

HB 109

FILED

2009 JUN 17 PM 4: 32

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

FIRST EXTRAORDINARY SESSION, 2009



# ENROLLED

## House Bill No. 109

(By Mr. Speaker, Mr. Thompson, and Delegate Armstead)  
[By Request of the Executive]



Passed June 2, 2009

In Effect July 1, 2009

**ENROLLED**

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**H. B. 109**

OFFICE WEST VIRGINIA  
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(BY MR. SPEAKER, MR. THOMPSON, AND DELEGATE ARMSTEAD)  
[BY REQUEST OF THE EXECUTIVE]

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[Passed June 2, 2009; in effect July 1, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18-5B-1, §18-5B-2, §18-5B-3, §18-5B-4, §18-5B-5, §18-5B-6, §18-5B-7, §18-5B-8 and §18-5B-9, all relating to school innovation zones; setting forth legislative findings, intent and purpose; authorizing state board to designate school innovation zones in schools, groups of schools and departments or subdivisions of a school or schools; establishing an application, plan review, approval and amendment process; authorizing exceptions to certain policies, rules, interpretations and statutes; providing for approval of the innovation zone plan by certain employees of a school; providing for revocation of designation and plan approval; requiring annual report by the state board; designating the order in which the state board must consider applications; providing for the voluntary transfer of employees; authorizing teacher job postings that exceed certain qualifications and requirements; providing that a state institution of higher education may establish a school designated as an innovation zone and that such school may not receive certain funds; providing the procedure in which a state

institution of higher education may apply for and establish an innovation zone school; providing for the approval mechanism for an innovation zone school established by a state institution of higher education by the county board and state board; and authorizing the State Board of Education to promulgate rules and emergency rules.

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §18-5B-1, §18-5B-2, §18-5B-3, §18-5B-4, §18-5B-5, §18-5B-6, §18-5B-7, §18-5B-8 and §18-5B-9, all to read as follows:

**ARTICLE 5B. SCHOOL INNOVATION ZONES ACT.**

**§18-5B-1. Title.**

1           This article shall be known as the “School Innovation  
2   Zones Act”.

**§18-5B-2. Legislative findings and purpose.**

1           (a) *Legislative findings.* -- The Legislature finds that:

2           (1) Decades of school improvement literature  
3   substantiate that schools where the principal uses a  
4   collaborative and distributed approach to leadership and  
5   where the teachers have a unity of purpose, operate in a  
6   cohesive learning-centered culture and implement consistent,  
7   pervasive and research-based approaches to learning, can and  
8   do improve student learning;

9           (2) As in all enterprises, rules are established in public  
10   education to manage the resources efficiently, allot time  
11   among the activities and processes required and ensure

12 attention to the goals mandated, but rules, by their nature,  
13 also limit the flexibility of professional educators to engage  
14 in those activities and implement those approaches that may  
15 best improve the learning of their students for the twenty-first  
16 century;

17 (3) Allowing individual schools to seek and receive  
18 exceptions from certain statutes, policies, rules and  
19 interpretations through the creation of school innovation  
20 zones will provide them greater control over important  
21 educational factors that impact student achievement, such as  
22 curriculum, personnel, organization of the school day,  
23 organization of the school year, technology utilization and  
24 the delivery of educational services to improve student  
25 learning; and

26 (4) Providing greater flexibility at innovation zone  
27 schools will enable school-level, professional educators to  
28 exercise more fully their professional judgment to improve  
29 student learning for the twenty-first century by instituting  
30 creative and innovative practices.

31 (b) *Intent and purpose.* — The intent and purpose of this  
32 article is to:

33 (1) Provide for the establishment of school innovation  
34 zones to improve educational performance;

35 (2) Provide principals and teachers at schools approved  
36 as innovation zones with greater flexibility and control to  
37 meet the needs of a diverse population of students by  
38 removing certain policy, rule, interpretive and statutory  
39 constraints;

40 (3) Provide a testing ground for innovative educational  
41 reform programs and initiatives to be applied on an  
42 individual school level;

43 (4) Provide information regarding the effects of specific  
44 innovations and policies on student achievement;

45 (5) Document educational strategies that enhance  
46 student success; and

47 (6) Increase the accountability of the state's public  
48 schools for student achievement as measured by the state  
49 assessment programs and local assessment processes  
50 identified by the schools.

**§18-5B-3. School innovation zones; application for designation;  
state board rule.**

1 (a) A school, a group of schools, a subdivision or  
2 department of a group of schools, or a subdivision or  
3 department of a school may be designated as an innovation  
4 zone in accordance with this article.

