

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 609

FISCAL
NOTE

BY SENATORS FERNS, AZINGER, RUCKER AND CLINE

[Introduced March 15, 2017; Referred
to the Committee on Education; and then to the
Committee on Finance]

1 A BILL to amend and reenact §18-9A-2, §18-9A-4, §18-9A-5, §18-9A-6a, §18-9A-7, §18-9A-9,
2 §18-9A-10 and §18-9A-12 of the Code of West Virginia, 1931, as amended, all relating to
3 public school support; including treasurer/chief school business official and child nutrition
4 director as professional educator for funding purposes only; deleting required periodic
5 legislative review of adjustments in net enrollment; determining allowance for fundable
6 professional educators at set ratio, rather than the number employed subject to a limit;
7 providing for determination of allowance for fundable positions in excess of number
8 employed; deleting expired provisions; basing minimum professional instructional
9 personnel required on percent of employed fundable professional educators; providing for
10 prorating professional instructional personnel among participating counties in joint school
11 or program or service; removing penalty for not meeting applicable professional
12 instructional personnel ratio for 2017-2018 school year; deleting expired provisions;
13 deleting required periodic legislative review of density category ratios; determining
14 allowance for fundable service personnel at set ratio, rather than number employed
15 subject to a limit; providing for determination of allowance for fundable positions in excess
16 of number employed; providing for proration of number and allowance of personnel
17 employed in part by state and county funds; adding professional student support
18 personnel allowance to calculation of teachers retirement fund allowance; basing
19 Teachers Retirement Fund allowance on average retirement contribution rate of each
20 county and defining "average rate"; allowing limited portion of funds for bus purchases to
21 be used for facility and equipment repair maintenance and improvement or replacement
22 or other current expense priorities if requested and approved by state superintendent
23 following verification; changing calculation of allowance for current expense from percent
24 allowances for professional and service personnel to county's state average costs per
25 square footage per student for operations and maintenance; removing authorization for
26 use of instructional improvement funds for implementation and maintenance of regional

27 computer information system; removing requirement for fully utilizing applicable provisions
 28 of allowances for professional and service personnel before using instructional
 29 improvement funds for employment; removing restriction limiting use of new instructional
 30 improvement funds for employment except for technology system specialists until certain
 31 determination made by state superintendent; authorizing use of instructional technology
 32 improvement funds for employment of technology system specialists and requiring amount
 33 used to be included and justified in strategic technology plan; specifying when certain debt
 34 service payments are to be made into School Building Capital Improvement Fund;
 35 authorizing use of percentages of allocations for improving instructional programs;
 36 improving instructional technology for facility and equipment repair and maintenance or
 37 replacement and other current expense priorities and for emergency purposes; requiring
 38 amounts used to be included and justified in respective strategic plans; and reducing state
 39 aid funding to the school districts for the 2018 fiscal year only.

Be it enacted by the Legislature of West Virginia:

1 That §18-9A-2, §18-9A-4, §18-9A-5, §18-9A-6a, §18-9A-7, §18-9A-9, §18-9A-10 and §18-
 2 9A-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read
 3 as follows:

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-2. Definitions.

1 For the purpose of this article:

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

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

4 (c) "Professional salaries" means the state legally mandated salaries of the professional
 5 educators as provided in article four, chapter eighteen-a of this code.

6 (d) "Professional educator" ~~shall be~~ is synonymous with and ~~shall have~~ has the same
 7 meaning as "teacher" as defined in section one, article one of this chapter and includes technology

8 integration specialists. For funding purposes in accordance with this article only, "Professional
9 educator" also includes Treasurer/Chief School Business Official with a bachelor's degree and
10 Child Nutrition Director with a bachelor's degree.

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

17 (f) "Professional student support personnel" means a "teacher" as defined in section one,
18 article one of this chapter who is assigned and serves on a regular full-time basis as a counselor
19 or as a school nurse with a bachelor's degree and who is licensed by the West Virginia Board of
20 Examiners for Registered Professional Nurses. For all purposes except for the determination of
21 the allowance for professional educators pursuant to section four of this article, professional
22 student support personnel are professional educators.

23 (g) "Service personnel salaries" means the state legally mandated salaries for service
24 personnel as provided in section eight-a, article four, chapter eighteen-a of this code.

