

HB 2204

RECEIVED
97 MAY -6 PM 4: 19
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997



ENROLLED

HOUSE BILL No. 2204

Williams, Michael, Mezzatesta, Dempsey,
(By Delegate _____ Ennis, Manuel and Osborne _____)



Passed _____ April 12, _____ 1997

In Effect _____ July 1, 1997 _____ Passage

RECEIVED

97 MAY -6 PM 4: 19

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2204

(BY DELEGATES WILLIAMS, MICHAEL, MEZZATESTA,
DEMPSEY, ENNIS, MANUEL AND OSBORNE)

[Passed April 12, 1997; in effect July 1, 1997.]

AN ACT to repeal section six, article eight, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty one, as amended; to amend article five of said chapter by adding thereto a new section, designated section eighteen-d; to amend and reenact sections three, four, seven and eleven, article eight of said chapter; to amend sections six-a, six-b and fifteen, article nine-a of said chapter; and to amend article four, chapter eighteen-a of said code by adding thereto a new section, designated section eight-i, all relating to study on programs for children under the age of five; requiring preparation of attendance reports upon request of county superintendent; eliminating the board of education's power of removal of the attendance director; providing that attendance director shall ascertain reasons for absences of students of sixteen years of age as well as those under sixteen years of age; authorizing service of summons; requiring attendance director to serve as liaison for homeless children and youth; prohibiting the inducement of a student to be absent from school of any age; reducing the appropriation determined by the actuarial evaluation for the teachers' retirement fund by the amount resulting from an increase in local share; allowance for increased enrollment; and seniority

rights for professional educators and school service personnel in cases of intercounty transfer arrangements.

Be it enacted by the Legislature of West Virginia:

That section six, article eight, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended be repealed; that article five of said code be amended by adding thereto a new section, designated section eighteen-d; that sections three, four, seven and eleven, article eight of said chapter be amended and reenacted; that sections six-a, six-b and fifteen, article nine-a of said chapter be amended and reenacted; and that article four, chapter eighteen-a be amended by adding thereto a new section, designated section eight-i, all to read as follows:

CHAPTER 18. EDUCATION.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-18d. Study on programs for children under the age of five.

1 The state department of education and the
2 department of health and human resources, in consultation
3 with the governor's cabinet on children and families, shall
4 conduct a comprehensive study on programs for children
5 under the age of five. Such study shall consider issues
6 including, but not limited to, curriculum, acquiring federal
7 dollars, welfare reform, relation to day care centers,
8 relation to kindergarten programs, involvement of the
9 private sector, involvement of the public sector and cost
10 effectiveness. The state department of education and the
11 department of health and human resources shall submit a
12 report to the legislative oversight commission on
13 education accountability by the first day of December,
14 one thousand nine hundred ninety-seven.

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-3. Employment of county director of school attendance and assistants; qualifications; salary and traveling expenses; removal.

1 (a) The county board of education of every county,
2 not later than the first day of August of each year, shall
3 employ the equivalent of a full-time county director of
4 school attendance if such county has a net enrollment of
5 more than four thousand pupils, at least a half-time
6 director of school attendance if such county has a net
7 enrollment equal to or less than four thousand pupils and
8 such assistant attendance directors as deemed necessary.
9 All persons to be employed as attendance directors shall
10 have the written recommendation of the county
11 superintendent.

12 (b) The county board of education may establish
13 special and professional qualifications for attendance
14 directors and assistants as are deemed expedient and
15 proper and are consistent with regulations of the state
16 board of education relating thereto.

17 (c) The attendance director or assistant director shall
18 be paid a monthly salary as fixed by the county board.
19 The attendance director or assistant director shall prepare
20 attendance reports, and such other reports as the county
21 superintendent may request.

22 (d) The county board of education shall reimburse
23 the attendance directors or assistant directors for their
24 necessary traveling expenses upon presentation of a
25 monthly, itemized, sworn statement approved by the
26 county superintendent.

**§18-8-4. Duties of attendance director and assistant directors;
complaints, warrants and hearings.**

1 The county attendance director and the assistants
2 shall diligently promote regular school attendance. They
3 shall ascertain reasons for inexcusable absences from
4 school of pupils of compulsory school age and students
5 who remain enrolled beyond the sixteenth birthday as
6 defined under this article and shall take such steps as are,
7 in their discretion, best calculated to correct attitudes of
8 parents and pupils which results in absences from school
9 even though not clearly in violation of law.