5 (b) The state board shall promulgate a rule, including an  
6 emergency rule if necessary, in accordance with article three-  
7 b, chapter twenty-nine-a of this code to implement the  
8 provisions of this article. The rule shall include provisions  
9 for at least the following:

10 (1) A process for a school, a group of schools, a  
11 subdivision or department of a group of schools or a  
12 subdivision or department of a school to apply for  
13 designation as an innovation zone that encompasses at least  
14 the following:

15 (A) The manner, time and process for the submission of  
16 an innovation zone application;

17 (B) The contents of the application, which must include  
18 a general description of the innovations the school or schools

19 seek to institute and an estimation of the employees who may  
20 be affected by the implementation of the innovations; and

21 (C) Factors to be considered by the state board when  
22 evaluating an application, which shall include, but are not  
23 limited to, the following factors:

24 (i) The level of staff commitment to apply for designation  
25 as an innovation zone as determined by a vote by secret  
26 ballot at a special meeting of employees eligible to vote on  
27 the plan, as provided in section six of this article;

28 (ii) Support from parents, students, the county board of  
29 education, the local school improvement council and school  
30 business partners; and

31 (iii) The potential for an applicant to be successful as an  
32 innovation zone; and

33 (2) Standards for the state board to review applications  
34 for designation as innovation zones and to make  
35 determinations on the designation of innovation zones.

36 (c) The state board shall review innovation zone  
37 applications in accordance with the standards adopted by the  
38 board and shall determine whether to designate the applicant  
39 as an innovation zone. The state board shall notify an  
40 applicant of the board's determination within sixty days of  
41 receipt of an innovation zone application.

42 When initially designating innovation zones after the  
43 enactment of this article by the first extraordinary session of  
44 the 2009 Legislature, the state board shall consider applicants  
45 for designation in the following order: (1) A school and  
46 groups of schools; (2) a group of schools seeking designation  
47 across the same subdivision or department of the schools; and

48 (3) a school seeking designation of a subdivision or a  
49 department.

**§18-5B-4. Innovation zones; required plans; plan approval;  
state board rule.**

1 (a) The rule promulgated by the state board pursuant to  
2 section three of this article also shall include at least the  
3 following:

4 (1) Each school, group of schools, subdivision or  
5 department of a group of schools or subdivision or  
6 department of a school designated as an innovation zone or  
7 seeking designation as an innovation zone in accordance with  
8 this article shall develop an innovation zone plan;

9 (2) The innovation zone plan shall contain:

10 (A) A description of the programs, policies or initiatives  
11 the school, group of schools, subdivision or department of a  
12 group of schools or subdivision or department of a school  
13 intends to implement as an innovative strategy to improve  
14 student learning if the plan is approved in accordance with  
15 section five of this article;

16 (B) A list of all county and state board rules, policies and  
17 interpretations, and all statutes, if any, identified as  
18 prohibiting or constraining the implementation of the plan,  
19 including an explanation of the specific exceptions to the  
20 rules, policies and interpretations and statutes required for  
21 plan implementation. A school, a group of schools, a  
22 subdivision or department of a group of schools or a  
23 subdivision or department of a school may not request an  
24 exception nor may an exception be granted from any of the  
25 following:

26 (i) An assessment program administered by the West  
27 Virginia Department of Education;

28 (ii) Any provision of law or policy required by the No  
29 Child Left Behind Act of 2001, Public Law No. 107-110 or  
30 other federal law; and

31 (iii) Section seven, article two and sections seven-a,  
32 seven-b, eight and eight-b, article four, chapter eighteen-a of  
33 this code, except as provided in section eight of this article;  
34 and

35 (C) Any other information the state board requires.

36 (3) The innovation zone plan may include:

37 (A) An emphasis in the early childhood through  
38 intermediate grade levels on ensuring that each student is  
39 prepared fully at each grade level, including additional  
40 intervention strategies at grade levels three and eight to  
41 reinforce the preparation of students who are not prepared  
42 fully for promotion, or an emphasis in the secondary grade  
43 levels on ensuring that each student is prepared fully for  
44 college or other post-secondary education, as applicable for  
45 the school; and

46 (B) An emphasis on innovative strategies that allows  
47 academically advanced students to pursue academic learning  
48 above grade level or not available through the normal  
49 curriculum at the school.

50 (b) Each school, group of schools, subdivision or  
51 department of a group of schools or subdivision or  
52 department of a school designated or seeking designation as  
53 an innovation zone shall submit its innovation zone plan to  
54 the school's employees, the county superintendent and



55 county board having jurisdiction over the school, the state  
56 board, and the state superintendent in accordance with  
57 section five of this article.

