students with disabilities, and students who pose such severe disciplinary problems that they warrant a specific education program.

**§18-5G-11. State board rule relating to funding for charter school enrollment and other necessary provisions.**

(a) The state board shall promulgate a rule in accordance with §29A-3B-1 *et seq.* of this code setting forth requirements for public charter school funding. The rule shall include a requirement that 90 percent of the per pupil total basic foundation allowance follow the student to the public charter school, subject to the following:

(1) Notwithstanding §18-9A-1 *et seq.* of this code, the rule may provide for modifications to the calculations outlined in §18-9A-7 regarding the allowance for student transportation and in §18-9A-9(1) regarding the allowance for current expense for the purpose of providing additional state aid funding to county boards of education related to the operation of public charter schools;

(2) The rule shall designate which county school district is required to pay for a student attending a public charter school; and

(3) The rule shall require the Department of Education to follow federal requirements in ensuring that federal funding follows the student to a public charter school.

(b) The state board may promulgate a rule in accordance with §29A-3B-1 *et seq.* of this code to clarify, if necessary, the requirements of this article and address any unforeseen issues that might arise relating to the implementation of the requirements of this article.

**§18-5G-12. Access to public facilities.**

(a) A public charter school may request usage of public facilities from a local county board where the charter school is located. A local county board or other public entity shall make facilities available to the charter school that are either not used in whole or in part for classroom instruction at the time the charter school seeks to use or lease the public facility.

(b) If a charter school seeks to lease the whole or part of a public facility, the cost of the lease must be at or under current market value.

(c) During the term of the lease, the charter school is solely responsible for the direct expenses related to the public facility lease, including utilities, insurance, maintenance, repairs and remodeling. The county school board is responsible for any debt incurred or liens that are attached to the school building before the charter school leases the public facility.

**§18-5G-13. Reports.**

(a) An authorizer that has authorized a public charter school that is currently in operation shall submit to the state superintendent for presentation to the state board and the West Virginia Public Charter School Commission an annual report within 60 days of the end of each school fiscal year summarizing:

(1) The performance of the public charter schools overseen by the authorizer, according to the performance measures and expectations specified in the charter contracts;

(2) The authorizing duties and functions provided by the authorizer during the previous academic year.

(b) One year after public charter schools have been in operation, and each year thereafter, the State Superintendent shall issue to the Governor, the Legislature, and the general public, a report on the state’s public charter school program, drawing from the annual reports submitted by authorizers pursuant to this section, as well as any additional relevant data compiled by the State Superintendent up to the school year ending in the preceding calendar year. The report must include an assessment of the public charter school program’s successes, challenges, and areas for improvement in meeting the purposes of this chapter as well as any suggested changes in state law or policy necessary to strengthen the public charter school program.”

On the adoption of the amendment to the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 157**), and there were—yeas 28, nays 71, absent and not voting 1, with the yeas and absent and not voting being as follows:

Yeas: Atkinson, Azinger, Bibby, Butler, Cadle, Capito, Cowles, Criss, Espinosa, Fast, Foster, Graves, Hamrick, Hardy, Harshbarger, Higginbotham, Hollen, Householder, D. Jeffries, Jennings, Malcolm, Porterfield, Shott, Summers, Sypolt and Hanshaw (Mr. Speaker).

Absent and Not Voting: Kump.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was rejected.

At 8:14 p.m., the House of Delegates recessed until 8:29 p.m.

\* \* \* \* \*

**Evening Session**

\* \* \* \* \*

The House of Delegates was called to order by the Honorable Roger Hanshaw, Speaker.

In the absence of objection, the House returned to consideration of the pending amendment previously offered by Delegate Bates.

On the adoption of the amendment to the amendment, Delegate Bates demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 158**), and there were—yeas 45, nays 49, absent and not voting 6, with the yeas and absent and not voting being as follows:

Yeas: Angelucci, Barrett, Bates, Boggs, N. Brown, S. Brown, Byrd, Campbell, Canestraro, Caputo, Cooper, Dean, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hansen, Hartman, Hicks, Hornbuckle, Lavender-Bowe, Longstreth, Lovejoy, Miley, Miller, Paynter, Pethtel, Pushkin, Pyles, Robinson, Rodighiero, Rowe, Skaff, Sponaugle, Staggers, Swartzmiller, C. Thompson, R. Thompson, Tomblin, Toney and Walker.

Absent and Not Voting: Kump, Malcolm, Nelson, Porterfield, Rohrbach and Steele.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was rejected.

Delegates Walker, S. Brown, C. Thompson, Hornbuckle, Bates, Lavender-Bowe, Barrett, Estep-Burton, Pethtel and Miley moved to amend the amendment on page twenty-four, section three, line eleven, following the words “public schools”, by inserting a comma and the following “and shall not discriminate based on sexual orientation or gender identity”.

On the adoption of the amendment to the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 159**), and there were—yeas 37, nays 59, absent and not voting 4, with the yeas and absent and not voting being as follows:

Yeas: Angelucci, Barrett, Bates, Boggs, S. Brown, Byrd, Campbell, Canestraro, Capito, Caputo, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hansen, Hartman, Hornbuckle, Lavender-Bowe, Longstreth, Lovejoy, Miley, Miller, Pethtel, Pushkin, Pyles, Robinson, Rowe, Skaff, Sponaule, Staggers, Swartzmiller, C. Thompson, Walker.

Absent and Not Voting: Kump, Nelson, Storch and Westfall.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was rejected.

Delegate Hornbuckle moved to amend the amendment on page twenty-three, section two, line forty-two, following the words “noncharter public schools”, by striking out the semi-colon, inserting a colon and the following proviso: *Provided, however*, that no charter school can be established or operated as a virtual charter school.”

On the adoption of the amendment to the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 160**), and there were—yeas 56, nays 41, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: Speaker Hanshaw, Atkinson, Azinger, Bibby, Butler, Cadle, Cowles, Criss, Ellington, Espinosa, Fast, Foster, Graves, Hamrick, Hardy, Harshbarger, Higginbotham, Hill, Hollen, Hott, Householder, Howell, D. Jeffries, J. Jeffries, Jennings, D. Kelly, Kessinger, Malcolm, Mandt, C. Martin, P. Martin, Maynard, McGeehan, Phillips, Porterfield, Rowan, Summers, Sypolt, Waxman, Westfall and Wilson.

Absent and Not Voting: Kump, Nelson and Storch.

So, a majority of the members present and voting having voted in the affirmative, the amendment was adopted.

Delegate Wilson moved to amend the bill on pages twenty-one through forty-three, by striking out all of §18-5G-1 *et seq.* and inserting in lieu thereof a new §18-5G-1 *et seq.*, to read as follows:

**“ARTICLE 5G. PUBLIC CHARTER SCHOOLS.**

**§18-5G-1. Legislative purpose and intent.**

The West Virginia Legislature hereby authorizes the establishment of five (5) public charter schools to benefit students, parents, teachers, and community members by creating new, innovative, and more flexible ways of educating all children within the public school system and by advancing a renewed commitment to the mission, goals, and diversity of public education. The purposes of the public charter school initiative are to:

(a) Improve student learning by creating more diverse public schools with high standards for student performance;

(b) Provide innovative educational methods and practices through programs that engage students in the learning process, thus resulting in higher student achievement;

(c) Enable schools to establish a distinctive school curriculum, a specialized academic theme, or method of instruction; and

(d) Allow schools enhanced freedom and flexibility in exchange for exceptional levels of results-driven accountability.

### **§18-5G-2. Definitions.**

The following words used in this article and any proceedings pursuant thereto have the following meanings unless the context clearly indicates a different meaning:

(1) 'Applicant' means any group or entity with 501(c)(3) tax-exempt status or that has submitted an application for 501(c)(3) tax-exempt status that develops and submits an application for a public charter school to an authorizer;

(2) 'Authorizer' means the entity authorized under this article to review and approve or deny charter applications, enter into charter contracts with applicants, oversee public charter schools, and determine whether to renew, not renew, or revoke charter contracts. Authorizers include:

(A) A county school board in the county in which a public charter school is proposed to be located;

(B) Two or more county school boards representing the several counties which a public charter school is proposed to serve; or

(C) Any accredited West Virginia public or private institution of higher education; or

(3) 'Charter application' means a proposal from an applicant to an authorizer to enter into a charter contract whereby the proposed school obtains public charter school status;

(4) 'Charter contract' or 'contract' means a fixed-term, renewable contract between a public charter school's governing board and an authorizer that identifies the roles, powers, responsibilities, operational duties, accountability, and performance expectations for each party to the contract, consistent with the requirements of this article;

(5) 'County board' means a county board of education;

(6) 'Education service provider' means an education management organization, school design provider, or any other partner entity with which a public charter school contracts for educational design, implementation, or comprehensive management;

(7) 'Governing board' means the independent board of directors for a public charter school that is a party to the charter contract with the authorizer and whose members have been elected or selected pursuant to the charter application;

(8) 'Noncharter public school' means a public school other than a public charter school established pursuant to this article;

(9) 'Parent' means a parent, guardian, or other person or entity having legal custody over a child;

(10) 'Public charter school means a public school established pursuant to this article that:

(A) Is a public corporate body, exercising public power through its governing board, including the power in name to contract and be contracted with, sue and be sued, and adopt bylaws not inconsistent with this article;

(B) Has autonomy over decisions relating to finance, personnel, scheduling, curriculum, and instruction consistent with this article and its charter contract;

(C) Is governed by a governing board that is independent of a county board except as otherwise provided in this article;

(D) Is established and operating under the terms of a charter contract between the public charter school's governing board and its authorizer;

(E) Is a public school to which parents choose to send their children;

(F) Is a public school that admits students on the basis of a random and open lottery if more students apply for admission than can be accommodated, pursuant to and subject to §18-5G-4 of this code;

(G) Offers a comprehensive instructional program that meets or exceeds the student performance standards adopted pursuant to §18-2E-5 of this code; and

(H) Operates under the oversight of its authorizer in accordance with its charter contract;

(11) 'State board' means the West Virginia Board of Education;

(12) 'Student' means any person that is eligible for attendance in a public school in West Virginia; and

(13) 'Virtual public charter school' means a public charter school that offers education services primarily or completely through an online program.

### **§18-5G-3. Authorization for the establishment of public charter schools; governing board.**

(a) A public charter school shall be part of the state's system of public education but shall be exempt from all statutes and administrative regulations applicable to the state board, a county board, or a school unless expressly stated otherwise in this article, subject to the following:

(1) Public charter schools shall adhere to the same immunization, civil rights, and disability rights requirements applicable to noncharter public schools; and

(2) Nothing in this article prohibits a public charter school from complying with any statute, state board policy, or county board policy applicable to noncharter public schools.

(b) A public charter school shall not have entrance requirements or charge tuition or fees: *Provided*, That a public charter school may require the payment of fees on the same basis and to the same extent as noncharter public schools.

(c) A public charter school shall not have the power to levy taxes.

(d) A public charter school shall:

(1) Be governed by a governing board;

(2) Provide instructional time that is at least equal to the number of days or their equivalent required by §18-5-45 of this code;

(3) Require criminal background checks for staff and volunteers, including members of its governing board, as required of all noncharter public school employees and volunteers;

(4) Prohibit contractors and service providers or their employees from making direct, unaccompanied contact with students or accessing school grounds unaccompanied when students are present if it cannot be verified that the contractors, service providers, or their employees have not been previously convicted of a qualifying offense pursuant to §18-5-15c of this code;

(5) Ensure student participation in the required state summative assessment pursuant to §18-2E-5 of this code;

(6) Adhere to generally accepted accounting principles and adhere to the same financial audits, audit procedures, and audit requirements applicable to noncharter public schools;

(7) Utilize the same system for reporting student information data and financial data as is utilized by noncharter public schools;

(8) Comply with the Freedom of Information Act as set forth in §29B-1-1 *et seq.* of this code;

(9) Report data using the West Virginia Education Information System or successor data reporting system that noncharter public schools use;

(10) Operate under the oversight of its authorizer in accordance with its charter contract;

(11) As a public corporate body, have the powers necessary for carrying out the terms of its charter contract, including, but not limited to the power to:

(A) Receive and disburse funds for school purposes;

(B) Secure appropriate insurance and enter into contracts and leases;

(C) Contract with an education service provider, so long as the governing board retains final oversight and authority over the school;

(D) Pledge, assign, or encumber its assets to be used as collateral for loans or extensions of credit;



(E) Solicit and accept any gifts or grants for school purposes, subject to applicable laws and the terms of its charter; and

(F) Acquire real property for use as its facilities or facilities from public or private sources;

(12) Enroll students in the public charter school pursuant to §18-5G-4 of this code;

(13) Require any education service provider contracted with the governing board to provide a monthly detailed budget to the board;

(14) Serve one or more of grades pre-K through 12 and limit admission to students within the grade levels served; and

(15) Provide programs and services to a student with a disability in accordance with the student's individualized education program and all federal and state laws, rules, and regulations. A public charter school shall deliver the services directly or contract with another provider to deliver the services.

(e) A public charter school may:

(1) Negotiate and contract with its authorizer or any third party for the use, operation, and maintenance of a building and grounds, liability insurance, and the provision of any service, activity, or undertaking that the public charter school is required to perform in order to carry out the educational program described in its charter contract. Any services for which a public charter school contracts with a school district shall be provided by the district at cost and shall be negotiated as a separate agreement after final charter contract negotiations;

(2) Sue and be sued in its own name;

(3) Own, rent, or lease its space;

(4) Participate in cocurricular activities to the same extent as noncharter public schools; and

(5) Participate in extracurricular activities to the same extent as noncharter public schools.

(f) *Public charter school governing board.* —

(1) To ensure compliance with this article, a public charter school shall be administered by a governing board accountable to the authorizer as set forth in the charter contract. A public charter school governing board shall consist of no fewer than five members.

(2) The governing board shall consist of at least:

(A) Two parents of students attending the public charter school operating under the governing board; and

~~(B) One member of the county board over the school district in which the public charter school is located if the county board elects to appoint a member: *Provided, That refusal by any county board members to sit on the governing board shall not preclude the establishment of a charter school.*~~

(3) Members of the governing board shall:

(A) Not be an employee of the public charter school administered by the governing board;

(B) Not be an employee of an education service provider that provides services to the public charter school; and

(C) File a full disclosure report to the authorizer identifying potential conflicts of interest, relationships with management organizations, and relationships with family members who are employed by the public charter school or have other business dealings with the school, the management organization of the school, or any other public charter school.

(4) Members of the governing board shall collectively possess expertise in leadership, curriculum and instruction, law, and finance.

(5) A member of the public charter school governing board shall be considered an officer of a school district under the provisions of §6-6-7 of this code, and shall be removed from office under the provisions of that section.

(6) The governing board shall be responsible for the operation of its public charter school, including, but not limited to, preparation of an annual budget, contracting for services, school curriculum, personnel matters, and achieving the objectives and goals of the public charter school's program.

(7) The governing board shall comply with open governmental proceedings requirements set forth in §6-9A-1 *et seq.* of this code.

