

# WEST VIRGINIA LEGISLATURE

## 2023 REGULAR SESSION

Introduced

### House Bill 2772

FISCAL  
NOTE

By Delegate Foster

[Introduced January 18, 2023; Referred to the  
Committee on Education]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §18-10R-1, §18-10R-2, §18-10R-3, §18-10R-4, §18-10R-5, §18-10R-6, §18-  
 3 10R-7, §18-10R-8, §18-10R-9, §18-10R-10, §18-10R-11, §18-10R-12, §18-10R-13, §18-  
 4 10R-14, §18-10R-15, §18-10R-16, and §18-10R-17, all relating to creating a Statewide  
 5 Online Education Program to enable eligible students to earn high school graduation credit  
 6 through the completion of publicly funded online courses.

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

**ARTICLE. 10R. STATEWIDE ONLINE EDUCATION PROGRAM.**

**§18-10R-1. Definitions.**

1 As used in this article:

2 "District school" means a public school under the control of a county school board.

3 "Eligible student" means:

4 (A) A student enrolled in a county school or charter school in West Virginia; or

5 (B) Beginning on July 1, 2023, a student:

6 (i) Who attends a private school or home school; and

7 (ii) Whose custodial parent or legal guardian is a resident of West Virginia.

8 "LEA" means a local education agency in West Virginia that has administrative control and  
 9 direction for public education.

10 "Online course" means a course of instruction offered by the Statewide Online Education  
 11 Program using digital technology.

12 "Primary LEA of enrollment" means the LEA in which an eligible student is enrolled for  
 13 courses other than online courses offered through the Statewide Online Education Program.

14 "Released-time" means a period during the regular school day a student is excused from  
 15 school at the request of the student's parent or guardian pursuant to rules of the State Board of  
 16 Education.

**§18-10R-2. Statewide Online Education Program created – Designated as program of the**

**public education system – Purposes.**

1 (a) The Statewide Online Education Program is created to enable an eligible student to  
2 earn high school graduation credit through the completion of publicly funded online courses.

3 (b) The Statewide Online Education Program is designated as a program of the public  
4 education system.

5 (c) The purposes of an online school are to:

6 (1) Provide a student with access to online learning options regardless of where the  
7 student attends school, whether a public, private, or home school;

8 (2) Provide high quality learning options for a student regardless of language, residence,  
9 family income, or special needs;

10 (3) Provide online learning options to allow a student to acquire the knowledge and  
11 technology skills necessary in a digital world;

12 (4) Utilize the power and scalability of technology to customize education so that a student  
13 may learn in the student’s own style preference and at the student’s own pace;

14 (5) Utilize technology to remove the constraints of traditional classroom learning, allowing  
15 a student to access learning virtually at any time and in any place and giving the student the  
16 flexibility to take advantage of the student’s peak learning time;

17 (6) Provide personalized learning, where a student can spend as little or as much time as  
18 the student needs to master the material;

19 (7) Provide greater access to self-paced programs enabling a high achieving student to  
20 accelerate academically, while a struggling student may have additional time and help to gain  
21 competency;

22 (8) Allow a student to customize the student’s schedule to better meet the student’s  
23 academic goals;

24 (9) Provide quality learning options to better prepare a student for post-secondary  
25 education and vocational or career opportunities; and

26 (10) Allow a student to have an individualized educational experience.

**§18-10R-3. Option to enroll in online courses offered through the Statewide Online Education Program.**

1 (a) Subject to the course limitations provided in §18-10R-2 of this code, an eligible student  
2 may enroll in an online course offered through the Statewide Online Education Program if:

3 (1) The student meets the course prerequisites;

4 (2) The course is open for enrollment;

5 (3) The online course is aligned with the student's student education/occupation plan  
6 (SEOP);

7 (4) The online course is consistent with the student's individual education plan (IEP), if the  
8 student has an IEP; and

9 (5) The online course is consistent with the student's international baccalaureate program  
10 if the student is participating in an international baccalaureate program.

11 (b) An eligible student may enroll in online courses for no more than the following number  
12 of credits:

13 (1) In the 2024-25 and 2025-26 school years, two credits;

14 (2) In the 2026-27 school year, three credits;

15 (3) In the 2027-28 school year, four credits;

16 (4) In the 2028-29 school year, five credits; and

17 (5) Beginning with the 2029-30 school year, six credits.

