

# WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2711

MR. SPEAKER (MR. ARMSTEAD) AND DELEGATE MILEY

(BY REQUEST OF THE EXECUTIVE)

[Passed April 8, 2017; in effect ninety days from passage.]

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SECRETARY OF STATE

2017 APR 26 P 8:21

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1 AN ACT to repeal §18-2-26a of the Code of West Virginia, 1931, as amended; to amend and  
2 reenact §18-2-26 of said code; to amend and reenact §18-2E-1a and §18-2E-5 of said  
3 code; to amend and reenact §18-5-13 and §18-5-45 of said code; to further amend said  
4 code by adding thereto two new sections designated §18-5-13b and §18-5-13c; to amend  
5 and reenact §18-5A-5 of said code; to amend and reenact §18-9A-8a of said code; and to  
6 amend and reenact §18A-4-14 of said code, all relating generally to education; repealing  
7 requirement for biennial meetings of county boards by region; providing for dissolving  
8 regional educational service agencies by certain date; allowing for modification and  
9 dissolving by cooperative agreement before said date; providing for the transfer,  
10 liquidation or disbursement of property and records; requiring state board to constructively  
11 engage with the legislative oversight commission on education accountability prior to  
12 adopting certain standards and prior to adoption of a new statewide summative  
13 assessment; requiring certain state board actions before full implementation of a new  
14 accountability system; modifying state board prohibitions and duties as part of its on-going  
15 responsibility for developing and implementing a program of standards, assessments and  
16 a program of accountability; clarifying responsibilities and authority of Legislature and  
17 state board with respect to process for improving education and purposes and intent of  
18 system of accountability; modifying areas for which the state board is required to adopt  
19 high-quality education standards; modifying statewide assessment program; modifying  
20 annual performance measures for accreditation; requiring county board use of statewide  
21 electronic information system; modifying process for assessing school and school system  
22 performance; eliminating office of education performance audits and authorizing  
23 employment of experienced education professionals with certain duties; modifying school  
24 accreditation and removing authorization for state board intervention in school operations;  
25 modifying school system approval and processes for state board intervention; modifying  
26 processes for improving capacity; modifying process for building leadership capacity of

27 system during intervention; expanding county board authority for entering into cooperative  
28 agreements; establishing the County Superintendents' Advisory Council; setting forth the  
29 council's authority and responsibilities, including the formation of four geographic  
30 quadrants to carry out the work of the council; requiring certain meetings and reports;  
31 authorizing county board agreements to establish educational services cooperatives;  
32 providing references to regional education service agencies mean cooperatives; providing  
33 priorities for transfer, liquidation and disbursement of regional education service agency  
34 property, equipment and records upon dissolution; providing for governing council of  
35 educational services cooperatives; providing for powers and duties; providing for  
36 cooperative annual plan and optional programs and services; providing for selection of  
37 fiscal agent county board and annual audit; providing for staff and member expenses;  
38 providing for member compensation; defining minimum length of instructional day;  
39 defining instruction delivered through alternative methods; allowing equivalent  
40 instructional time alternative to one hundred eighty separate instructional days;  
41 authorizing county board to increase length of instructional day by certain amount and use  
42 instructional time gained for certain purposes; authorizing delivery of instruction through  
43 alternative methods upon plan approved by state board and counting as instructional and  
44 employment days; designating one noninstructional day for teachers as a preparation day  
45 for opening school and another for teachers as a preparation day for closing school;  
46 allowing teacher preparation days to be used for certain other purposes at teacher's  
47 discretion; increasing number of two-hour blocks for faculty senate meetings from four to  
48 six; removing requirement that faculty senate meetings be held once every forty-five days;  
49 modifying requirement for rescheduling days to be used for instruction to reflect  
50 instructional time gained by lengthening instructional day; exempting certain days from  
51 rescheduling when instructional day lengthened; authorizing decrease of instructional  
52 term in county subject to emergency or disaster declaration by Governor; reducing

53 foundation allowance for regional education service agencies; removing requirement for  
54 planning period to be within instructional day; requiring educators to receive uninterrupted  
55 time for planning periods each day; prohibiting administrators from requiring a teacher to  
56 use the planning period time to complete duties beyond instructional planning; and making  
57 technical improvements and removing obsolete provisions.

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

1 That §18-2-26a of the Code of West Virginia, 1931, as amended, be repealed; that §18-  
2 2-26 of said code be amended and reenacted; that §18-2E-1a and §18-2E-5 of said code be  
3 amended and reenacted; that §18-5-13 and §18-5-45 of said code be amended and reenacted;  
4 that said code be further amended by adding thereto two new sections designated, §18-5-13b  
5 and §18-5-13c; that §18-5A-5 of said code be amended and reenacted; that §18-9A-8a of said  
6 code be amended and reenacted; and that §18A-4-14 of said code be amended and reenacted,  
7 all to read as follows:

## **CHAPTER 18. EDUCATION.**

### **ARTICLE 2. STATE BOARD OF EDUCATION.**

#### **§18-2-26. Abolishment and transition of regional education service agencies.**

1 (a) The regional education service agencies previously established by this section and  
2 W. Va. 126CSR72, filed October 15, 2015, and effective November 16, 2015, shall remain and  
3 may continue to operate in accordance with the provisions of this section prior to its amendment  
4 and reenactment at the Regular Session of the Legislature, 2017, and with said rule, unless and  
5 until modified by a cooperative agreement entered into by county boards within the agency  
6 boundaries or dissolved by said county boards: *Provided*, That on July 1, 2018, the regional  
7 education service agencies as provided under prior provisions of this section are dissolved.

8 (b) On July 1, 2018, all property, equipment and records held by the regional education  
9 service agencies necessary to effectuate the purposes of this article shall be transferred or  
10 liquidated or disbursed in accordance with section thirteen-c, article five of this chapter.

**ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.**

**§18-2E-1a. Standards, assessment and accountability programs; duties of the state board.**

1 (a) Prior to adoption or revision of academic standards in mathematics, English language  
2 arts, science and social studies, the state board shall constructively engage with the legislative  
3 oversight commission on education accountability as outlined in subsection (b). Prior to adoption  
4 of a new statewide summative assessment, the state board shall constructively engage with the  
5 legislative oversight commission on education accountability on the assessment program it  
6 intends to adopt to measure the progress of public school students in attaining a high quality  
7 education. Prior to the full implementation of a new accountability system, state board shall  
8 develop and recommend to the legislative oversight commission on education accountability an  
9 accountability program to help ensure a thorough and efficient system of schools. In developing  
10 the standards, assessment program and the accountability program, the state board shall take  
11 into consideration recommendations arising from any legislative interim study undertaken at the  
12 direction of the joint committee on government and finance and also shall take into consideration  
13 any recommendations made by the legislative oversight commission on education accountability.

14 (b) As part of their on-going responsibility for developing and implementing a program of  
15 standards, assessments and a program of accountability, the state board:

- 16 (1) Is prohibited from implementing the Common Core academic standards;
- 17 (2) Shall allow West Virginia educators the opportunity to participate in the development  
18 of the academic standards;
- 19 (3) Shall provide by rule for a cyclical review, by West Virginia educators, of any academic  
20 standards that are proposed by the state board;

21 (4) Shall review assessment tools, including tests of student performance and measures  
22 of school and school system performance, and determine when any improvements or additions  
23 are necessary;

24 (5) Shall consider multiple assessments, including, but not limited to, a state testing  
25 program developed in conjunction with the state's professional educators with assistance from  
26 such knowledgeable consultants as may be necessary, which may include criterion referenced  
27 tests;

28 (6) Is prohibited from adopting the Smarter Balanced Assessment system or the PARCC  
29 assessment system as the statewide summative assessment;

30 (7) Shall review all accountability measures, such as the accreditation and personnel  
31 evaluation systems and consider any improvements or additions deemed necessary; and

32 (8) Shall ensure that all statewide assessments of student performance are secure.

33 (c) The state board shall not adopt any national or regional testing program tied to federal  
34 funding, or national or regional academic standards tied to federal funding, without oversight by  
35 the legislative oversight commission on education accountability.