25 (h) "Service personnel" means all personnel as provided in section eight, article four,
26 chapter eighteen-a of this code. For the purpose of computations under this article of ratios of
27 service personnel to net enrollment, a service employee ~~shall be~~ is counted as that number found
28 by dividing his or her number of employment days in a fiscal year by two hundred: *Provided*, That
29 the computation for any service person employed for three and one-half hours or less per day as
30 provided in section eight-a, article four, chapter eighteen-a of this code ~~shall be~~ is calculated as
31 one half an employment day.

32 (i) "Net enrollment" means the number of pupils enrolled in special education programs,
33 kindergarten programs and grades one to twelve, inclusive, of the public schools of the county.

34 Net enrollment further shall include:

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

37 (A) Net enrollment includes no more than one thousand of those adults counted on the
38 basis of full-time equivalency and apportioned annually to each county in proportion to the adults
39 participating in regular secondary vocational programs in the prior year counted on the basis of
40 full-time equivalency; and

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

43 (2) Students enrolled in early childhood education programs as provided in section forty-
44 four, article five of this chapter, counted on the basis of full-time equivalency;

45 (3) No pupil ~~shall~~ may be counted more than once by reason of transfer within the county
46 or from another county within the state, and no pupil shall be counted who attends school in this
47 state from another state;

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

50 (5) For the purposes of determining the county's basic foundation program only, for any
51 county whose net enrollment as determined under all other provisions of this definition is less than
52 one thousand four hundred, the net enrollment of the county shall be increased by an amount to
53 be determined in accordance with the following:

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

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

58 (C) If the increase in net enrollment as determined under this subdivision plus the county's
59 net enrollment as determined under all other provisions of this subsection is greater than one

60 thousand four hundred, the increase in net enrollment shall be reduced so that the total does not
61 exceed one thousand four hundred; and

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

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

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

73 (l) "Medium-density county" means a county whose ratio of net enrollment, excluding any
74 increase in the net enrollment of counties, pursuant to subdivision (5), subsection (i) of this
75 section, of the definition of "net enrollment", to the square miles of the county is equal to or greater
76 than ten but less than twenty.

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

81 (n) "Levies for general current expense purposes" means ninety percent of the levy rate
82 for county boards of education calculated or set by the Legislature pursuant to section six-f, article
83 eight, chapter eleven of this code.

84 (o) "Technology integration specialist" means a professional educator who has expertise
85 in the technology field and is assigned as a resource teacher to provide information and guidance

86 to classroom teachers on the integration of technology into the curriculum.

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

§18-9A-4. Foundation allowance for professional educators.

1 (a) The basic foundation allowance to the county for professional educators ~~shall be~~ is the
 2 amount of money required to pay the state minimum salaries, in accordance with provisions of
 3 article four, chapter eighteen-a of this code, ~~to the personnel employed,~~ subject to the following:

4 (1) ~~Subject to subdivision (2) of this subsection, in~~ In making this computation ~~ne a~~ a county
 5 shall receive an allowance for ~~the personnel which number is in excess of professional educators~~
 6 state aid eligible professional educator positions to each one thousand students in net enrollment
 7 as follows:

8 (A) For each high-density county, ~~the number of personnel for which a county shall receive~~
 9 ~~the allowance shall not exceed~~ seventy-two and ~~one tenth~~ three tenths professional educators
 10 per each one thousand students in net enrollment;

11 (B) For each medium-density county, ~~the number of personnel for which a county shall~~
 12 ~~receive the allowance shall not exceed~~ seventy-two and ~~twenty-five~~ forty-five hundredths
 13 professional educators per each one thousand students in net enrollment;

14 (C) For each low-density county, ~~the number of personnel for which a county shall receive~~
 15 ~~the allowance shall not exceed~~ seventy-two and ~~four~~ six tenths professional educators per each
 16 one thousand students in net enrollment; ~~and~~

17 (D) For each sparse-density county, ~~the number of personnel for which a county shall~~
 18 ~~receive the allowance shall not exceed~~ seventy-two and ~~fifty-five~~ seventy-five one hundredths
 19 professional educators per each one thousand students in net enrollment; and

20 (E) For any professional educator positions, or fraction thereof, determined for a county

21 pursuant to paragraphs (A), (B), (C) and (D) of this subdivision that exceed the number employed,
 22 the county's allowance for these positions shall be determined using the average state funded
 23 salary of professional educators for the county;

