

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 371**

5 (BY SENATORS KESSLER (MR. PRESIDENT) AND HALL,

6 BY REQUEST OF THE EXECUTIVE)

7 _____
8 [Passed March 10, 2012; in effect from passage.]
9 _____

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11
12 AN ACT to amend the Code of West Virginia, 1931, as amended, by
13 adding thereto a new section, designated §18-5B-12, relating
14 to allowing flexibility within county school systems;
15 authorizing the State Board of Education to select a county
16 school system to serve as a school system collaborative
17 innovation zone; giving McDowell County first opportunity to
18 submit application; specifying effect of change in school
19 system approval status; requiring the State Board of Education
20 to promulgate rules and emergency rules; providing the
21 procedure and criteria for application and selection as a
22 school system collaborative innovation zone; requiring
23 development of school system collaborative innovation zone
24 plan; setting forth potential innovations; requiring public

1 town hall meetings; requiring meeting to review input from
2 town hall meetings and develop plan; requiring meeting to
3 educate employees about the plan and to allow examination and
4 discussion of plan; requiring vote to determine level of
5 school employee support; authorizing a designated school
6 system to submit requests for exceptions from county and state
7 board rules, policies and interpretations; permitting
8 exceptions from statutes subject to legislative approval;
9 allowing revision and resubmission of approved plan; setting
10 forth duration of plan; requiring annual performance reviews
11 and reports; permitting the posting of certain teaching
12 vacancies; and including, for a school system collaborative
13 innovation zone and to the extent applicable, any land and
14 infrastructure needs in the land use master plan, authorizing
15 an area health association to work with county board in
16 addressing health, wellness and fitness needs and authorizing
17 an area institution of higher education to work with the
18 county board to address certain challenges.

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

20 That the Code of West Virginia, 1931, as amended, be amended
21 by adding thereto a new section, designated §18-5B-12, to read as
22 follows:

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

24 **§18-5B-12. School system collaborative innovation zone;**

1 requirements to qualify; application for
2 designation; required plans for innovation zones;
3 plan approval; waiver of statutes, policies, rules
4 or interpretations; progress reviews and annual
5 reports; teacher vacancies, job postings and
6 approval.

7 (a) The Legislature makes the following findings and
8 expressions of legislative intent:

9 (1) The Legislature created a performance-based accreditation
10 system in 1988 and has amended these provisions several times,
11 significantly in 1998 to set forth a process for improving
12 education consisting of four elements: (i) High quality education
13 standards; (ii) an assessment of the performance and progress of
14 schools and school systems in achieving these standards with a
15 primary focus on student learning; (iii) holding schools and school
16 systems accountable for performance and progress to provide
17 assurances that a thorough and efficient education is being
18 provided; and (iv) a process for targeting resources strategically
19 to improve teaching and learning. These provisions include a
20 process for the state board to declare a state of emergency and
21 intervene in the operation of a school system when its educational
22 program does not meet the standards and it fails to implement an
23 improvement plan or meet the plan's deadlines and improve with a
24 reasonable time. Since the inception of these provisions, the

1 state board has declared a state of emergency in nine county school
2 systems and intervened, including delegating decision-making
3 authority to the state superintendent or his or her designee for
4 system operations. Of these nine school systems, three improved
5 sufficiently over a period of time for the state of emergency to be
6 rescinded, the longest of which took ten years and six months. Of
7 the six systems remaining under state board intervention, although
8 most are fairly recent, one school system has been under state
9 intervention for more than ten years and its improvement is
10 progressing slowly;

11 (2) School systems do not exist in a vacuum and external
12 circumstances and events can have a significant impact on them and
13 the students they serve, as well as on the system's capacity to
14 deliver the thorough and efficient education to which those
15 students are entitled. For example, the McDowell County school
16 system which in the 1950's at its height of employment in coal
17 production had a total population of about 100,000 residents, faced
18 much different challenges than it does today with that county's
19 total population now at 22,113 based on the 2010 census. This
20 school system has lost nearly 70 percent of its enrollment in the
21 past 30 years, declining from 11,715 students in 1981-82 to 3,535
22 in 2011-12. Along with the steep decline in the historical bedrock
23 of employment in the county in the coal industry and the large
24 number of middle class workers and services it supported, including