**§18-2E-5. Process for improving education; education standards; statewide assessment  
program; accountability measures; Office of Education Performance Audits; school  
accreditation and school system approval; intervention to correct low performance.**

1 (a) *Legislative findings, purpose and intent.* — The Legislature makes the following  
2 findings with respect to the process for improving education and its purpose and intent in the  
3 enactment of this section:

4 (1) The process for improving education includes four primary elements, these being:

5 (A) Standards which set forth the knowledge and skills that students should know and be  
6 able to perform as the result of a thorough and efficient education that prepares them for the  
7 twenty-first century, including measurable criteria to evaluate student performance and progress;

8 (B) Assessments of student performance and progress toward meeting the standards;

9 (C) A system of accountability for continuous improvement articulated by a rule  
10 promulgated by the state board that will build capacity in and ensure the efficiency of schools and  
11 districts to meet rigorous outcomes that assure student performance and progress toward  
12 obtaining the knowledge and skills intrinsic to a high-quality education, rather than monitoring for  
13 compliance with specific laws and regulations; and

14 (D) A method for building the capacity and improving the efficiency of schools and school  
15 systems to improve student performance and progress;

16 (2) As the constitutional body charged with the general supervision of schools as provided  
17 by general law, the state board has the authority following constructive engagement of the  
18 Legislature as provided in section one, article two-h of this chapter and as delegated by the  
19 Legislature by general law to establish the standards and assess the performance and progress  
20 of students against the standards, and to exercise its supervisory responsibility to hold schools  
21 and school systems accountable and assist schools and school systems to build capacity and  
22 improve efficiency so that the standards are met, including, when necessary, seeking additional  
23 resources in consultation with the Legislature and the Governor;

24 (3) As the constitutional body charged with providing for a thorough and efficient system  
25 of schools, the Legislature has the authority and the responsibility to establish and be engaged  
26 constructively in the determination of the knowledge and skills that students should know and be  
27 able to do as the result of a thorough and efficient education. This determination is made by using  
28 the process for improving education to determine when school improvement is needed by  
29 evaluating the results and the efficiency of the system of schools, by ensuring accountability and  
30 by providing for the necessary capacity and its efficient use;

31 (4) In consideration of these findings, the purpose of this section is to establish a process  
32 for improving education that includes the four primary elements as set forth in subdivision (1) of  
33 this subsection to provide assurances that the high-quality standards are, at a minimum, being



34 met and that a thorough and efficient system of schools is being provided for all West Virginia  
35 public school students on an equal education opportunity basis; and

36 (5) The intent of the Legislature in enacting this section is to establish a process through  
37 which the Legislature, the Governor and the state board will constructively consult on any  
38 measures affecting standards, assessments and accountability prior to their adoption, examine  
39 the performance and progress of students, schools and school systems and, when necessary,  
40 consider alternative measures to ensure that all students continue to receive the thorough and  
41 efficient education to which they are entitled. However, nothing in this section requires any specific  
42 level of funding by the Legislature.

43 (b) *Electronic county and school strategic improvement plans.* — The state board shall  
44 promulgate a rule consistent with this section and in accordance with article three-b, chapter  
45 twenty-nine-a of this code establishing an electronic county strategic improvement plan for each  
46 county board and an electronic school strategic improvement plan for each public school in this  
47 state. Each respective plan shall be for a period of no more than five years and shall include the  
48 mission and goals of the school or school system to improve student, school or school system  
49 performance and progress, as applicable. The strategic plan shall be revised annually in each  
50 area in which the school or system is below the standard on the annual performance measures.  
51 The plan shall be revised when required pursuant to this section to include each annual  
52 performance measure upon which the school or school system fails to meet the standard for  
53 performance and progress, the action to be taken to meet each measure, a separate time line  
54 and a date certain for meeting each measure, a cost estimate and, when applicable, the  
55 assistance to be provided by the department and other education agencies to improve student,  
56 school or school system performance and progress to meet the annual performance measure.

57 The department shall make available to all public schools through its website or the West  
58 Virginia Education Information System an electronic school strategic improvement plan  
59 boilerplate designed for use by all schools to develop an electronic school strategic improvement

60 plan which incorporates all required aspects and satisfies all improvement plan requirements of  
61 the Every Student Succeeds Act or subsequent federal law.

62 (c) *High-quality education standards and efficiency standards.* — In accordance with  
63 article three-b, chapter twenty-nine-a of this code, the state board shall adopt and periodically  
64 review and update high-quality education standards for student, school and school system  
65 performance and processes in the following areas:

- 66 (1) Academic standards;
- 67 (2) Workplace readiness skills;
- 68 (3) Finance;
- 69 (4) Transportation;
- 70 (5) Special education;
- 71 (6) Facilities;
- 72 (7) Administrative practices;
- 73 (8) Training of county board members and administrators;
- 74 (9) Personnel qualifications;
- 75 (10) Professional development and evaluation;
- 76 (11) Student performance, progress and attendance;
- 77 (12) Professional personnel, including principals and central office administrators, and  
78 service personnel attendance;
- 79 (13) School and school system performance and progress;
- 80 (14) A code of conduct for students and employees;
- 81 (15) Indicators of efficiency;
- 82 (16) Digital literacy skills; and
- 83 (17) Any other areas determined by the state board.

84 (d) *Comprehensive statewide student assessment program.* — The state board shall  
85 establish a comprehensive statewide student assessment program to assess student

86 performance and progress in grades three through twelve. The assessment program is subject to  
87 the following:

88 (1) The state board shall promulgate a rule in accordance with article three-b, chapter  
89 twenty-nine-a of this code establishing the comprehensive statewide student assessment  
90 program;

91 (2) Prior to the testing window of the 2017-2018 school year, the state board shall align  
92 the comprehensive statewide student assessment for all grade levels in which the test is given  
93 with the college-readiness standards adopted pursuant to section thirty-nine, article two of this  
94 chapter or develop other aligned tests to be required in grades three through eight and  
95 administered once during the grade span of nine through twelve to assess progress toward  
96 college and career readiness in English/language arts and math. The assessment in science shall  
97 be administered once in grade spans three through five, once in grade spans six through eight,  
98 and once in grade spans nine through twelve;

99 (3) In accordance with articles two and two-e, chapter eighteen of this code, the state  
100 board shall review or develop, and adopt a college and career readiness assessment to be  
101 administered in grade eleven: *Provided*, That the adopted college and career readiness  
102 assessment administered in grade eleven counts toward the statewide student assessment and  
103 must be used by a significant number of regionally accredited higher education institutions for  
104 determining college admissions;

105 (4) The comprehensive statewide student assessment shall be administered to students  
106 in accordance with the requirements of the Every Student Succeeds Act or subsequent federal  
107 law;

108 (5) The state board may provide, through the statewide assessment program, other  
109 optional testing or assessment instruments applicable to grade levels kindergarten through grade  
110 twelve which may be used by each school to promote student achievement. The state board  
111 annually shall publish and make available, electronically or otherwise, to school curriculum teams

112 and teacher collaborative processes the optional testing and assessment instruments. For any  
113 online assessment, the state board shall provide online assessment preparation to ensure that  
114 students have the requisite digital literacy skills to be successful on the assessment;

115 (6) The state board may adopt a career readiness assessment that measures and  
116 documents foundational workplace skills and leads to a nationally recognized work readiness  
117 certificate for students that meet minimum proficiency requirements; and

118 (7) The comprehensive statewide student assessment adopted prior to the testing window  
119 of the 2017-2018 school year shall continue to be used for at least a total of four consecutive  
120 years;

121 (8) No summative assessment approved by the state board may take more than two  
122 percent of a student's instructional time;

123 (9) No student may be required to complete a greater number of summative assessments  
124 than is required by the Every Student Succeeds Act except as otherwise required by this  
125 subsection; and

126 (10) Collection of personal data as part of the assessment process except for what is  
127 necessary for the student's instruction, academic and college and career search needs is  
128 prohibited.

129 (e) *State annual performance measures for school and school system accreditation.* —

130 The state board shall promulgate a rule in accordance with article three-b, chapter twenty-  
131 nine-a of this code that establishes a system that is based in multiple measures and meets the  
132 requirements of any federal law to assess and weigh annual performance measures to assure  
133 that schools and school systems are providing a thorough and efficient education to their students.  
134 State accreditation shall be reviewed and approved in a balanced manner that gives fair credit to  
135 all measures affecting students and subgroups of students in the schools and school systems.  
136 The state board also may establish performance incentives for schools and school systems as  
137 part of the state accreditation system. On or before December 1, 2018, the state board shall report

138 to the Governor and to the Legislative Oversight Commission on Education Accountability the  
139 proposed rule for establishing the measures and incentives of accreditation and the estimated  
140 cost therefore, if any. Thereafter, the state board shall provide an annual report to the Governor  
141 and to the Legislative Oversight Commission on Education Accountability on the impact and  
142 effectiveness of the accreditation system. The rule for school and school system accreditation  
143 proposed by the board may include, but is not limited to, the following measures:

- 144 (1) Student proficiency and growth in English and language arts, math, science and other  
145 subjects determined by the board;
- 146 (2) Graduation and attendance rate;
- 147 (3) Students taking and passing AP tests;
- 148 (4) Students completing a career and technical education class;
- 149 (5) Closing achievement gaps within subgroups of a school's student population; and
- 150 (6) Students scoring at or above average attainment on SAT or ACT tests.

151 (f) *Indicators of efficiency.* — In accordance with article three-b, chapter twenty-nine-a of  
152 this code, the state board shall adopt by rule and periodically review and update indicators of  
153 efficiency for use by the appropriate divisions within the department to ensure efficient  
154 management and use of resources in the public schools in the following areas:

- 155 (1) Curriculum delivery including, but not limited to, the use of distance learning;
- 156 (2) Transportation;
- 157 (3) Facilities;
- 158 (4) Administrative practices;
- 159 (5) Personnel; and
- 160 (6) Any other indicators as determined by the state board.

161 Each county board of education shall use the statewide electronic information system  
162 established by the state board for data collection and reporting to the state Department of  
163 Education.