24 ~~(2) For the ratios applicable to each of the four density categories set forth in subdivision~~
 25 ~~(1) of this subsection, the number of professional educators per each one thousand students in~~
 26 ~~net enrollment increases by five one hundredths per year for each of fiscal years 2010, 2011,~~
 27 ~~2012 and 2013. For each fiscal year thereafter, the ratios remain at the 2013 level~~

28 ~~(3) (2)~~ The number of and the allowance for personnel paid in part by state and county
 29 funds shall be prorated; and

30 ~~(4) (3)~~ Where two or more counties join together in support of a vocational or
 31 comprehensive high school or any other program or service, the professional educators for the
 32 school or program may be prorated among the participating counties on the basis of each one's
 33 enrollment therein and the personnel shall be considered within the above-stated limit.

34 ~~(b) Subject to subsection (c) of this section each,~~ Each county board shall establish and
 35 maintain a minimum ratio of professional instructional personnel per ~~one thousand students in net~~
 36 ~~enrollment~~ state aid funded professional educators employed as follows:

37 (1) For each high-density county, the minimum ~~number~~ ratio of professional instructional
 38 personnel per ~~one thousand students in net enrollment is sixty-five and eight tenths~~ state aid
 39 funded professional educators employed, is ninety-one and twenty-nine one hundredths percent;

40 (2) For each medium-density county, the minimum ~~number~~ ratio of professional
 41 instructional personnel per ~~one thousand students in net enrollment is sixty-five and nine tenths~~
 42 state aid funded professional educators employed, is ninety-one and twenty-four one hundredths
 43 percent;

44 (3) For each low-density county, the minimum ~~number~~ ratio of professional instructional
 45 personnel per ~~one thousand students in net enrollment is sixty-six~~ state aid funded professional
 46 educators employed, is ninety-one and eighteen one hundredths percent;

47 (4) For each sparse-density county, the minimum ~~number~~ ratio of professional instructional
48 personnel per ~~one thousand students in net enrollment is sixty-six and five one hundredths~~ state
49 aid funded professional educators employed, is ninety-one and seven one hundredths percent;
50 and

51 (5) Where two or more counties join together in support of a vocational or comprehensive
52 high school or any other program or service, the professional instructional personnel for the school
53 or program may be prorated among the participating counties on the basis of each ones
54 enrollment therein and the personnel shall be considered within the above-stated limit.

55 ~~(c) For the ratios applicable to each of the four density categories set forth in subsection~~
56 ~~(b) of this subsection, the number of professional instructional personnel per each one thousand~~
57 ~~students in net enrollment increases by five one hundredths per year for each of fiscal years 2010,~~
58 ~~2011, 2012 and 2013. For each fiscal year thereafter, the ratios remain at the 2013 level~~

59 ~~(d)~~ (c) Any county board which does not establish and maintain the applicable minimum
60 ratio required in subsection (b) of this section shall suffer a pro rata reduction in the allowance for
61 professional educators under this section: *Provided*, That ~~no~~ a county ~~shall~~ may not be penalized
62 if it has increases in enrollment during that school year. *Provided, however*, That for the school
63 year ~~2008-2009, only, no county shall~~ 2017-2018, only, a county may not be penalized for not
64 meeting the applicable minimum ratio required in subsection (b) of this section.

65 ~~(e)~~ ~~No~~ (d) A county ~~shall~~ may not increase the number of administrative personnel
66 employed as either professional educators or pay grade "H" service personnel above the number
67 which were employed, or for which positions were posted, on June 30, 1990, and therefore, county
68 boards shall whenever possible utilize classroom teachers for curriculum administrative positions
69 through the use of modified or extended contracts.

70 ~~(f) As the number of professional educators per each one thousand students in net~~
71 ~~enrollment increases during fiscal years 2009 through 2013, any additional positions that are~~
72 ~~created as a result of that increase shall be positions that will enhance student achievement and~~

73 ~~are consistent with the needs as identified in each county board's electronic county strategic~~
 74 ~~improvement plan. County boards are encouraged to fill at least some of the additional positions~~
 75 ~~with technology integration specialists.~~

76 ~~(g) During the 2008-2009 interim period, and every three interim periods thereafter, the~~
 77 ~~Legislative Oversight Commission on Education Accountability shall review the four density~~
 78 ~~categories created in section two of this article, the ratios for professional educators established~~
 79 ~~in this section and the ratios for service personnel established in section five of this article~~

§18-9A-5. Foundation allowance for service personnel.