1 housing, utilities and medical care, the county's rugged
2 mountainous topography contributes to its vulnerability to natural
3 disasters such as the devastating floods in 2001 and 2002 that
4 swept away many homes and much of the infrastructure along the
5 creek beds throughout the county. This topography also
6 significantly limits the amount of land suitable for development
7 and transportation networks, and makes planning for future economic
8 development alternatives difficult. The social and economic
9 byproducts of these external circumstances and events leave a
10 school system with many atypical challenges for addressing the
11 needs of its students and making the improvements in performance
12 and progress needed to assure a thorough and efficient education;

13 (3) Among the findings, intent and purposes of this article
14 are that: (i) Allowing exceptions from certain statutes, policies,
15 rules and interpretations through the creation of innovation zones
16 will enable greater local control over the important educational
17 factors that impact student achievement and the delivery of
18 educational services to improve student learning; and (ii)
19 innovation zones will provide greater flexibility and local control
20 to meet the needs of a diverse population of students. In
21 addition, among the findings of the Local Solution Dropout
22 Prevention and Recovery Innovation Zone Act as set forth in section
23 eleven of this article are findings that when educators, parents,
24 elected officials, business leaders, faith-based leaders, human

1 service personnel, judicial personnel and civic leaders
2 collectively work together they are often able to find innovative
3 solutions to address school and community problems. Since the
4 creation of this article, forty-five innovation zone projects have
5 been approved by the state board, nine of which were Dropout
6 Prevention and Recovery Innovation Zone projects. Twenty-seven
7 policy waivers and five statutory waivers have been granted to
8 enable implementation of these projects. In one county, an
9 innovation zone project was expanded to all of the remaining
10 schools in the county when the schools used the Local School
11 Improvement Council waiver process to request and receive a
12 statutory waiver to implement a comprehensive new teacher induction
13 process countywide. Collectively, these projects illustrate how
14 local schools, and in some cases school systems, have increased
15 their capacity by using the innovation zone process to
16 collaboratively plan and implement a variety of changes to increase
17 student engagement, develop more flexible schedules, enhance
18 student and teacher ownership of the learning process and increase
19 student achievement;

20 (4) Choosing one county school system under a declared state
21 of emergency due to nonapproval status to designate as an
22 innovation zone would allow the testing of innovations that could
23 be replicated in other school systems facing similar circumstances
24 across the state, nation and world;

1 (5) Numerous studies have shown an association between a young
2 person's health status and his or her ability to succeed in
3 educational settings;

4 (6) McDowell County is unique and should be given the first
5 opportunity to use innovative solutions to improve its education
6 system when the totality of the circumstances set forth in this
7 subsection are considered. Other facts specifically applicable to
8 McDowell County include the following:

9 (A) The McDowell County school system has been under a
10 continuous declared state of emergency by the state board due to
11 nonapproval status longer than any other county that is currently
12 under a declared state of emergency;

13 (B) McDowell County school system is engaged in a public-
14 private partnership to begin addressing challenges both within the
15 school system and in the community at large; and

16 (C) McDowell County has a chronic shortage of good roads,
17 public transportation, housing, Internet bandwidth, recreation
18 centers and health clinics;

19 (7) This section is intended as an additional tool for an
20 eligible school system in collaboration with community and business
21 partners to plan and implement new approaches to improve the
22 performance and progress of the students, schools and system to
23 achieve full approval at the earliest possible date. It is further
24 the intent of the Legislature that the process for an eligible

1 school system to apply for exceptions under this section should
2 allow multiple opportunities to apply for additional exceptions as
3 the system moves forward with its partners toward fulfillment of
4 its improvement goals; and

5 (8) In accordance with the intent of this section as an
6 additional tool for planning and implementing new approaches to
7 improve the performance and progress of the students, schools and
8 school system to achieve full approval at the earliest possible
9 date, the state board shall rescind the state of emergency and
10 nonapproval status of a school system designated as a school system
11 collaborative innovation zone as soon as the requisite conditions
12 are met as provided in section five, article two-e of this chapter,
13 notwithstanding the designation. If a school system that has been
14 designated as a school system collaborative innovation zone is
15 subsequently issued a school system approval status that would make
16 it ineligible for the designation, the designation shall remain in
17 effect as provided in this section.