164           (g) *Assessment and accountability of school and school system performance and*  
165 *processes.* — In accordance with article three-b, chapter twenty-nine-a of this code, the state  
166 board shall establish by rule a system of education performance measures to evaluate the quality  
167 of education and the preparation of students based on the annual measures of student, school  
168 and school system performance and progress. The system of education performance measures  
169 shall provide information to the state board, the Legislature and the Governor, upon which they  
170 may determine whether a thorough and efficient system of schools is being provided. The system  
171 of education performance measures shall include:

172           (1) The assessment of student, school and school system performance and progress  
173 based on the annual measures established pursuant to subsection (e) of this section;

174           (2) The evaluation of records, reports and other documents that provide information on  
175 the quality of education and compliance with statutes, policies and standards: and

176           (3) The review of school and school system electronic strategic improvement plans.

177           (h) *Uses of school and school system assessment information.* — The state board shall  
178 use information from the system of education performance measures to assist it in ensuring that  
179 a thorough and efficient system of schools is being efficiently provided and to improve student,  
180 school and school system performance and progress. Information from the system of education  
181 performance measures further shall be used by the state board for these purposes, including, but  
182 not limited to, the following:

183           (1) Determining accountability and accreditation for schools and school system approval  
184 status as required by state board rule and any federal law or regulations; and

185           (2) Holding schools and school systems accountable for the efficient use of existing  
186 resources to meet or exceed the standards; and

187           (3) Targeting additional resources when necessary to improve performance and progress.

188           The state board shall make the performance measures information available to the  
189 Legislature, the Governor, the general public and to any individual who requests the information,  
190 subject to the provisions of any act or rule restricting the release of information.

191           (i) *Early detection and intervention programs.* — Based on the assessment of student,  
192 school and school system performance and progress, the state board shall establish early  
193 detection and intervention programs using the available resources of the Department of  
194 Education, or other resources as appropriate, to assist underachieving schools and school  
195 systems to improve performance before conditions become so grave as to warrant more  
196 substantive state intervention. Assistance shall include, but is not limited to, providing additional  
197 technical assistance and programmatic, professional staff development, and providing monetary,  
198 staffing and other resources where appropriate.

199           (j) The state board may employ experienced education professionals, who serve at the  
200 will and pleasure of the state board, to coordinate on site and school system improvement efforts  
201 with staff at the State Department of Education to support schools and school systems in  
202 improving education performance measures.

203           (k) *School accreditation.* —

204           (1) The state board shall establish levels of accreditation to be assigned to schools. The  
205 establishment of levels of accreditation shall be subject to the following:

206           (A) The levels will be designed to demonstrate school performance on multiple measures  
207 as established by the state board by legislative rule in accordance with article three-b, chapter  
208 twenty-nine-a of this code and consistent with the applicable state laws, policies and standards,  
209 which include standards for performance-based accountability, high-quality education, and  
210 continuous improvement; and

211           (B) Will ensure compliance with federal law and applicable state laws, policies and  
212 standards at a minimum.

213 (2) The state board annually shall review the information from the system of education  
214 performance measures submitted for each school and shall accredit each school as designated  
215 in the rule, and consistent with the applicable state laws, policies and standards; and

216 (3) Exercise other powers and actions the state board determines necessary to fulfill its  
217 duties of general supervision of the schools and school systems of West Virginia.

218 (l) *School system approval.* — The state board annually shall review the information  
219 submitted for each school system from the system of education performance measures and issue  
220 to each county board an approval status in compliance with federal law and established by state  
221 board rule.

222 (m) Nonapproval for extraordinary circumstances.

223 (1) The state board shall establish and adopt additional standards to identify school  
224 systems in which the program may be nonapproved and the state board may issue nonapproval  
225 status whenever extraordinary circumstances exist as defined by the state board.

226 (2) When extraordinary circumstances exist, but do not rise to the level of immediate  
227 intervention as described in subsection (n) of this section, the state board may declare a state of  
228 emergency in the school system and shall direct designees to provide recommendations within  
229 sixty days of appointment for correcting the extraordinary circumstances. When the state board  
230 approves the recommendations, they shall be communicated to the county board. If progress in  
231 correcting the extraordinary circumstances, as determined by the state board, is not made within  
232 six months from the time the county board receives the recommendations, the state board shall  
233 intervene in the operation of the school system to cause improvements to be made that will  
234 provide assurances that a thorough and efficient system of schools will be provided. This  
235 intervention may include, but is not limited to, the following:

236 (A) Limiting the authority of the county board in areas that compromise the delivery of a  
237 thorough and efficient education to its students as designated by the state board by rule, which



238 may include delegating decision-making authority regarding these matters to the state  
239 superintendent who may:

240 (B) Declare that the office of the county superintendent is vacant;

241 (C) Declare that the positions of personnel who serve at the will and pleasure of the county  
242 superintendent as provided in section one, article two, chapter eighteen-a of this code, are vacant,  
243 subject to application and reemployment;

244 (D) Fill the declared vacancies during the period of intervention; and

245 (E) Take any direct action necessary to correct the extraordinary circumstance.

246 (n) Notwithstanding any other provision of this section, the state board may intervene  
247 immediately in the operation of the county school system with all the powers, duties and  
248 responsibilities contained in subsection (m) of this section, if the state board finds any of the  
249 following:

250 (1) A county board fails to act on a statutory obligation which would interrupt the day-to-  
251 day operations of the school system;

252 (2) That the conditions precedent to intervention exist as provided in this section; and that  
253 delaying intervention for any period of time would not be in the best interests of the students of  
254 the county school system; or

255 (3) That the conditions precedent to intervention exist as provided in this section and that  
256 the state board had previously intervened in the operation of the same school system and had  
257 concluded that intervention within the preceding five years.

258 (o) *Capacity*. — The process for improving education includes a process for targeting  
259 resources strategically to improve the teaching and learning process. Development of electronic  
260 school and school system strategic improvement plans, pursuant to subsection (b) of this section,  
261 is intended, in part, to provide mechanisms to target resources strategically to the teaching and  
262 learning process to improve student, school and school system performance. When deficiencies  
263 are detected through the assessment and accountability processes, the revision and approval of

264 school and school system electronic strategic improvement plans shall ensure that schools and  
265 school systems are efficiently using existing resources to correct the deficiencies. When the state  
266 board determines that schools and school systems do not have the capacity to correct  
267 deficiencies, the state board shall take one or more of the following actions:

268 (1) Work with the county board to develop or secure the resources necessary to increase  
269 the capacity of schools and school systems to meet the standards and, when necessary, seek  
270 additional resources in consultation with the Legislature and the Governor;

271 (2) Recommend to the appropriate body including, but not limited to, the Legislature,  
272 county boards, schools and communities methods for targeting resources strategically to  
273 eliminate deficiencies identified in the assessment and accountability processes. When making  
274 determinations on recommendations, the state board shall include, but is not limited to, the  
275 following methods:

276 The state board, or its designee, the West Virginia Department of Education, and county  
277 school systems, shall work collaboratively in:

278 (1) Examining reports and electronic strategic improvement plans regarding the  
279 performance and progress of students, schools and school systems relative to the standards and  
280 identifying the areas in which improvement is needed;

281 (2) Determining the areas of weakness and of ineffectiveness that appear to have  
282 contributed to the substandard performance and progress of students or the deficiencies of the  
283 school or school system;

284 (3) Determining the areas of strength that appear to have contributed to exceptional  
285 student, school and school system performance and progress and promoting their emulation  
286 throughout the system;

287 (4) Requesting technical assistance from the School Building Authority in assessing or  
288 designing comprehensive educational facilities plans;

289 (5) Recommending priority funding from the School Building Authority based on identified  
290 needs;

291 (6) Recommending special staff development programs from county boards based on  
292 identified needs;

293 (7) Submitting requests to the Legislature for appropriations to meet the identified needs  
294 for improving education;

295 (8) Directing educational expertise and support services strategically toward alleviating  
296 deficiencies;

297 (9) Ensuring that the need for facilities in counties with increased enrollment are  
298 appropriately reflected and recommended for funding;

299 (10) Ensuring that the appropriate person or entity is held accountable for eliminating  
300 deficiencies; and

301 (11) Ensuring that the needed capacity is available from the state and local level to assist  
302 the school or school system in achieving the standards and alleviating the deficiencies.

303 (p) *Building leadership capacity.* — To help build the governance and leadership capacity  
304 of a county board during an intervention in the operation of its school system, and to help assure  
305 sustained success following return of control to the county board, the county board shall establish  
306 goals and action plans, subject to approval of the state superintendent, to improve performance  
307 sufficiently to end the intervention within a period of not more than five years. The state  
308 superintendent shall maintain oversight and provide assistance and feedback to the county board  
309 on development and implementation of the goals and action plans. At a minimum, the goals and  
310 action plans shall include:

311 (1) An analysis of the training and development activities needed by the county board and  
312 leadership of the school system for effective governance and school improvement;

313           (2) Support for the training and development activities identified which may include those  
314 made available through the state superintendent, West Virginia School Board Association, and  
315 other sources identified in the goals and action plans; and

316           (3) Active involvement by the county board in the improvement process, working in tandem  
317 with the county superintendent to gather, analyze and interpret data, write time-specific goals to  
318 correct deficiencies, prepare and implement action plans and allocate or request from the  
319 Department of Education the resources, including board development training and coaching,  
320 necessary to achieve approved goals and action plans and sustain system and school  
321 improvement.