**§18-5B-5. Approval of innovation zone plans; waiver of  
statutes, policies, rules or interpretations.**

1 (a) Each school, group of schools, subdivision or  
2 department of a group of schools or subdivision or  
3 department of a school designated or seeking designation as  
4 an innovation zone shall:

5 (1) Submit its innovation zone plan to each employee  
6 regularly employed at the school if the employee's primary  
7 job duties would be affected by the implementation of the  
8 plan. An innovation zone plan is approved by school  
9 employees when approved by a vote by secret ballot as  
10 provided in section six of this article;

11 (2) Submit its innovation zone plan as approved by vote  
12 of school employees to the county superintendent and board  
13 for review. The county board shall within sixty days of  
14 receipt of the plan review the plan and with recommendations  
15 from the county superintendent report its support or concerns,  
16 or both, and return the plan and report to the school principal,  
17 faculty senate and local school improvement council; and

18 (3) Submit its innovation zone plan as approved by vote  
19 of the school employees eligible to vote on the plan along  
20 with the report of the county board to the state board and  
21 state superintendent for review. The county board shall be  
22 given an opportunity to present its concerns with the plan, if  
23 any, to the state board during its review. Except as provided  
24 in subsection (c) of this section, the state board and state  
25 superintendent shall approve or disapprove the plan within  
26 sixty days of receipt, subject to the following:

27       (A) No exceptions to county or state board rules, policies  
28 or interpretations are granted unless both the state  
29 superintendent and the state board approve the plan at least  
30 conditionally pursuant to subsections (b) and (c) of this  
31 section; and

32       (B) If the plan is disapproved, the state superintendent,  
33 the state board or both, as applicable, shall communicate the  
34 reasons for the disapproval to the school, the group of  
35 schools, the subdivision or department of a group of schools  
36 or the subdivision or department of a school and shall make  
37 recommendations for improving the plan. The school, the  
38 group of schools, the subdivision or department of a group of  
39 schools or the subdivision or department of a school may  
40 amend the plan pursuant to subsection (d) of this section.

41       (b) Upon the approval of an innovation zone plan by the  
42 state board and state superintendent, all exceptions to county  
43 and state board rules, policies and interpretations listed  
44 within the plan are granted, subject to the limitations  
45 contained in subdivision (B), subparagraph (2), subsection (a)  
46 of section four of this article.

47       (c) If an innovation zone plan, or a part thereof, may not  
48 be implemented unless an exception to a statute is granted by  
49 Act of the Legislature, the state board and state  
50 superintendent may approve the plan, or the part thereof, only  
51 upon the condition that the Legislature acts to grant the  
52 exception. If the state board and state superintendent approve  
53 a plan on that condition, the state board and state  
54 superintendent shall submit the plan with the request for an  
55 exception to a statute, along with supporting reasons, to the  
56 Legislative Oversight Commission on Education  
57 Accountability. The commission shall review the plan and  
58 exemption request and make a recommendation to the  
59 Legislature regarding the exception requested.

60 (d) The rule promulgated by the state board pursuant to  
61 section three of this article shall include a process for  
62 amending or revising an innovation zone plan. The process  
63 shall require that any amendments or revisions to an  
64 innovation zone plan are subject to the approval requirements  
65 of subsection (a) of this section.

**§18-5B-6. Employee approval of innovation plan application  
and plan; transfer of employees.**

1 (a) An employee shall be eligible to vote in accordance  
2 with the provisions of this section if: (1) The employee is  
3 regularly employed at the school; and (2) the employee's  
4 primary job duties will be affected by the implementation of  
5 the innovation zone plan. The panel created in subsection (c)  
6 of this section and the principal shall determine which  
7 employees are eligible to vote in accordance with this  
8 subsection. No employee may be eligible to vote unless both  
9 the panel and the principal determine that the employee is  
10 eligible to vote.

11 (b) A secret ballot vote at a special meeting of all  
12 employees regularly employed at the school who are eligible  
13 to vote in accordance with this section shall be conducted to  
14 determine the following:

15 (1) The level of employee commitment to apply for  
16 designation as an innovation zone in accordance with section  
17 three of this article; and

18 (2) The approval of an innovation zone plan as required  
19 by section five of this article.

20 (c) A panel consisting of the elected officers of the  
21 faculty senate of the school or schools, one representative of  
22 the service personnel employed at the school and three parent

23 members appointed by the local school improvement council  
24 shall call the meeting required in subsection (b) of this  
25 section, conduct the votes and certify the results to the  
26 principal, the county superintendent and the president of the  
27 county board. The panel shall provide notice of the special  
28 meeting to all employees eligible to vote at least two weeks  
29 prior to the meeting and shall provide an absentee ballot to  
30 each employee eligible to vote who cannot attend the meeting  
31 to vote.