1 ~~(1) For the school year beginning on July 1, 2008, and thereafter, no A county shall receive~~
 2 ~~an allowance for an amount in excess of state aid eligible service personnel positions per one~~
 3 ~~thousand students in net enrollment, as follows:~~

4 ~~(A) For each high-density county, the number of personnel for which a county shall receive~~
 5 ~~the allowance shall not exceed forty-three and ninety-seven one hundredths service personnel~~
 6 ~~per one thousand students in net enrollment;~~

7 ~~(B) For each medium-density county, the number of personnel for which a county shall~~
 8 ~~receive the allowance shall not exceed forty-four and fifty-three one hundredths service personnel~~
 9 ~~per one thousand students in net enrollment;~~

10 ~~(C) For each low-density county, the number of personnel for which a county shall receive~~
 11 ~~the allowance shall not exceed forty-five and one tenth service personnel per one thousand~~
 12 ~~students in net enrollment; and~~

13 ~~(D) For each sparse-density county, the number of personnel for which a county shall~~
 14 ~~receive the allowance shall not exceed forty-five and sixty-eight one hundredths service personnel~~
 15 ~~per one thousand students in net enrollment; and~~

16 ~~(E) For any service personnel positions, or fraction thereof, determined for a county~~
 17 ~~pursuant to subdivision (1) of this subsection that exceed the number employed, the county's~~
 18 ~~allowance for these positions shall be determined using the average state funded minimum salary~~

19 of service personnel for the county;

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

22 ~~(2)~~ (3) Where two or more counties join together in support of a vocational or
 23 comprehensive high school or any other program or service, the service personnel for the school
 24 or program may be prorated among the participating counties on the basis of each ones
 25 enrollment therein and that the personnel shall be considered within the above-stated limit.

§18-9A-6a. Teachers Retirement Fund allowance; unfunded liability allowance.

1 (a) The total Teachers Retirement Fund allowance ~~shall be~~ is the sum of the basic
 2 foundation allowance for professional educators, the basic foundation allowance for professional
 3 student support personnel and the basic foundation allowance for service personnel, as provided
 4 in sections four, ~~and~~ five and eight of this article; all salary equity appropriations authorized in
 5 section five, article four of chapter eighteen-a; and such amounts as are to be paid by the counties
 6 pursuant to sections five-a and five-b of said article to the extent such county salary supplements
 7 are equal to the amount distributed for salary equity among the counties, multiplied by ~~fifteen~~
 8 ~~percent~~ the average retirement contribution rate for each county board. The average contribution
 9 rate for each county board is based on the required employer contributions for state aide eligible
 10 employees participating in the retirement plans pursuant to articles seven-a and seven-b of this
 11 chapter.

12 (b) The Teachers Retirement Fund allowance amounts provided for in subsection (a) of
 13 this section shall be accumulated in the Employers Accumulation Fund of the state Teachers
 14 Retirement System pursuant to section eighteen, article seven-a of this chapter, and shall be in
 15 lieu of the contribution required of employers pursuant to subsection (b) of said section as to all
 16 personnel included in the allowance for state aid in accordance with sections four, ~~and~~ five and
 17 eight of this article.

18 (c) In addition to the Teachers Retirement Fund allowance provided for in subsection (a)

19 of this section, there shall be an allowance for the reduction of any unfunded liability of the
20 Teachers Retirement Fund in accordance with the following provisions of this subsection. On or
21 before December 31, of each year, the actuary or actuarial firm employed in accordance with the
22 provisions of section four, article ten-d, chapter five of this code shall submit a report to the
23 President of the Senate and the Speaker of the House of Delegates which sets forth an actuarial
24 valuation of the Teachers Retirement Fund as of the preceding ~~the thirtieth day of~~ June 30. Each
25 annual report shall recommend the actuary's best estimate, at that time, of the funding necessary
26 to both eliminate the unfunded liability over a forty-year period beginning on July 1, 1994, and to
27 meet the cash flow requirements of the fund in fulfilling its future anticipated obligations to its
28 members. In determining the amount of funding required, the actuary shall take into consideration
29 all funding otherwise available to the fund for that year from any source: *Provided*, That the
30 appropriation and allocation to the Teachers' Retirement Fund made pursuant to the provisions
31 of section six-b of this article shall be included in the determination of the requisite funding amount.
32 In any year in which the actuary determines that the Teachers Retirement Fund is not being
33 funded in such a manner, the allowance made for the unfunded liability for the next fiscal year
34 shall be not less than the amount of the actuary's best estimate of the amount necessary to
35 conform to the funding requirements set forth in this subsection.