18 (b) The state board is authorized to choose one county school
19 system currently under a declared state of emergency by the state
20 board due to nonapproval status to participate a program to test
21 the effectiveness of allowing such county school systems to be
22 considered school system collaborative innovation zones. Due to
23 the reasons set forth in subsection (a) of this section, the
24 McDowell County Board of Education shall be provided the first

1 opportunity to submit a school system collaborative innovation zone
2 application under this article. If the McDowell County Board of
3 Education has not submitted an application by April 1, 2013 or less
4 than fifty percent cast ballots in an election to approve a school
5 system collaborative innovation zone plan, the state board may
6 accept applications from other county boards under a declared state
7 of emergency by the state board due to nonapproval status.

8 (c) The Legislature finds that an emergency exists and,
9 therefore, no later than April 16, 2012, the state board shall
10 promulgate an emergency rule in accordance with section ten,
11 article three-b, chapter twenty-nine-a of this code, to implement
12 the provisions of this article. The state board also shall
13 promulgate a legislative rule, in accordance with article three-b,
14 chapter twenty-nine-a of this code, to implement this section.
15 Both rules shall include, but not be limited to, the following
16 provisions:

17 (1) The manner, time and process for the submission of a
18 school system collaborative innovation zone application;

19 (2) The contents of the application, which must include a
20 general description of the innovations the county school district
21 seeks to institute;

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

1 (A) Support from teachers, staff, parents, students, the
2 county board of education, the local school improvement council and
3 school business partners; and

4 (B) The potential for an applicant to be successful in raising
5 student achievement as a school system collaborative innovation
6 zone; and

7 (4) Standards for the state board to review applications for
8 designation as a school system collaborative innovation zone and to
9 make determinations on the designation of a school system
10 collaborative innovation zone.

11 (d) The state board shall review school system collaborative
12 innovation zone applications in accordance with the standards
13 adopted by the board and shall determine whether to designate the
14 applicant as a school system collaborative innovation zone. The
15 state board shall notify an applicant of the board's determination
16 within thirty days of receipt of the application.

17 (e) Prior to designation by the state board as a school system
18 collaborative innovation zone, county school systems submitting
19 applications shall develop school system collaborative innovation
20 zone plans. The school system collaborative innovation zone plan
21 may include, but is not limited to, the following proposals:

22 (1) Allowing increased collaborative site-based
23 decision-making powers over the budgeting for and spending on
24 programs and services for students;

1 (2) Allowing increased collaborative site-based
2 decision-making powers over teacher recruitment;

3 (3) Allowing a collaborative process which ensures
4 accountability and transparency to all stakeholders;

5 (4) Allowing a collaborative process which provides input and
6 demonstrative buy-in from education personnel regarding appropriate
7 professional development, supports, resources and working
8 conditions.

9 (5) Allowing a collaborative site-based process to reduce
10 certain requirements to allow staff to meet the school's mission;

11 (6) Allowing, through a collaborative site-based process,
12 flexibility to the alternative teacher certification provided in
13 section one-a, article three, chapter eighteen-a of this code;

14 (7) Utilizing virtual school courses aligned with the Southern
15 Regional Education Board's Standards for Quality Online Courses;
16 and

17 (8) Other innovation zone plans approved under the provisions
18 of this article and being implemented in other schools and school
19 systems throughout the state.

20 (f) Prior to submitting a school system collaborative
21 innovation zone plan to the state board:

22 (1) The school system in collaboration with its public-private
23 partnership shall conduct public town hall meetings in at least two
24 schools in the county for the purpose of soliciting input from

1 those in attendance on the challenges affecting the quality of
2 education in the county and the potential strategies and priorities
3 for addressing them. The two meetings shall occur within ten days
4 of each other;

5 (2) Within fifteen days after the town hall meetings, the
6 county superintendent shall hold a meeting for the purpose of
7 reviewing the input gathered at the public town hall meetings and
8 developing the school system collaborative innovation zone plan.
9 The meeting shall include the principals employed within the
10 county, the chairs of the faculty senates of each school in the
11 county, employee organization representatives, school service
12 person from each work site, parents and other stakeholders;

13 (3) Within fifteen days after the meeting to develop the
14 school system collaborative innovation zone plan, the county
15 superintendent shall hold a meeting of all regularly employed
16 school employees for the purpose of educating those employees about
17 the plan and for the purpose of providing the employees an
18 opportunity to examine and discuss the school system collaborative
19 innovation zone plan; and