322           At least once each year during the period of intervention, the state board shall appoint a  
323 designee to assess the readiness of the county board to accept the return of control of the system  
324 or school from the state board and sustain the improvements, and shall make a report and  
325 recommendations to the state board supported by documented evidence of the progress made  
326 on the goals and action plans. The state board may return any portion of control of the operations  
327 of the school system or end the intervention in its entirety by a majority vote. If the state board  
328 determines at the fifth annual assessment that the county board is still not ready to accept return  
329 of control by the state board and sustain the improvements, the state board shall hold a public  
330 hearing in the affected county at which the attendance by all members of the county board is  
331 requested so that the reasons for continued intervention and the concerns of the citizens of the  
332 county may be heard. The state board may continue the intervention only after it holds the public  
333 hearing and may require revision of the goals and action plans. The state board must thereafter  
334 hold a public hearing after each annual assessment beyond the fifth year. If a school system is in  
335 intervention status on the effective date of this provision, the total years of intervention shall be  
336 calculated from the date of initial intervention.

337           Following the termination of an intervention in the operation of a school system and return  
338 of full control by the state board, the support for governance education and development shall

339 continue as needed for up to three years. If at any time within this three years, the state board  
340 determines that intervention in the operation of the school system is again necessary, the state  
341 board shall again hold a public hearing in the affected county so that the reasons for the  
342 intervention and the concerns of the citizens of the county may be heard prior to intervening.

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

**§18-5-13. Authority of boards generally.**

1 Subject to the provisions of this chapter and the rules of the state board, each county  
2 board may:

3 (a) Control and manage all of the schools and school interests for all school activities and  
4 upon all school property owned or leased by the county, including:

5 (1) Requiring schools to keep records regarding funds connected with the school or school  
6 interests, including all receipts and disbursements of all funds collected or received by:

7 (A) Any principal, teacher, student or other person in connection with the schools and  
8 school interests;

9 (B) Any program, activity or other endeavor of any nature operated or conducted by or in  
10 the name of the school; and

11 (C) Any organization or body directly connected with the school;

12 (2) Allowing schools to expend funds for student, parent, teacher and community  
13 recognition programs. A school may use only funds it generates through a fund-raising or  
14 donation-soliciting activity. Prior to commencing the activity, the school shall:

15 (A) Publicize the activity as intended for this purpose; and

16 (B) Designate for this purpose the funds generated;

17 (3) Auditing the records and conserving the funds, including securing surety bonds by  
18 expending board moneys. The funds described in this subsection are quasipublic funds, which  
19 means the moneys were received for the benefit of the school system as a result of curricular or  
20 noncurricular activities;

21 (b) Establish:

22 (1) Schools, from preschool through high school;

23 (2) Vocational schools; and

24 (3) Schools and programs for post-high school instruction, subject to approval of the state  
25 board;

26 (c) Close any school:

27 (1) Which is unnecessary and assign the students to other schools. The closing shall occur  
28 pursuant to official action of the county board. Except in emergency situations when the timing  
29 and manner of notification are subject to approval by the state superintendent, the county board  
30 shall notify the affected teachers and service personnel of the county board action not later than  
31 the first Monday in April. The board shall provide notice in the same manner as set forth in section  
32 four of this article; or

33 (2) Pursuant to subsection (e) of this section;

34 (d) Consolidate schools;

35 (e) Close any elementary school whose average daily attendance falls below twenty  
36 students for two consecutive months. The county board may assign the students to other schools  
37 in the district or to schools in adjoining districts. If the teachers in the closed school are not  
38 transferred or reassigned to other schools, they shall receive one month's salary;

39 (f) Provide transportation according to rules established by the county board, as follows:

40 (1) To provide at public expense adequate means of transportation:

41 (A) For all children of school age who live more than two-miles distance from school by  
42 the nearest available road;

43 (B) For school children participating in county board-approved curricular and  
44 extracurricular activities;

45 (C) Across county lines for students transferred from one district to another by mutual  
46 agreement of both county boards. The agreement shall be recorded in the meeting minutes of  
47 each participating county board and is subject to subsection (h) of this section; and

48 (D) Within available revenues, for students within two-miles distance of the school; and

49 (2) To provide transportation for participants in projects operated, financed, sponsored or  
50 approved by the Bureau of Senior Services. This transportation shall be provided at no cost to  
51 the county board. All costs and expenses incident in any way to this transportation shall be borne  
52 by the bureau or the local or county affiliate of the bureau;

53 (3) Any school bus owned by the county board may be operated only by a bus operator  
54 regularly employed by the county board, except as provided in subsection (g) of this section;

55 (4) Pursuant to rules established by the state board, the county board may provide for  
56 professional employees to be certified to drive county board-owned vehicles that have a seating  
57 capacity of fewer than ten passengers. These employees may use the vehicles to transport  
58 students for school-sponsored activities, but may not use the vehicles to transport students  
59 between school and home. Not more than one of these vehicles may be used for any school-  
60 sponsored activity;

61 (5) Students may not be transported to a school-sponsored activity in any county-owned  
62 or leased vehicle that does not meet school bus or public transit ratings. This section does not  
63 prohibit a parent from transporting ten or fewer students in a privately-owned vehicle;

64 (6) Students may be transported to a school-sponsored activity in a vehicle that has a  
65 seating capacity of sixteen or more passengers which is not owned and operated by the county  
66 board only as follows:

67 (A) The state board shall promulgate a rule to establish requirements for:

68 (i) Automobile insurance coverage;

69 (ii) Vehicle safety specifications;

70 (iii) School bus or public transit ratings; and

71 (iv) Driver training, certification and criminal history record check; and

72 (B) The vehicle owner shall provide to the county board proof that the vehicle and driver  
73 satisfy the requirements of the state board rule; and

74 (7) Buses shall be used for extracurricular activities as provided in this section only when  
75 the insurance coverage required by this section is in effect;

76 (g) Lease school buses pursuant to rules established by the county board.

77 (1) Leased buses may be operated only by bus operators regularly employed by the  
78 county board, except that these buses may be operated by bus operators regularly employed by  
79 another county board in this state if bus operators from the owning county are unavailable.

80 (2) The lessee shall bear all costs and expenses incurred by, or incidental to the use of,  
81 the bus.

82 (3) The county board may lease buses to:

83 (A) Public and private nonprofit organizations and private corporations to transport school-  
84 age children for camps or educational activities;

85 (B) Any college, university or officially recognized campus organization for transporting  
86 students, faculty and staff to and from the college or university. Only college and university  
87 students, faculty and staff may be transported pursuant to this paragraph. The lease shall include  
88 provisions for:

89 (i) Compensation for bus operators;

90 (ii) Consideration for insurance coverage, repairs and other costs of service; and

91 (iii) Any rules concerning student behavior;

92 (C) Public and private nonprofit organizations, including education employee  
93 organizations, for transportation associated with fairs, festivals and other educational and cultural  
94 events. The county board may charge fees in addition to those charges otherwise required by this  
95 subsection;



96 (h) To provide at public expense for insurance coverage against negligence of the drivers  
97 of school buses, trucks or other vehicles operated by the county board. Any contractual  
98 agreement for transportation of students shall require the vehicle owner to maintain insurance  
99 coverage against negligence in an amount specified by the county board;

100 (i) Provide for the full cost or any portion thereof for group plan insurance benefits not  
101 provided or available under the West Virginia Public Employees Insurance Act. Any of these  
102 benefits shall be provided:

103 (1) Solely from county board funds; and

104 (2) For all regular full-time employees of the county board;

105 (j) Employ teacher aides; to provide in-service training for the aides pursuant to rules  
106 established by the state board; and, prior to assignment, to provide a four-clock-hour program of  
107 training for a service person assigned duties as a teacher aide in an exceptional children program.  
108 The four-clock-hour program shall consist of training in areas specifically related to the education  
109 of exceptional children;

110 (k) Establish and operate a self-supporting dormitory for:

111 (1) Students attending a high school or participating in a post high school program; and

112 (2) Persons employed to teach in the high school or post high school program;

113 (l) At the county board's discretion, employ, contract with or otherwise engage legal  
114 counsel in lieu of using the services of the prosecuting attorney to advise, attend to, bring,  
115 prosecute or defend, as the case may be, any matters, actions, suits and proceedings in which  
116 the county board is interested;

117 (m) Provide appropriate uniforms for school service personnel;

118 (n) Provide at public expense for payment of traveling expenses incurred by any person  
119 invited to appear to be interviewed concerning possible employment by the county board, subject  
120 to rules established by the county board;

121 (o) Allow designated employees to use publicly provided carriage to travel from their  
122 residences to their workplace and return. The use:

123 (1) Is subject to the supervision of the county board; and

124 (2) Shall be directly connected with, required by and essential to the performance of the  
125 employee's duties and responsibilities;

126 (p) Provide at public expense adequate public liability insurance, including professional  
127 liability insurance, for county board employees;

128 (q) (1) Enter into cooperative agreements with one or more county boards or educational  
129 services cooperative to provide improvements to the instructional needs of each district. The  
130 cooperative agreements may be used to employ specialists in a field of academic study or for  
131 support functions or services for the field.