**§18-5G-4. Enrollment in a public charter school; recruitment and retention plans.**

(a) A public charter school may enroll any student residing in the state.

(b) If capacity is insufficient to enroll all students who wish to attend any specific grade level at a public charter school, the school shall select students through a randomized and transparent lottery: *Provided*, That the state board shall promulgate a rule to guide student application and lottery procedures for public charter schools.

(c) Enrollment preference for public charter schools shall be given to students enrolled in the public charter school the previous year and to siblings of students already enrolled in the school. An enrollment preference for returning students shall exclude those students from entering into a lottery, as identified in §18-5G-4(c) of this code.

(d) A public charter school may allow an enrollment preference for students who meet federal eligibility requirements for free or reduced-price meals and at-risk students.

(e) A public charter school may give enrollment preference to children of a public charter school's governing board members and full-time employees, as long as they constitute no more than 10 percent of the school's total student population.

(f) Every charter school shall submit a recruitment and retention plan annually to its authorizer. The plan shall list deliberate, specific strategies the school will use to attract, enroll, and retain a student population that includes students who are, to the extent applicable:

(1) Limited English proficient;

(2) Special education;

(3) Low income;

(4) Below proficiency on the comprehensive statewide student assessment;

(5) At risk of dropping out of school;

(6) Have dropped out of school; or

(7) Any others who should be targeted to eliminate achievement gaps.

(g) A noncharter public school converting partially or entirely to a public charter school shall adopt and maintain a policy giving enrollment preference to students who reside within the former attendance area of that public school.

#### **§18-5G-5. Application to establish public charter school.**

(a) To establish a new public charter school or to convert an existing noncharter public school to a public charter school, an applicant shall submit a charter application to an authorizer: *Provided*, That only a county board may authorize the conversion of an existing noncharter public school to a public charter school. Charter authorizers shall accept and document the date and time of receipt of all charter applications.

(b) The application shall contain, at a minimum, the following information:

(1) A mission statement and a vision statement for the public charter school, including specialized academic focus, if any, to be promoted and advanced through the establishment of the public charter school;

(2) A detailed description of the public charter school's proposed program;

(3) The student achievement goals for the public charter school's program and the chosen methods of evaluating whether students have attained the skills and knowledge specified for those goals;

(4) The school's plan for using data derived from student evaluations and assessments, including the statewide summative assessment, to drive instruction and promote continued school improvement;

(5) An explanation of how the school's proposed program is likely to improve the achievement of traditionally underperforming students in the local school district;

(6) The proposed governance structure of the school, including a list of members of the initial governing board, a draft of bylaws that include the description of the qualifications, terms, and methods of appointment or election of governing board members, and the organizational structure of the school that clearly presents lines of authority and reporting between the governing board, school administrators, staff, any related bodies such as advisory bodies or parent and teacher councils, and any external organizations that will play a role in managing the school;

(7) Plans and timelines for student enrollment, including policies and procedures for conducting transparent and random admission lotteries that are open to the public, and that are consistent with this article;

(8) A proposed five-year budget, including the start-up year and projections for four additional years with clearly stated assumptions;

(9) Proposed fiscal and internal control policies for the public charter school;

(10) Acknowledgement that the public charter school will participate in the state's accountability system;

(11) A proposed handbook that outlines the personnel policies of the public charter school, including the criteria to be used in the hiring of qualified teachers, school administrators, and other school employees, a description of staff responsibilities, and the school's plan to evaluate personnel on an annual basis;

(12) An explanation of proposed student discipline procedures, including disciplinary procedures for students with disabilities, which shall be consistent with the requirements of due process and with state and federal laws and regulations governing the placement of students with disabilities;

(13) A description of the facilities to be used by the public charter school, including the location of the school and how the facility supports the implementation of the school's program. The school shall obtain all required occupation and operation certificates and licenses prior to the first instructional day for students;

(14) The proposed ages and grade levels to be served by the public charter school, including the planned minimum and maximum enrollment per grade per year;

(15) The school calendar and school day schedule, which shall meet the requirements of §18-5-45 of this code;

(16) Types and amounts of insurance coverage to be obtained by the public charter school, which:

(A) Shall include adequate insurance for liability, property loss, and the personal injury of students comparable to noncharter public schools within the local school district operated by the county board; and

(B) May include coverage from the Board of Risk and Insurance Management pursuant to §29-12-5a of this code;

(17) A description of the food services to be provided to students attending the school;

(18) Process and procedures to be followed in the case of the closure or dissolution of the public charter school, including provisions for the transfer of students and student records to the appropriate local school district and an assurance and agreement to payment of net assets or equity, after payment of debts as specified in §18-5G-8 of this code;

(19) A code of ethics for the school setting forth the standards of conduct expected of its governing board, officers, and employees;

(20) The public charter school's plan for successfully serving students with disabilities, students who are English language learners, bilingual students, and students who are academically behind and gifted, including, but not limited to, the school's plan for compliance with all applicable federal and state laws and regulations;

(21) A description of cocurricular and extracurricular programs to be offered by the public charter school and how they will be funded and delivered;

(22) The process by which the school will resolve any disputes with the authorizer;

(23) A detailed start-up plan, including financing, tasks, timelines, and individuals responsible for carrying out the plan;

(24) The public charter school's plan for parental involvement.

(c) If the applicant intends to contract with an education service provider for educational program implementation or comprehensive management, the application shall additionally require the applicant to provide the following information with respect to the educational service provider:

(1) Evidence of success in serving student populations similar to the targeted population, including demonstrated academic achievement as well as successful management of nonacademic school functions, if applicable;

(2) Student performance data and financial audit reports for all current and past public charter schools;

(3) Documentation of and explanation for any actions taken, legal or otherwise, against any of its public charter schools for academic, financial, or ethical concerns;

(4) The proposed duration of the service contract;

(5) The annual proposed fees and other amounts to be paid to the education service provider;

(6) The roles and responsibilities of the governing board, the school staff, and the education service provider;

(7) The scope of services and resources to be provided by the education service provider;

(8) Performance evaluation measures and timelines;

(9) Methods of contract oversight and enforcement;

(10) Investment disclosure;

(11) Conditions for renewal and termination of the contract; and

(12) Disclosure and explanation any existing or potential conflicts of interest between the governing board and the proposed education service provider or any affiliated business entities.

#### **§18-5G-6. Authorizer duties and responsibilities.**

(a) An authorizer shall:

(1) Demonstrate public accountability and transparency in all matters concerning its charter-authorizing practices, decisions, and expenditures;

(2) Approve new charter applications that meet the requirements of this section and §18-5G-5 of this code, demonstrate the ability to operate the school in an educationally and fiscally sound manner, and are likely to improve student achievement through the program detailed in the charter application;

(3) Decline to approve charter applications that fail to meet the requirements of §18-5G-5 of this code;

(4) Negotiate and execute in good faith a charter contract with each public charter school it authorizes;

(5) Monitor the performance and compliance of public charter schools according to the terms of the charter contract;

(6) Determine whether each charter contract it authorizes merits renewal or revocation; and

(7) Establish and maintain policies and practices consistent with the principles and professional standards for authorizers of public charter schools, including standards relating to:

(A) Organizational capacity and infrastructure;

(B) Evaluating applications;

(C) Ongoing public charter school oversight and evaluation; and

(D) Charter approval, renewal, and revocation decision-making.

(b) After an applicant submits a written application to establish a public charter school, the authorizer shall:

(1) Complete a thorough review process;

(2) Conduct an in-person interview with the applicant;

(3) Provide an opportunity in a public forum for local residents to provide input and learn about the charter application;

(4) Provide a detailed analysis of the application to the applicant or applicants;

(5) Allow an applicant a reasonable time to provide additional materials and amendments to its application to address any identified deficiencies; and

(6) Approve or deny a charter application based on established objective criteria or request additional information.

(c) In deciding to approve a charter application, the authorizer shall:

(1) Approve charter applications only to applicants that possess competence in all elements of the application requirements identified in this section and §18-5G-5 of this code;

(2) Base decisions on documented evidence collected through the application review process; and

(3) Follow charter-granting policies and practices that are transparent, based on merit, and avoid conflicts of interest.

(d) No later than 90 days following the filing of the charter application, the authorizer shall approve or deny the charter application. The authorizer shall provide its decision in writing, including an explanation stating the reasons for approval or denial of its decision during an open meeting. Any failure to act on a charter application within the time specified shall be deemed an approval by the authorizer.

(e) An authorizer's charter application approval shall be submitted to the West Virginia Department of Education.

(f) No public charter school may begin operations prior to July 1, 2019.

(g) An applicant whose charter application has been denied may appeal the authorizer's decision to the West Virginia Public Charter School Commission pursuant to §18-5G-10 of this code: *Provided*, That if public charter school authorization is sought directly from the commission, the commission's decision is final.

(h) Notwithstanding any provision of this code to the contrary, no civil liability shall attach to an authorizer or to any of its members or employees for any acts or omissions of the public charter school. Neither the county board of education nor the State of West Virginia shall be liable for the debts or financial obligations of a public charter school or any person or entity that operates a public charter school.

(i) To cover authorizer costs for overseeing public charter schools in accordance with this Act, each public charter school shall remit to its respective authorizer an oversight fee. The oversight fee shall be drawn from and calculated as a uniform percentage of the per student operational funding allocated to each public charter school under §18-5G-13 of this code, not to exceed one percent of each public charter school's per-student funding in a single school year. The state board shall establish a statewide formula for authorizer funding, which shall apply uniformly to every authorizer in the state. The state board may establish a sliding scale for authorizing funding, with the funding percentage decreasing after the authorizer has achieved a certain threshold, such as after a certain number of schools have been authorized or after a certain number of students are enrolled in the authorizer's public charter schools. The state board shall establish a cap on the total amount of funding that an authorizer may withhold from a full-time charter school. The state board shall annually review the effectiveness of the state formula for authorizer funding and shall adjust the formula if necessary to maximize public benefit and strengthen the implementation of this act.

#### **§18-5G-7. Charter contract requirements; term of contract.**

(a) Within 90 days of the approval of a charter application, the governing board and the authorizer shall negotiate and enter into a charter contract.

(b) The charter contract shall address, in detail, the following items:

(1) The term of the contract: *Provided*, That the contract term shall be no longer than five years;

(2) The agreements relating to each item required under §18-5G-5(b) and §18-5G-5(c) of this code;

(3) The rights and duties of the authorizer and the public charter school;

(4) The administrative relationship between the authorizer and the public charter school;

(5) The process the authorizer will use to provide ongoing oversight;

(6) The specific commitments of the authorizer relating to its obligations to oversee, monitor the progress of, and supervise the public charter school;

(7) The process and criteria the authorizer will use to annually monitor and evaluate the overall academic, operating, and fiscal conditions of the public charter school, including the process the authorizer will use to oversee the correction of any deficiencies found;

(8) The process for revision or amendment to the terms of the charter contract agreed to by the authorizer and the governing board;

(9) The process agreed to by the authorizer and the governing board that identifies how disputes between the authorizer and the board will be handled; and

(10) Any other terms and conditions agreed to by the authorizer and the governing board, including preopening conditions.

(c) The charter contract shall include provisions relating to the performance of the public charter school that set forth the academic and operational performance indicators, measures, and metrics to be used by the authorizer to evaluate the public charter school. At a minimum, the performance provisions shall include indicators, measures, and metrics for:

(1) Student academic proficiency;

(2) Student academic growth;

(3) Achievement gaps in both student proficiency and student growth between student subgroups, including race, sex, socioeconomic status, and areas of exceptionality;

(4) Student attendance;

(5) Student suspensions;

(6) Student withdrawals;

(7) Recurrent enrollment from year to year;

(8) Governing board's performance and stewardship, including compliance with all applicable statutes and terms of charter contract; and

(9) Additional valid and reliable indicators requested by the public charter school.

(d) The authorizer shall be responsible for collecting and reporting to the state board all state-required assessment and achievement data for the public charter school.

(e) The charter contract shall be signed by the chair of the governing board and the president of the county board, presidents of the county boards, or the president of the public or private institution of higher education, as applicable. A copy of the charter contract shall be provided to the State Superintendent of Schools.

(f) No public charter school may commence operations without a charter contract that meets the requirements of this section, has been properly executed, and has been approved by, as applicable, a county board, county boards, or the institutional board of governors of a public or private institution of higher education that has such a board. For any public or private institution of higher education that does not have an institutional board of governors, the charter contract instead shall be approved by the level of authority immediately above the president or other chief administrator of the institution.



**§18-5G-8. Renewal or nonrenewal of charter contracts; revocation of charter contracts; rulemaking; right to appeal.**

(a) A charter contract may be renewed by the authorizer for a term of no more than five years. Authorizers may grant renewal with specific conditions for necessary improvements in the public charter school: *Provided*, That any specific condition imposed does not contradict the terms of this article.

(b) The State Board of Education shall promulgate a rule establishing the process for renewing or not renewing a charter contract. At a minimum, this rule shall include:

(1) A timeline for a governing board to submit an application for renewal to an authorizer;

(2) The information that must be included in an application for renewal;

(3) If the authorizer initially determines to deny a renewal application:

(A) Notification requirements to the governing board about the prospect of nonrenewal and the reasons for possible closure of the public charter school;

(B) An opportunity and timeframe for the governing board to provide a response to the notice of the nonrenewal;

(C) An opportunity for the governing board to submit documentation and provide testimony as to why the charter contract should be renewed; and

(D) An opportunity for a recorded public hearing, at the request of the governing board;

(4) That the authorizer shall consider the governing board's response, testimony, and documentation, as well as the recorded public hearing, prior to rendering a final decision on the nonrenewal of the charter contract;

(5) The information that must be included in the authorizer's final decision if it determines to deny a renewal application;

(6) A timeline for an authorizer to render a final decision on whether or not to revoke a charter contract;

(7) Approval of the authorizer's decision shall be adopted by the county board, county boards, or institutional board of governors, as applicable, during an open meeting, subject to the following:

(A) If the authorizer is a public or private institution of higher education that has no institutional board of governors, the decision shall be adopted during an open meeting of the institution's level of authority immediately above the president or other chief administrator of the institution; and

(B) If the level of authority immediately above the president or other chief administrator is an individual, the open meeting requirement of this subdivision does not apply; and

(8) A provision that the failure of the authorizer to act on a renewal application within the designated timeframes shall be deemed an approval of the renewal application.

(c) A charter contract shall not be renewed if the authorizer determines that the public charter school has:

(1) Committed a material violation of any of the terms, conditions, standards, or procedures required under this article or the charter contract, and has persistently failed to correct the violation after fair and specific notice from the authorizer;

(2) Failed to meet or make significant progress toward the program performance expectations identified in the charter contract;

(3) Failed to meet generally accepted standards of fiscal management, and has failed to correct the violation after fair and specific notice from the authorizer; or

(4) Substantially violated any material provision of law from which the public charter school was not exempted and has failed to correct the violation after fair and specific notice from the authorizer.

