

HB 4588

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SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
SECOND REGULAR SESSION, 2008

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**ENROLLED**

COMMITTEE SUBSTITUTE  
FOR  
**House Bill No. 4588**

(By Delegates Perry, Browning, Poling, Shaver,  
Wysong, Duke, Romine, Williams and Ellis)

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Passed March 8, 2008

In Effect July 1, 2008

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FOR

## H. B. 4588

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(BY DELEGATES PERRY, BROWNING, POLING, SHAVER,  
WYSONG, DUKE, ROMINE, WILLIAMS AND ELLIS)

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[Passed March 8, 2008; in effect July 1, 2008.]

AN ACT to repeal §18-9A-5a, §18-9A-5b, §18-9A-10a and §18-9A-22 of the Code of West Virginia, 1931, as amended; to amend and reenact §18-1-1 of said code; to amend and reenact §18-9A-2, §18-9A-3a, §18-9A-4, §18-9A-5, §18-9A-6, §18-9A-7, §18-9A-8, §18-9A-9, §18-9A-10 and §18-9A-21 of said code; and to amend and reenact §18-20-5 of said code all relating to public school support; defining terms; eliminating adjusted enrollment and certain waiver provisions; eliminating obsolete provisions; providing alternate computation of county and total basic foundation program funding for certain years; limiting basis of foundation allowances for personnel to certain ratios of net student enrollment instead of adjusted enrollment; establishing different net enrollment limits on the basis of differences in students per square mile and expiring existing ratios and funding provisions; providing for certain adjustments to net enrollment for allowances in low enrollment counties;

requiring review of certain issues; establishing minimum ratios of professional instructional personnel per students in net enrollment; providing criteria for certain new positions; establishing student density categories for determining allowance for transportation; modifying incentive for alternative fuel use and allowance for transporting students to certain multi-county centers; removing obsolete provisions for certain competitive bidding; deleting allowance for administrative costs; providing foundation allowance for professional student support personnel, including fixed charges; including professional student support personnel costs in determining professional substitute allowance; placing funding supplement for advanced placement and dual credit enrollment in allowance to improve instructional programs; repealing provisions for certain additional nursing positions; providing enrollment basis for alternative program funding and adding prevention programs; expiring certain provisions for funding for economies of scale in certain counties; requiring annual review and report by state superintendent on exceptional student services and accounting of services and costs; requiring appropriation for distribution upon application to support children with high acuity needs that exceed county capacity from funds available; and requiring rule to implement distribution.

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

That §18-9A-5a, §18-9A-5b, §18-9A-10a and §18-9A-22 of the Code of West Virginia, 1931, as amended, be repealed; that §18-1-1 of said code be amended and reenacted; that §18-9A-2, §18-9A-3a, §18-9A-4, §18-9A-5, §18-9A-6, §18-9A-7, §18-9A-8, §18-9A-9, §18-9A-10 and §18-9A-21 of said code be amended and reenacted; and that §18-20-5 of said code be amended and reenacted, all to read as follows:

## **CHAPTER 18. EDUCATION.**

**ARTICLE 1. DEFINITIONS; LIMITATIONS OF CHAPTER;  
GOALS FOR EDUCATION.**

**§18-1-1. Definitions.**

1 The following words used in this chapter and in any  
2 proceedings pursuant thereto have the meanings ascribed to  
3 them unless the context clearly indicates a different meaning:

4 (a) "School" means the students and teachers assembled  
5 in one or more buildings, organized as a unit;

6 (b) "District" means county school district;

7 (c) "State board" means the West Virginia Board of  
8 Education;

9 (d) "County board" or "board" means a county board of  
10 education;

11 (e) "State superintendent" means the State Superintendent  
12 of Free Schools;

13 (f) "County superintendent" or "superintendent" means  
14 a county superintendent of schools;

15 (g) "Teacher" means a teacher, supervisor, principal,  
16 superintendent, public school librarian or any other person  
17 regularly employed for instructional purposes in a public  
18 school in this state;

19 (h) "Service person" or "service personnel," whether  
20 singular or plural, means any non-teaching school employee  
21 who is not included in the meaning of "teacher" as defined in  
22 this section, and who serves the school or schools as a whole,  
23 in a nonprofessional capacity, including such areas as