§18-9A-7. Foundation allowance for transportation cost.

1 (a) The allowance in the foundation school program for each county for transportation ~~shall~~
2 ~~be~~ is the sum of the following computations:

3 (1) A percentage of the transportation costs incurred by the county for maintenance,
4 operation and related costs exclusive of all salaries, including the costs incurred for contracted
5 transportation services and public utility transportation, as follows:

6 (A) For each high-density county, eighty-seven and one-half percent;

7 (B) For each medium-density county, ninety percent;

8 (C) For each low-density county, ninety-two and one-half percent;

9 (D) For each sparse-density county, ninety-five percent;

10 (E) For any county for the transportation cost for maintenance, operation and related
11 costs, exclusive of all salaries, for transporting students to and from classes at a multicounty
12 vocational center, the percentage provided in paragraphs (A) through (D) of this subdivision as
13 applicable for the county plus an additional ten percent; and

14 (F) For any county for that portion of its school bus system that uses as an alternative fuel
15 compressed natural gas or propane, the percentage provided in paragraphs (A) through (D) of
16 this subdivision as applicable for the county plus an additional ten percent: *Provided*, That for any
17 county receiving an additional ten percent for that portion of their bus system using bio-diesel as
18 an alternative fuel during the school year 2012-2013, bio-diesel shall continue to qualify as an
19 alternative fuel under this paragraph to the extent that the additional percentage applicable to that
20 portion of the bus system using bio-diesel shall be decreased by two and one-half percent per
21 year for four consecutive school years beginning in school year 2014-2015: *Provided, however*,
22 That any county using an alternative fuel and qualifying for the additional allowance under this
23 subdivision shall submit a plan regarding the intended future use of alternatively fueled school
24 buses;

25 (2) The total cost, within each county, of insurance premiums on buses, buildings and
26 equipment used in transportation;

27 (3) An amount equal to eight and one-third percent of the current replacement value of the
28 bus fleet within each county as determined by the state board. ~~*Provided*, That the amount for the~~
29 ~~school year beginning July 1, 2015, will be \$15,000,000 and the amount for the school year~~
30 ~~beginning July 1, 2016, will be \$18,000,000.~~ The amount shall only be used for the replacement
31 of buses except as provided in subdivision (4) of this subsection. Buses purchased after July 1,
32 1999 that are driven one hundred eighty thousand miles, regardless of year model, ~~will be~~ are
33 subject to the replacement value of eight and one-third percent as determined by the state board.
34 In addition, in any school year in which its net enrollment increases when compared to the net

35 enrollment the year immediately preceding, a school district may apply to the state superintendent
36 for funding for an additional bus or buses. The state superintendent shall make a decision
37 regarding each application based upon an analysis of the individual school district's net enrollment
38 history and transportation needs: *Provided*, That the superintendent ~~shall~~ may not consider any
39 application which fails to document that the county has applied for federal funding for additional
40 buses. If the state superintendent finds that a need exists, a request for funding shall be included
41 in the budget request submitted by the state board for the upcoming fiscal year;

42 (4) Notwithstanding the restriction on the use of funds for the replacement of buses
43 pursuant to subdivision (3) of this subsection, up to \$200,000 of these funds in any school year
44 may be used by a county for school facility and equipment repair, maintenance and improvement
45 or replacement or other current expense priorities if a request by the county superintendent listing
46 the amount, the intended use of the funds and the serviceability of the bus fleet is approved by
47 the state superintendent. Before approving the request, the state superintendent shall verify the
48 serviceability of the county's bus fleet based upon the state school bus inspection defect rate of
49 the county over the two prior years; and

50 ~~(4)~~ (5) Aid in lieu of transportation equal to the state average amount per pupil for each
51 pupil receiving the aid within each county.

52 (b) The total state share for this purpose is the sum of the county shares: *Provided*, That
53 ~~no~~ a county ~~shall~~ may not receive an allowance which is greater than one-third above the
54 computed state average allowance per transportation mile multiplied by the total transportation
55 mileage in the county exclusive of the allowance for the purchase of additional buses.