(d) A charter contract shall include provisions for revoking the charter contract. At a minimum, these provisions shall include:

(1) The information that must be included in the authorizer's initial decision to revoke the charter contract;

(2) Notification requirements to the governing board about the authorizer's initial decision to revoke a charter contract and the reasons for the revocation;

(3) An opportunity and timeframe for the governing board to provide a response to the authorizer's initial decision to revoke the charter contract;

(4) An opportunity for the governing board to submit documentation and provide testimony as to why the charter contract should not be revoked;

(5) An opportunity for a recorded public hearing, at the request of the governing board;

(6) That the authorizer shall consider the governing board's response, testimony, and documentation, as well as the recorded public hearing, prior to rendering a final decision on the revocation of the charter contract;

(7) The information that must be included in the authorizer's final decision if it determines to revoke the charter contract;

(8) A timeline for an authorizer to render a final decision on whether or not to revoke a charter contract;

(9) Approval of the authorizer's decision shall be adopted during an open meeting, subject to the following:

(A) If the authorizer is a public or private institution of higher education that has no institutional board of governors, the decision shall be adopted during an open meeting of the institution's level of authority immediately above the president or other chief administrator of the institution; and

(B) If the level of authority immediately above the president or other chief administrator is an individual, the open meeting requirement of this subdivision does not apply; and

(10) A provision that the failure of the authorizer to act on a renewal application within the designated timeframes shall be deemed.

(e) Notwithstanding the process set forth in §18-5G-8(d) of this code, an authorizer shall take immediate action to revoke a charter contract if the health and safety of students attending the public charter school is threatened. A governing board whose charter contract has been revoked pursuant to this provision may appeal the authorizer's action to the West Virginia Public Charter School Commission, subject to the following:

(1) The charter contract shall remain revoked unless and until the Commission directs otherwise; and

(2) If the Commission is the authorizer that revokes the charter contract, the Commission's decision is final.

(f) A governing board whose charter contract has not been renewed or has been revoked may appeal the authorizer's final decision to the West Virginia Public Charter School Commission pursuant to §18-5G-10 of this code: *Provided*, That if the Commission is the authorizer that fails to renew or revokes a charter contract, the Commission's decision is final.

(g) An authorizer shall develop a public charter school closure protocol or protocol for transitioning a charter school to noncharter public school status. The protocol shall ensure timely notification to parents, orderly transition of students and student records to new schools when applicable, and proper disposition of school funds, property, and assets. The protocol shall specify tasks, timelines, and responsible parties, including delineating the respective duties of the public charter school and the authorizer. If a public charter school closes or transitions to noncharter public school status for any reason, the authorizer shall oversee and work with the closing or transitioning school to ensure a smooth and orderly closure or transition and transition for students and parents, as guided by the closure or school transition protocol. If a public charter school is subject to closure or transition, following exhaustion of any appeal allowed under §18-5G-10 of this code, an authorizer may remove at will at any time any or all of the members of the board of directors of the public charter school in connection with ensuring a smooth and orderly closure or transition. If the authorizer removes members of the board of directors such that the board of directors can no longer function, the authorizer shall be empowered to take any further necessary and proper acts connected with closure or transition of the public charter school in the name and interest of the public charter school.

#### **§18-5G-9. Appeal of authorizer's decision to West Virginia Public Charter School Commission.**

(a) A charter applicant or governing board of an existing public charter school may appeal a decision of an authorizer concerning the denial of a charter application, the nonrenewal of a charter contract, or the revocation of a charter contract to the authorizer within 30 days of the authorizer's decision.

(b) The State Board of Education shall promulgate a rule establishing the process and timeline for appeals filed pursuant to §18-5G-10(a) of this code.

(c) If the authorizer finds that the application, applicant, and public charter school, as applicable, meet the requirements of this Act, the authorizer shall approve the application, or renew or reinstate the charter contract.

#### **§18-5G-10. Prohibitions.**

Notwithstanding any provision in this article that may be interpreted to the contrary, a public charter school shall not:

(1) Be home-school based; and

(2) Discriminate on any basis for which the noncharter public schools of this state may not discriminate: *Provided*, That nothing in this subsection may be construed to limit the formation of a public charter school that is dedicated to focusing education services on at-risk students, students with disabilities, and students who pose such severe disciplinary problems that they warrant a specific education program.

**§18-5G-11. State board rule relating to funding for charter school enrollment and other necessary provisions.**

(a) The state board shall promulgate a rule in accordance with §29A-3B-1 *et seq.* of this code setting forth requirements for public charter school funding. The rule shall include a requirement that 90 percent of the per pupil total basic foundation allowance follow the student to the public charter school, subject to the following:

(1) Notwithstanding §18-9A-1 *et seq.* of this code, the rule may provide for modifications to the calculations outlined in §18-9A-7 regarding the allowance for student transportation and in §18-9A-9(1) regarding the allowance for current expense for the purpose of providing additional state aid funding to county boards of education related to the operation of public charter schools;

(2) The rule shall designate which county school district is required to pay for a student attending a public charter school; and

(3) The rule shall require the Department of Education to follow federal requirements in ensuring that federal funding follows the student to a public charter school.

(b) The state board may promulgate a rule in accordance with §29A-3B-1 *et seq.* of this code to clarify, if necessary, the requirements of this article and address any unforeseen issues that might arise relating to the implementation of the requirements of this article.

**§18-5G-12. Access to public facilities.**

(a) A public charter school may request usage of public facilities from a local county board where the charter school is located. A local county board or other public entity shall make facilities available to the charter school that are either not used in whole or in part for classroom instruction at the time the charter school seeks to use or lease the public facility.

(b) If a charter school seeks to lease the whole or part of a public facility, the cost of the lease must be at or under current market value.

(c) During the term of the lease, the charter school is solely responsible for the direct expenses related to the public facility lease, including utilities, insurance, maintenance, repairs and remodeling. The county school board is responsible for any debt incurred or liens that are attached to the school building before the charter school leases the public facility.

**§18-5G-13. Reports.**

(a) An authorizer that has authorized a public charter school that is currently in operation shall submit to the state superintendent for presentation to the state board and the West Virginia Public Charter School Commission an annual report within 60 days of the end of each school fiscal year summarizing:

(1) The performance of the public charter schools overseen by the authorizer, according to the performance measures and expectations specified in the charter contracts;

(2) The authorizing duties and functions provided by the authorizer during the previous academic year.

(b) One year after public charter schools have been in operation, and each year thereafter, the State Superintendent shall issue to the Governor, the Legislature, and the general public, a report on the state's public charter school program, drawing from the annual reports submitted by authorizers pursuant to this section, as well as any additional relevant data compiled by the State Superintendent up to the school year ending in the preceding calendar year. The report must include an assessment of the public charter school program's successes, challenges, and areas for improvement in meeting the purposes of this chapter as well as any suggested changes in state law or policy necessary to strengthen the public charter school program."

On the adoption of the amendment to the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 161**), and there were—yeas 33, nays 65, absent and not voting 2, with the yeas and absent and not voting being as follows:

Yeas: Anderson, Atkinson, Azinger, Bibby, Butler, Cadle, Capito, Cowles, Criss, Espinosa, Fast, Foster, Hamrick, Hanna, Hardy, Harshbarger, Higginbotham, Hill, Hollen, D. Jeffries, Jennings, J. Kelly, Kessinger, Malcolm, Nelson, Phillips, Porterfield, Shott, Summers, Syo and Hanshaw (Mr. Speaker).

Absent and Not Voting: Ellington and Kump.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was rejected.

Delegate Wilson moved to amend the bill on page sixty-eight, following §18-20-5, by inserting a new article, designated §18-31-1 *et seq.* to read as follows:

## **ARTICLE 31. EDUCATION SAVINGS ACCOUNT PROGRAM.**

### **§18-31-1. Short title.**

This article shall be known as the "Education Savings Account Act" or "ESA Act." The program created by the ESA Act shall be known as the "Education Savings Account Program" or "ESA Program."

### **§18-31-2. Definitions.**

The following words have the meanings ascribed to them unless the context clearly indicates a different meaning:

(1) 'Account' or 'ESA' means an education savings account, awarded pursuant to this article, to which funds are allocated by the treasurer to the parent or parents of an ESA student in order to pay qualifying education expenses to educate the student pursuant to the requirements and conditions of this article;

(2) 'Curriculum' means a complete course of study for a particular content area or grade level, including any supplemental materials required by the curriculum;

(3) 'Education service provider' means a person or organization that receives payments from education savings accounts to provide educational goods and services to ESA students;

(4) 'Eligible student' means an elementary or secondary student who has attended a West Virginia public school in the prior school year and is not attending a public school outside of West Virginia;

(5) 'ESA student' means a student who receives an account pursuant to this article;

(6) 'Parent' means a biological parent, legal guardian, custodian, or other person with legal authority to act on behalf of an eligible student or ESA student;

(7) 'Participating school' means any private school that provides education to elementary and/or secondary students and has notified the treasurer of its intention to participate in the program and comply with the program's requirements;

(8) 'Resident school district' means the county school district in which the student resides; and

(9) 'Treasurer' means the West Virginia State Treasurer's Office or an organization that the Treasurer has contracted with to carry out any or all portions of this article.

### **§18-31-3. Basic elements of the Education Savings Account Program.**

(a) The amount of funds deposited in an account pursuant to this article shall be an amount equivalent to 75 percent of the prior year's statewide average net state aid allotted per pupil based on net enrollment adjusted for state aid purposes. These funds shall be derived from a line item appropriation established for the purposes of this article.

(b) In exchange for the parent's agreement pursuant to §18-31-4(c)(4) of this code, the Department of Education shall transfer the amount determined pursuant §18-31-3(a) of this code to the treasurer for deposit into a West Virginia ESA.

(c) The State Superintendent of Schools shall, by rule, determine how the fund transfer to the treasurer shall be accomplished.

(d) Parents of an ESA student shall agree to use the funds deposited in their student's ESA only for the following qualifying expenses to educate the ESA student:

(1) Tuition and/or fees at a private school;

(2) Tuition and/or fees for nonpublic online learning programs;

(3) Tutoring services provided by an individual or a tutoring facility;

(4) Services contracted for, and provided by, a public district, charter, or magnet school, including without limitation, individual classes and extracurricular activities and programs;

(5) Textbooks, curriculum, or other instructional materials, including without limitation, any supplemental materials or associated online instruction required by either a curriculum or an education service provider;

(6) Computer hardware or other technological devices that are primarily used to help meet an ESA student's educational needs;

(7) Educational software and applications;

(8) School uniforms;

(9) Fees for nationally standardized assessments, advanced placement examinations, any examinations related to college or university admission, and tuition and/or fees for preparatory courses for the aforementioned exams;

(10) Fees for summer education programs and specialized after-school education programs, but not after-school childcare;

(11) Tuition, fees, instructional materials, and examination fees at a career or technical school or education provider;

(12) Educational services and therapies, including, but not limited to, occupational, behavioral, physical, speech-language, and audiology therapies;

(13) Tuition and fees at an institution of higher education;

(14) Fees for transportation paid to a fee-for-service transportation provider for the student to travel to and from an education service provider; or

(15) Any other educational expense approved by the treasurer.

(e) The funds in an ESA may only be used for educational purposes in accordance with §18-31-3(d) of this code.

(f) ESA funds may not be refunded, rebated, or shared with a parent or ESA student in any manner. Any refund or rebate for goods or services purchased with ESA funds shall be credited directly to the student's ESA.

(g) Parents are allowed to make payments for the costs of educational goods and services not covered by the funds in their student's ESA. However, personal deposits into an ESA is not permitted.

(h) Funds deposited in an ESA do not constitute taxable income to the parent or the ESA student.

(i) An ESA shall remain in force, and any unused funds shall roll over from quarter-to-quarter and from year-to-year until the parent withdraws the ESA student from the ESA Program or until the ESA student graduates from college with a bachelor's degree, unless the ESA is closed because of a substantial misuse of funds. However, if an ESA student has not enrolled in a postsecondary institution within four years after graduating from high school, or if an ESA student turns 24 years of age, whichever occurs first, the ESA shall be closed and any unused funds revert to the treasurer and be allocated to fund other ESAs.

(j) Nothing in this article requires that an ESA student must be enrolled, full or part-time, in either a private school or nonpublic online school.

#### **§18-31-4. Application for an Education Savings Account.**

(a) A parent may apply to the treasurer to establish an ESA for an eligible student at any point on or after July 1, 2019. The household income of an eligible student shall be less than \$150,000 per year to qualify for the education savings account program. For purposes of this article, the household income shall be the adjusted gross income claimed for federal income tax purposes by the biological

parent or parents, legal guardian or guardians, custodian or custodians, or person or persons with legal authority to act on behalf of an eligible student plus any income of the eligible student. The treasurer shall develop a process for verifying the income of any applicant for the education savings account.

(b) The treasurer shall accept and approve applications year-round and shall establish procedures for approving applications in an expeditious manner.

(c) The treasurer shall create a standard form that parents can submit to establish their student's eligibility for the ESA Program and shall ensure that the application is readily available and may be submitted through various sources, including the Internet.

(d) The treasurer shall approve an application for an ESA if:

(1) The parent submits an application for an ESA in accordance with any application procedures established by the treasurer;

(2) The student on whose behalf the parent is applying is an eligible student;

(3) Funds are available for the ESA; and

(4) The parent signs an agreement with the treasurer, promising:

(A) To provide an education for the eligible student in at least the subjects of reading, language, mathematics, science, and social studies;

(B) Not to enroll the ESA student, full-time, in a district school, an Innovation in Education School, the West Virginia Virtual School, or a West Virginia School for the Deaf and Blind;

(C) To use the funds in the ESA only for qualifying expenses to educate the eligible student as established by the ESA Program; and

(D) To comply with the rules and requirements of the ESA Program.

(E) To afford the ESA student opportunities for educational enrichment such as organized athletics, art, music, or literature.

(e) The signed agreement between the parent and the treasurer shall include the date of withdrawal of the student from the public school. The treasurer shall verify with the Department of Education within 30 days that the student has withdrawn from public school.

(f) The treasurer shall annually renew a student's ESA after verifying with the Department of Education that:

(1) For an ESA student who chooses to attend a private school, the school board will communicate their continued attendance; or

(2) For an ESA student who chooses an individualized instructional program, he or she must annually take a nationally normed standardized test of academic achievement and received a score within or above the fourth stanine or if below the fourth stanine, shows improvement from the previous year's results, or a certified teacher conducts a review of the student's academic work and determines that the student is making academic progress commensurate with their age and ability and reports the results to the county board in which the student resides no later than July 30.



A student who has failed to maintain good standing under this subsection may re-establish eligibility for an ESA after complying with another exemption for compulsory school attendance for a period of one school year.

(g) Upon notice to the treasurer, an ESA student may choose to stop receiving ESA funding and enroll full-time in a public school.

(h) Enrolling as a full-time student in a public school shall result in the immediate suspension of payment of additional funds into the student's ESA; however, the ESA shall remain open and active for the parent to make qualifying expenditures to educate the student from funds remaining in the ESA. When or if no funds remain in the student's ESA or the student turns 24, the treasurer may close the ESA.

(i) If an eligible student decides to return to the ESA Program, they must reapply.

(j) The treasurer may adopt rules and policies to provide the least disruptive process for ESA students who desire to stop receiving ESA payments and enroll full-time in a public school.