24 secretarial, custodial, maintenance, transportation, school  
25 lunch and aides. Any reference to “service employee” or  
26 “service employees” in this chapter or chapter eighteen-a of  
27 this code means service person or service personnel as  
28 defined in this section;

29 (i) “Social worker” means a nonteaching school  
30 employee who, at a minimum, possesses an undergraduate  
31 degree in social work from an accredited institution of higher  
32 learning and who provides various professional social work  
33 services, activities or methods as defined by the State Board  
34 for the benefit of students;

35 (j) “Regular full-time employee” means any person  
36 employed by a county board who has a regular position or  
37 job throughout his or her employment term, without regard  
38 to hours or method of pay;

39 (k) “Career clusters” means broad groupings of related  
40 occupations;

41 (l) “Work-based learning” means a structured activity  
42 that correlates with and is mutually supportive of the  
43 school-based learning of the student and includes specific  
44 objectives to be learned by the student as a result of the  
45 activity;

46 (m) “School-age juvenile” means any individual who is  
47 entitled to attend or who, if not placed in a residential facility,  
48 would be entitled to attend public schools in accordance with:  
49 (1) Section five, article two of this chapter; (2) sections  
50 fifteen and eighteen, article five of this chapter; or (3) section  
51 one, article twenty of this chapter;

52 (n) “Student with a disability” means an exceptional  
53 child, other than gifted, pursuant to section one, article  
54 twenty of this chapter;

55 (o) "Casual deficit" means a deficit of not more than  
56 three percent of the approved levy estimate or a deficit that is  
57 nonrecurring from year to year.

## 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  
3 Education.

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

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

9 (d) "Professional educator" shall be synonymous with  
10 and shall have the same meaning as "teacher" as defined in  
11 section one, article one of this chapter, and includes  
12 technology integration specialists.

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

22 (f) "Professional student support personnel" means a  
23 "professional person" as those terms are defined in section

24 one. article one, chapter eighteen-a of this code who is  
25 assigned and serves on a regular full-time basis as a  
26 counselor or as a school nurse with a bachelor's degree and  
27 who is licensed by the West Virginia Board of Examiners for  
28 Registered Professional Nurses.

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

32 (h) "Service personnel" means all personnel as provided  
33 in section eight, article four, chapter eighteen-a of this code.  
34 For the purpose of computations under this article of ratios of  
35 service personnel to net enrollment, a service employee shall  
36 be counted as that number found by dividing his or her  
37 number of employment days in a fiscal year by two hundred:  
38 *Provided*, That the computation for any service person  
39 employed for three and one-half hours or less per day as  
40 provided in section eight-a, article four, chapter eighteen-a of  
41 this code shall be calculated as one-half an employment day.

42 (i) "Net enrollment" means the number of pupils enrolled  
43 in special education programs, kindergarten programs and  
44 grades one to twelve, inclusive, of the public schools of the  
45 county. Net enrollment further shall include:

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

49 (A) Net enrollment includes no more than one thousand  
50 of those adults counted on the basis of full-time equivalency  
51 and apportioned annually to each county in proportion to the  
52 adults participating in regular secondary vocational programs  
53 in the prior year counted on the basis of full-time  
54 equivalency; and

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

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

61 (3) No pupil shall be counted more than once by reason  
62 of transfer within the county or from another county within  
63 the state, and no pupil shall be counted who attends school in  
64 this state from another state;

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

68 (5) For any county whose net enrollment as determined  
69 under all other provisions of this definition is less than one  
70 thousand four hundred, the net enrollment of the county shall  
71 be increased by an amount to be determined in accordance  
72 with the following:

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

75 (B) Multiply the amount derived from the calculation in  
76 paragraph (A) of this subdivision by three hundred;

77 (C) If the increase in net enrollment as determined under  
78 this subdivision plus the county's net enrollment as  
79 determined under all other provisions of this subsection is  
80 greater than one thousand four hundred, the increase in net  
81 enrollment shall be reduced so that the total does not exceed  
82 one thousand four hundred; and



83 (D) During the two thousand eight - two thousand nine  
84 interim period and every three interim periods thereafter, the  
85 Legislative Oversight Commission on Education  
86 Accountability shall review the provisions of this subdivision  
87 to determine whether or not they properly address the needs  
88 of counties with low enrollment and a sparse population  
89 density.

