

**WEST VIRGINIA LEGISLATURE**  
**2019 FIRST EXTRAORDINARY SESSION**

**Introduced**

**House Bill 142**

BY DELEGATES HORNBUCKLE, DOYLE, BARRET, BROWN,  
S., WILLIAMS, SPONAUGLE, BROWN, N., LONGSTRETH,  
BOGGS, HARTMAN, AND THOMPSON, R.,

[Introduced May 20, 2019]

1 A BILL to amend and reenact §18-9A-2, §18-9A-12, and §18-9A-21 of the Code of West Virginia,  
 2 1931, as amended, all relating to modifications to the school aid formula, amending the  
 3 definition of levies for general current expense purposes; instituting a floor of 1,400  
 4 students for the purposes of determining the county’s basic foundation program; providing  
 5 for allocating state aid share of certain counties by calculating the basic foundation  
 6 program upon the 2015-2016 determined local share; and increasing funding for  
 7 alternative education programs.

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

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

**§18-9A-2. Definitions.**

1 For the purpose of this article:

2 ~~(a) “State board” means the West Virginia Board of Education~~

3 ~~(b) “County board” or “board” means a county board of education.~~

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

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

10 “Levies for general current expense purposes” means 90 percent of the levy rate for  
 11 county boards of education calculated or set by the Legislature pursuant to §11-8-6f of this code.

12 For the fiscal year beginning July 1, 2019, “levies for general current expense purposes” means  
 13 85 percent of the levy rate for county boards of education calculated or set by the Legislature  
 14 pursuant to §11-8-6f of this code. For the fiscal year beginning July 1, 2020 and for each fiscal  
 15 year thereafter, “levies for general current expense purposes” means 80 percent of the levy rate  
 16 for county boards of education calculated or set by the Legislature pursuant to §11-8-6f of this

17 code.

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

22 “Medium-density county” means a county whose ratio of net enrollment, excluding any  
23 increase in the net enrollment of counties, pursuant to subdivision (5), subsection (i) of this  
24 section, of the definition of “net enrollment”, to the square miles of the county is equal to or greater  
25 than 10 but less than 20.

26 “Net enrollment” means the number of pupils enrolled in special education programs,  
27 kindergarten programs and grades one to 12, inclusive, of the public schools of the county. Net  
28 enrollment further shall include:

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

31 (A) Net enrollment includes no more than 2,500 of those adults counted on the basis of  
32 full-time equivalency and apportioned annually to each county to support Advanced Career  
33 Education programs, as provided in §18-2E-11 of this code, in proportion to the adults  
34 participating in regular secondary vocational programs in the prior year counted on the basis of  
35 full-time equivalency: *Provided*, That beginning with the 2021 fiscal year and every year  
36 thereafter, a career technical education center may only receive the funding for enrollment as  
37 authorized by this paragraph if the center has satisfied the requirements of §18-2E-11 of this  
38 code; and

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

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

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

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

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

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

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

63 "Professional salaries" means the state legally mandated salaries of the professional  
64 educators as provided in §18A-4-1 et seq. of this code.

65 ~~(f)~~ "Professional student support personnel" means a "teacher" as defined in §18-1-1 of  
66 this code who is assigned and serves on a regular full-time basis as a counselor or as a school  
67 nurse with a bachelor's degree and who is licensed by the West Virginia Board of Examiners for  
68 Registered Professional Nurses. Professional student support personnel shall also include

69 professional personnel providing direct social and emotional support services to students,  
70 including, but not limited to, social workers and psychologists. For all purposes except for the  
71 determination of the allowance for professional educators pursuant to section four of this article,  
72 professional student support personnel are professional educators.

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

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

81 "Service personnel salaries" means the state legally mandated salaries for service  
82 personnel as provided in §18A-4-8 of this code.

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

85 Net enrollment further shall include:

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

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

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

94 ~~(2) Students enrolled in early childhood education programs as provided in section forty-~~

95 ~~four, article five of this chapter, counted on the basis of full-time equivalency;~~

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

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

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

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

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

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

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

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

120 "State board" means the West Virginia Board of Education.