#### **§18-31-5. Responsibilities of the Treasurer.**

In addition to the treasurer's duties, obligations, and authority stated in other parts of this article, the treasurer has the following duties, obligations, and authority:

(1) The treasurer shall maintain an updated list of participating schools and shall ensure that the list is publicly available through various sources, including the Internet.

(2) The treasurer shall provide parents with a written explanation of the allowable uses of ESA funds, the responsibilities of parents, the duties of the treasurer and the role of any private financial management firms or other private organizations that the treasurer may contract with to administer the ESA Program or any aspect of the ESA Program.

(3) The treasurer shall ensure that parents of students with a disability receive notice that participation in the ESA Program is a parental placement under 20 U.S.C. § 1412 of the Individuals with Disabilities Education Act (IDEA) along with an explanation of the rights that parentally placed students possess under (IDEA) and any applicable state laws and regulations.

(4) The treasurer shall contract with private organizations to administer the ESA Program. This includes, but is not limited to, private financial management firms to manage ESAs.

(5) The treasurer may deduct an amount from education savings accounts to cover the costs of administering the ESA Program, up to a maximum of five percent annually in the first two years of the ESA Program and up to a maximum of three percent annually thereafter.

(6) The treasurer shall implement or contract with a private organization to implement a commercially viable, cost effective, and parent-friendly system for payment for services from ESAs to education service providers by electronic or online funds transfer and by debit card. The treasurer shall not adopt a system that relies exclusively on requiring parents to be reimbursed for out-of-pocket expenses, but rather shall provide maximum flexibility to parents by facilitating direct payments to education service providers as well as requests for preapproval of and reimbursements for qualifying expenses, including expenses pursuant to §18-31-3(d)(15) of this code.

(7) The treasurer shall also seek to implement a commercially viable, cost-effective, and parent-friendly system for publicly rating, reviewing, and sharing information about education service

providers, ideally as part of the same system that facilitates the electronic or online funds transfers so as to create a one-stop-shop for parents and ESA students.

(8) If an education service provider requires partial payment of tuition or fees prior to the start of the academic year to reserve space for an ESA student admitted to the education service provider, such partial payment may be paid by the treasurer prior to the start of the school year in which the ESA is awarded, and deducted in an equitable manner from subsequent ESA deposits to ensure adequate funds remain available throughout the school year; but if an ESA student decides not to use the education service provider, the partial reservation payment must be returned to the treasurer by such education service provider and credited to the student's ESA.

(9) The treasurer shall continue making deposits into a student's ESA until:

(A) The treasurer determines that the ESA student is no longer an eligible student;

(B) The treasurer determines that there was substantial misuse of the funds in the ESA;

(C) The parent or ESA student withdraws from the ESA Program;

(D) The ESA student enrolls full-time in a public school; or

(E) The ESA student graduates from high school.

(10) The treasurer shall have the authority to conduct or contract for the auditing of individual ESAs, and shall, at a minimum, conduct random audits of ESAs on an annual basis.

(11) The treasurer shall have the authority to make any parent or ESA student ineligible for the ESA Program in the event of intentional and substantial misuse of ESA funds.

(A) The treasurer shall create procedures to ensure that a fair process exists to determine whether an intentional and substantial misuse of ESA funds has occurred.

(B) The treasurer shall have the authority to refer suspected cases of intentional and substantial misuse of ESA funds to the Attorney General for investigation if evidence of fraudulent use of ESA funds is obtained.

(C) A parent or ESA student may appeal the treasurer's decision to make a parent or ESA student ineligible for the ESA Program.

(12) The treasurer may bar an education service provider from accepting payments from ESAs if the treasurer determines that the education service provider has:

(A) Intentionally and substantially misrepresented information or failed to refund any overpayments in a timely manner; or

(B) Routinely failed to provide students with promised educational goods or services.

(13) The treasurer shall create procedures to ensure that a fair process exists to determine whether an education service provider may be barred from receiving payment from ESAs.

(A) If the treasurer bars an education service provider from receiving payments from ESAs, it shall notify parents and ESA students of its decision as quickly as possible.

(B) Education service providers may appeal the treasurer's decision to bar them from receiving payments from ESAs.

(14) The treasurer may accept gifts and grants from any source to cover administrative costs, to inform the public about the ESA Program, or to fund additional ESAs.

(15) The treasurer may adopt rules and policies that are not inconsistent with this article and that are necessary for the administration of this article, including:

(A) Establishing or contracting for the establishment of an online anonymous fraud reporting service;

(B) Establishing an anonymous telephone hotline for fraud reporting;

(C) Policies that require a surety bond for education service providers receiving more than \$100,000 in ESA funds;

(D) Procedures for refunding payments from education service providers back to ESAs; and

(E) Procedures for entering into reciprocal agreements with other state ESA agencies or entities, whether public or private, to recognize and allow education service providers approved in other states to receive payments from ESAs under this article.

(16) Any rules or policies adopted by the treasurer should avoid excessive bureaucracy and overly prescriptive mandates and instead focus on easing parental involvement and encouraging education service providers to provide parents and ESA students with a broad array of educational options.

#### **§18-31-6. Parent Review Committee.**

(a) There is created the Parent Review Committee to assist the treasurer in determining whether questionable expenditures meet the requirements to be considered qualifying expenses to educate the ESA student pursuant to §18-31-3(d) of this code, and to provide recommendations to the treasurer about how to implement, administer, and improve the ESA Program.

(b) (1) The Parent Review Committee:

(A) Consists of seven members who are parents of ESA students and represent no fewer than four counties in the state; and

(B) Shall be appointed by the State Treasurer and serve at the State Treasurer's pleasure for one calendar year and may be reappointed; and

(2) The State Treasurer, or the director's designee, serves as the nonvoting chair of the committee.

(c) The treasurer may request the committee to meet, in person or virtually, to determine whether an expenditure of ESA funds is or was a qualifying expense to educate an ESA student pursuant to §18-31-3(d) of this code. The committee may deny or approve questionable expenditures by a majority vote.

(d) The treasurer may also request the committee to meet, in person or virtually, to review appeals of education service provider denials pursuant to §18-31-7 of this code, and to provide a

recommendation to the treasurer as to whether an education service provider should be allowed to receive, or continue receiving, payments from ESAs.

**§18-31-7. Requirements for and rights of education service providers.**

(a) To be eligible to accept payments from an ESA, an education service provider shall:

(1) Submit notice to the treasurer that they wish to participate in the ESA Program;

(2) Provide parents with a receipt for all qualifying educational expenses;

(3) Agree not to refund, rebate, or share ESA funds with parents or ESA students in any manner, except that funds may be remitted or refunded to an ESA in accordance with procedures established by the treasurer;

(4) Certify that it will not discriminate on any basis prohibited by 42 U.S.C. §1981; and

(5) Agree to submit any employee who will have contact with ESA students to a criminal background check.

(b) This article does not limit the independence or autonomy of an education service provider or makes the actions of an education service provider the actions of the state government.

(c) Education service providers shall be given maximum freedom to provide for the educational needs of ESA students without governmental control.

(d) This article does not expand the regulatory authority of the state, its officers, or any school district to impose any additional regulation of education service providers beyond those necessary to enforce the requirements of the program.

**§18-31-8. Responsibilities of resident school districts.**

The resident school district shall provide an education service provider that has enrolled an ESA student with a complete copy of the student's school records, while complying with the Family Educational Rights and Privacy Act of 1974 (20 USC Section 1232 g).

**§18-31-9. Legal proceedings.**

(a) In any legal proceeding challenging the application of this chapter to a participating entity, the state bears the burden of establishing that the challenged action, rule, or requirement is necessary and does not impose any undue burden on education service providers.

(b) No liability arises on the part of the treasurer or the state or of any county school district based on the award or use of an ESA awarded pursuant to this article.

(c) If any part of this article is challenged in a state court as violating either the state or federal constitutions, parents of eligible and/or ESA students are permitted to intervene in the lawsuit for the purposes of defending the article's constitutionality. However, for the purposes of judicial administration, a court may limit the number of parents permitted to intervene or require that all parents file a joint brief, so long as they are not required to join any brief filed on behalf of any named state defendant."

Delegate Pack requested to be excused from voting on the amendment to the amendment under the provisions of House Rule 49.

The Speaker replied that the Delegate was a member of a class of persons possibly to be affected by the adoption of the amendment to the amendment and directed the Member to vote.

On the adoption of the amendment to the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 162**), and there were—yeas 26, nays 71, absent and not voting 3, with the yeas and absent and not voting being as follows:

Yeas: Atkinson, Azinger, Bibby, Butler, Cadle, Criss, Espinosa, Fast, Foster, Graves, Hamrick, Hardy, Harshbarger, Higginbotham, Hollen, Householder, D. Jeffries, Jennings, Kessinger, Malcolm, Porterfield, Summers, Sypolt and Hanshaw (Mr. Speaker).

Absent and Not Voting: Cowles, Hicks and Kump.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was rejected.

Delegate Wilson moved to amend the bill on page 68, following §18-20-5, by inserting a new article, designated §18-31-1 *et seq.* to read as follows:

### **ARTICLE 31. EDUCATION SAVINGS ACCOUNT PROGRAM.**

#### **§18-31-1. Short title.**

This article shall be known as the “Education Savings Account Act” or “ESA Act.” The program created by the ESA Act shall be known as the “Education Savings Account Program” or “ESA Program.”

#### **§18-31-2. Definitions.**

The following words have the meanings ascribed to them unless the context clearly indicates a different meaning:

(1) “Account” or “ESA” means an education savings account, awarded pursuant to this article, to which funds are allocated by the treasurer to the parent or parents of an ESA student in order to pay qualifying education expenses to educate the student pursuant to the requirements and conditions of this article;

(2) “Curriculum” means a complete course of study for a particular content area or grade level, including any supplemental materials required by the curriculum;

(3) “Education service provider” means a person or organization that receives payments from education savings accounts to provide educational goods and services to ESA students;

(4) “Eligible student” means an elementary or secondary student who has attended a West Virginia public school in the prior school year and is not attending a public school outside of West Virginia;

(5) “ESA student” means a student who receives an account pursuant to this article;

(6) "Parent" means a biological parent, legal guardian, custodian, or other person with legal authority to act on behalf of an eligible student or ESA student;

(7) "Participating school" means any private school that provides education to elementary and/or secondary students and has notified the treasurer of its intention to participate in the program and comply with the program's requirements;

(8) "Resident school district" means the county school district in which the student resides; and

(9) "Treasurer" means the West Virginia State Treasurer's Office or an organization that the Treasurer has contracted with to carry out any or all portions of this article.

**§18-31-3. Basic elements of the Education Savings Account Program.**

(a) The amount of funds deposited in an account pursuant to this article shall be an amount equivalent to 75 percent of the prior year's statewide average net state aid allotted per pupil based on net enrollment adjusted for state aid purposes. These funds shall be derived from a line item appropriation established for the purposes of this article.

(b) In exchange for the parent's agreement pursuant to §18-31-4(c)(4) of this code, the Department of Education shall transfer the amount determined pursuant §18-31-3(a) of this code to the treasurer for deposit into a West Virginia ESA.

(c) The State Superintendent of Schools shall, by rule, determine how the fund transfer to the treasurer shall be accomplished.

(d) Parents of an ESA student shall agree to use the funds deposited in their student's ESA only for the following qualifying expenses to educate the ESA student:

(1) Tuition and/or fees at a private school;

(2) Tuition and/or fees for nonpublic online learning programs;

(3) Tutoring services provided by an individual or a tutoring facility;

(4) Services contracted for, and provided by, a public district, charter, or magnet school, including without limitation, individual classes and extracurricular activities and programs;

(5) Textbooks, curriculum, or other instructional materials, including without limitation, any supplemental materials or associated online instruction required by either a curriculum or an education service provider;

(6) Computer hardware or other technological devices that are primarily used to help meet an ESA student's educational needs;

(7) Educational software and applications;

(8) School uniforms;

(9) Fees for nationally standardized assessments, advanced placement examinations, any examinations related to college or university admission, and tuition and/or fees for preparatory courses for the aforementioned exams;

(10) Fees for summer education programs and specialized after-school education programs, but not after-school childcare;

(11) Tuition, fees, instructional materials, and examination fees at a career or technical school or education provider;

(12) Educational services and therapies, including, but not limited to, occupational, behavioral, physical, speech-language, and audiology therapies;

(13) Tuition and fees at an institution of higher education;

(14) Fees for transportation paid to a fee-for-service transportation provider for the student to travel to and from an education service provider; or

(15) Any other educational expense approved by the treasurer.

(e) The funds in an ESA may only be used for educational purposes in accordance with §18-31-3(d) of this code.

(f) ESA funds may not be refunded, rebated, or shared with a parent or ESA student in any manner. Any refund or rebate for goods or services purchased with ESA funds shall be credited directly to the student's ESA.

(g) Parents are allowed to make payments for the costs of educational goods and services not covered by the funds in their student's ESA. However, personal deposits into an ESA is not permitted.

(h) Funds deposited in an ESA do not constitute taxable income to the parent or the ESA student.

(i) An ESA shall remain in force, and any unused funds shall roll over from quarter-to-quarter and from year-to-year until the parent withdraws the ESA student from the ESA Program or until the ESA student graduates from college with a bachelor's degree, unless the ESA is closed because of a substantial misuse of funds. However, if an ESA student has not enrolled in a postsecondary institution within four years after graduating from high school, or if an ESA student turns 24 years of age, whichever occurs first, the ESA shall be closed and any unused funds revert to the treasurer and be allocated to fund other ESAs.

(j) Nothing in this article requires that an ESA student must be enrolled, full or part-time, in either a private school or nonpublic online school.

#### **§18-31-4. Application for an Education Savings Account.**

(a) A parent may apply to the treasurer to establish an ESA for an eligible student at any point on or after July 1, 2019. The household income of an eligible student shall be less than \$150,000 per year to qualify for the education savings account program. For purposes of this article, the household income shall be the adjusted gross income claimed for federal income tax purposes by the biological parent or parents, legal guardian or guardians, custodian or custodians, or person or persons with legal authority to act on behalf of an eligible student plus any income of the eligible student. The treasurer shall develop a process for verifying the income of any applicant for the education savings account.

(b) The treasurer shall accept and approve applications year-round and shall establish procedures for approving applications in an expeditious manner: *Provided*, That the number of education savings accounts may not exceed 10,000 total at any one time.

(c) The treasurer shall create a standard form that parents can submit to establish their student's eligibility for the ESA Program and shall ensure that the application is readily available and may be submitted through various sources, including the Internet.

(d) The treasurer shall approve an application for an ESA if:

(1) The parent submits an application for an ESA in accordance with any application procedures established by the treasurer;

(2) The student on whose behalf the parent is applying is an eligible student;

(3) Funds are available for the ESA; and

(4) The parent signs an agreement with the treasurer, promising:

(A) To provide an education for the eligible student in at least the subjects of reading, language, mathematics, science, and social studies;

(B) Not to enroll the ESA student, full-time, in a district school, an Innovation in Education School, the West Virginia Virtual School, or a West Virginia School for the Deaf and Blind;

(C) To use the funds in the ESA only for qualifying expenses to educate the eligible student as established by the ESA Program; and

(D) To comply with the rules and requirements of the ESA Program.