90 (j) "Sparse-density county" means a county whose ratio  
91 of net enrollment, excluding any increase in the net  
92 enrollment of counties pursuant to subdivision (5) of the  
93 definition of net enrollment, to the square miles of the county  
94 is less than five.

95 (k) "Low-density county" means a county whose ratio of  
96 net enrollment, excluding any increase in the net enrollment  
97 of counties pursuant to subdivision (5) of the definition of net  
98 enrollment, to the square miles of the county is equal to or  
99 greater than five but less than ten.

100 (l) "Medium-density county" means a county whose ratio  
101 of net enrollment, excluding any increase in the net  
102 enrollment of counties pursuant to subdivision (5) of the  
103 definition of net enrollment, to the square miles of the county  
104 is equal to or greater than ten but less than twenty.

105 (m) "High-density county" means a county whose ratio  
106 of net enrollment, excluding any increase in the net  
107 enrollment of counties pursuant to subdivision (5) of the  
108 definition of net enrollment, to the square miles of the county  
109 is equal to or greater than twenty.

110 (n) "Levies for general current expense purposes" means  
111 ninety-four percent of the levy rate for county boards of  
112 education calculated or set by the Legislature pursuant to the  
113 provisions of section six-f, article eight, chapter eleven of this

114 code: *Provided*, That beginning the first day of July, two  
115 thousand eight, “levies for general current expense purposes”  
116 means ninety percent of the levy rate for county boards of  
117 education calculated or set by the Legislature pursuant to the  
118 provisions of section six-f, article eight, chapter eleven of this  
119 code: *Provided, however*. That effective the first day of July,  
120 two thousand ten, the definitions set forth in this subsection  
121 are subject to the provisions of section two-a of this article.

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

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

**§18-9A-3a. Total state basic foundation program for fiscal  
years 2009 through 2013, only.**

1 (a) Notwithstanding any other provisions of this article to  
2 the contrary, the total basic foundation program for the state  
3 for the fiscal years two thousand nine through two thousand  
4 thirteen shall be the sum of the amounts computed for each  
5 county in accordance with this section, less the county’s local  
6 share:

7 (1) For the fiscal year two thousand nine, the department  
8 of education shall compute the total basic foundation  
9 program for each county in accordance with the provisions of  
10 this article and in accordance with the provisions of this

11 article in effect for fiscal year two thousand eight. The total  
12 basic foundation program for each county computed in  
13 accordance with this article is limited to a growth of one fifth  
14 above the amount computed for the county in accordance  
15 with the provisions in effect for fiscal year two thousand  
16 eight. The total basic foundation program for the county is  
17 the greater of the two computations.

18 (2) For the fiscal year two thousand ten, the department  
19 of education shall compute the total basic foundation  
20 program for each county in accordance with the provisions of  
21 this article and in accordance with the provisions of this  
22 article in effect for fiscal year two thousand eight. The total  
23 basic foundation program for each county computed in  
24 accordance with this article is limited to a growth of two  
25 fifths above the amount computed for the county in  
26 accordance with the provisions in effect for fiscal year two  
27 thousand eight. The total basic foundation program for the  
28 county is the greater of the two computations.

29 (3) For the fiscal year two thousand eleven, the  
30 department of education shall compute the total basic  
31 foundation program for each county in accordance with the  
32 provisions of this article and in accordance with the  
33 provisions of this article in effect for fiscal year two thousand  
34 eight. The total basic foundation program for each county  
35 computed in accordance with this article is limited to a  
36 growth of three fifths above the amount computed for the  
37 county in accordance with the provisions in effect for fiscal  
38 year two thousand eight. The total basic foundation program  
39 for the county is the greater of the two computations.

40 (4) For the fiscal year two thousand twelve, the  
41 department of education shall compute the total basic  
42 foundation program for each county in accordance with the  
43 provisions of this article and in accordance with the

44 provisions of this article in effect for fiscal year two thousand  
45 eight. The total basic foundation program for each county  
46 computed in accordance with this article is limited to a  
47 growth of four fifths above the amount computed for the  
48 county in accordance with the provisions in effect for fiscal  
49 year two thousand eight. The total basic foundation program  
50 for the county is the greater of the two computations.