132 (2) Enter into cooperative agreements with one or more county boards to facilitate  
133 coordination and cooperation in areas of service to reduce administrative and/or operational  
134 costs, including the consolidation of administrative, coordinating, and other county level functions  
135 into shared functions to promote the efficient administration and operation of the public school  
136 systems including, but not limited to:

137 (A) Purchasing;

138 (B) Operation of specialized programs for exceptional children;

139 (C) Employment of any school personnel as defined in section one, article one, chapter  
140 eighteen-a of this code;

141 (D) Professional development;

142 (E) Technology including, but not limited to WVEIS; and

143 (F) Billing for school-based Medicaid services in schools throughout the state.

144 Each such cooperative agreement shall be in writing and agreed to by each county board  
145 participating in the cooperative agreement. Each cooperative agreement that is an employment  
146 agreement may be entered into on a case-by-case basis. Notwithstanding the geographic

147 quadrants as provided in section thirteen-b of this article, school systems may enter into  
148 cooperative agreements with any school system in the state.

149 (3) Enter into a cooperative agreement with other county boards to establish educational  
150 services cooperatives as provided in section thirteen-c of this article.

151 (r) Provide information about vocational and higher education opportunities to exceptional  
152 students. The county board shall provide in writing to the students and their parents or guardians  
153 information relating to programs of vocational education and to programs available at state  
154 institutions of higher education. The information may include sources of available funding,  
155 including grants, mentorships and loans for students who wish to attend classes at institutions of  
156 higher education;

157 (s) Enter into agreements with other county boards for the transfer and receipt of any funds  
158 determined to be fair when students are permitted or required to attend school in a district other  
159 than the district of their residence. These agreements are subject to the approval of the state  
160 board; and

161 (t) Enter into job-sharing arrangements, as defined in section one, article one, chapter  
162 eighteen-a of this code, with its employees, subject to the following provisions:

163 (1) A job-sharing arrangement shall meet all the requirements relating to posting,  
164 qualifications and seniority, as provided in article four, chapter eighteen-a of this code;

165 (2) Notwithstanding any contrary provision of this code or legislative rule and specifically  
166 article sixteen, chapter five of this code, a county board that enters into a job-sharing arrangement:

167 (A) Shall provide insurance coverage to the one employee mutually agreed upon by the  
168 employees participating in that arrangement; and

169 (B) May not provide insurance benefits of any type to more than one of the job-sharing  
170 employees, including any group plan available under the State Public Employees Insurance Act;

171 (3) Each job-sharing agreement shall be in writing on a form prescribed and furnished by  
172 the county board. The agreement shall designate specifically one employee only who is entitled

173 to the insurance coverage. Any employee who is not designated is not eligible for state public  
174 employees insurance coverage regardless of the number of hours he or she works;

175 (4) All employees involved in the job-sharing agreement shall meet the requirements of  
176 subdivision (3), section two, article sixteen, chapter five of this code; and

177 (5) When entering into a job-sharing agreement, the county board and the participating  
178 employees shall consider issues such as retirement benefits, termination of the job-sharing  
179 agreement and any other issue the parties consider appropriate. Any provision in the agreement  
180 relating to retirement benefits may not cause any cost to be incurred by the retirement system  
181 that is more than the cost that would be incurred if a single employee were filling the position; and

182 (u) Under rules it establishes for each child, expend an amount not to exceed the  
183 proportion of all school funds of the district that each child would be entitled to receive if all the  
184 funds were distributed equally among all the children of school age in the district upon a per capita  
185 basis.

**§18-5-13b. County Superintendents' Advisory Council, purpose, reports.**

1 (a) The County Superintendents' Advisory Council, ("the Council") is hereby established.  
2 The purpose of the council is to promote collaboration among county districts and to provide input  
3 to the State Board of Education and state superintendent on issues facing school systems.

4 (b) After the effective date of this section, but no later than June 1, 2017, all fifty-five county  
5 superintendents shall convene to divide the state into four geographic quadrants for the purpose  
6 of carrying out the work of the council as described herein.

7 (c) County superintendents' responsibilities –

8 (1) County superintendents belonging to the same geographic quadrant shall meet to  
9 select a county superintendent to represent the geographic quadrant. The method of selection of  
10 the representative is at the discretion of each geographic quadrant. The representative of each  
11 geographic quadrant will represent the council at the state level.

12 (2) County superintendents of each geographic quadrant shall meet as necessary to  
13 identify coordination and cooperation in areas of service to reduce administrative and/or  
14 operational costs, including the consolidation of administrative, coordinating, and other county  
15 level functions into shared functions to promote the efficient administration and operation of the  
16 public school systems. These areas of service include, but are not limited to, the cooperative  
17 agreement areas as provided in subsection (q), section thirteen of this article.

18 (d) The representative from each of the four geographic quadrants of the council shall  
19 identify issues facing their geographic quadrants and present them at the state level as follows:

20 (1) Meet semiannually with the State Superintendent of Schools;

21 (2) Meet annually with the State Board of Education; and

22 (3) Provide an annual report to Legislative Oversight Commission on Education  
23 Accountability and the Governor on or before June 30 of each year.

24 (e) At least one meeting in each geographic quadrant annually shall include on the  
25 meeting agenda a discussion of any recommendations of the county boards in the quadrant for  
26 changes in laws or policies needed to better empower them to meet the state's education goals.  
27 A report of these recommendations, if any, shall be included in the annual report to Legislative  
28 Oversight Commission on Education Accountability and the Governor.

**§18-5-13c. Educational services cooperatives; purpose; establishment; governance;  
authorized functions and services.**

1 (a) Pursuant to subsection (q), section thirteen of this article, a county board is authorized  
2 to enter into a cooperative agreement with one or more other county boards to establish  
3 educational services cooperatives which shall serve as regional units to provide for high quality,  
4 cost effective lifelong education programs and services to students, schools, school systems, and  
5 communities in accordance with this section. Each educational services cooperative may serve  
6 as a regional public multi-service agency to develop, manage, and provide such services or  
7 programs as determined by its governing council and as provided in this section or otherwise

8 provided in this code. All references in this code to regional education service agencies or RESA's  
9 mean an educational services cooperative as authorized under this section.

10 (b) The regional education service agencies previously established by section twenty-six,  
11 article two of this chapter and W. Va. 126CSR72, filed October 15, 2015, and effective November  
12 16, 2015, shall remain and may continue to operate in accordance with said section and rule  
13 unless and until modified by a cooperative agreement entered into by county boards within the  
14 boundaries of the agency or dissolved by said county boards: *Provided*, That on July 1, 2018, the  
15 regional education service agencies as provided under prior provisions of section twenty-six,  
16 article two of this chapter are dissolved. If a regional education service agency is reconfigured  
17 pursuant to a cooperative agreement or is dissolved, all property, equipment and records held by  
18 the regional education service agency necessary to effectuate the purposes of this section shall  
19 be transferred or liquidated and disbursed in accordance with the following priority order: (1) To  
20 any successor educational services cooperative substantially covering the same geographical  
21 area; (2) To the county boards who were members of the regional education service agency as  
22 agreed upon by those counties; or (3) To the state board or to other appropriate entities as  
23 provided by law.

24 (c) An educational services cooperative shall be under the direction and control of a  
25 governing council consisting of the following members:

26 (1) The county superintendent of each county participating in the cooperative agreement;

27 (2) A member of the board of education from each county participating in the cooperative  
28 agreement selected by the county board of education as provided in the bylaws of the governing  
29 council of the educational services cooperative; and

30 (3) The following representatives, if any, to be selected by the educational services  
31 cooperative administrator with the consent of the governing council:

32 (A) Representatives of institutions of higher education and community and technical  
33 colleges serving the geographical area covered by the educational services cooperative;

- 34 (B) One non-superintendent chief instructional leader employed by a member county;
- 35 (C) One school principal employed by a member county;
- 36 (D) One teacher employed by a member county; and
- 37 (E) Additional members representing business and industry, or other appropriate entities,
- 38 as the governing council determines fit to meet its responsibilities.

39 (d) The governing council of an educational services cooperative:

40 (1) Shall adopt bylaws concerning the appointment and terms of its members, including  
41 the authorization of designees by its members, the selection of officers and their terms, the filling  
42 of vacancies, the appointment of task forces and study groups, the evaluation of the executive  
43 director and staff and any other provisions necessary for the operation of the educational services  
44 cooperative. A quorum for governing council meetings shall be a simple majority of the number  
45 of members of each governing council;

46 (2) Shall appoint an individual to serve as the educational services cooperative  
47 administrator who shall serve at the will and pleasure of the governing council and shall implement  
48 the policies of the governing council.