20 (4) At the meeting required by subdivision (3) of this
21 subsection, the county superintendent shall direct that a vote of
22 all regularly employed school employees in the county be conducted
23 to determine the level of school employee support for the school
24 system collaborative innovation zone plan. The vote shall be

1 completed within fifteen days after the meeting required by
2 subdivision (3) of this subsection. The vote shall be by secret
3 ballot administered by the panels created in subsection (c) section
4 six of this article for each school and shall be administered in
5 accordance with that subsection. For the vote to be valid, ballots
6 must be cast by at least fifty percent of all regularly employed
7 school employees in the county. The plan may not be submitted to
8 the state board and the state board may not designate the school
9 system as a school system collaborative innovation zone unless at
10 least two-thirds of the employees voting vote to submit the plan.

11 (g) Approval of a school system collaborative innovation zone
12 plan pursuant to this section is at the sole discretion of the
13 state board. Any approval requirement not contained within this
14 section does not apply.

15 (h) The plan is intended to serve as the basis for the
16 innovation zone activities of the school system and to provide a
17 vision for the school improvement goals it will work to accomplish
18 in collaboration with its school and community partners. The plan
19 is not intended as a limit on the normal school improvement
20 activities that all school systems are expected to pursue, nor is
21 the plan intended as a restriction on the ability of the school
22 system or its schools to pursue other innovative strategies in
23 accordance with the other provisions of this article, specifically
24 the designation as a Local Solution Dropout Prevention and Recovery

1 Innovation Zone in accordance with section eleven of this article.

2 (i) The designation as a school system collaborative
3 innovation zone authorizes the school system to submit requests as
4 provided in subsection (j) of this section to the state board for
5 exceptions to statutes, policies, rules and interpretations that
6 are required to permit implementation by the school system of the
7 innovative strategies contemplated in its strategic plan for school
8 improvement. The designation shall be for a period of five years,
9 during which the school system may submit multiple individual
10 requests for exceptions to permit implementation of different
11 strategies contemplated in the plan as the strategies are
12 developed. Each request for an exception shall be submitted and
13 may be approved by the state board in accordance with subsection
14 (j) of this subsection.

15 (j)(1) A school system designated as a school system
16 collaborative innovation zone may request an exception to a
17 statute, policy, rule or interpretation by submitting an
18 application to the state board that contains the following
19 information:

20 (A) A description of the program or initiative the school
21 system intends to implement as an innovative strategy to improve
22 student achievement if the request is approved by the state board;

23 (B) An explanation of the specific exception to a statute,
24 policies, rule or interpretation, in the singular or plural, that

1 the school system has identified as prohibiting or constraining the
2 implementation of the program or initiative and why the exception
3 is necessary;

4 (C) An explanation of how the program or initiative furthers
5 the activities contemplated in the strategic plan for improvement;

6 (D) A certification by the county superintendent that the
7 request for an exception was approved by a vote of the eligible
8 employees in accordance with the process for voting as set forth in
9 section six of this article, except that notwithstanding subsection
10 (d) of said section, at least two-thirds of the eligible employees
11 voting must vote to request the exception for it to be approved for
12 submission to the state board: *Provided*, That for the vote to be
13 valid, ballots must be cast by at least fifty percent of the
14 eligible employees; and

15 (E) Any other information the state board requires as set
16 forth in its rule pursuant to subsection (c) of this section.

17 (2) The state board shall review request in accordance with
18 the standards adopted by the board in its rule and shall determine
19 whether to approve or disapprove the request. The approval or
20 disapproval of a request is at the sole discretion of the state
21 board. Any approval requirement not contained within this section
22 does not apply.

23 (3) Except as provided in subdivision (5) of this subsection,
24 the state board shall approve or disapprove the request within

1 thirty days of receipt, subject to the following:

2 (A) No exceptions to state board policies, rules or
3 interpretations are granted unless the state board approves the
4 request at least conditionally pursuant to subdivisions (2) and (5)
5 of this subsection; and

6 (B) If the request is disapproved, the state board shall
7 communicate its reasons for the disapproval to the school system
8 and shall make recommendations for improving the request. The
9 school system may amend and resubmit the request.