51 (5) For the fiscal year two thousand thirteen and each  
52 year thereafter, the department of education shall compute  
53 the total basic foundation program for each county in  
54 accordance with the provisions of this article and in  
55 accordance with the provisions of this article in effect for  
56 fiscal year two thousand eight. For the fiscal year two  
57 thousand thirteen only, the total basic foundation program for  
58 the county is the greater of the two computations.

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

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

6 (1) Subject to subdivision (2) of this subsection, in  
7 making this computation no county shall receive an  
8 allowance for the personnel which number is in excess of  
9 professional educators to each one thousand students in net  
10 enrollment as follows:

11 (A) For each high-density county, the number of  
12 personnel for which a county shall receive the allowance  
13 shall not exceed seventy-two and one tenth professional  
14 educators per each one thousand students in net enrollment;

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

20 (C) For each low-density county, the number of  
21 personnel for which a county shall receive the allowance  
22 shall not exceed seventy-two and four tenths professional  
23 educators per each one thousand students in net enrollment;  
24 and

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

30 (2) For the ratios applicable to each of the four density  
31 categories set forth in subdivision (1) of this subsection, the  
32 number of professional educators per each one thousand  
33 students in net enrollment increases by five one hundredths  
34 per year for each of fiscal years two thousand ten, two  
35 thousand eleven, two thousand twelve and two thousand  
36 thirteen. For each fiscal year thereafter, the ratios remain at  
37 the two thousand thirteen level.

38 (3) The number of and the allowance for personnel paid  
39 in part by state and county funds shall be prorated; and

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

46 (b) Subject to subsection (c) of this section, each county  
47 board shall establish and maintain a minimum ratio of  
48 professional instructional personnel per one thousand  
49 students in net enrollment as follows:

50 (1) For each high-density county, the minimum number  
51 of professional instructional personnel per one thousand  
52 students in net enrollment is sixty-five and eight tenths;

53 (2) For each medium-density county, the minimum  
54 number of professional instructional personnel per one  
55 thousand students in net enrollment is sixty-five and nine  
56 tenths;

57 (3) For each low-density county, the minimum number of  
58 professional instructional personnel per one thousand  
59 students in net enrollment is sixty-six;

60 (4) For each sparse-density county, the minimum number  
61 of professional instructional personnel per one thousand  
62 students in net enrollment is sixty-six and five one  
63 hundredths.

64 (c) For the ratios applicable to each of the four density  
65 categories set forth in subsection (b) of this subsection, the  
66 number of professional instructional personnel per each one  
67 thousand students in net enrollment increases by five one  
68 hundredths per year for each of fiscal years two thousand ten,  
69 two thousand eleven, two thousand twelve and two thousand  
70 thirteen. For each fiscal year thereafter, the ratios remain at  
71 the two thousand thirteen level.

72 (d) Any county board which does not establish and  
73 maintain the applicable minimum ratio required in subsection  
74 (b) of this section shall suffer a pro rata reduction in the  
75 allowance for professional educators under this section:

76 *Provided*, That no county shall be penalized if it has  
77 increases in enrollment during that school year: *Provided*,  
78 *however*, That for the school year two thousand eight - two  
79 thousand nine, only, no county shall be penalized for not  
80 meeting the applicable minimum ratio required in subsection  
81 (b) of this section.

82 (e) No county shall increase the number of administrative  
83 personnel employed as either professional educators or pay  
84 grade "H" service personnel above the number which were  
85 employed, or for which positions were posted, on the thirtieth  
86 day of June, one thousand nine hundred ninety, and,  
87 therefore, county boards shall whenever possible utilize  
88 classroom teachers for curriculum administrative positions  
89 through the use of modified or extended contracts.

90 (f) As the number of professional educators per each one  
91 thousand students in net enrollment increases during fiscal  
92 years two thousand nine through two thousand thirteen, any  
93 additional positions that are created as a result of that  
94 increase shall be positions that will enhance student  
95 achievement and are consistent with the needs as identified  
96 in each county board's electronic county strategic  
97 improvement plan. County boards are encouraged to fill at  
98 least some of the additional positions with technology  
99 integration specialists.

100 (g) During the two thousand eight - two thousand nine  
101 interim period, and every three interim periods thereafter, the  
102 Legislative Oversight Commission on Education  
103 Accountability shall review the four density categories  
104 created in section two of this article, the ratios for  
105 professional educators established in this section and the  
106 ratios for service personnel established in section five of this  
107 article.