49 (3) May employ regular full-time and part-time staff, as necessary, after a majority of the  
50 members of a governing council, by vote, verify that such employment is necessary for effective  
51 provision of services and to perform services or other projects that may require staff and support  
52 services for effective implementation. Staff who are hired into a position that requires a specified  
53 certification must maintain the certification for the duration of employment. The governing council  
54 is the sole employer of the educational services cooperative's personnel it employs and shall be  
55 responsible for any benefit and liability programs necessitated by such employment. Employees  
56 of the educational services cooperative are considered state employees for the purposes of  
57 participation in the state's public employees' insurance and retirement programs. A recipient of  
58 personnel services from the educational services cooperative is not deemed an employer  
59 because of the exercise of supervision or control over any personnel services provided;

60 (4) May purchase, hold, encumber and dispose of real property, in the name of the  
61 educational services cooperative, for use as its office or for any educational service provided by  
62 the educational services cooperative if a resolution to do so is adopted by a two-thirds vote of the  
63 members of the governing council and then approved by three-fourths of the county boards in  
64 the educational services cooperative by majority vote of each county board;

65 (5) Shall operate as Local Educational Agencies (LEA's) for financial purposes, including  
66 grants and cooperative purchasing, and collectively as essential agencies responsible for  
67 performing service functions to the total community. An educational services cooperative is  
68 eligible as an LEA to participate in partnership with or on behalf of any county school system or  
69 school in those programs that will accomplish implementation of the strategic plan and/or state  
70 education initiative of the system or school, or to further statutory priorities consistent with  
71 educational services cooperative operations;

72 (6) May receive, expend and disburse funds from the state and federal governments, from  
73 member counties, or from gifts and grants and may contract with county boards of education, the  
74 West Virginia Department of Education, institutions of higher education, persons, companies, or  
75 other agencies to implement programs and services at the direction of the council. The state  
76 board, department of education, or any member county board may request implementation of  
77 programs and services by the educational services cooperative. An educational services  
78 cooperative may also receive funds from profit-generating enterprises, the funds of which will  
79 contribute to the educational services cooperative initiatives. Each educational services  
80 cooperative is encouraged to partner with member school systems, particularly those designated  
81 as low-performing, and other organizations as appropriate to attract and leverage resources  
82 available from federal programs to maximize its capacity for meeting the needs of member  
83 schools and school systems. Educational services cooperatives are recognized as eligible LEA's  
84 for the purposes of applying, on behalf of school systems, for grant funds consistent with



85 performing regional services and functions and/or supportive of education initiatives of the  
86 educational services cooperative;

87 (7) Upon the request of one or more county boards of education, or by the state board as  
88 permitted or contracted, and if directed by law, an educational services cooperative may assume  
89 responsibility for one or more functions otherwise performed by one or more county boards of  
90 education;

91 (8) May offer technical assistance, including targeted comprehensive staff development  
92 services, or other technical assistance to any member school or school system, and give priority  
93 to those schools and school systems that are found to be out of compliance with a state law or  
94 federal law;

95 (9) May serve as repositories of research-based teaching and learning practices, and shall  
96 use technology, particularly web-based technology, to ensure maximum access to such practices  
97 by public schools in the region and state; and

98 (10) Shall develop and/or implement any other programs or services as directed by law or  
99 the governing council, or requested by individual member counties or groups of member counties  
100 subject to available funds. The Legislature expects that the assistance and programs developed  
101 and/or implemented by the educational services cooperatives may differ among the schools,  
102 counties and educational services cooperatives.

103 (d) The administrator of each educational services cooperative shall submit annually a  
104 plan to the governing council that identifies the programs and services which are suggested for  
105 implementation by the educational services cooperative during the following year. The plan shall  
106 contain components of long-range planning determined by the governing council. These  
107 programs and services may include, but are not limited to, the following areas:

108 (1) Administrative services;

109 (2) Curriculum development;

- 110 (3) Data processing;
- 111 (4) Distance learning and other telecommunication services;
- 112 (5) Evaluation and research;
- 113 (6) Staff development;
- 114 (7) Media and technology centers;
- 115 (8) Publication and dissemination of materials;
- 116 (9) Pupil personnel services;
- 117 (10) Planning;
- 118 (11) Secondary, postsecondary, community, adult, and adult vocational education;
- 119 (12) Teaching and learning services, including services for students with special talents and  
120 special needs;
- 121 (13) Employee personnel and employment services;
- 122 (14) Vocational rehabilitation;
- 123 (15) Health, diagnostic, and child development services and centers;
- 124 (16) Leadership or direction in early childhood and family education;
- 125 (17) Community services;
- 126 (18) Fiscal services and risk management programs;
- 127 (19) Legal services;
- 128 (20) Technology planning, training, and support services;
- 129 (21) Health and safety services;
- 130 (22) Student academic challenges;

131 (23) Cooperative purchasing services; and

132 (24) Other programs and services as may be provided pursuant to other provisions of this  
133 Code.

134 (e) The educational services cooperative administrator, with advice and assistance of the  
135 governing council, may select as its fiscal agent one of the county boards of education comprising  
136 the educational services cooperative. The county board so selected may maintain a separate  
137 bank account or accounts for the receipt and disbursement of all educational services cooperative  
138 funds and perform the accounting functions specified in the policies adopted by the state board.  
139 A county board of education serving as a fiscal agent may not initiate action, direct the programs  
140 or substitute its judgment for that of the educational services cooperative administrator as advised  
141 by the governing council. The county board of education may reject an action of the educational  
142 services cooperative administrator if sufficient funds are not available, or if it perceives a legal  
143 conflict. The educational services cooperative administrator shall make arrangements for an  
144 annual audit to be conducted in accordance with the requirements of the OMB Uniform Guidance  
145 (2 C.F.R. 200) and the cost of the audit shall be incurred by the educational services cooperative.  
146 Prior to making those arrangements, the educational services cooperative administrator must  
147 coordinate with the respective fiscal agent to ensure the audit addresses all applicable issues.

148 (f) Notwithstanding any other provision of this code to the contrary, employees of educational  
149 services cooperatives shall be reimbursed for travel, meals and lodging at the same rate as state  
150 employees under the travel management office of the Department of Administration.

151 (g) Notwithstanding any other provision of this code to the contrary, county board members  
152 serving on governing councils of educational services cooperatives may receive compensation at  
153 a rate not to exceed \$100 per meeting attended, not to exceed fifteen meetings per year. County  
154 board members serving on governing councils may be reimbursed for travel at the same rate as  
155 state employees under the rules of the travel management office of the Department of

156 Administration. A county board member may not be an employee of an educational services  
157 cooperative.

**§18-5-45. School calendar.**

1 (a) As used in this section:

2 (1) "Instructional day" means a day within the instructional term which meets the following  
3 criteria:

4 (A) Instruction is offered to students for at least the minimum number of minutes as follows:

5 (i) For early childhood programs as provided in subsection (d) section forty-four of this  
6 article;

7 (ii) For schools with grade levels kindergarten through and including grade five, 315  
8 minutes of instructional time per day;

9 (iii) For schools with grade levels six through and including grade eight, 330 minutes of  
10 instructional time per day; and

11 (iv) For schools with grade levels nine through and including grade twelve, 345 minutes of  
12 instructional time per day.

13 (B) Instructional time is used for instruction and cocurricular activities; and

14 (C) Other criteria as the state board determines appropriate.

15 (2) "Cocurricular activities" are activities that are closely related to identifiable academic  
16 programs or areas of study that serve to complement academic curricula as further defined by  
17 the state board; and

18 (3) "Instruction delivered through alternative methods" means a plan developed by a  
19 county board and approved by the state board for teachers to assign and grade work to be  
20 completed by students on days when schools are closed due to inclement weather or other  
21 unforeseen circumstances.

22 (b) *Findings.* –

23 (1) The primary purpose of the school system is to provide instruction for students.

24 (2) The school calendar, as defined in this section, is designed to define the school term  
25 both for employees and for instruction.

26 (3) The school calendar shall provide for one hundred eighty separate instructional days  
27 or an equivalent amount of instructional time as provided in this section.

28 (c) The county board shall provide a school term for its schools that contains the following:

29 (1) An employment term that excludes Saturdays and Sundays and consists of at least  
30 two hundred days, which need not be successive. The beginning and closing dates of the  
31 employment term may not exceed forty-eight weeks;

32 (2) Within the employment term, an instructional term for students of no less than one  
33 hundred eighty separate instructional days, which includes an inclement weather and  
34 emergencies plan designed to guarantee an instructional term for students of no less than one  
35 hundred eighty separate instructional days, subject to the following:

36 (A) A county board may increase the length of the instructional day as defined in this  
37 section by at least thirty minutes per day to ensure that it achieves at least an amount of  
38 instructional time equivalent to one hundred and eighty separate instructional days within its  
39 school calendar and:

40 (i) Apply up to five days of this equivalent time to cancel days lost due to necessary school  
41 closures;

42 (ii) Plan within its school calendar and not subject to cancellation and rescheduling as  
43 instructional days up to an additional five days or equivalent portions of days, without students  
44 present, to be used as determined by the county board exclusively for activities by educators at  
45 the school level designed to improve instruction; and

46 (iii) Apply any additional equivalent time to recover time lost due to late arrivals and early  
47 dismissals;

48 (B) Subject to approval of its plan by the state board, a county board may deliver  
49 instruction through alternative methods on up to five days when schools are closed due to  
50 inclement weather or other unforeseen circumstances and these days are instructional days  
51 notwithstanding the closure of schools; and

52 (C) The use of equivalent time gained by lengthening the school day to cancel days lost,  
53 and the delivery of instruction through alternative methods, both as defined in this section, shall  
54 be considered instructional days for the purpose of meeting the 180 separate day requirement  
55 and as employment days for the purpose of meeting the 200 day employment term.