56 (c) One half of one percent of the transportation allowance distributed to each county ~~shall~~
57 ~~be~~ is for the purpose of trips related to academic classroom curriculum and not related to any
58 extracurricular activity. Any remaining funds credited to a county for the purpose of trips related
59 to academic classroom curriculum during the fiscal year shall be carried over for use in the same
60 manner the next fiscal year and shall be separate and apart from, and in addition to, the

61 appropriation for the next fiscal year. The state board may request a county to document the use
62 of funds for trips related to academic classroom curriculum if the board determines that it is
63 necessary.

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

1 The total allowance for other current expense and substitute employees ~~shall be~~ is the
2 sum of the following:

3 ~~(1) For current expense, ten percent of the sum of the computed state allocation for~~
4 ~~professional educators, professional student support personnel and service personnel as~~
5 ~~determined in sections four, five and eight of this article. Distribution to the counties shall be made~~
6 ~~proportional to the average of each county's average daily attendance for the preceding year and~~
7 ~~the county's second month net enrollment; plus~~

8 (1) For current expense:

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

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

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

21 (D) Each county's allowance for current expense is 70.25% of the county's state average

22 costs per square footage per student for operations and maintenance amount as calculated in
 23 paragraph (C) of this subdivision; plus

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

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

33 (4) For academic materials, supplies and equipment for use in instructional programs,
 34 \$200 multiplied by the number of professional instructional personnel and professional student
 35 support personnel employed in the schools of the county. Distribution ~~shall be~~ is made to each
 36 county for allocation to the faculty senate of each school in the county on the basis of \$200 per
 37 professional instructional personnel employed at the school. "Faculty Senate" means a faculty
 38 senate created pursuant to section five, article five-a of this chapter. Decisions for the expenditure
 39 of such funds ~~shall be~~ are made at the school level by the faculty senate in accordance with the
 40 provisions of said section five, article five-a and ~~shall~~ may not be used to supplant the current
 41 expense expenditures of the county. Beginning on September 1, 1994, and every September
 42 thereafter, county boards shall forward to each school for the use by faculty senates the
 43 appropriation specified in this section. Each school shall be responsible for keeping accurate
 44 records of expenditures.

**§18-9A-10. Foundation allowance to improve instructional programs and instructional
technology.**

1 (a) The total allowance to improve instructional programs ~~shall be~~ and instructional

2 technology is the sum of the following:

3 (1) For instructional improvement, in accordance with county and school electronic
4 strategic improvement plans required by section five, article two-e of this chapter, an amount
5 equal to ten percent of the increase in the local share amount for the next school year above any
6 required allocation pursuant to section six-b of this article shall be added to the amount of the
7 appropriation for this purpose for the immediately preceding school year. The sum of these
8 amounts shall be ~~distributed~~ allocated to the counties as follows:

9 (A) One hundred fifty thousand dollars shall be allocated to each county; and

10 (B) ~~Distribution~~ Allocation to the counties of the remainder of these funds shall be made
11 proportional to the average of each county's average daily attendance for the preceding year and
12 the county's second month net enrollment.

13 Moneys allocated by ~~provision~~ of this subdivision shall be used to improve instructional
14 programs according to the county and school strategic improvement plans required by section
15 five, article two-e of this chapter and approved by the state board. ~~Provided, That notwithstanding~~
16 ~~any other provision of this code to the contrary, moneys allocated by provision of this section also~~
17 ~~may be used in the implementation and maintenance of the uniform integrated regional computer~~
18 ~~information system.~~

19 Up to twenty-five percent of this allocation for the improvement of instructional programs
20 may be used to employ professional educators and service personnel in ~~counties after all~~
21 ~~applicable provisions of sections four and five of this article have been fully utilized~~ the county.

22 Prior to the use of any funds from this subdivision for personnel costs, the county board must
23 receive authorization from the state superintendent. The state superintendent shall require the
24 county board to demonstrate: (1) The need for the allocation; (2) efficiency and fiscal responsibility
25 in staffing; (3) sharing of services with adjoining counties and the regional educational service
26 agency for that county in the use of the total local district board budget; and (4) employment of
27 technology integration specialists to meet the needs for implementation of the West Virginia

28 Strategic Technology Learning Plan. County boards shall make application for the use of funds
29 for personnel for the next fiscal year by May 1 of each year. On or before June 1, the state
30 superintendent shall review all applications and notify applying county boards of the approval or
31 disapproval of the use of funds for personnel during the fiscal year appropriate. The state
32 superintendent shall require the county board to demonstrate the need for an allocation for
33 personnel based upon the county's inability to meet the requirements of state law or state board
34 policy.