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

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

6 (1) For the school year beginning on the first day of July,  
7 two thousand eight, and thereafter, no county shall receive an  
8 allowance for an amount in excess of service personnel per  
9 one thousand students in net enrollment, as follows:

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

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

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

24 (D) For each sparse-density county, the number of  
25 personnel for which a county shall receive the allowance  
26 shall not exceed forty-five and sixty-eight one hundredths  
27 service personnel per one thousand students in net  
28 enrollment: and



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

**§18-9A-6. Foundation allowance for fixed charges.**

1 The total allowance for fixed charges shall be the sum of  
2 the following:

3 (1) The sum of the foundation allowance for professional  
4 educators and the foundation allowance for other personnel,  
5 as determined in sections four, five and eight of this article,  
6 multiplied by the current social security rate of contribution;  
7 plus

8 (2) The sum of the foundation allowance for professional  
9 educators and the foundation allowance for other personnel,  
10 as determined in sections four, five and eight of this article,  
11 multiplied by four hundredths of one percent as an allowance  
12 for unemployment compensation contribution; plus

13 (3) The sum of the foundation allowance for professional  
14 educators and the foundation allowance for other personnel,  
15 as determined in sections four, five and eight of this article,  
16 multiplied by the rate which is derived by dividing the total  
17 estimated contributions for workers' compensation for all  
18 county boards by the sum of the foundation allowance for  
19 professional educators and other personnel, as determined in  
20 sections four, five and eight of this article. The total  
21 estimated contribution for workers compensation is  
22 determined by multiplying each county board's allowance for  
23 professional educators and other personnel, as determined by  
24 sections four, five and eight of this article, by the county's

25 actual contribution rate by using data of the most recent year  
26 for which it is available; plus

27 (4) The teachers retirement fund allowance as determined  
28 in section six-a of this article.

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

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

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

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

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

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

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

15 (E) For any county for the transportation cost for  
16 maintenance, operation and related costs, exclusive of all  
17 salaries, for transporting students to and from classes at a  
18 multi-county vocational center, the percentage provided in  
19 paragraphs (A) through (D) of this subdivision as applicable  
20 for the county plus an additional ten percent; and

21 (F) For any county for that portion of its school bus  
22 system that uses an alternative fuel such as compressed

23 natural gas or other acceptable alternative fuel, the percentage  
24 provided in paragraphs (A) through (D) of this subdivision as  
25 applicable for the county plus an additional ten percent:  
26 *Provided*, That any county using an alternative fuel and  
27 qualifying for the additional allowance under this subdivision  
28 shall submit a plan regarding the intended future use of  
29 alternatively fueled school buses;

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

33 (3) An amount equal to eight and one-third percent of the  
34 current replacement value of the bus fleet within each county  
35 as determined by the state board. The amount shall only be  
36 used for the replacement of buses. Buses purchased after the  
37 first day of July, one thousand nine hundred ninety-nine, that  
38 are driven one hundred eighty thousand miles, regardless of  
39 year model, will be subject to the replacement value of eight  
40 and one-third percent as determined by the state board. In  
41 addition, in any school year in which its net enrollment  
42 increases when compared to the net enrollment the year  
43 immediately preceding, a school district may apply to the  
44 state superintendent for funding for an additional bus or  
45 buses. The state superintendent shall make a decision  
46 regarding each application based upon an analysis of the  
47 individual school district's net enrollment history and  
48 transportation needs: *Provided*, That the superintendent shall  
49 not consider any application which fails to document that the  
50 county has applied for federal funding for additional buses.  
51 If the state superintendent finds that a need exists, a request  
52 for funding shall be included in the budget request submitted  
53 by the state board for the upcoming fiscal year; and

54 (4) Aid in lieu of transportation equal to the state average  
55 amount per pupil for each pupil receiving the aid within each  
56 county.

57 (b) The total state share for this purpose shall be the sum  
58 of the county shares: *Provided*, That no county shall receive  
59 an allowance which is greater than one-third above the  
60 computed state average allowance per transportation mile  
61 multiplied by the total transportation mileage in the county  
62 exclusive of the allowance for the purchase additional buses.