32 (d) At least eighty percent of the employees who are  
33 eligible to vote in accordance with this section must vote to  
34 apply for designation as an innovation zone and to approve  
35 the school's innovation zone plan before the level of staff  
36 commitment at the school is sufficient for the school to apply  
37 for designation and before the plan is approved by the school.

38 (e) An employee regularly employed at a school applying  
39 for or designated as an innovation zone whose job duties may  
40 be affected by implementation of the innovation zone plan or  
41 proposed plan may request a transfer to another school in the  
42 school district. The county board shall make every  
43 reasonable effort to accommodate the transfer.

#### **§18-5B-7. Progress reviews and annual reports.**

1 (a) At least annually, the state board or its designated  
2 committee shall review the progress of the development or  
3 implementation of an innovation zone plan. If, following  
4 such a review, the state board determines that a designated  
5 school, group of schools, subdivision or department of a  
6 group of schools, subdivision or department of a school or a  
7 school created by a state institution of higher education in  
8 accordance with section nine of this article has not made  
9 adequate progress toward developing or implementing its  
10 plan, the board shall submit a report to the designated school,

11 group of schools, subdivision or department of a group of  
12 schools, subdivision or department of a school or a school  
13 created by a state institution of higher education in  
14 accordance with section nine of this article identifying its  
15 areas of concern. The state board or its designated committee  
16 may conduct an additional review within six months of  
17 submitting a report in accordance with this section. If,  
18 following such additional review, the state board or its  
19 designated committee determines that the designated school,  
20 group of schools, subdivision or department of a group of  
21 schools, subdivision or department of a school or a school  
22 created by a state institution of higher education in  
23 accordance with section nine of this article has not made  
24 adequate progress toward developing or implementing its  
25 innovation zone plan, the state board may revoke the  
26 designation as an innovation zone or, if the innovation zone  
27 plan has been approved in accordance with section five of  
28 this article, rescind its approval of the plan.

29 (b) The state board shall provide an annual report on  
30 innovation zones and the progress of innovation zone plans  
31 to the Legislative Oversight Committee for Educational  
32 Accountability.

**§18-5B-8. Teacher vacancies in an innovation zone; job postings  
exceeding certain qualifications and requirements;  
approval of postings.**

1 A school, group of schools, subdivision or department of  
2 a group of schools, or a subdivision or department of a school  
3 whose school innovation zone plan has been approved in  
4 accordance with section five of this article may make a job  
5 posting for a teacher vacancy at the school, the group of  
6 schools, the subdivision or department of a group of schools,  
7 or the subdivision or department of a school designated as an  
8 innovation zone that sets forth standards or qualifications that

9 exceed the standards and qualifications provided in section  
10 seven-a, article four, chapter eighteen-a of this code:  
11 *Provided*, That teachers in the county approve the job posting  
12 by majority vote: *Provided, however*, That the county  
13 superintendent administers the vote and the record of the vote  
14 remains on file in the personnel office of the county board  
15 until the school group of schools, subdivision or department  
16 of a group of schools, or a subdivision or department of a  
17 school is no longer designated as an innovation zone.

**§18-5B-9. Establishment of new innovation zone schools by  
state institutions of higher education.**

1 (a) A state institution of higher education may establish  
2 a new innovation zone school subject to the following:

3 (1) The school will be under the jurisdiction of the state  
4 institution of higher education;

5 (2) The county board with jurisdiction over the school  
6 district in which the new school is planned to be located must  
7 approve the establishment of the new innovation zone school;

8 (3) The state institution of higher education must enter  
9 into cooperative agreements with the county board or county  
10 boards whose students attend the new innovation zone  
11 school. The agreements shall include at least required  
12 reporting on student attendance, academic progress and any  
13 other matters relating to the administration, operation and  
14 support of the school agreed to by institution and the board  
15 or boards;

16 (4) Students attending the school shall be enrolled in a  
17 school in their county of residence subject to the policies of  
18 the county. The students may participate in extracurricular  
19 and cocurricular activities at the county school in which they

20 are enrolled and, subject to the cooperative agreement with  
21 the state institution of higher education, participate in  
22 curricular activities at the county school in which they are  
23 enrolled;

24 (5) No funds provided to support the planning and  
25 implementation of school innovation zones pursuant to this  
26 article may be used for a state institution of higher education  
27 to establish a new innovation zone school; and

28 (6) A school established in accordance with this section  
29 may not be funded with: (1) Moneys appropriated by the  
30 Legislature to fund the innovation zone program; or (2) state  
31 or county moneys that result from the school aid formula.