18 (6) Notwithstanding subdivision (2) of this section:

19 (i) A student's primary LEA of enrollment may allow an eligible student to enroll in online  
20 courses for more than the number of credits specified in subdivision (2) of this section; or

21 (ii) Upon the request of an eligible student, the State Board of Education may allow the  
22 student to enroll in online courses for more than the number of credits specified in this section, if  
23 the online courses better meet the academic goals of the student.

24 (iii) An eligible student’s primary LEA of enrollment in conjunction with the student and the  
25 student’s parent or legal guardian is responsible for preparing and implementing a student  
26 education/occupation plan (SEOP) for the eligible student; and

27 (iv) Shall assist an eligible student in scheduling courses in accordance with the student’s  
28 SEOP, graduation requirements, and the student’s post-secondary plans.

29 (c) An eligible student’s primary LEA of enrollment may not:

30 (1) Impose restrictions on a student’s selection of an online course that fulfills graduation  
31 requirements and is consistent with the student’s SEOP or post-secondary plans; or

32 (2) Give preference to an online course or online course provider.

33 (3) The State Board of Education, including an employee of the State Board of Education,  
34 may not give preference to an online course or online course provider.

35 (d) (1) Except as otherwise provided in this section, a person may not provide an  
36 inducement or incentive to a public school student to participate in the Statewide Online Education  
37 Program.

38 (2) For purposes of subdivision (7)(a) of this section:

39 (i) "Inducement or incentive" does not mean:

40 (A) Instructional materials or software necessary to take an online course; or

41 (B) Access to a computer or digital learning device for the purpose of taking an online  
42 course.

43 (ii) "Person" does not include a relative of the public school student.

**§18-10R-4. Authorized online course providers.**

1 The following entities may offer online courses to eligible students through the Statewide  
2 Online Education Program:

3 (1) A charter school or district school created exclusively for the purpose of serving  
4 students online;

5 (2) An LEA program, approved by the LEA’s governing board, that is created exclusively

6 for the purpose of serving students online; and

7 (3) A program of an institution of higher education that:

8 (a) Offers secondary school level courses; and

9 (b) Is created exclusively for the purpose of serving students online.

**§18-10R-5. Payment for an online course.**

1 (1) For the 2024-25 school year, the fee for a .5 credit online course or .5 credit of a one  
2 credit online course is:

3 (a) \$200 for the following courses, except a concurrent enrollment course:

4 (i) Financial literacy;

5 (ii) Health;

6 (iii) Fitness for life; and

7 (iv) Computer literacy;

8 (b) Two hundred dollars for driver education;

9 (c) Two hundred fifty dollars for a course that meets core standards for West Virginia public  
10 schools in fine arts or career and technical education, except a concurrent enrollment course;

11 (d) Three hundred dollars for the following courses:

12 (i) A course that meets core standards for the public schools requirements in social  
13 studies, except a concurrent enrollment course; and

14 (ii) A world language course, except a concurrent enrollment course;

15 (e) Three hundred fifty dollars for the following courses:

16 (i) A course that meets core standards for public schools requirements for language arts,  
17 mathematics, or science; and

18 (ii) A concurrent enrollment course; and

19 (f) Two hundred fifty dollars for a course not described in subsections (1)(a) through (e) of  
20 this section.

21 (2) If a course meets the requirements of more than one course fee category described in

22 subsection (1) of this section, the course fee shall be the lowest of the applicable course fee  
23 categories.

24 (3) Beginning with the 2025-26 school year, the online course fees described in subsection  
25 (1) of this section shall be adjusted each school year in accordance with the percentage change in  
26 value of the weighted pupil unit from the previous school year.

27 (4) An online learning provider shall receive payment for an online course as follows:

28 (a) For a .5 credit online course, 50 percent of the online course fee after the withdrawal  
29 period described in §18-10R-6 of this code;

30 (b) For a one credit online course, 25 percent of the online course fee after the withdrawal  
31 period described in §18-10R-6 of this code and 25 percent of the online course fee upon the  
32 beginning of the second .5 credit of the online course; and

33 (c) If a student completes a one credit online course within 12 months or a .5 credit course  
34 within nine weeks following the end of a traditional semester, 50 percent of the online course fee.