56 (3) Within the employment term, noninstructional days shall total twenty and shall be  
57 comprised of the following:

58 (A) Seven paid holidays;

59 (B) Election day as specified in section two, article five, chapter eighteen-a of this code;

60 (C) Six days to be designated by the county board to be used by the employees outside  
61 the school environment, with at least four outside the school environment days scheduled to occur  
62 after the one hundred and thirtieth instructional day of the school calendar; (D) One day to be  
63 designated by the county board to be used by the employees for preparation for opening school  
64 and one day to be designated by the county board to be used by the employees for preparation  
65 for closing school: *Provided*, That the school preparation days may be used for the purposes set  
66 forth in paragraph (E) of this subdivision at the teacher's discretion; and

67 (E) The remaining days to be designated by the county board for purposes to include, but  
68 not be limited to:

69 (i) Curriculum development;

70 (ii) Professional development;

71 (iii) Teacher-pupil-parent conferences;

72 (iv) Professional meetings;

73 (v) Making up days when instruction was scheduled but not conducted; and

74 (vi) At least six two-hour blocks of time for faculty senate meetings with at least one two-  
75 hour block of time scheduled in the first month of the employment term, at least one two-hour  
76 block of time scheduled in the last month of the employment term and at least one two-hour block  
77 of time scheduled in each of the months of October, December, February and April; and

78 (4) Scheduled out-of-calendar days that are to be used for instructional days in the event  
79 school is canceled for any reason.

80 (d) A county board of education shall develop a policy that requires additional minutes of  
81 instruction in the school day or additional days of instruction to recover time lost due to late arrivals  
82 and early dismissals.

83 (e) If it is not possible to complete one hundred eighty separate instructional days with the  
84 current school calendar and the additional five days of instructional time gained by increasing the  
85 length of the instructional day as provided in subsection (c) of this section are insufficient to offset  
86 the loss of separate instructional days, the county board shall schedule instruction on any  
87 available noninstructional day, regardless of the purpose for which the day originally was  
88 scheduled, or an out-of-calendar day and the day will be used for instruction of students: *Provided,*  
89 That the provisions of this subsection do not apply to:

90 (1) Holidays;

91 (2) Election day;

92 (3) Saturdays and Sundays; and

93 (4) The five days or equivalent portions of days planned within the school calendar  
94 exclusively for activities by educators at the school level to improve instruction that are gained by  
95 increasing the length of the instructional day as provided in subsection (c) of this section.

96 (f) The instructional term shall commence and terminate on a date selected by the county  
97 board.

98 (g) The state board may not schedule the primary statewide assessment program more  
99 than thirty days prior to the end of the instructional year unless the state board determines that  
100 the nature of the test mandates an earlier testing date.

101 (h) The following applies to cocurricular activities:

102 (1) The state board shall determine what activities may be considered cocurricular;

103 (2) The state board shall determine the amount of instructional time that may be consumed  
104 by cocurricular activities; and

105 (3) Other requirements or restrictions the state board may provide in the rule required to  
106 be promulgated by this section.

107 (i) Extracurricular activities may not be used for instructional time.

108 (j) Noninstructional interruptions to the instructional day shall be minimized to allow the  
109 classroom teacher to teach.

110 (k) Prior to implementing the school calendar, the county board shall secure approval of  
111 its proposed calendar from the state board or, if so designated by the state board, from the state  
112 superintendent.

113 (l) In formulation of a school's calendar, a county school board shall hold at least two public  
114 meetings that allow parents, teachers, teacher organizations, businesses and other interested  
115 parties within the county to discuss the school calendar. The public notice of the date, time and  
116 place of the public hearing must be published in a local newspaper of general circulation in the  
117 area as a Class II legal advertisement, in accordance with the provisions of article three, chapter  
118 fifty-nine of this code.

119 (m) The county board may contract with all or part of the personnel for a longer term of  
120 employment.

121 (n) The minimum instructional term may be decreased by order of the state superintendent  
122 in any county declared a federal disaster area and in any county subject to an emergency or



123 disaster declaration by the Governor when the event causing the declaration is substantially  
124 related to the loss of instructional days in the county.

125 (o) Notwithstanding any provision of this code to the contrary, the state board may grant  
126 a waiver to a county board for its noncompliance with provisions of chapter eighteen, eighteen-a,  
127 eighteen-b and eighteen-c of this code to maintain compliance in reaching the mandatory one  
128 hundred eighty separate instructional days established in this section.

129 (p) The state board shall promulgate a rule in accordance with the provisions of article  
130 three-b, chapter twenty-nine-a of this code for the purpose of implementing the provisions of this  
131 section.

## **ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.**

### **§18-5A-5. Public school faculty senates established; election of officers; powers and duties.**

1 (a) There is established at every public school in this state a faculty senate which is  
2 comprised of all permanent, full-time professional educators employed at the school who shall all  
3 be voting members. "Professional educators", as used in this section, means "professional  
4 educators" as defined in chapter eighteen-a of this code. A quorum of more than one half of the  
5 voting members of the faculty shall be present at any meeting of the faculty senate at which official  
6 business is conducted. Prior to the beginning of the instructional term each year, but within the  
7 employment term, the principal shall convene a meeting of the faculty senate to elect a chair, vice  
8 chair and secretary and discuss matters relevant to the beginning of the school year. The vice  
9 chair shall preside at meetings when the chair is absent. Meetings of the faculty senate shall be  
10 held during the times provided in accordance with subdivision (12), subsection (b) of this section  
11 as determined by the faculty senate. Emergency meetings may be held during noninstructional  
12 time at the call of the chair or a majority of the voting members by petition submitted to the chair  
13 and vice chair. An agenda of matters to be considered at a scheduled meeting of the faculty  
14 senate shall be available to the members at least two employment days prior to the meeting. For

15 emergency meetings the agenda shall be available as soon as possible prior to the meeting. The  
16 chair of the faculty senate may appoint such committees as may be desirable to study and submit  
17 recommendations to the full faculty senate, but the acts of the faculty senate shall be voted upon  
18 by the full body.

19 (b) In addition to any other powers and duties conferred by law, or authorized by policies  
20 adopted by the state or county board or bylaws which may be adopted by the faculty senate not  
21 inconsistent with law, the powers and duties listed in this subsection are specifically reserved for  
22 the faculty senate. The intent of these provisions is neither to restrict nor to require the activities  
23 of every faculty senate to the enumerated items except as otherwise stated. Each faculty senate  
24 shall organize its activities as it considers most effective and efficient based on school size,  
25 departmental structure and other relevant factors.

26 (1) Each faculty senate shall control funds allocated to the school from legislative  
27 appropriations pursuant to section nine, article nine-a of this chapter. From those funds, each  
28 classroom teacher and librarian shall be allotted \$100 for expenditure during the instructional year  
29 for academic materials, supplies or equipment which, in the judgment of the teacher or librarian,  
30 will assist him or her in providing instruction in his or her assigned academic subjects or shall be  
31 returned to the faculty senate: *Provided*, That nothing contained herein prohibits the funds from  
32 being used for programs and materials that, in the opinion of the teacher, enhance student  
33 behavior, increase academic achievement, improve self-esteem and address the problems of  
34 students at risk. The remainder of funds shall be expended for academic materials, supplies or  
35 equipment in accordance with a budget approved by the faculty senate. Notwithstanding any other  
36 provisions of the law to the contrary, funds not expended in one school year are available for  
37 expenditure in the next school year: *Provided, however*, That the amount of county funds  
38 budgeted in a fiscal year may not be reduced throughout the year as a result of the faculty  
39 appropriations in the same fiscal year for such materials, supplies and equipment. Accounts shall  
40 be maintained of the allocations and expenditures of such funds for the purpose of financial audit.

41 Academic materials, supplies or equipment shall be interpreted broadly, but does not include  
42 materials, supplies or equipment which will be used in or connected with interscholastic athletic  
43 events.