32 (b) The state board shall promulgate a rule, including an  
33 emergency rule if necessary, in accordance with article three-  
34 b, chapter twenty-nine-a of this code for a state institution of  
35 higher education to establish a new innovation zone school.  
36 The rule shall include provisions for at least the following:

37 (1) A process for a state institution of higher education in  
38 accordance with this section to apply for designation as  
39 innovation zone and for approval of its innovation zone plan  
40 that encompasses at least the following:

41 (A) The manner, time and process for the submission of  
42 an application for innovation zone designation and for  
43 approval of its innovation zone plan;

44 (B) The contents of the application; and

45 (C) Factors to be considered by the state board when  
46 evaluating an application and plan, which shall include, but  
47 are not limited to, support from parents, students, county  
48 board or boards of education, the local school improvement

49 council or councils and school business partners and the  
50 potential for a school to be successful as an innovation zone.

51 (2) A school created by state institution of higher  
52 education designated as an innovation zone or seeking  
53 designation as an innovation zone in accordance with this  
54 section shall develop an innovation zone plan that includes at  
55 least the following:

56 (A) A description of the programs, policies or initiatives  
57 the state institution of higher education intends to implement  
58 as an innovative strategy to improve student learning if the  
59 plan is approved;

60 (B) The approval of the county board of education with  
61 jurisdiction over the school district in which the new school  
62 is planned to be or is located and the cooperative agreements  
63 with the county board or county boards whose students attend  
64 the new innovation zone school;

65 (C) A list of all county and state board rules, policies and  
66 interpretations, and all statutes, if any, identified as  
67 prohibiting or constraining the implementation of the plan,  
68 including an explanation of the specific exceptions to the  
69 rules, policies and interpretations and statutes required for  
70 plan implementation;

71 (D) A policy under which the state institution of higher  
72 education and participating county board or boards of  
73 education agree to meet the accountability requirements for  
74 student assessment under all applicable assessment programs  
75 administered by the West Virginia Department of Education  
76 and provisions of law or policy required by the No Child Left  
77 Behind Act of 2001, Public Law No. 107-110 or other federal  
78 law; and




79 (E) Any other information the state board requires.

80 (3) Standards for the state board to review applications  
81 for designation as innovation zones and to make  
82 determinations on the approval of innovation zone plans.

83 (c) The state board and state superintendent shall review  
84 innovation zone applications and plans of a school created by  
85 a state institution of higher education in accordance with the  
86 standards adopted by the board and shall determine whether  
87 to designate it as an innovation zone or approve it plan, as  
88 applicable. The state board and state superintendent shall  
89 notify an applicant of the board's determination within sixty  
90 days of receipt of an innovation zone application and receipt  
91 of an innovation zone plan. If the plan is disapproved, the  
92 state board and state superintendent shall communicate the  
93 reasons for the disapproval to the school and make  
94 recommendations for improving the plan. The school may  
95 amend and resubmit the plan to the state board.

96 (d) Upon the approval of an innovation zone plan by  
97 the state board and state superintendent, all exceptions to  
98 county and state board rules, policies and interpretations  
99 listed within the plan are granted. If an innovation zone plan,  
100 or a part thereof, may not be implemented unless an  
101 exception to a statute is granted by Act of the Legislature, the  
102 state board and state superintendent may approve the plan, or  
103 the part thereof, only upon the condition that the Legislature  
104 acts to grant the exception. If the state board and state  
105 superintendent approve a plan on that condition, the state  
106 board and state superintendent shall submit the plan with the  
107 request for an exception to a statute, along with supporting  
108 reasons, to the Legislative Oversight Commission on  
109 Education Accountability. The commission shall review the  
110 plan and request and make a recommendation to the  
111 Legislature on the exception requested.

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

  
\_\_\_\_\_  
Chairman Senate Committee

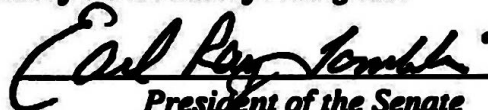
  
\_\_\_\_\_  
Chairman House Committee

Originating in the House.

In effect July 1, 2009.

  
\_\_\_\_\_  
Clerk of the Senate

  
\_\_\_\_\_  
Clerk of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

The within was approved this the 17<sup>th</sup>  
day of June, 2009.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE  
GOVERNOR

JUN 16 2009

Time 9:10 am