(E) To afford the ESA student opportunities for educational enrichment such as organized athletics, art, music, or literature.

(e) The signed agreement between the parent and the treasurer shall include the date of withdrawal of the student from the public school. The treasurer shall verify with the Department of Education within 30 days that the student has withdrawn from public school.

(f) The treasurer shall annually renew a student's ESA after verifying with the Department of Education that:

(1) For an ESA student who chooses to attend a private school, the school board will communicate their continued attendance; or

(2) For an ESA student who chooses an individualized instructional program, he or she must annually take a nationally normed standardized test of academic achievement and received a score within or above the fourth stanine or if below the fourth stanine, shows improvement from the previous year's results, or a certified teacher conducts a review of the student's academic work and determines that the student is making academic progress commensurate with their age and ability and reports the results to the county board in which the student resides no later than July 30.

A student who has failed to maintain good standing under this subsection may re-establish eligibility for an ESA after complying with another exemption for compulsory school attendance for a period of one school year.

(g) Upon notice to the treasurer, an ESA student may choose to stop receiving ESA funding and enroll full-time in a public school.



(h) Enrolling as a full-time student in a public school shall result in the immediate suspension of payment of additional funds into the student's ESA; however, the ESA shall remain open and active for the parent to make qualifying expenditures to educate the student from funds remaining in the ESA. When or if no funds remain in the student's ESA or the student turns 24, the treasurer may close the ESA.

(i) If an eligible student decides to return to the ESA Program, they must reapply.

(j) The treasurer may adopt rules and policies to provide the least disruptive process for ESA students who desire to stop receiving ESA payments and enroll full-time in a public school.

#### **§18-31-5. Responsibilities of the Treasurer.**

In addition to the treasurer's duties, obligations, and authority stated in other parts of this article, the treasurer has the following duties, obligations, and authority:

(1) The treasurer shall maintain an updated list of participating schools and shall ensure that the list is publicly available through various sources, including the Internet.

(2) The treasurer shall provide parents with a written explanation of the allowable uses of ESA funds, the responsibilities of parents, the duties of the treasurer and the role of any private financial management firms or other private organizations that the treasurer may contract with to administer the ESA Program or any aspect of the ESA Program.

(3) The treasurer shall ensure that parents of students with a disability receive notice that participation in the ESA Program is a parental placement under 20 U.S.C. § 1412 of the Individuals with Disabilities Education Act (IDEA) along with an explanation of the rights that parentally placed students possess under (IDEA) and any applicable state laws and regulations.

(4) The treasurer shall contract with private organizations to administer the ESA Program. This includes, but is not limited to, private financial management firms to manage ESAs.

(5) The treasurer may deduct an amount from education savings accounts to cover the costs of administering the ESA Program, up to a maximum of five percent annually in the first two years of the ESA Program and up to a maximum of three percent annually thereafter.

(6) The treasurer shall implement or contract with a private organization to implement a commercially viable, cost effective, and parent-friendly system for payment for services from ESAs to education service providers by electronic or online funds transfer and by debit card. The treasurer shall not adopt a system that relies exclusively on requiring parents to be reimbursed for out-of-pocket expenses, but rather shall provide maximum flexibility to parents by facilitating direct payments to education service providers as well as requests for preapproval of and reimbursements for qualifying expenses, including expenses pursuant to §18-31-3(d)(15) of this code.

(7) The treasurer shall also seek to implement a commercially viable, cost-effective, and parent-friendly system for publicly rating, reviewing, and sharing information about education service providers, ideally as part of the same system that facilitates the electronic or online funds transfers so as to create a one-stop-shop for parents and ESA students.

(8) If an education service provider requires partial payment of tuition or fees prior to the start of the academic year to reserve space for an ESA student admitted to the education service provider, such partial payment may be paid by the treasurer prior to the start of the school year in which the ESA is awarded, and deducted in an equitable manner from subsequent ESA deposits to ensure

adequate funds remain available throughout the school year; but if an ESA student decides not to use the education service provider, the partial reservation payment must be returned to the treasurer by such education service provider and credited to the student's ESA.

(9) The treasurer shall continue making deposits into a student's ESA until:

(A) The treasurer determines that the ESA student is no longer an eligible student;

(B) The treasurer determines that there was substantial misuse of the funds in the ESA;

(C) The parent or ESA student withdraws from the ESA Program;

(D) The ESA student enrolls full-time in a public school; or

(E) The ESA student graduates from high school.

(10) The treasurer shall have the authority to conduct or contract for the auditing of individual ESAs, and shall, at a minimum, conduct random audits of ESAs on an annual basis.

(11) The treasurer shall have the authority to make any parent or ESA student ineligible for the ESA Program in the event of intentional and substantial misuse of ESA funds.

(A) The treasurer shall create procedures to ensure that a fair process exists to determine whether an intentional and substantial misuse of ESA funds has occurred.

(B) The treasurer shall have the authority to refer suspected cases of intentional and substantial misuse of ESA funds to the Attorney General for investigation if evidence of fraudulent use of ESA funds is obtained.

(C) A parent or ESA student may appeal the treasurer's decision to make a parent or ESA student ineligible for the ESA Program.

(12) The treasurer may bar an education service provider from accepting payments from ESAs if the treasurer determines that the education service provider has:

(A) Intentionally and substantially misrepresented information or failed to refund any overpayments in a timely manner; or

(B) Routinely failed to provide students with promised educational goods or services.

(13) The treasurer shall create procedures to ensure that a fair process exists to determine whether an education service provider may be barred from receiving payment from ESAs.

(A) If the treasurer bars an education service provider from receiving payments from ESAs, it shall notify parents and ESA students of its decision as quickly as possible.

(B) Education service providers may appeal the treasurer's decision to bar them from receiving payments from ESAs.

(14) The treasurer may accept gifts and grants from any source to cover administrative costs, to inform the public about the ESA Program, or to fund additional ESAs.

(15) The treasurer may adopt rules and policies that are not inconsistent with this article and that are necessary for the administration of this article, including:

(A) Establishing or contracting for the establishment of an online anonymous fraud reporting service;

(B) Establishing an anonymous telephone hotline for fraud reporting;

(C) Policies that require a surety bond for education service providers receiving more than \$100,000 in ESA funds;

(D) Procedures for refunding payments from education service providers back to ESAs; and

(E) Procedures for entering into reciprocal agreements with other state ESA agencies or entities, whether public or private, to recognize and allow education service providers approved in other states to receive payments from ESAs under this article.

(16) Any rules or policies adopted by the treasurer should avoid excessive bureaucracy and overly prescriptive mandates and instead focus on easing parental involvement and encouraging education service providers to provide parents and ESA students with a broad array of educational options.

#### **§18-31-6. Parent Review Committee.**

(a) There is created the Parent Review Committee to assist the treasurer in determining whether questionable expenditures meet the requirements to be considered qualifying expenses to educate the ESA student pursuant to §18-31-3(d) of this code, and to provide recommendations to the treasurer about how to implement, administer, and improve the ESA Program.

(b) (1) The Parent Review Committee:

(A) Consists of seven members who are parents of ESA students and represent no fewer than four counties in the state; and

(B) Shall be appointed by the State Treasurer and serve at the State Treasurer's pleasure for one calendar year and may be reappointed; and

(2) The State Treasurer, or the director's designee, serves as the nonvoting chair of the committee.

(c) The treasurer may request the committee to meet, in person or virtually, to determine whether an expenditure of ESA funds is or was a qualifying expense to educate an ESA student pursuant to §18-31-3(d) of this code. The committee may deny or approve questionable expenditures by a majority vote.

(d) The treasurer may also request the committee to meet, in person or virtually, to review appeals of education service provider denials pursuant to §18-31-7 of this code, and to provide a recommendation to the treasurer as to whether an education service provider should be allowed to receive, or continue receiving, payments from ESAs.

#### **§18-31-7. Requirements for and rights of education service providers.**

(a) To be eligible to accept payments from an ESA, an education service provider shall:

(1) Submit notice to the treasurer that they wish to participate in the ESA Program;

(2) Provide parents with a receipt for all qualifying educational expenses;

(3) Agree not to refund, rebate, or share ESA funds with parents or ESA students in any manner, except that funds may be remitted or refunded to an ESA in accordance with procedures established by the treasurer;

(4) Certify that it will not discriminate on any basis prohibited by 42 U.S.C. §1981; and

(5) Agree to submit any employee who will have contact with ESA students to a criminal background check.

(b) This article does not limit the independence or autonomy of an education service provider or makes the actions of an education service provider the actions of the state government.

(c) Education service providers shall be given maximum freedom to provide for the educational needs of ESA students without governmental control.

(d) This article does not expand the regulatory authority of the state, its officers, or any school district to impose any additional regulation of education service providers beyond those necessary to enforce the requirements of the program.

#### **§18-31-8. Responsibilities of resident school districts.**

The resident school district shall provide an education service provider that has enrolled an ESA student with a complete copy of the student's school records, while complying with the Family Educational Rights and Privacy Act of 1974 (20 USC Section 1232 g).

#### **§18-31-9. Legal proceedings.**

(a) In any legal proceeding challenging the application of this chapter to a participating entity, the state bears the burden of establishing that the challenged action, rule, or requirement is necessary and does not impose any undue burden on education service providers.

(b) No liability arises on the part of the treasurer or the state or of any county school district based on the award or use of an ESA awarded pursuant to this article.

(c) If any part of this article is challenged in a state court as violating either the state or federal constitutions, parents of eligible and/or ESA students are permitted to intervene in the lawsuit for the purposes of defending the article's constitutionality. However, for the purposes of judicial administration, a court may limit the number of parents permitted to intervene or require that all parents file a joint brief, so long as they are not required to join any brief filed on behalf of any named state defendant."

On the adoption of the amendment to the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 163**), and there were—yeas 26, nays 73, absent and not voting 1, with the yeas and absent and not voting being as follows:

Yeas: Azinger, Bibby, Butler, Cadle, Cowles, Espinosa, Fast, Foster, Graves, Hamrick, Hardy, Harshbarger, Higginbotham, Hollen, Householder, D. Jeffries, Jennings, Kessinger, Malcolm, P. Martin, Porterfield, Summers, Sypolt and Hanshaw (Mr. Speaker).

Absent and Not Voting: Kump.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was rejected.

Delegate Wilson moved to amend the bill on page sixty-eight, following §18-20-5, by inserting a new article, designated §18-31-1 *et seq.* to read as follows:

**“ARTICLE 31. EDUCATION SAVINGS ACCOUNT PROGRAM.**

**§18-31-1. Short title.**

This article shall be known as the ‘Education Savings Account Act’ or ‘ESA Act’. The program created by the ESA Act shall be known as the ‘Education Savings Account Program’ or ‘ESA Program’.

**§18-31-2. Definitions.**

The following words have the meanings ascribed to them unless the context clearly indicates a different meaning:

(1) ‘Account’ or “ESA” means an education savings account, awarded pursuant to this article, to which funds are allocated by the treasurer to the parent or parents of an ESA student in order to pay qualifying education expenses to educate the student pursuant to the requirements and conditions of this article;

(2) ‘Curriculum’ means a complete course of study for a particular content area or grade level, including any supplemental materials required by the curriculum;

(3) ‘Education service provider’ means a person or organization that receives payments from education savings accounts to provide educational goods and services to ESA students;

(4) ‘Eligible student’ means an elementary or secondary student who has attended a West Virginia public school in the prior school year and is not attending a public school outside of West Virginia;

(5) ‘ESA student’ means a student who receives an account pursuant to this article;

(6) ‘Parent’ means a biological parent, legal guardian, custodian, or other person with legal authority to act on behalf of an eligible student or ESA student;

(7) ‘Participating school’ means any private school that provides education to elementary and/or secondary students and has notified the treasurer of its intention to participate in the program and comply with the program’s requirements;

(8) ‘Resident school district’ means the county school district in which the student resides; and

(9) ‘Treasurer’ means the West Virginia State Treasurer’s Office or an organization that the Treasurer has contracted with to carry out any or all portions of this article.

**§18-31-3. Basic elements of the Education Savings Account Program.**

(a) The amount of funds deposited in an account pursuant to this article shall be an amount equivalent to 75 percent of the prior year's statewide average net state aid allotted per pupil based on net enrollment adjusted for state aid purposes. These funds shall be derived from a line item appropriation established for the purposes of this article.

(b) In exchange for the parent's agreement pursuant to §18-31-4(c)(4) of this code, the Department of Education shall transfer the amount determined pursuant §18-31-3(a) of this code to the treasurer for deposit into a West Virginia ESA.

(c) The State Superintendent of Schools shall, by rule, determine how the fund transfer to the treasurer shall be accomplished.

(d) Parents of an ESA student shall agree to use the funds deposited in their student's ESA only for the following qualifying expenses to educate the ESA student:

(1) Tuition and/or fees at a private school;

(2) Tuition and/or fees for nonpublic online learning programs;

(3) Tutoring services provided by an individual or a tutoring facility;

(4) Services contracted for, and provided by, a public district, charter, or magnet school, including without limitation, individual classes and extracurricular activities and programs;

(5) Textbooks, curriculum, or other instructional materials, including without limitation, any supplemental materials or associated online instruction required by either a curriculum or an education service provider;

(6) Computer hardware or other technological devices that are primarily used to help meet an ESA student's educational needs;

(7) Educational software and applications;

(8) School uniforms;

(9) Fees for nationally standardized assessments, advanced placement examinations, any examinations related to college or university admission, and tuition and/or fees for preparatory courses for the aforementioned exams;

(10) Fees for summer education programs and specialized after-school education programs, but not after-school childcare;

(11) Tuition, fees, instructional materials, and examination fees at a career or technical school or education provider;

(12) Educational services and therapies, including, but not limited to, occupational, behavioral, physical, speech-language, and audiology therapies;

(13) Tuition and fees at an institution of higher education;

(14) Fees for transportation paid to a fee-for-service transportation provider for the student to travel to and from an education service provider; or

(15) Any other educational expense approved by the treasurer.

(e) The funds in an ESA may only be used for educational purposes in accordance with §18-31-3(d) of this code.

(f) ESA funds may not be refunded, rebated, or shared with a parent or ESA student in any manner. Any refund or rebate for goods or services purchased with ESA funds shall be credited directly to the student's ESA.

(g) Parents are allowed to make payments for the costs of educational goods and services not covered by the funds in their student's ESA. However, personal deposits into an ESA is not permitted.

(h) Funds deposited in an ESA do not constitute taxable income to the parent or the ESA student.

(i) An ESA shall remain in force, and any unused funds shall roll over from quarter-to-quarter and from year-to-year until the parent withdraws the ESA student from the ESA Program or until the ESA student graduates from college with a bachelor's degree, unless the ESA is closed because of a substantial misuse of funds. However, if an ESA student has not enrolled in a postsecondary institution within four years after graduating from high school, or if an ESA student turns 24 years of age, whichever occurs first, the ESA shall be closed and any unused funds revert to the treasurer and be allocated to fund other ESAs.