35 ~~The provisions relating to the use of any funds from this subdivision for personnel costs~~
36 ~~are subject to the following: (1) The funds available for personnel under this subsection~~
37 ~~subdivision may not be used to increase the total number of professional noninstructional~~
38 ~~personnel in the central office beyond four. and (2) For the school year beginning July 1, 2013,~~
39 ~~and thereafter, any funds available to a county for use for personnel under this subsection above~~
40 ~~the amount available for the 2012-2013 school year, only may be used for technology systems~~
41 ~~specialists until the state superintendent determines that the county has sufficient technology~~
42 ~~systems specialists to serve the needs of the county.~~

43 The plan shall be made available for distribution to the public at the office of each affected
44 county board; plus

45 (2) For the purposes of improving instructional technology, an amount equal to twenty
46 percent of the increase in the local share amount for the next school year above any required
47 allocation pursuant to section six-b of this article shall be added to the amount of the appropriation
48 for this purpose for the immediately preceding school year. The sum of these amounts shall be
49 ~~distributed~~ allocated to the counties as follows:

50 (A) Thirty thousand dollars shall be allocated to each county; and

51 (B) ~~Distribution~~ Allocation to the counties of the remainder of these funds shall be made
52 proportional to the average of each county's average daily attendance for the preceding year and
53 the county's second month net enrollment.

54 ~~Effective July 1, 2014, Moneys allocated by provision of this subdivision shall be used to~~
55 ~~improve instructional technology programs according to the county and school strategic~~
56 ~~improvement plans~~ board's strategic technology learning plan. ~~plus~~

57 This allocation for the improvement of instructional technology programs may also be used
58 for the employment of technology system specialists essential for the technology systems of the
59 schools of the county to be fully functional and readily available when needed by classroom
60 teachers. The amount of this allocation used for the employment of technology system specialists
61 shall be included and justified in the county board's strategic technology learning plan; plus

62 (3) One percent of the state average per pupil state aid multiplied by the number of
63 students enrolled in dual credit, advanced placement and international baccalaureate courses, as
64 defined by the state board, distributed to the counties proportionate to enrollment in these courses
65 in each county; plus

66 (4) An amount not less than the amount required to meet debt service requirements on
67 any revenue bonds issued prior to January 1, 1994, and the debt service requirements on any
68 revenue bonds issued for the purpose of refunding revenue bonds issued prior to January 1,
69 1994, shall be paid by the department of education in accordance with the expenditure schedule
70 approved by the state budget office into the School Building Capital Improvements Fund created
71 by section six, article nine-d of this chapter and shall be used solely for the purposes of that article.
72 The School Building Capital Improvements Fund shall not be utilized to meet the debt services
73 requirement on any revenue bonds or revenue refunding bonds for which moneys contained
74 within the School Building Debt Service Fund have been pledged for repayment pursuant to that
75 section.

76 (b) Notwithstanding the restrictions on the use of funds pursuant to subdivisions (1) and
77 (2), subsection (a) of this section, a county board may:

78 (1) Utilize up to twenty-five percent of the allocation for the improvement of instructional
79 programs in any school year for school facility and equipment repair, maintenance and

80 improvement or replacement and other current expense priorities and for emergency purposes.
81 The amount of this allocation used for any of these purposes shall be included and justified in the
82 county and school strategic improvement plans or amendments thereto; and

83 (2) Utilize up to fifty percent of the allocation for improving instructional technology in any
84 school year for school facility and equipment repair, maintenance and improvement or
85 replacement and other current expense priorities and for emergency purposes. The amount of
86 this allocation used for any of these purposes shall be included and justified in the county board's
87 strategic technology learning plan or amendments thereto.

88 ~~(b)~~ (c) When the school improvement bonds secured by funds from the School Building
89 Capital Improvements Fund mature, the State Board of Education shall annually deposit an
90 amount equal to ~~\$24,000,000~~ \$24 million from the funds allocated in this section into the School
91 Construction Fund created pursuant to the provisions of section six, article nine-d of this chapter
92 to continue funding school facility construction and improvements.