10 In the case of five consecutive or ten total unexcused
11 absences of a child during a school year, the attendance
12 director or assistant shall serve written notice to the parent,
13 guardian or custodian of such child that the attendance of
14 such child at school is required and that within ten days of
15 receipt of the notice the parent, guardian or custodian,
16 accompanied by the child, shall report in person to the
17 school the child attends for a conference with the principal
18 or other designated representative of the school in order to
19 discuss and correct the circumstances causing the
20 inexcusable absences of the child; and if the parent,
21 guardian or custodian does not comply with the provisions
22 of this article, then the attendance director or assistant shall
23 make complaint against the parent, guardian or custodian
24 before a magistrate of the county. If it appears from the
25 complaint that there is probable cause to believe that an
26 offense has been committed and that the accused has
27 committed it, a summons or a warrant for the arrest of the
28 accused shall issue to any officer authorized by law to
29 serve the summons or to arrest persons charged with
30 offenses against the state. More than one summons or
31 warrant may be issued on the same complaint. The
32 summons or warrant shall be executed within ten days of
33 its issuance.

34 The magistrate court clerk, or the clerk of the circuit
35 court performing the duties of the magistrate court as
36 authorized in section eight, article one, chapter fifty of this
37 code, shall assign the case to a magistrate within ten days
38 of execution of the summons or warrant. The hearing
39 shall be held within twenty days of the assignment to the
40 magistrate, subject to lawful continuance. The magistrate
41 shall provide to the accused at least ten days' advance
42 notice of the date, time and place of the hearing.

43 When any doubt exists as to the age of a child absent
44 from school, the attendance director shall have authority
45 to require a properly attested birth certificate or an
46 affidavit from the parent, guardian or custodian of such
47 child, stating age of the child. The county attendance
48 director or assistant shall, in the performance of his or her
49 duties, have authority to take without warrant any child
50 absent from school in violation of the provisions of this

51 article and to place such child in the school in which such
52 child is or should be enrolled.

53 The county attendance director shall devote such
54 time as is required by section three of this article to the
55 duties of attendance director in accordance with this
56 section during the instructional term and at such other
57 times as the duties of an attendance director are required.
58 All attendance directors hired for more than two hundred
59 days may be assigned other duties determined by the
60 superintendent during the period in excess of two hundred
61 days. The county attendance director shall be responsible
62 under direction of the county superintendent for the
63 efficient administration of school attendance in the
64 county.

65 In addition to those duties directly relating to the
66 administration of attendance, the county attendance
67 director and assistant directors shall also perform the
68 following duties:

69 (a) Assist in directing the taking of the school census
70 to see that it is taken at the time and in the manner
71 provided by law;

72 (b) Confer with principals and teachers on the
73 comparison of school census and enrollment for the
74 detection of possible nonenrollees;

75 (c) Cooperate with existing state and federal agencies
76 charged with enforcement of child labor laws;

77 (d) Prepare a report for submission by the county
78 superintendent to the state superintendent of schools on
79 school attendance, at such times and in such detail as may
80 be required; also, file with the county superintendent and
81 county board of education at the close of each month a
82 report showing activities of the school attendance office
83 and the status of attendance in the county at the time;

84 (e) Promote attendance in the county by the
85 compilation of data for schools and by furnishing
86 suggestions and recommendations for publication through
87 school bulletins and the press, or in such manner as the
88 county superintendent may direct;

89 (f) Participate in school teachers' conferences with
90 parents and students;

91 (g) Assist in such other ways as the county
92 superintendent may direct for improving school
93 attendance;

94 (h) Make home visits of students who have excessive
95 unexcused absences, as provided above, or if requested by
96 the chief administrator, principal or assistant principal.

97 (i) The attendance director shall serve as the liaison
98 for homeless children and youth.

§18-8-7. Aiding or abetting violations of compulsory attendance; penalty.

1 Any person who induces or attempts to induce any
2 child or student unlawfully to absent himself or herself
3 from school, or who harbors or employs any child or
4 student of compulsory school age or any student over
5 sixteen years of age who is enrolled in a school while the
6 school to which he or she belongs and which he or she is
7 required to attend is in session, or who employs such child
8 or student within the term of such school on any day such
9 school is in session without the written permission of the
10 county superintendent of schools, or for a longer period
11 than such work permit may specify shall be guilty of a
12 misdemeanor and, upon conviction thereof, shall be fined
13 not less than twenty-five nor more than fifty dollars and
14 may be confined in jail not less than ten nor more than
15 thirty days.