35 (5) (a) If a student fails to complete a one credit course within 12 months or a .5 credit  
36 course within nine weeks following the end of a traditional semester, the student may continue to  
37 be enrolled in the course until the student graduates from high school.

38 (b) To encourage an online course provider to provide remediation to a student who  
39 remains enrolled in an online course pursuant to subsection (5)(a) of this section and avoid the  
40 need for credit recovery, an online course provider shall receive a payment equal to 30 percent of  
41 the online course fee if the student completes the online course before the student graduates from  
42 high school.

43 (6) Notwithstanding the online course fees prescribed in subsections (1) through (3) of this  
44 section, a school district or charter school may:

45 (a) Negotiate a fee with an online course provider for an amount up to the amount  
46 prescribed in subsections (1) through (3) of this section; and

47 (b) Pay the negotiated fee instead of the fee prescribed in subsections (1) through (3) of

48 this section.

49 (7) An online course provider who contracts with a vendor for the acquisition of online  
50 course content or online course instruction may negotiate the payment for the vendor's service  
51 independent of the fees specified in subsections (1) through (3) of this section.

**§18-10R-6. Withdrawal from an online course.**

1 (1) An online course provider shall establish a start date for an online course, including a  
2 start date for the second .5 credit of a one credit online course.

3 (2) Except as provided in subsection (3) of this section, a student may withdraw from an  
4 online course:

5 (a) Within 20 school calendar days of the start date, if the student enrolls in an online  
6 course on or before the start date established pursuant to subsection (1) of this section; or

7 (b) Within 20 school calendar days of enrolling in the online course if the student enrolls in  
8 an online course after the start date established pursuant to subsection (1) of this section.

9 (3) (a) A student may withdraw from a one credit online course within 20 school calendar  
10 days of the start date of the second .5 credit of the online course.

11 (b) An online course provider shall refund a payment received for the second .5 credit of an  
12 online course if a student withdraws from the online course pursuant to subsection (3)(a) of this  
13 section.

14 (c) If a student withdraws from a one credit online course as provided in subsection (3)(a)  
15 of this section, the online course provider shall receive payment for the student's completion of .5  
16 credit of the one credit course in the same manner as an online course provider receives payment  
17 for a student's completion of a .5 credit online course.

**§18-10R-7. State Board of Education to deduct funds and make payments -- Plan for the**  
**payment of online courses taken by private and home school students.**

1 (a) The State Board of Education shall deduct money from funds allocated to the student's  
2 primary LEA of enrollment to pay for online course fees.



3 (b) Money shall be deducted under subsection (a) of this section in the amount and at the  
4 time an online course provider qualifies to receive payment for an online course as provided in  
5 §18-10R-3 of this code.

6 (1) From money deducted under subsection (a) of this section, the State Board of  
7 Education shall make payments to the student’s online course provider as provided in §18-10R-5  
8 of this code.

9 (2) The Legislature shall establish a plan, which shall take effect beginning on July 1, 2024,  
10 for the payment of online courses taken by a private school or home school student.

**§18-10R-8. Course credit acknowledgement.**

1 (a) A student’s primary LEA of enrollment and the student’s online course provider shall  
2 enter a course credit acknowledgement in which the primary LEA of enrollment and the online  
3 course provider acknowledge that the online course provider is responsible for the instruction of  
4 the student in a specified online course.

5 (b) The terms of the course credit acknowledgement shall provide that:

6 (1) The online course provider shall receive a payment in the amount provided under §18-  
7 10R-5 of this code; and

8 (2) The student’s primary LEA of enrollment acknowledges that the State Board of  
9 Education will deduct funds allocated to the LEA in the amount and at the time the online course  
10 provider qualifies to receive payment for the online course as provided in §18-10R-5 of this code.

11 (c) (1) A course credit acknowledgement may originate with either an online course  
12 provider or primary LEA of enrollment.

13 (2) The originating entity shall submit the course credit acknowledgement to the State  
14 Board of Education who shall forward it to the primary LEA of enrollment for course selection  
15 verification or the online course provider for acceptance.

16 (3) (i) A primary LEA of enrollment may only reject a course credit acknowledgement if:

17 (A) The online course is not aligned with the student’s SEOP;

18 (B) The online course is not consistent with the student's IEP, if the student has an IEP;

19 (C) The online course is not consistent with the student's international baccalaureate  
20 program, if the student participates in an international baccalaureate program; or

21 (D) The number of online course credits exceeds the maximum allowed for the year as  
22 provided in §18-10R-5 of this code.