93 ~~(e)~~ (d) Any project funded by the School Building Authority shall be in accordance with a
94 comprehensive educational facility plan which must be approved by the state board and the
95 School Building Authority.

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

1 (a) The basic foundation program for each county for the fiscal year shall be the sum of
2 the amounts computed in accordance with the provisions of sections four, five, six, seven, eight,
3 nine and ten of this article. On the first working day of July in each year, the state board shall
4 determine the basic foundation program for each county for that fiscal year. Data used in the
5 computations relating to net and adjusted enrollment, and the number of professional educators,
6 shall be for the second month of the prior school term. Transportation expenditures used in these
7 computations shall be for the most recent year in which data are available. The allocated state
8 aid share of the county's basic foundation program shall be the difference between the cost of its
9 basic foundation program and the county's local share as determined in section eleven of this

10 article except as provided in subsection (b) of this section.

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

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

28 (2) In those instances where the local share as computed under section eleven of this
29 article is not reflective of local funds available because the county is collecting tax based upon an
30 assessed value which is less than that determined by the Tax Commissioner in the most recent
31 published survey of property valuations in the state due to an error in the published survey, which
32 error is certified to by the Tax Commissioner, the allocated state aid share shall be the county's
33 basic foundation program, minus the local share as computed under section eleven of this article,
34 plus the amount of property tax the county is unable to collect based on differences in the
35 assessed valuation between those in the most recent published survey of valuation and the

36 corrected assessed value actually levied upon by the county: *Provided*, That said adjustment shall
37 not be made or shall only be made proportionately when the Legislature fails to fund or funds only
38 in part the public school basic foundation support plan state share at a level sufficient to cover the
39 reduction in state share: *Provided, however*, That nothing herein provided shall be construed to
40 require or mandate any level of funding by the Legislature.

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

53 (c) The allocated state aid share shall be adjusted in any county receiving payments or
54 contributions in lieu of property taxes. In instances where a county receives payments or
55 contributions in lieu of property taxes, the allocated state aid share shall be the county's basic
56 foundation program minus the local share as computed under section eleven of this article, plus
57 any amounts added pursuant to subsection (b) of this section minus the payments or contributions
58 in lieu of property taxes which are distributed by the sheriff to the county board of education. In
59 determining the amount of such contribution or payment in lieu of taxes, each county commission
60 shall provide to the State Tax Commissioner, by January 1 of each year, the total amount of such
61 payments or contributions paid to the county and the proportion of the total amount that has been

62 or will be distributed to the county board of education. The State Tax Commissioner then shall
63 provide the state board, by January 15 of each year, a certified listing of those counties in which
64 an adjustment pursuant to this section shall be made, together with the amount of revenue which
65 will be available to each county board in the ensuing fiscal year as a result of contribution or
66 payment in lieu of taxes.

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

71 (e) Notwithstanding any other provision of this section to the contrary, for the 2018 fiscal
72 year only, the total basic state aid to the county shall be ninety-five percent of the total basic state
73 aid to the county as otherwise calculated pursuant to subsections (a) through (d) of this section.

NOTE: The purpose of this bill is to create additional flexibility for school systems in the use of school aid funds. The bill moves the basis for calculation the foundation allowances for professional educators and service personnel to an authorized positions ratio, rather than the number employed subject to a limiting ratio. Necessary related adjustments for professional instructional personnel are made and issues raised by the Legislative Auditor are addressed. For funding purposes only, the Treasurer and Director of Child Nutrition are made fundable professional educators. The bill also authorizes counties to use up to \$200,000 of the formula funds restricted to bus purchases for facility, equipment and other current expense priorities if approved by the state superintendent. The method for calculating the Allowance for Current Expense is changed from a percentage of salary costs to a state average cost for operations and maintenance per square foot per student. The bill authorizes funds for the improvement of instructional technology to be used for the employment of technology system specialists and allows percentages of both allowances for improving instructional programs and instructional technology to be used for school facility and equipment repair, maintenance and improvement or replacement and other current expense priorities, and for emergencies. The amounts use for these purposes must be included and justified in the respective strategic plans for instructional programs and technology improvement. The bill also reduces state aid funding to school districts for the 2018 fiscal year only.

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