§18-8-11. School attendance as condition of licensing for privilege of operation of motor vehicle.

1 (a) In accordance with the provisions of sections
2 three and five, article two, chapter seventeen-b of this code,
3 the division of motor vehicles shall deny a license or
4 instruction permit for the operation of a motor vehicle to
5 any person under the age of eighteen who does not at the
6 time of application present a diploma or other certificate
7 of graduation issued to the person from a secondary high
8 school of this state or any other state or documentation
9 that the person: (1) Is enrolled and making satisfactory

10 progress in a course leading to a general educational
11 development certificate (GED) from a state approved
12 institution or organization, or has obtained such
13 certificate; (2) is enrolled in a secondary school of this
14 state or any other state; (3) is excused from such
15 requirement due to circumstances beyond his or her
16 control; or (4) is enrolled in an institution of higher
17 education as a full-time student in this state or any other
18 state.

19 (b) The attendance director or chief administrator
20 shall provide documentation of enrollment status on a
21 form approved by the department of education to any
22 student fifteen years of age but less than eighteen years of
23 age or older upon request who is properly enrolled in a
24 school under the jurisdiction of the official for
25 presentation to the division of motor vehicles on
26 application for or reinstatement of an instruction permit or
27 license to operate a motor vehicle. Whenever a student
28 fifteen years of age but less than eighteen years of age
29 withdraws from school, except as provided in subsection
30 (d) of this section, the attendance director or chief
31 administrator shall notify the division of motor vehicles of
32 the withdrawal not later than five days from the withdrawal
33 date. Within five days of receipt of the notice, the division
34 of motor vehicles shall send notice to the licensee that the
35 license will be suspended under the provisions of section
36 three, article two, chapter seventeen-b of this code on the
37 thirtieth day following the date the notice was sent unless
38 documentation of compliance with the provisions of this
39 section is received by the division of motor vehicles
40 before such time.

41 (c) For the purposes of this section, withdrawal shall
42 be defined as more than ten consecutive or fifteen days
43 total unexcused absences during a school year. For the
44 purposes of this section, suspension or expulsion from
45 school or imprisonment in a jail or a penitentiary is not a
46 circumstance beyond the control of such person.

47 (d) Whenever the withdrawal from school of such
48 student, or such student's failure to enroll in a course
49 leading to or to obtain a GED or high school diploma, is

50 beyond the control of such student, or is for the purpose
51 of transfer to another school as confirmed in writing by
52 the student's parent or guardian, no such notice shall be
53 sent to the division of motor vehicles to suspend the
54 student's motor vehicle operator's license, and if the
55 student is applying for a license, the attendance director or
56 chief administrator shall provide the student with
57 documentation to present to the division of motor
58 vehicles to excuse the student from the provisions of this
59 section. The school district superintendent (or the
60 appropriate school official of any private secondary
61 school) with the assistance of the county attendance
62 director and any other staff or school personnel shall be
63 the sole judge of whether such withdrawal is due to
64 circumstances beyond the control of such person.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-6a. Teachers retirement fund allowance; unfunded liability allowance.

1 (a) The total teachers retirement fund allowance shall
2 be the sum of the basic foundation allowance for
3 professional educators and the basic foundation allowance
4 for service personnel, as provided in sections four and five
5 of this article; all salary equity appropriations authorized
6 in section five, article four of chapter eighteen-a; and such
7 amounts as are to be paid by the counties pursuant to
8 sections five-a and five-b of said article to the extent such
9 county salary supplements are equal to the amount
10 distributed for salary equity among the counties,
11 multiplied by fifteen percent.

12 (b) The teachers retirement fund allowance amounts
13 provided for in subsection (a) of this section shall be
14 accumulated in the employers accumulation fund of the
15 state teachers retirement system pursuant to section
16 eighteen, article seven-a of this chapter, and shall be in lieu
17 of the contribution required of employers pursuant to
18 subsection (b) of said section as to all personnel included
19 in the allowance for state aid in accordance with sections
20 four and five of this article.