23 (ii) Verification of alignment of an online course with a student's SEOP does not require a  
24 meeting with the student.

25 (d) An online course provider may only reject a course credit acknowledgement if:

26 (i) The student does not meet course prerequisites; or

27 (ii) The course is not open for enrollment.

28 (e) A primary LEA of enrollment or online course provider shall submit an acceptance or  
29 rejection of a course credit acknowledgement to the State Board of Education within 72 business  
30 hours of the receipt of a course credit acknowledgement from the State Board of Education  
31 pursuant to subdivision (3)(b) of this section.

32 (f) If an online course provider accepts a course credit acknowledgement, the online  
33 course provider shall forward to the primary LEA of enrollment the online course start date.

34 (g) If an online course provider rejects a course credit acknowledgement, the online course  
35 provider shall include an explanation which the State Board of Education shall forward to the  
36 primary LEA of enrollment for the purpose of assisting a student with future online course  
37 selection.

38 (h) If a primary LEA of enrollment does not submit an acceptance or rejection of a course  
39 credit acknowledgement to the State Board of Education within 72 business hours of the receipt of  
40 a course credit acknowledgement from the State Board of Education, the State Board of Education  
41 shall consider the course credit acknowledgement accepted.

42 (i) Upon acceptance of a course credit acknowledgement, the primary LEA of enrollment  
43 shall notify the student of the acceptance and the start date for the online course.

44 (ii) Upon rejection of a course credit acknowledgement, the primary LEA of enrollment  
45 shall notify the student of the rejection and provide an explanation of the rejection.

46 (j) If the online course student has an individual education plan (IEP) or 504  
47 accommodations, the primary LEA of enrollment shall forward the IEP or description of 504  
48 accommodations to the online course provider within 72 business hours after the primary LEA of  
49 enrollment receives notice that the online course provider accepted the course credit  
50 acknowledgement.

51 (4) (a) A primary LEA of enrollment may not reject a course credit acknowledgement,  
52 because the LEA is negotiating, or intends to negotiate, an online course fee with the online  
53 course provider.

54 (b) If a primary LEA of enrollment negotiates an online course fee with an online course  
55 provider before the start date of an online course, a course credit acknowledgement may be  
56 amended to reflect the negotiated online course fee.

**§18-10R-9. Online course credit hours included in daily membership -- Limitation.**

1 (a) Subject to subsection (2) of this section, a student's primary LEA of enrollment shall  
2 include online course credit hours in calculating daily membership.

3 (b) A student may not count as more than one FTE, unless the student intends to complete  
4 high school graduation requirements, and exit high school, early, in accordance with the student's  
5 education/occupation plan (SEOP).

6 (c) A student who enrolls in an online course may not be counted in membership for a  
7 released-time class, if counting the student in membership for a released-time class would result  
8 in the student being counted as more than one FTE.

9 (d) Except as provided in subsection (5) of this section, a student enrolled in an online  
10 course may earn no more credits in a year than the number of credits a student may earn in a year  
11 by taking a full course load during the regular school day in the student's primary LEA of  
12 enrollment.

13 (e) A student enrolled in an online course may earn more credits in a year than the number  
14 of credits a student may earn in a year by taking a full course load during the regular school day in  
15 the student's primary LEA of enrollment:

16 (1) If the student intends to complete high school graduation requirements, and exit high  
17 school, early, in accordance with the student's education/occupation plan (SEOP); or

18 (2) If allowed under local school board or charter school governing board policy.

**§18-10R-10. Administration of statewide assessments to students enrolled in online courses.**

1 (a) A student enrolled in an online course that is a course for which a statewide  
2 assessment is administered shall take the statewide assessment.

3 (b) The State Board of Education shall make rules providing for the administration of a  
4 statewide assessment to a student enrolled in an online course.

5 (c) Rules made under subdivision (2)(a) of this section shall:

6 (1) Provide for the administration of a statewide assessment upon a student completing an  
7 online course; and

8 (2) Require an online course provider to proctor the statewide assessment.