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

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

129 ~~(l) “Medium-density county” means a county whose ratio of net enrollment, excluding any~~  
130 ~~increase in the net enrollment of counties, pursuant to subdivision (5), subsection (i) of this~~  
131 ~~section, of the definition of “net enrollment”, to the square miles of the county is equal to or greater~~  
132 ~~than ten but less than twenty.~~

133 ~~(m) “High-density county” means a county whose ratio of net enrollment, excluding any~~  
134 ~~increase in the net enrollment of counties, pursuant to subdivision (5), subsection (i) of this~~  
135 ~~section, of the definition of “net enrollment”, to the square miles of the county is equal to or greater~~  
136 ~~than twenty.~~

137 ~~(n) “Levies for general current expense purposes” means ninety percent of the levy rate~~  
138 ~~for county boards of education calculated or set by the Legislature pursuant to section six-f, article~~  
139 ~~eight, chapter eleven of this code~~

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

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

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

1           (a) The basic foundation program for each county for the fiscal year shall be the sum of  
2 the amounts computed in accordance with the provisions of sections four, five, six, seven, eight,  
3 nine, and ten of this article. On the first working day of July in each year, the State Board shall  
4 determine the basic foundation program for each county for that fiscal year. Data used in the  
5 computations relating to net and adjusted enrollment, and the number of professional educators,  
6 shall be for the second month of the prior school term. Transportation expenditures used in these  
7 computations shall be for the most recent year in which data are available. The allocated state  
8 aid share of the county's basic foundation program shall be the difference between the cost of its  
9 basic foundation program and the county's local share as determined in §18-9A-11 of this code  
10 except as provided in subsection (b) of this section: Provided, That for all years after 2018, in  
11 calculating the allocated state aid share of the county's basic foundation program, when  
12 subtracting the amount of the county's local share, if the county's local share as determined in  
13 §18-9A-11 of this code is greater than the county's local share was determined to be for fiscal  
14 year 2015-2016, then the allocated state aid share of the county's basic foundation program shall  
15 be the difference between the cost of its basic foundation program and the county's 2015-2016  
16 determined local share.

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

23           (1) In those instances where the local share as computed under §18-9A-11 of this code is  
24 not reflective of local funds available because the county is under a final court order, or a final  
25 decision of a board of assessment appeals under §11-3-24b of this code, to refund or credit



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

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

47 (3) In instances where a county is unable to collect property taxes from a taxpayer during  
48 the pendency of any court proceeding, the allocated state aid share shall be the county's basic  
49 foundation program minus the local share as computed under §18-9A-11 of this code, plus the  
50 amount the county is unable to collect as a result of the pending court proceedings as certified by  
51 the tax commissioner: *Provided*, That the county is required to reimburse the amount of allocated

52 state aid share attributable to the amount of property tax it later receives upon completion of court  
53 proceedings, which shall be paid into the General Revenue Fund of the state: *Provided, however,*  
54 That said adjustment shall not be made or shall only be made proportionately when the  
55 Legislature fails to fund or funds only in part the public school basic foundation support plan state  
56 share at a level sufficient to cover the reduction in state share: *Provided further,* That nothing  
57 herein provided shall be construed to require or mandate any level of funding by the Legislature.

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

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

**§18-9A-21. Funding for alternative education programs.**

1 (a) An appropriation may be made to the state department to be distributed to county

2 boards for the operation of alternative education and prevention programs established in  
3 accordance with policies and procedures adopted by the state board under §18-2-6 of this code.  
4 The appropriation shall be an amount equal to ~~\$18~~ \$27 per student in net enrollment, subject to  
5 appropriation by the Legislature. The state board shall distribute 98 percent of the total  
6 appropriation to the county boards proportionate to each county's net enrollment. The remaining  
7 two percent of the appropriation shall be retained by the state department to support the provision  
8 of services to the county boards in administering programs established in accordance with policies  
9 and procedures adopted by the state board under §18-2-6 of this code.

10 (b) Nothing in this section may be construed to require any specific level of funding by the  
11 Legislature.

12 (c) The increase from ~~\$12~~ \$18 per student in net enrollment to ~~\$18~~ \$27 per student in net  
13 enrollment pursuant to the amendment and enactment of this section during the ~~2010 regular~~  
14 2019 first extraordinary session of the Legislature is not subject to the provisions of section three-  
15 a.

NOTE: The purpose of this bill is to modify the school aid formula, amend the definition of levies for general current expense purposes; institute a floor of 1,400 students for the purposes of determining the county's basic foundation program; provide for allocating state aid share of certain counties by calculating the basic foundation program upon the 2015-2016 determined local share; and increase funding for alternative education programs.

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