21 (c) In addition to the teachers retirement fund
22 allowance provided for in subsection (a) of this section,
23 there shall be an allowance for the reduction of any
24 unfunded liability of the teachers retirement fund in
25 accordance with the following provisions of this
26 subsection. On or before the thirty-first day of December
27 of each year, the actuary or actuarial firm employed in
28 accordance with the provisions of section four, article ten-
29 d, chapter five of this code shall submit a report to the
30 president of the Senate and the speaker of the House of
31 Delegates which sets forth an actuarial valuation of the
32 teachers retirement fund as of the preceding thirtieth day
33 of June. Each annual report shall recommend the
34 actuary's best estimate, at that time, of the funding
35 necessary to both eliminate the unfunded liability over a
36 forty-year period beginning on the first day of July, one
37 thousand nine hundred ninety-four, and to meet the cash
38 flow requirements of the fund in fulfilling its future
39 anticipated obligations to its members. In determining the
40 amount of funding required, the actuary shall take into
41 consideration all funding otherwise available to the fund
42 for that year from any source: *Provided*, That the
43 appropriation and allocation to the teachers' retirement
44 fund made pursuant to the provisions of sections six-b of
45 this article shall be included in the determination of the
46 requisite funding amount. In any year in which the
47 actuary determines that the teachers retirement fund is not
48 being funded in such a manner, the allowance made for
49 the unfunded liability for the next fiscal year shall be not
50 less than the amount of the actuary's best estimate of the
51 amount necessary to conform to the funding requirements
52 set forth in this subsection.

53 **§18-9A-6b. Allocation of growth of local share.**

54 Beginning with the first day of July, one thousand
55 nine hundred ninety-five, and thereafter, an appropriation
56 and allocation due to the increase in local share not to
57 exceed seven million dollars above that computed for the
58 previous year, which increase may be attributable to any
59 increase in the tax rate as enacted by the Legislature in
60 accordance with the provisions of subsection (b), section
61 six-f, article eight, chapter eleven of this code, shall be

62 allocated to the state teachers' retirement system, which
63 appropriation and allocation shall be used to reduce the
64 amounts required by section six-a of this article or any
65 other retirement contributions as may be required to the
66 state teachers retirement system set forth in article seven-a
67 of this chapter and which shall be accumulated in the
68 employers accumulation fund created in section eighteen
69 of said article seven-a.

§18-9A-15. Allowance for increased enrollment.

1 To provide for the support of increased net
2 enrollments in the counties in a school year over the net
3 enrollments used in the computation of total state aid for
4 that year, there shall be appropriated for that purpose
5 from the general revenue fund an amount equal to the
6 average total state aid per net pupil multiplied by the total
7 of all of the increases in the net enrollments of the
8 counties made by comparing the most recent reports of
9 net enrollment for the second school month to the
10 immediately previous year's reports for the same school
11 month.

12 Upon determination of the several increases in the
13 respective counties' net enrollments, as of the close of the
14 second school month, each county showing such increase
15 shall be allocated an amount equal to that county's
16 average per net pupil total state aid multiplied by the
17 increase in that county's net enrollment determined as
18 provided heretofore. Such allocations shall be distributed
19 not later than the thirty-first day of December of each
20 year to the counties having increases in net enrollment as
21 heretofore provided. If the amount appropriated for this
22 purpose shall not be sufficient to provide payment in full
23 for the total of these several allocations, each county
24 allocation shall be reduced to an amount which is
25 proportionate to the appropriation compared to the total
26 of the several allocations, and the allocations as thus
27 adjusted shall be distributed to the counties as provided in
28 this section: *Provided*, That the governor shall request a
29 supplemental appropriation at the next legislative session
30 for the reduced amount.

31 No provision of this section shall be construed to in
32 any way affect the allocation of moneys for educational
33 purposes to a county under other provisions of law.

34 Except for those students who are enrolled in special
35 education programs, students who have not attained the
36 age of five prior to the first day of September shall not be
37 included for any purpose of this section.

38 Nothing in this section shall be construed to require
39 any specific level of funding by the Legislature.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-8i. Seniority rights for professional educators and school service personnel in cases of intercounty transfer arrangements.

1 Notwithstanding any other provisions of this code to
2 the contrary, if students are required to attend school in a
3 county other than the county of their residence as a result
4 of an intercounty transfer arrangement, then the following
5 terms, rules and procedures shall apply:

6 (a) For the purposes of this section, the following
7 terms have the following meanings:

8 (1) "Intercounty transfer arrangement" means those
9 cases in which students are required to attend school in a
10 county other than the county of their residence;

11 (2) "Receiving county" means the county, other
12 than the county of residence, where students are required
13 to attend school; and

14 (3) "Sending county" means the county of resi-
15 dence of students involved in intercounty transfer
16 arrangements.