(j) Nothing in this article requires that an ESA student must be enrolled, full or part-time, in either a private school or nonpublic online school.

#### **§18-31-4. Application for an Education Savings Account.**

(a) A parent may apply to the treasurer to establish an ESA for an eligible student at any point on or after July 1, 2019. The household income of an eligible student shall be less than \$150,000 per year to qualify for the education savings account program. For purposes of this article, the household income shall be the adjusted gross income claimed for federal income tax purposes by the biological parent or parents, legal guardian or guardians, custodian or custodians, or person or persons with legal authority to act on behalf of an eligible student plus any income of the eligible student. The treasurer shall develop a process for verifying the income of any applicant for the education savings account.

(b) The treasurer shall accept and approve applications year-round and shall establish procedures for approving applications in an expeditious manner: *Provided*, That the number of education savings accounts may not exceed 5,000 total at any one time.

(c) The treasurer shall create a standard form that parents can submit to establish their student's eligibility for the ESA Program and shall ensure that the application is readily available and may be submitted through various sources, including the Internet.

(d) The treasurer shall approve an application for an ESA if:

(1) The parent submits an application for an ESA in accordance with any application procedures established by the treasurer;

(2) The student on whose behalf the parent is applying is an eligible student;

(3) Funds are available for the ESA; and

(4) The parent signs an agreement with the treasurer, promising:

(A) To provide an education for the eligible student in at least the subjects of reading, language, mathematics, science, and social studies;

(B) Not to enroll the ESA student, full-time, in a district school, an Innovation in Education School, the West Virginia Virtual School, or a West Virginia School for the Deaf and Blind;

(C) To use the funds in the ESA only for qualifying expenses to educate the eligible student as established by the ESA Program; and

(D) To comply with the rules and requirements of the ESA Program.

(E) To afford the ESA student opportunities for educational enrichment such as organized athletics, art, music, or literature.

(e) The signed agreement between the parent and the treasurer shall include the date of withdrawal of the student from the public school. The treasurer shall verify with the Department of Education within 30 days that the student has withdrawn from public school.

(f) The treasurer shall annually renew a student's ESA after verifying with the Department of Education that:

(1) For an ESA student who chooses to attend a private school, the school board will communicate their continued attendance; or

(2) For an ESA student who chooses an individualized instructional program, he or she must annually take a nationally normed standardized test of academic achievement and received a score within or above the fourth stanine or if below the fourth stanine, shows improvement from the previous year's results, or a certified teacher conducts a review of the student's academic work and determines that the student is making academic progress commensurate with their age and ability and reports the results to the county board in which the student resides no later than July 30.

A student who has failed to maintain good standing under this subsection may re-establish eligibility for an ESA after complying with another exemption for compulsory school attendance for a period of one school year.

(g) Upon notice to the treasurer, an ESA student may choose to stop receiving ESA funding and enroll full-time in a public school.

(h) Enrolling as a full-time student in a public school shall result in the immediate suspension of payment of additional funds into the student's ESA; however, the ESA shall remain open and active for the parent to make qualifying expenditures to educate the student from funds remaining in the ESA. When or if no funds remain in the student's ESA or the student turns 24, the treasurer may close the ESA.

(i) If an eligible student decides to return to the ESA Program, they must reapply.

(j) The treasurer may adopt rules and policies to provide the least disruptive process for ESA students who desire to stop receiving ESA payments and enroll full-time in a public school.



**§18-31-5. Responsibilities of the Treasurer.**

In addition to the treasurer's duties, obligations, and authority stated in other parts of this article, the treasurer has the following duties, obligations, and authority:

(1) The treasurer shall maintain an updated list of participating schools and shall ensure that the list is publicly available through various sources, including the Internet.

(2) The treasurer shall provide parents with a written explanation of the allowable uses of ESA funds, the responsibilities of parents, the duties of the treasurer and the role of any private financial management firms or other private organizations that the treasurer may contract with to administer the ESA Program or any aspect of the ESA Program.

(3) The treasurer shall ensure that parents of students with a disability receive notice that participation in the ESA Program is a parental placement under 20 U.S.C. § 1412 of the Individuals with Disabilities Education Act (IDEA) along with an explanation of the rights that parentally placed students possess under (IDEA) and any applicable state laws and regulations.

(4) The treasurer shall contract with private organizations to administer the ESA Program. This includes, but is not limited to, private financial management firms to manage ESAs.

(5) The treasurer may deduct an amount from education savings accounts to cover the costs of administering the ESA Program, up to a maximum of five percent annually in the first two years of the ESA Program and up to a maximum of three percent annually thereafter.

(6) The treasurer shall implement or contract with a private organization to implement a commercially viable, cost effective, and parent-friendly system for payment for services from ESAs to education service providers by electronic or online funds transfer and by debit card. The treasurer shall not adopt a system that relies exclusively on requiring parents to be reimbursed for out-of-pocket expenses, but rather shall provide maximum flexibility to parents by facilitating direct payments to education service providers as well as requests for preapproval of and reimbursements for qualifying expenses, including expenses pursuant to §18-31-3(d)(15) of this code.

(7) The treasurer shall also seek to implement a commercially viable, cost-effective, and parent-friendly system for publicly rating, reviewing, and sharing information about education service providers, ideally as part of the same system that facilitates the electronic or online funds transfers so as to create a one-stop-shop for parents and ESA students.

(8) If an education service provider requires partial payment of tuition or fees prior to the start of the academic year to reserve space for an ESA student admitted to the education service provider, such partial payment may be paid by the treasurer prior to the start of the school year in which the ESA is awarded, and deducted in an equitable manner from subsequent ESA deposits to ensure adequate funds remain available throughout the school year; but if an ESA student decides not to use the education service provider, the partial reservation payment must be returned to the treasurer by such education service provider and credited to the student's ESA.

(9) The treasurer shall continue making deposits into a student's ESA until:

(A) The treasurer determines that the ESA student is no longer an eligible student;

(B) The treasurer determines that there was substantial misuse of the funds in the ESA;

(C) The parent or ESA student withdraws from the ESA Program;

(D) The ESA student enrolls full-time in a public school; or

(E) The ESA student graduates from high school.

(10) The treasurer shall have the authority to conduct or contract for the auditing of individual ESAs, and shall, at a minimum, conduct random audits of ESAs on an annual basis.

(11) The treasurer shall have the authority to make any parent or ESA student ineligible for the ESA Program in the event of intentional and substantial misuse of ESA funds.

(A) The treasurer shall create procedures to ensure that a fair process exists to determine whether an intentional and substantial misuse of ESA funds has occurred.

(B) The treasurer shall have the authority to refer suspected cases of intentional and substantial misuse of ESA funds to the Attorney General for investigation if evidence of fraudulent use of ESA funds is obtained.

(C) A parent or ESA student may appeal the treasurer's decision to make a parent or ESA student ineligible for the ESA Program.

(12) The treasurer may bar an education service provider from accepting payments from ESAs if the treasurer determines that the education service provider has:

(A) Intentionally and substantially misrepresented information or failed to refund any overpayments in a timely manner; or

(B) Routinely failed to provide students with promised educational goods or services.

(13) The treasurer shall create procedures to ensure that a fair process exists to determine whether an education service provider may be barred from receiving payment from ESAs.

(A) If the treasurer bars an education service provider from receiving payments from ESAs, it shall notify parents and ESA students of its decision as quickly as possible.

(B) Education service providers may appeal the treasurer's decision to bar them from receiving payments from ESAs.

(14) The treasurer may accept gifts and grants from any source to cover administrative costs, to inform the public about the ESA Program, or to fund additional ESAs.

(15) The treasurer may adopt rules and policies that are not inconsistent with this article and that are necessary for the administration of this article, including:

(A) Establishing or contracting for the establishment of an online anonymous fraud reporting service;

(B) Establishing an anonymous telephone hotline for fraud reporting;

(C) Policies that require a surety bond for education service providers receiving more than \$100,000 in ESA funds;

(D) Procedures for refunding payments from education service providers back to ESAs; and

(E) Procedures for entering into reciprocal agreements with other state ESA agencies or entities, whether public or private, to recognize and allow education service providers approved in other states to receive payments from ESAs under this article.

(16) Any rules or policies adopted by the treasurer should avoid excessive bureaucracy and overly prescriptive mandates and instead focus on easing parental involvement and encouraging education service providers to provide parents and ESA students with a broad array of educational options.

#### **§18-31-6. Parent Review Committee.**

(a) There is created the Parent Review Committee to assist the treasurer in determining whether questionable expenditures meet the requirements to be considered qualifying expenses to educate the ESA student pursuant to §18-31-3(d) of this code, and to provide recommendations to the treasurer about how to implement, administer, and improve the ESA Program.

(b) (1) The Parent Review Committee:

(A) Consists of seven members who are parents of ESA students and represent no fewer than four counties in the state; and

(B) Shall be appointed by the State Treasurer and serve at the State Treasurer's pleasure for one calendar year and may be reappointed; and

(2) The State Treasurer, or the director's designee, serves as the nonvoting chair of the committee.

(c) The treasurer may request the committee to meet, in person or virtually, to determine whether an expenditure of ESA funds is or was a qualifying expense to educate an ESA student pursuant to §18-31-3(d) of this code. The committee may deny or approve questionable expenditures by a majority vote.

(d) The treasurer may also request the committee to meet, in person or virtually, to review appeals of education service provider denials pursuant to §18-31-7 of this code, and to provide a recommendation to the treasurer as to whether an education service provider should be allowed to receive, or continue receiving, payments from ESAs.

#### **§18-31-7. Requirements for and rights of education service providers.**

(a) To be eligible to accept payments from an ESA, an education service provider shall:

(1) Submit notice to the treasurer that they wish to participate in the ESA Program;

(2) Provide parents with a receipt for all qualifying educational expenses;

(3) Agree not to refund, rebate, or share ESA funds with parents or ESA students in any manner, except that funds may be remitted or refunded to an ESA in accordance with procedures established by the treasurer;

(4) Certify that it will not discriminate on any basis prohibited by 42 U.S.C. §1981; and

(5) Agree to submit any employee who will have contact with ESA students to a criminal background check.

(b) This article does not limit the independence or autonomy of an education service provider or makes the actions of an education service provider the actions of the state government.

(c) Education service providers shall be given maximum freedom to provide for the educational needs of ESA students without governmental control.

(d) This article does not expand the regulatory authority of the state, its officers, or any school district to impose any additional regulation of education service providers beyond those necessary to enforce the requirements of the program.

#### **§18-31-8. Responsibilities of resident school districts.**

The resident school district shall provide an education service provider that has enrolled an ESA student with a complete copy of the student's school records, while complying with the Family Educational Rights and Privacy Act of 1974 (20 USC Section 1232 g).

#### **§18-31-9. Legal proceedings.**

(a) In any legal proceeding challenging the application of this chapter to a participating entity, the state bears the burden of establishing that the challenged action, rule, or requirement is necessary and does not impose any undue burden on education service providers.

(b) No liability arises on the part of the treasurer or the state or of any county school district based on the award or use of an ESA awarded pursuant to this article.

(c) If any part of this article is challenged in a state court as violating either the state or federal constitutions, parents of eligible and/or ESA students are permitted to intervene in the lawsuit for the purposes of defending the article's constitutionality. However, for the purposes of judicial administration, a court may limit the number of parents permitted to intervene or require that all parents file a joint brief, so long as they are not required to join any brief filed on behalf of any named state defendant."

Delegate Porterfield requested to be excused from voting on the amendment to Com. Sub. for S. B. 451 under the provisions of House Rule 49.

The Speaker replied that the Delegate was a member of a class of persons possibly to be affected by the amendment to the amendment and directed the Member to vote.

On the adoption of the amendment to the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 164**), and there were—yeas 32, nays 67, absent and not voting 1, with the yeas and absent and not voting being as follows:

Yeas: Anderson, Atkinson, Azinger, Bibby, Butler, Cadle, Cowles, Ellington, Espinosa, Fast, Foster, Graves, Hamrick, Hardy, Harshbarger, Higginbotham, Hill, Hollen, Householder, D. Jeffries, Jennings, Kessinger, Malcolm, C. Martin, P. Martin, Phillips, Porterfield, Summers, Sypo and Hanshaw (Mr. Speaker).

Absent and Not Voting: Kump.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was rejected.

Delegate Wilson moved to amend the amendment on page sixty-eight, following §18-20-5, by inserting a new article.

Whereupon,

Delegate Wilson asked and obtained unanimous consent that the amendment be withdrawn.

Delegate Wilson moves to amend the bill on page 68, following §18-20-5, by inserting a new article, designated §18-31-1 *et seq.* to read as follows:

### **ARTICLE 31. EDUCATION SAVINGS ACCOUNT PROGRAM.**

#### **§18-31-1. Short title.**

This article shall be known as the “Education Savings Account Act” or “ESA Act.” The program created by the ESA Act shall be known as the “Education Savings Account Program” or “ESA Program.”

#### **§18-31-2. Definitions.**

The following words have the meanings ascribed to them unless the context clearly indicates a different meaning:

(1) “Account” or “ESA” means an education savings account, awarded pursuant to this article, to which funds are allocated by the treasurer to the parent or parents of an ESA student in order to pay qualifying education expenses to educate the student pursuant to the requirements and conditions of this article;

(2) “Curriculum” means a complete course of study for a particular content area or grade level, including any supplemental materials required by the curriculum;

(3) “Education service provider” means a person or organization that receives payments from education savings accounts to provide educational goods and services to ESA students;

(4) “Eligible student” means an elementary or secondary student who

(a) has attended a West Virginia public school in the prior school year;

(b) is not attending a public school outside of West Virginia;

(c) and has been assigned an individual education plan for developmental delay or physical impairment.

(5) “ESA student” means a student who receives an account pursuant to this article;

(6) “Parent” means a biological parent, legal guardian, custodian, or other person with legal authority to act on behalf of an eligible student or ESA student;

(7) “Participating school” means any private school that provides education to elementary and/or secondary students and has notified the treasurer of its intention to participate in the program and comply with the program’s requirements;

(8) “Resident school district” means the county school district in which the student resides; and

(9) "Treasurer" means the West Virginia State Treasurer's Office or an organization that the Treasurer has contracted with to carry out any or all portions of this article.

**§18-31-3. Basic elements of the Education Savings Account Program.**

(a) The amount of funds deposited in an account pursuant to this article shall be an amount equivalent to 75 percent of the prior year's statewide average net state aid allotted per pupil based on net enrollment adjusted for state aid purposes. These funds shall be derived from a line item appropriation established for the purposes of this article.

(b) In exchange for the parent's agreement pursuant to §18-31-4(c)(4) of this code, the Department of Education shall transfer the amount determined pursuant §18-31-3(a) of this code to the treasurer for deposit into a West Virginia ESA.

(c) The State Superintendent of Schools shall, by rule, determine how the fund transfer to the treasurer shall be accomplished.