10 (4) Upon approval of the request by the state board, all of
11 the exceptions to state board policies, rules and interpretations
12 the were requested are granted; and

13 (5) If a request, or a part thereof, may not be implemented
14 unless an exception to a statute is granted by an Act of the
15 Legislature, the state board may approve the request, or the part
16 thereof, only upon the condition that the Legislature acts to grant
17 the exception. If the state board approves a request on that
18 condition, the state board shall submit the request for an
19 exception to a statute, along with supporting reasons, to the
20 Legislative Oversight Commission of Education Accountability. The
21 commission shall review the request and make a recommendation to
22 the Legislature regarding the exception requested.

23 (k) Upon approval of the exception by the state board, all
24 exceptions to county and state board rules, policies and

1 interpretations listed in the plan are granted.

2 (1) A county board designated as a school system collaborative
3 innovation zone pursuant to this section that has an approved
4 innovation zone plan may revise its plan and resubmit its plan to
5 the state board for approval after conducting the vote pursuant to
6 subdivision (4), subsection (f) of this section and complying with
7 all other applicable plan requirements set forth in this section
8 except for holding the public town hall meetings required by
9 subdivision (1), subsection (f) of this section.

10 (m) The designation of a county school system as a school
11 system collaborative innovation zone shall be for a period of five
12 years. The state board, upon request of the school system, may
13 extend the designation for an additional two years if the school
14 system has outstanding items in its school system collaborative
15 innovation zone plan that it still wants to pursue and only for the
16 purpose of pursuing those outstanding items. The expiration of the
17 designation does not negate any exceptions to statutes, policies,
18 rules or interpretations granted to the school system, unless and
19 until specifically revoked, repealed or modified by the state board
20 or by the Legislature, as applicable.

21 (n) The state board or its designated committee shall perform
22 annual performance reviews and provide annual reports in accordance
23 with section seven of this article.

24 (o) A county school system whose plan has been approved may

1 make a job posting for a teacher vacancy in accordance with the
2 procedures and approval provided by section eight of this article.

3 (p) For any county that is designated as a school system
4 collaborative innovation zone under the provisions of this section
5 and to the extent the following provisions are applicable:

6 (1) The county commission of the designated county shall
7 collaborate with the Office of Coalfield Community Development in
8 including any land and infrastructure needs in the land use master
9 plan provided for in section nine, article two-a, chapter five-b of
10 this code. These needs may include, but are not limited to,
11 advancement of public education, economic development, highway
12 development, recreational amenities and housing development;

13 (2) An area health organization, such as Tug River Health
14 Association, Inc. is authorized to work with the county board to
15 address the health, wellness and fitness needs of students,
16 parents, school personnel and all others in the county. Tug River
17 Health Association may partner with the Robert C. Byrd Center for
18 Rural Health and the Marshall University Medical School in
19 addressing these needs. In addressing the health, wellness and
20 fitness needs, the following should be considered:

21 (A) New evaluations of school-aged children are needed to
22 reassess their health status and direct further interventions;

23 (B) Prior to developing new assessment tools and initiating
24 programs, a comprehensive inventory of prior assessment tools and

1 programs is needed to determine their strengths and weaknesses.
2 This can direct further studies and interventions;

3 (C) New assessment tools should include objective markers of
4 disease as well as subjective opinions of individual health status
5 and barriers to health;

6 (D) Objective and subjective data should be linked at
7 individual and disease-specific levels;

8 (E) Disease-specific data may be used to address common
9 barriers to health as perceived by a specific population and tailor
10 interventions to these specific populations;

11 (F) The effectiveness of interventions should be assessed
12 using the same health status markers used to develop the
13 intervention;

14 (G) Interventions should use available technology that allows
15 individuals to track measures of health and provide assistance in
16 making informed decisions about their health;

17 (H) Assessments and interventions should be developed and
18 implemented using community-based participatory research models;
19 and

20 (I) Assessments and interventions should be multidisciplinary,
21 collaborative efforts with existing organizations and programs; and

22 (3) Area institutions of higher education, such as Concord
23 University and the June Harless Center at Marshall University, are
24 authorized to work with the county board on innovative strategies

1 to address challenges facing the school system and community,
2 including, but not limited to, the areas of critical need and
3 shortage in the teaching force, educator professional development
4 and improving the college-going rate. In addressing the areas of
5 critical need shortage in the teaching force, consideration should
6 be given to the implementation of an intensively supervised and
7 mentored teacher-in-residence program for prospective teachers
8 during their senior year in lieu of student teaching.