**§18-10R-11. Report on performance of online course providers.**

1 (a) The State Board of Education, in collaboration with online course providers, shall  
2 develop a report on the performance of online course providers, which may be used to evaluate  
3 the Statewide Online Education Program and assess the quality of an online course provider.

4 (b) A report on the performance of an online course provider shall include:

5 (1) Scores aggregated by test on statewide assessments, taken by students at the end of  
6 an online course offered through the Statewide Online Education Program;

7 (2) The percentage of the online course provider's students who complete online courses  
8 within the applicable time period;

9 (3) The percentage of the online course provider's students who complete online courses

10 after the applicable time period and before the student graduates from high school; and

11 (4) The pupil-teacher ratio for the combined online courses of the online course provider.

12 (c) The State Board of Education shall post a report on the performance of an online  
13 course provider on the Statewide Online Education Program’s website.

**§18-10R-12. Dissemination of information on the Statewide Online Education Program.**

1 (a) The State Board of Education shall develop a website for the Statewide Online  
2 Education Program which shall include:

3 (1) A description of the Statewide Online Education Program, including its purposes;

4 (2) Information on who is eligible to enroll, and how an eligible student may enroll, in an  
5 online course;

6 (3) A directory of online course providers;

7 (4) A link to a course catalog for each online course provider; and

8 (5) A report on the performance of online course providers.

9 (b) An online course provider shall provide the following information on the online course  
10 provider’s website:

11 (1) A description of the Statewide Online Education Program, including its purposes;

12 (2) Information on who is eligible to enroll, and how an eligible student may enroll, in an  
13 online course;

14 (3) A course catalog;

15 (4) Scores aggregated by test on statewide assessments taken by students at the end of  
16 an online course offered through the Statewide Online Education Program;

17 (5) The percentage of an online course provider’s students who complete online courses  
18 within the applicable time period;

19 (6) The percentage of an online course provider’s students who complete online courses  
20 after the applicable time period and before the student graduates from high school; and

21 (7) The online learning provider’s pupil-teacher ratio for the online courses combined.

**§18-10R-13. Time period to enroll in an online course.**

1 (a) To provide an LEA and online course providers with estimates of online course  
2 enrollment, a student should enroll in an online course, or declare an intention to enroll in an online  
3 course, during the high school course registration period designated by the LEA.

4 (b) Notwithstanding subdivision (1) of this section and except as provided in subsection (c)  
5 of this section, a student may enroll in an online course at any time during a calendar year.

6 (c) (1) A student may alter a course schedule by dropping a traditional classroom course  
7 and adding an online course consistent with course schedule alteration procedures adopted by  
8 the student’s primary LEA of enrollment or high school.

9 (2) A school district’s or high school’s deadline for dropping a traditional classroom course  
10 and adding an online course shall be the same deadline for dropping and adding a traditional  
11 classroom course.

**§18-10R-14. State Board of Education -- Rulemaking.**

1 The State Board of Education shall make rules in accordance with this article and §29A-3-1  
2 et seq. of this code, that:

3 (1) Establish a course credit acknowledgement form and procedures for completing and  
4 submitting to the State Board of Education a course credit acknowledgement; and

5 (2) Establish procedures for the administration of a statewide assessment to a student  
6 enrolled in an online course.

**§18-10R-15. Review by legislative auditor general.**

1 The Legislative Auditor general shall conduct a review and issue a report on the Statewide  
2 Online Education Program to the Joint Committee on Government and Finance after the  
3 conclusion of the 2022-23 school year.

**§18-10R-16. Report of noncompliance -- Action to ensure compliance.**

1 The state superintendent shall report to the State Board of Education any report of  
2 noncompliance of this part made to a member of the staff of the State Board of Education.

3           The State Board of Education shall take appropriate action to ensure compliance with this  
4 part.

**§18-10R-17.                   Agreements                   for                   online                   instruction.**

1           (a) In addition to offering online courses to students through the Statewide Online  
2 Education Program, a school district or charter school may enter into an agreement with another  
3 school district or charter school or a consortium of school districts or charter schools to provide  
4 online instruction to the school district's or charter school's students.

5           (b) Online instruction offered pursuant to subsection (a) of this section is not subject to the  
6 requirements of this article.

NOTE: The purpose of this bill is to create a Statewide Online Education Program to enable eligible students to earn high school graduation credit through the completion of publicly funded online courses.

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