(d) Parents of an ESA student shall agree to use the funds deposited in their student's ESA only for the following qualifying expenses to educate the ESA student:

(1) Tuition and/or fees at a private school;

(2) Tuition and/or fees for nonpublic online learning programs;

(3) Tutoring services provided by an individual or a tutoring facility;

(4) Services contracted for, and provided by, a public district, charter, or magnet school, including without limitation, individual classes and extracurricular activities and programs;

(5) Textbooks, curriculum, or other instructional materials, including without limitation, any supplemental materials or associated online instruction required by either a curriculum or an education service provider;

(6) Computer hardware or other technological devices that are primarily used to help meet an ESA student's educational needs;

(7) Educational software and applications;

(8) School uniforms;

(9) Fees for nationally standardized assessments, advanced placement examinations, any examinations related to college or university admission, and tuition and/or fees for preparatory courses for the aforementioned exams;

(10) Fees for summer education programs and specialized after-school education programs, but not after-school childcare;

(11) Tuition, fees, instructional materials, and examination fees at a career or technical school or education provider;

(12) Educational services and therapies, including, but not limited to, occupational, behavioral, physical, speech-language, and audiology therapies;

(13) Tuition and fees at an institution of higher education;

(14) Fees for transportation paid to a fee-for-service transportation provider for the student to travel to and from an education service provider; or

(15) Any other educational expense approved by the treasurer.

(e) The funds in an ESA may only be used for educational purposes in accordance with §18-31-3(d) of this code.

(f) ESA funds may not be refunded, rebated, or shared with a parent or ESA student in any manner. Any refund or rebate for goods or services purchased with ESA funds shall be credited directly to the student's ESA.

(g) Parents are allowed to make payments for the costs of educational goods and services not covered by the funds in their student's ESA. However, personal deposits into an ESA is not permitted.

(h) Funds deposited in an ESA do not constitute taxable income to the parent or the ESA student.

(i) An ESA shall remain in force, and any unused funds shall roll over from quarter-to-quarter and from year-to-year until the parent withdraws the ESA student from the ESA Program or until the ESA student graduates from college with a bachelor's degree, unless the ESA is closed because of a substantial misuse of funds. However, if an ESA student has not enrolled in a postsecondary institution within four years after graduating from high school, or if an ESA student turns 24 years of age, whichever occurs first, the ESA shall be closed and any unused funds revert to the treasurer and be allocated to fund other ESAs.

(j) Nothing in this article requires that an ESA student must be enrolled, full or part-time, in either a private school or nonpublic online school.

#### **§18-31-4. Application for an Education Savings Account.**

(a) A parent may apply to the treasurer to establish an ESA for an eligible student at any point on or after July 1, 2019. The household income of an eligible student shall be less than \$150,000 per year to qualify for the education savings account program. For purposes of this article, the household income shall be the adjusted gross income claimed for federal income tax purposes by the biological parent or parents, legal guardian or guardians, custodian or custodians, or person or persons with legal authority to act on behalf of an eligible student plus any income of the eligible student. The treasurer shall develop a process for verifying the income of any applicant for the education savings account.

(b) The treasurer shall accept and approve applications year-round and shall establish procedures for approving applications in an expeditious manner: *Provided*, That the number of education savings accounts may not exceed 2,500 total at any one time.

(c) The treasurer shall create a standard form that parents can submit to establish their student's eligibility for the ESA Program and shall ensure that the application is readily available and may be submitted through various sources, including the Internet.

(d) The treasurer shall approve an application for an ESA if:

(1) The parent submits an application for an ESA in accordance with any application procedures established by the treasurer;

(2) The student on whose behalf the parent is applying is an eligible student;

(3) Funds are available for the ESA; and

(4) The parent signs an agreement with the treasurer, promising:

(A) To provide an education for the eligible student in at least the subjects of reading, language, mathematics, science, and social studies;

(B) Not to enroll the ESA student, full-time, in a district school, an Innovation in Education School, the West Virginia Virtual School, or a West Virginia School for the Deaf and Blind;

(C) To use the funds in the ESA only for qualifying expenses to educate the eligible student as established by the ESA Program; and

(D) To comply with the rules and requirements of the ESA Program.

(E) To afford the ESA student opportunities for educational enrichment such as organized athletics, art, music, or literature.

(e) The signed agreement between the parent and the treasurer shall include the date of withdrawal of the student from the public school. The treasurer shall verify with the Department of Education within 30 days that the student has withdrawn from public school.

(f) The treasurer shall annually renew a student's ESA after verifying with the Department of Education that:

(1) For an ESA student who chooses to attend a private school, the school board will communicate their continued attendance; or

(2) For an ESA student who chooses an individualized instructional program, he or she must annually take a nationally normed standardized test of academic achievement and received a score within or above the fourth stanine or if below the fourth stanine, shows improvement from the previous year's results, or a certified teacher conducts a review of the student's academic work and determines that the student is making academic progress commensurate with their age and ability and reports the results to the county board in which the student resides no later than July 30.

A student who has failed to maintain good standing under this subsection may re-establish eligibility for an ESA after complying with another exemption for compulsory school attendance for a period of one school year.

(g) Upon notice to the treasurer, an ESA student may choose to stop receiving ESA funding and enroll full-time in a public school.

(h) Enrolling as a full-time student in a public school shall result in the immediate suspension of payment of additional funds into the student's ESA; however, the ESA shall remain open and active for the parent to make qualifying expenditures to educate the student from funds remaining in the ESA. When or if no funds remain in the student's ESA or the student turns 24, the treasurer may close the ESA.

(i) If an eligible student decides to return to the ESA Program, they must reapply.



(j) The treasurer may adopt rules and policies to provide the least disruptive process for ESA students who desire to stop receiving ESA payments and enroll full-time in a public school.

#### **§18-31-5. Responsibilities of the Treasurer.**

In addition to the treasurer's duties, obligations, and authority stated in other parts of this article, the treasurer has the following duties, obligations, and authority:

(1) The treasurer shall maintain an updated list of participating schools and shall ensure that the list is publicly available through various sources, including the Internet.

(2) The treasurer shall provide parents with a written explanation of the allowable uses of ESA funds, the responsibilities of parents, the duties of the treasurer and the role of any private financial management firms or other private organizations that the treasurer may contract with to administer the ESA Program or any aspect of the ESA Program.

(3) The treasurer shall ensure that parents of students with a disability receive notice that participation in the ESA Program is a parental placement under 20 U.S.C. § 1412 of the Individuals with Disabilities Education Act (IDEA) along with an explanation of the rights that parentally placed students possess under (IDEA) and any applicable state laws and regulations.

(4) The treasurer shall contract with private organizations to administer the ESA Program. This includes, but is not limited to, private financial management firms to manage ESAs.

(5) The treasurer may deduct an amount from education savings accounts to cover the costs of administering the ESA Program, up to a maximum of five percent annually in the first two years of the ESA Program and up to a maximum of three percent annually thereafter.

(6) The treasurer shall implement or contract with a private organization to implement a commercially viable, cost effective, and parent-friendly system for payment for services from ESAs to education service providers by electronic or online funds transfer and by debit card. The treasurer shall not adopt a system that relies exclusively on requiring parents to be reimbursed for out-of-pocket expenses, but rather shall provide maximum flexibility to parents by facilitating direct payments to education service providers as well as requests for preapproval of and reimbursements for qualifying expenses, including expenses pursuant to §18-31-3(d)(15) of this code.

(7) The treasurer shall also seek to implement a commercially viable, cost-effective, and parent-friendly system for publicly rating, reviewing, and sharing information about education service providers, ideally as part of the same system that facilitates the electronic or online funds transfers so as to create a one-stop-shop for parents and ESA students.

(8) If an education service provider requires partial payment of tuition or fees prior to the start of the academic year to reserve space for an ESA student admitted to the education service provider, such partial payment may be paid by the treasurer prior to the start of the school year in which the ESA is awarded, and deducted in an equitable manner from subsequent ESA deposits to ensure adequate funds remain available throughout the school year; but if an ESA student decides not to use the education service provider, the partial reservation payment must be returned to the treasurer by such education service provider and credited to the student's ESA.

(9) The treasurer shall continue making deposits into a student's ESA until:

(A) The treasurer determines that the ESA student is no longer an eligible student;

(B) The treasurer determines that there was substantial misuse of the funds in the ESA;

(C) The parent or ESA student withdraws from the ESA Program;

(D) The ESA student enrolls full-time in a public school; or

(E) The ESA student graduates from high school.

(10) The treasurer shall have the authority to conduct or contract for the auditing of individual ESAs, and shall, at a minimum, conduct random audits of ESAs on an annual basis.

(11) The treasurer shall have the authority to make any parent or ESA student ineligible for the ESA Program in the event of intentional and substantial misuse of ESA funds.

(A) The treasurer shall create procedures to ensure that a fair process exists to determine whether an intentional and substantial misuse of ESA funds has occurred.

(B) The treasurer shall have the authority to refer suspected cases of intentional and substantial misuse of ESA funds to the Attorney General for investigation if evidence of fraudulent use of ESA funds is obtained.

(C) A parent or ESA student may appeal the treasurer's decision to make a parent or ESA student ineligible for the ESA Program.

(12) The treasurer may bar an education service provider from accepting payments from ESAs if the treasurer determines that the education service provider has:

(A) Intentionally and substantially misrepresented information or failed to refund any overpayments in a timely manner; or

(B) Routinely failed to provide students with promised educational goods or services.

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(A) If the treasurer bars an education service provider from receiving payments from ESAs, it shall notify parents and ESA students of its decision as quickly as possible.

(B) Education service providers may appeal the treasurer's decision to bar them from receiving payments from ESAs.

(14) The treasurer may accept gifts and grants from any source to cover administrative costs, to inform the public about the ESA Program, or to fund additional ESAs.

(15) The treasurer may adopt rules and policies that are not inconsistent with this article and that are necessary for the administration of this article, including:

(A) Establishing or contracting for the establishment of an online anonymous fraud reporting service;

(B) Establishing an anonymous telephone hotline for fraud reporting;

(C) Policies that require a surety bond for education service providers receiving more than \$100,000 in ESA funds;

(D) Procedures for refunding payments from education service providers back to ESAs; and

(E) Procedures for entering into reciprocal agreements with other state ESA agencies or entities, whether public or private, to recognize and allow education service providers approved in other states to receive payments from ESAs under this article.

(16) Any rules or policies adopted by the treasurer should avoid excessive bureaucracy and overly prescriptive mandates and instead focus on easing parental involvement and encouraging education service providers to provide parents and ESA students with a broad array of educational options.

#### **§18-31-6. Parent Review Committee.**

(a) There is created the Parent Review Committee to assist the treasurer in determining whether questionable expenditures meet the requirements to be considered qualifying expenses to educate the ESA student pursuant to §18-31-3(d) of this code, and to provide recommendations to the treasurer about how to implement, administer, and improve the ESA Program.

(b) (1) The Parent Review Committee:

(A) Consists of seven members who are parents of ESA students and represent no fewer than four counties in the state; and

(B) Shall be appointed by the State Treasurer and serve at the State Treasurer's pleasure for one calendar year and may be reappointed; and

(2) The State Treasurer, or the director's designee, serves as the nonvoting chair of the committee.

(c) The treasurer may request the committee to meet, in person or virtually, to determine whether an expenditure of ESA funds is or was a qualifying expense to educate an ESA student pursuant to §18-31-3(d) of this code. The committee may deny or approve questionable expenditures by a majority vote.

(d) The treasurer may also request the committee to meet, in person or virtually, to review appeals of education service provider denials pursuant to §18-31-7 of this code, and to provide a recommendation to the treasurer as to whether an education service provider should be allowed to receive, or continue receiving, payments from ESAs.

#### **§18-31-7. Requirements for and rights of education service providers.**

(a) To be eligible to accept payments from an ESA, an education service provider shall:

(1) Submit notice to the treasurer that they wish to participate in the ESA Program;

(2) Provide parents with a receipt for all qualifying educational expenses;

(3) Agree not to refund, rebate, or share ESA funds with parents or ESA students in any manner, except that funds may be remitted or refunded to an ESA in accordance with procedures established by the treasurer;

(4) Certify that it will not discriminate on any basis prohibited by 42 U.S.C. §1981; and

(5) Agree to submit any employee who will have contact with ESA students to a criminal background check.

(b) This article does not limit the independence or autonomy of an education service provider or makes the actions of an education service provider the actions of the state government.

(c) Education service providers shall be given maximum freedom to provide for the educational needs of ESA students without governmental control.

(d) This article does not expand the regulatory authority of the state, its officers, or any school district to impose any additional regulation of education service providers beyond those necessary to enforce the requirements of the program.

#### **§18-31-8. Responsibilities of resident school districts.**

The resident school district shall provide an education service provider that has enrolled an ESA student with a complete copy of the student's school records, while complying with the Family Educational Rights and Privacy Act of 1974 (20 USC Section 1232 g).

#### **§18-31-9. Legal proceedings.**

(a) In any legal proceeding challenging the application of this chapter to a participating entity, the state bears the burden of establishing that the challenged action, rule, or requirement is necessary and does not impose any undue burden on education service providers.

(b) No liability arises on the part of the treasurer or the state or of any county school district based on the award or use of an ESA awarded pursuant to this article.

(c) If any part of this article is challenged in a state court as violating either the state or federal constitutions, parents of eligible and/or ESA students are permitted to intervene in the lawsuit for the purposes of defending the article's constitutionality. However, for the purposes of judicial administration, a court may limit the number of parents permitted to intervene or require that all parents file a joint brief, so long as they are not required to join any brief filed on behalf of any named state defendant."

Delegate Foster asked and obtained unanimous consent to place the amendment second from the bottom of amendments.

On motion of Delegate Hamrick, the amendment was amended on page one hundred three, section one, after line sixty-two, following the period, by inserting a new subsection (h) to read as follows:

"(h) Notwithstanding the provisions of subsection (d) of this section, and §18C-4A-3 and 18C-4A-4 of this code:

(1) Moneys in the Underwood-Smith Teaching Scholars Program Fund may be used to satisfy the loan assistance agreement pursuant to §18C-4A-3 of this code for any student who is fulfilling the requirements of an agreement on the effective date of this section;

(2) Moneys in the Underwood-Smith Teaching Scholars Program Fund may be used to fund Underwood-Smith teacher scholarships, and any renewals for which a recipient would be eligible

pursuant to the prior enactment of this article, for those students receiving such scholarship on the effective date of this section; and

(3) The terms, conditions, requirements, and agreements applicable to an Underwood-Smith teacher scholarship or loan assistance recipient prior to the effective date of this section shall continue in effect and are not altered by the reenactment of this section during the 2019 regular session of the Legislature.”

Delegates R. Thompson, Hartman, Hornbuckle, Estep-Burton, Miley and Doyle moved to amend the amendment on pages nineteen and twenty, section thirty-two, by striking out the colon and proviso that is located on lines twenty-two and twenty-three, page nineteen, and on lines twenty-four and twenty-five of page twenty, and inserting in lieu thereof, a period.