63 (c) One half of one percent of the transportation  
64 allowance distributed to each county shall be for the purpose  
65 of trips related to academic classroom curriculum and not  
66 related to any extracurricular activity. Any remaining funds  
67 credited to a county for the purpose of trips related to  
68 academic classroom curriculum during the fiscal year shall be  
69 carried over for use in the same manner the next fiscal year  
70 and shall be separate and apart from, and in addition to, the  
71 appropriation for the next fiscal year. The state board may  
72 request a county to document the use of funds for trips  
73 related to academic classroom curriculum if the board  
74 determines that it is necessary.

75 (d) The amendments made to this section during the two  
76 thousand eight regular session of the Legislature are intended  
77 to be temporary while the transportation issue is further  
78 studied during the two thousand eight-two thousand nine  
79 interim period.

**§18-9A-8. Foundation allowance for professional student support services.**

1 (a) The basic foundation allowance to the county for  
2 professional student support personnel shall be the amount of  
3 money determined in accordance with the following:

4 (1) The sum of the state minimum salaries, as determined  
5 in accordance with the provisions of article four, chapter  
6 eighteen of this code, for all state aid eligible school nurse

7 and counselor positions in the county during the two  
8 thousand eight fiscal year which number shall be reduced in  
9 the same proportion as the number of professional educators  
10 allowed to be funded under section four of this article to the  
11 total number of professional educators employed that are  
12 state aid eligible. In performing this calculation, the  
13 numerator shall be the number of professional educators  
14 actually funded under section four of this article and the  
15 denominator shall be the total number of professional  
16 educators employed that are eligible to be funded under  
17 section four of this article;

18 (2) The amount derived from the calculation in  
19 subdivision (1) of this subsection is increased by one half  
20 percent;

21 (3) The amount derived from the calculation in  
22 subdivision (2) of this subsection is the basic foundation  
23 allowance to the county for professional student support  
24 personnel for the two thousand nine fiscal year;

25 (4) For fiscal years two thousand ten, two thousand  
26 eleven, two thousand twelve and two thousand thirteen, the  
27 basic foundation allowance to the county for professional  
28 student support personnel increases by one-half percent per  
29 year over the allowance for the previous year; and

30 (5) For all fiscal years thereafter, the basic foundation  
31 allowance to the county for professional student support  
32 personnel remains the same amount as in the two thousand  
33 thirteen fiscal year.

34 (b) The additional positions for counselors that may be  
35 created as a result of the one percent increase provided  
36 pursuant to this section shall be assigned to schools where the  
37 counselor can:

38 (1) Enhance student achievement;

39 (2) Provide early intervention for students in grades pre-  
40 kindergarten through five; and

41 (3) Enhance student development and career readiness.

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

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

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

10 (2) For professional educator substitutes or current  
11 expense, two and five-tenths percent of the computed state  
12 allocation for professional educators and other professional  
13 personnel as determined in sections four and eight of this  
14 article. Distribution to the counties shall be made  
15 proportional to the number of professional educators and  
16 other professional personnel authorized for the county in  
17 compliance with sections four and eight of this article; plus

18 (3) For service personnel substitutes or current expense,  
19 two and five-tenths percent of the computed state allocation  
20 for service personnel as determined in section five of this  
21 article. Distribution to the counties shall be made proportional  
22 to the number of service personnel authorized for the county in  
23 compliance with section five of this article; plus

24 (4) For academic materials, supplies and equipment for  
25 use in instructional programs, two hundred dollars multiplied  
26 by the number of professional instructional personnel  
27 employed in the schools of the county. Distribution shall be  
28 made to each county for allocation to the faculty senate of  
29 each school in the county on the basis of two hundred dollars  
30 per professional instructional personnel employed at the  
31 school. Faculty senate means a faculty senate created  
32 pursuant to section five, article five-a of this chapter.  
33 Decisions for the expenditure of such funds shall be made at  
34 the school level by the faculty senate in accordance with the  
35 provisions of said section five, article five-a and shall not be  
36 used to supplant the current expense expenditures of the  
37 county. Beginning on the first day of September, one  
38 thousand nine hundred ninety-four, and every September  
39 thereafter, county boards shall forward to each school for the  
40 use by faculty senates the appropriation specified in this  
41 section. Each school shall be responsible for keeping  
42 accurate records of expenditures.