44 (2) A faculty senate may establish a process for members to interview or otherwise obtain  
45 information regarding applicants for classroom teaching vacancies that will enable the faculty  
46 senate to submit recommendations regarding employment to the principal. To facilitate the  
47 establishment of a process that is timely, effective, consistent among schools and counties, and  
48 designed to avoid litigation or grievance, the state board shall promulgate a rule pursuant to article  
49 three-b, chapter twenty-nine-a of this code to implement the provisions of this subdivision. The  
50 rule may include the following:

51 (A) A process or alternative processes that a faculty senate may adopt;

52 (B) If determined necessary, a requirement and procedure for training for principals and  
53 faculty senate members or their designees who may participate in interviews and provisions that  
54 may provide for the compensation based on the appropriate daily rate of a classroom teacher  
55 who directly participates in the training for periods beyond his or her individual contract;

56 (C) Timelines that will assure the timely completion of the recommendation or the forfeiture  
57 of the right to make a recommendation upon the failure to complete a recommendation within a  
58 reasonable time;

59 (D) The authorization of the faculty senate to delegate the process for making a  
60 recommendation to a committee of no less than three members of the faculty senate; and

61 (E) Such other provisions as the state board determines are necessary or beneficial for  
62 the process to be established by the faculty senate.

63 (3) A faculty senate may nominate teachers for recognition as outstanding teachers under  
64 state and local teacher recognition programs and other personnel at the school, including parents,  
65 for recognition under other appropriate recognition programs and may establish such programs  
66 for operation at the school.

67 (4) A faculty senate may submit recommendations to the principal regarding the  
68 assignment scheduling of secretaries, clerks, aides and paraprofessionals at the school.

69 (5) A faculty senate may submit recommendations to the principal regarding establishment  
70 of the master curriculum schedule for the next ensuing school year.

71 (6) A faculty senate may establish a process for the review and comment on sabbatical  
72 leave requests submitted by employees at the school pursuant to section eleven, article two of  
73 this chapter.

74 (7) Each faculty senate shall elect three faculty representatives to the local school  
75 improvement council established pursuant to section two of this article.

76 (8) Each faculty senate may nominate a member for election to the county staff  
77 development council pursuant to section eight, article three, chapter eighteen-a of this code.

78 (9) Each faculty senate shall have an opportunity to make recommendations on the  
79 selection of faculty to serve as mentors for beginning teachers under beginning teacher internship  
80 programs at the school.

81 (10) A faculty senate may solicit, accept and expend any grants, gifts, bequests, donations  
82 and any other funds made available to the faculty senate: *Provided*, That the faculty senate shall  
83 select a member who has the duty of maintaining a record of all funds received and expended by  
84 the faculty senate, which record shall be kept in the school office and is subject to normal auditing  
85 procedures.

86 (11) Any faculty senate may review the evaluation procedure as conducted in their school  
87 to ascertain whether the evaluations were conducted in accordance with the written system  
88 required pursuant to section twelve, article two, chapter eighteen-a of this code or pursuant to  
89 section two, article three-c, chapter eighteen-a of this code, as applicable, and the general intent  
90 of this Legislature regarding meaningful performance evaluations of school personnel. If a  
91 majority of members of the faculty senate determine that such evaluations were not so conducted,

92 they shall submit a report in writing to the State Board of Education: *Provided*, That nothing herein  
93 creates any new right of access to or review of any individual's evaluations.

94 (12) A local board shall provide to each faculty senate at least six two-hour blocks of time  
95 for faculty senate meetings with at least one two-hour block of time scheduled in the first month  
96 of the employment term, one two-hour block of time scheduled in the last month of the  
97 employment term and at least one two-hour block of time scheduled in each of the months of  
98 October, December, February and April. A faculty senate may meet for an unlimited block of time  
99 during noninstructional days to discuss and plan strategies to improve student instruction and to  
100 conduct other faculty senate business. A faculty senate meeting scheduled on a noninstructional  
101 day shall be considered as part of the purpose for which the noninstructional day is scheduled.  
102 This time may be used and determined at the local school level and includes, but is not limited to,  
103 faculty senate meetings.

104 (13) Each faculty senate shall develop a strategic plan to manage the integration of special  
105 needs students into the regular classroom at their respective schools and submit the strategic  
106 plan to the superintendent of the county board periodically pursuant to guidelines developed by  
107 the State Department of Education. Each faculty senate shall encourage the participation of local  
108 school improvement councils, parents and the community at large in developing the strategic plan  
109 for each school.

110 Each strategic plan developed by the faculty senate shall include at least: (A) A mission  
111 statement; (B) goals; (C) needs; (D) objectives and activities to implement plans relating to each  
112 goal; (E) work in progress to implement the strategic plan; (F) guidelines for placing additional  
113 staff into integrated classrooms to meet the needs of exceptional needs students without  
114 diminishing the services rendered to the other students in integrated classrooms; (G) guidelines  
115 for implementation of collaborative planning and instruction; and (H) training for all regular  
116 classroom teachers who serve students with exceptional needs in integrated classrooms.

**ARTICLE 9A. PUBLIC SCHOOL SUPPORT.**

**§18-9A-8a. Foundation allowance for regional education service agencies.**

1 For the fiscal year beginning on July 1, 2006, and for each fiscal year thereafter, the  
2 foundation allowance for regional education service agencies shall be equal to sixty-three one-  
3 hundredths percent of the allocation for professional educators as determined in section four of  
4 this article, but not more than \$3,690,750. The allowance shall be distributed to the regional  
5 education service agencies in accordance with rules adopted by the state board. The allowance  
6 for regional education service agencies shall be excluded from the computation of total basic state  
7 aid as provided in section twelve of this article: *Provided*, That the foundation allowance for  
8 regional education service agencies shall be reduced to zero for the fiscal year beginning on July  
9 1, 2017, and for each fiscal year thereafter.

**CHAPTER 18A. SCHOOL PERSONNEL.**

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

**§18A-4-14. Duty-free lunch and daily planning period for certain employees.**

1 (a) Notwithstanding section seven, article two of this chapter, every teacher who is  
2 employed for a period of time more than one half the class periods of the regular school day and  
3 every service person whose employment is for a period of more than three and one-half hours  
4 per day and whose pay is at least the amount indicated in the state minimum pay scale as set  
5 forth in section eight-a of this article shall be provided a daily lunch recess of not less than thirty  
6 consecutive minutes, and the employee shall not be assigned any responsibilities during this  
7 recess. The recess shall be included in the number of hours worked, and no county shall increase  
8 the number of hours to be worked by an employee as a result of the employee being granted a  
9 recess under this section.

10 (b) Every teacher who is regularly employed for a period of time more than one half the  
11 class periods of the regular school day shall be provided at least one planning period within each  
12 school day to be used to complete necessary preparations for the instruction of pupils. No teacher

13 may be assigned any responsibilities during this period, and no county shall increase the number  
14 of hours to be worked by a teacher as a result of such teacher being granted a planning period  
15 subsequent to the adoption of this section (March 13, 1982). Educators shall receive uninterrupted  
16 time for planning periods each day. Administrators may not require a teacher to use the planning  
17 period time allotted to complete duties beyond instructional planning, including, but not limited to,  
18 administrative tasks and meetings.

19 The duration of the planning period shall be in accordance with the following:

20 (1) For grades where the majority of the student instruction is delivered by only one  
21 teacher, the planning period shall be no less than forty minutes; and

22 (2) For grades where students take separate courses during at least four separate periods  
23 of instruction, most usually delivered by different teachers for each subject, the planning period  
24 shall be the length of the usual class period taught by the teacher, but no less than forty minutes.

25 Principals, and assistant principals, where applicable, shall cooperate in carrying out the  
26 provisions of this subsection, including, but not limited to, assuming control of the class period or  
27 supervision of students during the time the teacher is engaged in the planning period. Substitute  
28 teachers may also be utilized to assist with classroom responsibilities under this subsection:  
29 *Provided*, That any substitute teacher who is employed to teach a minimum of two consecutive  
30 days in the same position shall be granted a planning period pursuant to this section.

31 (c) Nothing in this section prevents any teacher from exchanging his or her lunch recess  
32 or a planning period or any service person from exchanging his or her lunch recess for any  
33 compensation or benefit mutually agreed upon by the employee and the county superintendent  
34 or his or her agent: *Provided*, That a teacher and the superintendent or his or her agent may not  
35 agree to terms which are different from those available to any other teacher granted rights under  
36 this section within the individual school or to terms which in any way discriminate among those  
37 teachers within the individual school, and a service person granted rights under this section and  
38 the superintendent or his or her agent may not agree to terms which are different from those

39 available to any other service personnel within the same classification category granted rights  
40 under this section within the individual school or to terms which in any way discriminate among  
41 those service personnel within the same classification category within the individual school.



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

*Steve Wynn*  
Vice-Chairman, House Committee

*Roman W. Blevins*  
Member Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

*Steph D. Harris*  
Clerk of the House of Delegates

*Clark A. Bowen*  
Clerk of the Senate

*Clay R. Hubert*  
Speaker of the House of Delegates

*Mark B. Lucarelli*  
President of the Senate

FILED  
2017 APR 26 P 8:21  
OFFICE WEST VIRGINIA  
SECRETARY OF STATE

The within *is approved* this the *26<sup>th</sup>*  
day of *April* 2017.

*Jim Justice*  
Governor

PRESENTED TO THE GOVERNOR

APR 21 2017

Time 3:57 pm