On the adoption of the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 165**), and there were—yeas 52, nays 45, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: Speaker Hanshaw, Atkinson, Azinger, Bibby, Butler, Cadle, Capito, Cowles, Criss, Ellington, Espinosa, Fast, Foster, Graves, Hamrick, Hanna, Hardy, Harshbarger, Higginbotham, Hill, Hollen, Hott, Householder, Howell, D. Jeffries, Jennings, D. Kelly, Kessinger, Malcolm, C. Martin, P. Martin, Maynard, McGeehan, Nelson, Phillips, Porterfield, Queen, Rowan, Shott, Steele, Storch, Summers, Sypolt, Waxman and Worrell.

Absent and Not Voting: J. Kelly, Kump and Wilson.

So, a majority of the members present and voting having voted in the affirmative, the amendment was adopted.

On motion of Delegate Dean, the amendment was amended on page eighty-one, section 7a, line ninety, by inserting a new subdivision (1) to read as follows:

“(1) Notwithstanding any provision of this code or county policy to the contrary, all reductions shall first be prioritized by employees with highest certifications and then the seniority of such employee. Provided, That the employee’s last performance evaluation as provided in §18A-2-12 or §18A-3C-2 of this code, as applicable, was not less than satisfactory;” and renumbering the subsequent subdivisions accordingly;”.

Delegates Hornbuckle, Doyle and R Thompson moved to amend the amendment on page 81, Section 7a, lines 101, 102 and 103, by returning stricken language to the amendment and by striking out the underlined language;

On page 81, Section 7a, line 105, by returning stricken language to the amendment and by striking out the underlined language;

On page 81, Section 7a, line 106 by striking out the word “qualifications”;

On page 81, Section 7a, line 108, by returning stricken language to the amendment and by striking out the underlined language;

On page 82, Section 7a, line 117, by returning stricken language to the amendment and by striking out the underlined language;

On page 82, Section 7a, lines 126 and 127 by returning stricken language to the amendment and by striking out the underlined language;

On page 81, Section 7a, line 131, by returning stricken language to the amendment and by striking out the underlined language;

On page 81, Section 7a, line 132, by returning stricken language to the amendment and by striking out the underlined language;

On page 84, Section 7a, line 184, by returning stricken language to the amendment and by striking out the underlined language;

On page 84, Section 7a, line 185, by returning stricken language to the amendment and by striking out the underlined language;

On page 84, Section 7a, line 186, by returning stricken language to the amendment and by striking out the underlined language;

On page 84, Section 7a, line 187, by returning stricken language to the amendment and by striking out the underlined language;

And,

On page 84, Section 7a, line 189, by returning stricken language to the amendment and by striking out the underlined language.

On the adoption of the amendment to the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 166**), and there were—yeas 48, nays 49, absent and not voting 3, with the yeas and absent and not voting being as follows:

Yeas: Angelucci, Barrett, Bates, Boggs, N. Brown, S. Brown, Byrd, Campbell, Canestraro, Caputo, Dean, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hansen, Hartman, Hicks, Hornbuckle, D. Kelly, Kessinger, Lavender-Bowe, Longstreth, Lovejoy, Mandt, McGeehan, Miley, Miller, Paynter, Pethtel, Pushkin, Pyles, Robinson, Rodighiero, Rowe, Skaff, Sponaugle, Stagers, Swartzmiller, C. Thompson, R. Thompson, Tomblin, Toney, Walker.

Absent and Not Voting: J. Kelly, Kump and Steele.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was rejected.

In the absence of objection, the pending amendment by Delegate Shott was withdrawn and he offered a reformed amendment.

On motion of Delegate Shott, the amendment was amended on page eighty, section seven-a, at line seventy-three before the word "All", by inserting the following:

"If two or more employees with the same certification establish an identical seniority date as a result of initial employment as a regular teacher on or after July 1, 2019, the priority between these employees shall be determined by a random selection system established by the employees and

approved by the county board. A board shall conduct the random selection within 30 days of the time the employees with the same certification establish an identical seniority date. All employees with an identical seniority date and the same certification shall participate in the random selection. As long as the affected employees hold the identical seniority date within a certification, the initial random selection conducted by the board shall be permanent for the duration of the employment of the employees by the board.”

Delegate Wilson then obtained unanimous consent to be permitted to offer a reformed amendment.

Delegate Wilson then moved to amend the bill on page sixty-eight, following §18-20-5, by inserting a new article, designated §18-31-1 *et seq.* to read as follows:

**“ARTICLE 31. EDUCATION TAX CREDITS.**

**§18-31-1. Short title.**

This article shall be known as the ‘Education Tax Credit’.

**§18-31-2.**

The parents and/or legal guardians of each child in the state of West Virginia participating in nonpublic schools between the ages 5 and 20 years old and in grade level K through 12 shall be entitled to tax credit against West Virginia state income tax in an amount up to three thousand dollars for qualifying educational expenses which shall include the following:

- (1) Tuition
- (2) Transportation costs
- (3) Curriculum
- (4) Text books
- (5) Lab supplies
- (6) Educational technology
- (7) Tutoring

This tax credit is available only as a credit against state taxes actually owed.”

Delegates Cowles, Porterfield, Steele, Pack, Capito and D. Jeffries requested to be excused from voting on the amendment to the amendment to Com. Sub. for S. B. 451 under the provisions of House Rule 49.

The Speaker replied that the Delegates were members of a class of persons possibly to be affected by the passage of the bill and directed the Members to vote.

On the adoption of the amendment to the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 167**), and there were—yeas 49, nays 50, absent and not voting 1, with the yeas and absent and not voting being as follows:

Yeas: Atkinson, Azinger, Bibby, Butler, Cadle, Capito, Cowles, Criss, Ellington, Espinosa, Fast, Fluharty, Foster, Graves, Hamrick, Hanna, Hardy, Harshbarger, Higginbotham, Hill, Hollen, Hott, Householder, Howell, D. Jeffries, J. Jeffries, Jennings, D. Kelly, J. Kelly, Kessinger, Lovejoy, Malcolm, Mandt, C. Martin, P. Martin, Maynard, McGeehan, Pack, Phillips, Porterfield, Shott, Steele, Storch, Summers, Sypolt, Waxman and Hanshaw (Mr. Speaker).

Absent and Not Voting: Kump.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was rejected.

An amendment, offered by Delegates Longstreth Bates, Hornbuckle, Rowe, Doyle and Miley, was reported by the Clerk as follows:

By striking out pages 1 through 68, up to but not including §18A-4-2 of the amendment;

Beginning on page 73, by striking out §18A-4-2d, 18A-4-5, §18-4-5a and 18A-4-7a which ends on page 85;

And,

Beginning on page 96, section 10, line 1, by striking out §18A-4-10 and the remainder of the amendment to the amendment in its entirety.

Delegate Bates asked and obtained unanimous consent that the amendment be withdrawn.

The question being on the Finance Committee amendment, as amended, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 168**), and there were—yeas 61, nays 38, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Angelucci, Bates, Boggs, N. Brown, S. Brown, Butler, Byrd, Campbell, Canestraro, Caputo, Diserio, Estep-Burton, Evans, Fast, Fleischauer, Fluharty, Hansen, Hornbuckle, Kessinger, Lavender-Bowe, Longstreth, Lovejoy, McGeehan, Miley, Miller, Paynter, Pethtel, Pushkin, Robinson, Rowe, Sponaule, Swartzmiller, C. Thompson, R. Thompson, Walker, Williams, Wilson and Zukoff.

Absent and Not Voting: Kump.

So, a majority of the members present and voting having voted in the affirmative, the amendment as amended was adopted.

The bill was then ordered third reading.

### Leaves of Absence

At the request of Delegate Summers, and by unanimous consent, leave of absence for the day was granted Delegate Kump.



**Miscellaneous Business**

Delegates Rohrbach and Steele noted to the Clerk that they was absent on today when the vote was taken on Roll No. 158, and that had he been present, he would have voted "Yea" thereon.

Pursuant to House Rule 132, unanimous consent was requested and obtained to print the following in the Appendix to the Journal:

- The prayer offered by Delegate Pack

Pursuant to House Rule 94b, Members filed forms with the Clerk's Office to be added as a cosponsor of the following:

- Delegate N. Brown for H. B. 2046 and H. B. 3125
- Delegate Porterfield for H. B. 2049, H. B. 2716, H. B. 2549, H. B. 2767, H. B. 2834, H. B. 2866 and H. B. 3032
- Delegate Robinson for H. B. 2100
- Delegate Nelson for H. B. 2834
- Delegate Paynter for H. B. 2847
- Delegate Byrd for H. B. 2936
- Delegate Nelson for H. B. 3022
- Delegates Boggs, Canestraro, Graves, Lovejoy, Rohrbach and Staggers for H. B. 3070
- Delegates Hartman, Hornbuckle and Howell for H. B. 3116
- Delegate Fleischauer for H. J. R. 26
- Delegate Mandt for H. J. R. 29

Pursuant to House Rule 94b, a form was filed with the Clerk's Office to be removed as a cosponsor of the following:

- Delegate Paynter for H. B. 2847

At 10:37 p.m., the House of Delegates adjourned until 11:00 a.m., Thursday, February 14, 2019.

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**HOUSE OF DELEGATES**  
**STEPHEN J. HARRISON, Clerk**  
**Building 1, Room M-212**  
**1900 Kanawha Blvd., East**  
**Charleston, WV 25305-0470**

## **SPECIAL CALENDAR**

**Thursday, February 14, 2019**

**37<sup>th</sup> Day**

**11:00 A. M.**

### **THIRD READING**

- Com. Sub. for S. B. 451 - Comprehensive education reform (HAMRICK) (REGULAR)
- Com. Sub. for H. B. 2173 - Allowing state and federal law-enforcement officers to testify as to the contents and evidence of a wiretap or electronic surveillance (SHOTT) (REGULAR)
- Com. Sub. for H. B. 2338 - Allowing the owner of an antique military vehicle to display alternate registration insignia (HOWELL) (REGULAR)
- Com. Sub. for H. B. 2359 - Relating to exemptions to the commercial driver's license requirements (HOWELL) (REGULAR)
- Com. Sub. for H. B. 2673 - Creating the Oil and Gas Abandoned Well Plugging Fund (HOUSEHOLDER) (REGULAR)
- H. B. 2709 - Relating to hunting licenses (SHOTT) (REGULAR)
- Com. Sub. for H. B. 2715 - Relating to Class Q special hunting permit for disabled persons (SHOTT) (REGULAR)
- H. B. 2739 - Relating to contributions on behalf of employees to a retirement plan administered by the Consolidated Public Retirement Board (HOUSEHOLDER) (REGULAR)
- H. B. 2743 - Eliminating reference to municipal policemen's pension and relief funds and firemen's pension and relief funds in section restricting investment (HOUSEHOLDER) (REGULAR)
- Com. Sub. for H. B. 2761 - Modernizing the self-service storage lien law (SHOTT) (JULY 1, 2019)
- Com. Sub. for H. B. 2793 - Expanding applicability of educational facilities for the West Virginia College Prepaid Tuition and Savings Program (HOUSEHOLDER) (REGULAR)
- Com. Sub. for H. B. 2821 - Updating provisions for command, clerical and other pay (HOUSEHOLDER) (REGULAR)
- Com. Sub. for H. B. 2848 - Relating to the West Virginia ABLE Act (HOUSEHOLDER) (REGULAR)
- H. B. 2992 - Relating to governmental websites (HOWELL) (REGULAR)

## **SECOND READING**

- S. B. 377 - Relating to minimum wage and maximum hour standards (JUDICIARY COMMITTEE AMENDMENT PENDING) (SHOTT) (REGULAR)
- H. B. 2472 - Providing a special license plate for pollinators (TECHNOLOGY AND INFRASTRUCTURE COMMITTEE AMENDMENT PENDING) (BUTLER) (REGULAR)
- Com. Sub. for H. B. 2538 - Providing banking services for medical cannabis (SHOTT) (EFFECTIVE FROM PASSAGE)
- Com. Sub. for H. B. 2579 - Relating to the collection of tax and the priority of distribution of an estate or property in receivership (SHOTT) (REGULAR)
- Com. Sub. for H. B. 2618 - Including undue influence as a factor in the definition of financial exploitation of an elderly person or protected person (SHOTT) (REGULAR)
- H. B. 2716 - Relating to motorboat lighting and equipment requirements (HOWELL) (REGULAR)
- H. B. 2846 - Designating a "Back the Blue" plate in support of law-enforcement personnel (BUTLER) (REGULAR)

## **FIRST READING**

- Com. Sub. for H. B. 2768 - Reducing the use of certain prescription drugs (ELLINGTON) (REGULAR)
- Com. Sub. for H. B. 2834 - Updating and modernizing the minimum spacing provisions for the drilling of horizontal deep wells (ANDERSON) (REGULAR)
- Com. Sub. for H. B. 2849 - Establishing different classes of pharmacy technicians (ELLINGTON) (REGULAR)

**HOUSE CALENDAR**

**Thursday, February 14, 2019**

**37<sup>th</sup> Day**

**11:00 A. M.**

**SECOND READING**

Com. Sub. for H. B. 2008 - Relating to nonpartisan election of justices of the Supreme Court of Appeals (SHOTT) (REGULAR)

H. B. 2692 - Relating to primary elections and procedures (HOWELL) (REGULAR)

H. B. 2819 - Relating generally to contractors (FINANCE COMMITTEE TITLE AMENDMENT PENDING) (HOUSEHOLDER) (REGULAR)

**WEST VIRGINIA  
HOUSE OF DELEGATES**

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**THURSDAY, FEBRUARY 14, 2019**

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**SMALL BUSINESS, ENTREPRENEURSHIP AND ECONOMIC DEVELOPMENT**

**9:00 A.M. – ROOM 215E**

**BANKING & INSURANCE**

**10:00 A.M. – ROOM 215E**

**COMMITTEE ON RULES**

**10:45 A.M. – BEHIND CHAMBER**

**SENIOR, CHILDREN, AND FAMILY ISSUES**

**1:00 P.M. – ROOM 215E**

**COMMITTEE ON HEALTH & HUMAN RESOURCES**

**2:00 P.M. – ROOM 215E**

**COMMITTEE ON ENERGY**

**2:00 P.M. – ROOM 418M**

**PREVENTION AND TREATMENT OF SUBSTANCE ABUSE**

**3:30 P.M. – ROOM 215E**

**POLITICAL SUBDIVISIONS**

**4:00 P.M. – ROOM 432M**

**VETERANS AFFAIRS & HOMELAND SECURITY**

**5:30 P.M. – ROOM 432M**

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**FRIDAY, FEBRUARY 15, 2019**

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**COMMITTEE ON THE JUDICIARY**

**9:00 A.M. – ROOM 418M**

**COMMITTEE ON EDUCATION**

**9:00 A.M. – ROOM 432M**

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**TUESDAY, FEBRUARY 19, 2019**

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**PUBLIC HEARING**

**COMMITTEE ON THE JUDICIARY SUBCOMMITTEE**

**8:00 A.M. – HOUSE CHAMBER**

**ARTICLE V CONVENTION OF THE STATES PROPOSALS**





HOUSE OF DELEGATES  
STEPHEN J. HARRISON, Clerk  
Building 1, Room M-212  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0470