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

1 (a) The total allowance to improve instructional programs  
2 shall be the sum of the following:

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

12 (A) One hundred fifty thousand dollars shall be allocated  
13 to each county;

14 (B) Distribution to the counties of the remainder of these  
15 funds shall be made proportional to the average of each  
16 county's average daily attendance for the preceding year and  
17 the county's second month net enrollment. Moneys allocated  
18 by provision of this section shall be used to improve  
19 instructional programs according to the county and school  
20 electronic strategic improvement plans required by section  
21 five, article two-c of this chapter and approved by the state  
22 board: *Provided*, That notwithstanding any other provision  
23 of this code to the contrary, moneys allocated by provision of  
24 this section may also be used in the implementation and  
25 maintenance of the uniform integrated regional computer  
26 information system.

27 Up to twenty-five percent of this allocation may be used  
28 to employ professional educators and service personnel in  
29 counties after all applicable provisions of sections four and  
30 five of this article have been fully utilized.

31 Prior to the use of any funds from this section for  
32 personnel costs, the county board must receive authorization  
33 from the state superintendent of schools. The state  
34 superintendent shall require the county board to demonstrate:  
35 (1) The need for the allocation; (2) efficiency and fiscal  
36 responsibility in staffing; (3) sharing of services with  
37 adjoining counties and the regional educational service  
38 agency for that county in the use of the total local district  
39 board budget; and (4) employment of technology integration  
40 specialists to meet the needs for implementation of the West  
41 Virginia 21st Century Strategic Technology Learning Plan.  
42 County boards shall make application for available funds for  
43 the next fiscal year by the first day of May of each year. On  
44 or before the first day of June, the state superintendent shall



45 review all applications and notify applying county boards of  
46 the distribution of the allocation. The funds shall be  
47 distributed during the fiscal year appropriate. The state  
48 superintendent shall require the county board to demonstrate  
49 the need for an allocation for personnel based upon the  
50 county's inability to meet the requirements of state law or  
51 state board policy: *Provided*, That the funds available for  
52 personnel under this section may not be used to increase the  
53 total number of professional non-instructional personnel in  
54 the central office beyond four. The plan shall be made  
55 available for distribution to the public at the office of each  
56 affected county board; plus

57 (2) For the purposes of the West Virginia 21st Century  
58 Strategic Technology Learning Plan provided for in section  
59 seven, article two-e of this chapter, an amount equal to fifteen  
60 percent of the increase in the local share amount for the next  
61 school year above any required allocation pursuant to section  
62 six-b of this article shall be added to the amount of the  
63 appropriation for this purpose for the immediately preceding  
64 school year. The sum of these amounts shall be allocated to  
65 the counties as provided in section seven, article two-e of this  
66 chapter to meet the objectives of the West Virginia 21st  
67 Century Strategic Technology Learning Plan; plus

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

74 (4) An amount not less than the amount required to meet  
75 debt service requirements on any revenue bonds issued prior  
76 to the first day of January, one thousand nine hundred ninety-  
77 four, and the debt service requirements on any revenue bonds

78 issued for the purpose of refunding revenue bonds issued  
79 prior to the first day of January, one thousand nine hundred  
80 ninety-four, shall be paid into the School Building Capital  
81 Improvements Fund created by section six, article nine-d of  
82 this chapter and shall be used solely for the purposes of that  
83 article. The School Building Capital Improvements Fund  
84 shall not be utilized to meet the debt services requirement on  
85 any revenue bonds or revenue refunding bonds for which  
86 moneys contained within the School Building Debt Service  
87 Fund have been pledged for repayment pursuant to that  
88 section.

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

97 (c) Any project funded by the School Building Authority  
98 shall be in accordance with a comprehensive educational  
99 facility plan which must be approved by the state board and  
100 the School Building Authority.

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

1 (a) An appropriation may be made to the state department  
2 to be distributed to county boards for the operation of  
3 alternative education and prevention programs established in  
4 accordance with policies and procedures adopted by the state  
5 board under section six, article two of this chapter. The  
6 appropriation shall be an amount equal to twelve dollars per  
7 student in net enrollment, subject to appropriation by the  
8 Legislature. The state board shall distribute ninety-seven

9 percent of the total appropriation to the county boards  
10 proportionate to each county's net enrollment. The  
11 remaining three percent of the appropriation shall be retained  
12 by the state department to support the provision of services  
13 to the county boards in administering programs established  
14 in accordance with policies and procedures adopted by the  
15 state board under section six, article two of this chapter:  
16 *Provided*, That nothing in this section shall be construed to  
17 require any specific level of funding by the Legislature.

## ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

### §18-20-5. Powers and duties of state superintendent.

1 (a) The state superintendent of schools shall organize,  
2 promote, administer and be responsible for:

3 (1) Stimulating and assisting county boards of education  
4 in establishing, organizing and maintaining special schools,  
5 classes, regular class programs, home-teaching and visiting-  
6 teacher services.

7 (2) Cooperating with all other public and private agencies  
8 engaged in relieving, caring for, curing, educating and  
9 rehabilitating exceptional children, and in helping coordinate  
10 the services of such agencies.

11 (3)(A) Preparing the necessary rules, policies, formula for  
12 distribution of available appropriated funds, reporting forms  
13 and procedures necessary to define minimum standards in  
14 providing suitable facilities for education of exceptional  
15 children and ensuring the employment, certification and  
16 approval of qualified teachers and therapists subject to  
17 approval by the state board of education: *Provided*, That no  
18 state rule, policy or standard under this article or any county  
19 board rule, policy or standard governing special education  
20 may exceed the requirements of federal law or regulation.

21 (B) The state superintendent shall annually review the  
22 rules, policies and standards of the state and federal law for  
23 serving the needs of exceptional children enrolled in the  
24 public schools and shall report to the legislative oversight  
25 commission on education accountability by the first day of  
26 December or as soon thereafter as requested by the  
27 commission, two thousand eight, and in each year thereafter,  
28 the findings of the review along with an accounting of the  
29 services provided and the costs thereof for exceptional  
30 children enrolled in the public schools of this state during the  
31 latest available school year. An appropriation shall be made  
32 to the department of education to be distributed to county  
33 boards to support children with high acuity needs that exceed  
34 the capacity of county to provide with funds available. Each  
35 county board shall apply to the state superintendent for  
36 receipt of this funding in a manner set forth by the state  
37 superintendent that assesses and takes into account varying  
38 acuity levels of the exceptional students. Any remaining  
39 funds at the end of a fiscal year from the appropriation shall  
40 be carried over to the next fiscal year. When possible,  
41 federal funds shall be distributed to county boards for this  
42 purpose before any of the state appropriation is distributed.  
43 The state board shall promulgate a rule in accordance with  
44 the provisions of article three-b, chapter twenty-nine-a of this  
45 code that implements the provisions of this subdivision  
46 relating to distributing the funds to the county boards. The  
47 rule at least shall include a definition for “children with high  
48 acuity needs”.

49 (4) Receiving from county boards of education their  
50 applications, annual reports and claims for reimbursement  
51 from such moneys as are appropriated by the Legislature,  
52 auditing such claims and preparing vouchers to reimburse  
53 said counties the amounts reimbursable to them.

54 (5) Assuring that all exceptional children in the state,  
55 including children in mental health facilities, residential

56 institutions, private schools and correctional facilities as  
57 provided in section thirteen-f, article two of this chapter  
58 receive an education in accordance with state and federal  
59 laws: *Provided*. That the state superintendent shall also  
60 assure that adults in correctional facilities and regional jails  
61 receive an education to the extent funds are provided  
62 therefor.

63 (6) Performing other duties and assuming other  
64 responsibilities in connection with this program as needed.

65 (7) Receive the county plan for integrated classroom  
66 submitted by the county boards of education and submit a  
67 state plan, approved by the state board of education, to the  
68 legislative oversight commission on education accountability  
69 no later than the first day of December, one thousand nine  
70 hundred ninety-five.

71 (b) Nothing contained in this section shall be construed  
72 to prevent any county board of education from establishing  
73 and maintaining special schools, classes, regular class  
74 programs, home-teaching or visiting-teacher services out of  
75 funds available from local revenue.

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

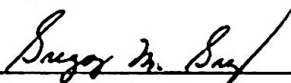
  
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Chairman Senate Committee

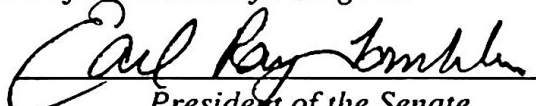
  
\_\_\_\_\_  
Chairman House Committee


Originating in the House.

In effect July 1, 2008.

  
\_\_\_\_\_  
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 31<sup>st</sup>  
day of March, 2008.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 25 2008

Time 10:35 am