17 (b) The state board shall determine the number of
18 professional educator and school service personnel
19 positions to be created in facilities receiving students or in
20 any facility affected by an intercounty transfer
21 arrangement. The state board shall prepare a certified list

22 of positions and shall provide the list to both the sending
23 and receiving counties involved in the intercounty transfer
24 arrangement.

25 (c) The state board shall prepare a certified list
26 containing the names and seniority of the professional
27 educators and service personnel in the sending county
28 whose employment has been terminated as a result of an
29 intercounty transfer arrangement. Those eligible to
30 appear on the certified list shall be limited to the following
31 classifications of employees:

32 (1) Those persons whose positions were eliminated as
33 a direct result of an intercounty transfer arrangement and:
34 (i) Who choose not to exercise their right to displace
35 another employee with lesser seniority; or (ii) whose
36 seniority is insufficient to allow them to displace other
37 employees; and

38 (2) Those persons, as determined by the state board,
39 who would have retained a position with the sending
40 county if the intercounty transfer arrangement had not
41 occurred.

42 (d) The receiving county may not fill any position
43 on the list of positions created pursuant to the provisions
44 of subsection (b) of this section until the receiving county
45 has received the list of employees created pursuant to the
46 provisions of subsection (c) of this section. When the
47 receiving county has been provided copies of both the
48 certified list of positions and the certified list of
49 employees, the receiving county shall begin filling the
50 vacancies by selecting employees from the certified list.
51 In filling these positions, the receiving county shall
52 comply with all provisions of law relevant to the filling of
53 professional educator or service personnel vacancies.

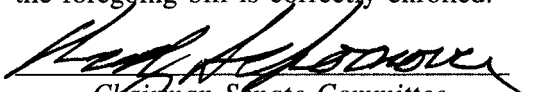
54 (e) For the remainder of the school year immediately
55 following the effective date of an intercounty transfer
56 arrangement, but in no case less than six months, the
57 receiving county may fill positions on the certified list of
58 positions only by selecting employees from the certified
59 list of employees.

60 (f) For the purposes of this section only, professional
61 educators and service personnel whose names appear on
62 the certified list of employees created pursuant to the
63 provisions of subsection (c) of this section and who are
64 hired by the county board of the receiving county shall
65 accrue seniority in both the sending and the receiving
66 counties during the time in which they continue to be
67 employed by the county board of the receiving county.

68 (g) The state board shall promulgate legislative rules
69 to implement the provisions of this section pursuant to the
70 provisions of article three-b, chapter twenty-nine-a of this
71 code. The rules shall be filed with the office of the
72 secretary of state no later than the first day of October,
73 one thousand nine hundred ninety-seven.

Enr. Com. Sub. for H. B. 2204] 14

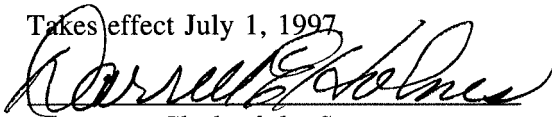
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

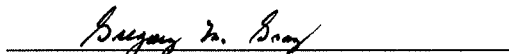

Chairman Senate Committee

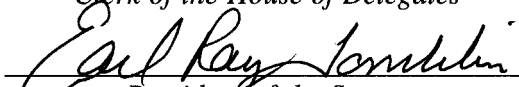

Chairman House Committee

Originating in the House.

Takes effect July 1, 1997

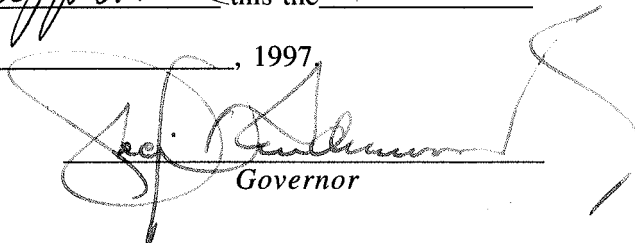

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 6th
day of May, 1997.


Governor

PRESENTED TO THE

GOVERNOR

Date 5/1/97

Time 3:45pm