

H. B. 2550

(By Delegates Iaquina, Fleischauer,
Longstreth, Stephens, Walker and Azinger)

[Introduced January 18, 2011; referred to the
Committee on Education then Finance.]

**Interim
Bill**

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new article, designated §18-10F-1, §18-10F-2
and §18-10F-3, all relating to the enactment of the Interstate
Compact on Educational Opportunity for Military Children;
establishing the West Virginia Council for Educational
Opportunities for Military Children; membership; powers and
duties.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended
by adding thereto a new article, designated §18-10F-1, §18-10F-2
and §18-10F-3, all to read as follows:

**ARTICLE 10F. INTERSTATE COMPACT ON EDUCATION OPPORTUNITY FOR
MILITARY CHILDREN.**

§18-10F-1. Title.

This article may be cited as the "Interstate Compact on
Education Opportunity for Military Children".

1 §18-10F-2. Enactment of the Interstate Compact on Education
2 Opportunity for Military Children.

3 The Interstate Compact on Education Opportunity for Military
4 Children is hereby enacted into law and entered into by the State
5 of West Virginia with any and all states legally joining therein in
6 accordance with its terms, in the form substantially as follows:

7
8 INTERSTATE COMPACT ON EDUCATIONAL
9 OPPORTUNITY FOR MILITARY CHILDREN

10 ARTICLE I. PURPOSE

11
12 It is the purpose of this compact to remove barriers to
13 educational success imposed on children of military families
14 because of frequent moves and deployment of their parents by:

15 (a) Facilitating the timely enrollment of children of military
16 families and ensuring that they are not placed at a disadvantage
17 due to difficulty in the transfer of education records from the
18 previous school district(s) or variations in entrance/age
19 requirements.

20 (b) Facilitating the student placement process through which
21 children of military families are not disadvantaged by variations
22 in attendance requirements, scheduling, sequencing, grading, course
23 content or assessment.

24 (c) Facilitating the qualification and eligibility for
25 enrollment, educational programs, and participation in

1 extracurricular academic, athletic, and social activities.

2 (d) Facilitating the on-time graduation of children of
3 military families.

4 (e) Providing for the promulgation and enforcement of
5 administrative rules implementing the provisions of this compact.

6 (f) Providing for the uniform collection and sharing of
7 information between and among member states, schools and military
8 families under this compact.

9 (g) Promoting coordination between this compact and other
10 compacts affecting military children.

11 (h) Promoting flexibility and cooperation between the
12 educational system, parents and the student in order to achieve
13 educational success for the student.

14

15 ARTICLE II. DEFINITIONS

16

17 As used in this compact, unless the context clearly requires
18 a different construction:

19 (a) "Active duty" means full-time duty status in the active
20 uniformed service of the United States, including members of the
21 National Guard and Reserve on active duty orders pursuant to 10
22 U.S.C. Section 1209 and 1211.

23 (b) "Children of military families" means a school-aged child
24 or children, enrolled in Kindergarten through Twelfth (12th) grade,
25 in the household of an active duty member.

1 (c) "Compact commissioner" means the voting representative of
2 each compacting state appointed pursuant to Article VIII of this
3 compact.

4 (d) "Deployment" means the period one (1) month prior to the
5 service members' departure from their home station on military
6 orders though six (6) months after return to their home station.

7 (e) "Education(al) records" means those official records,
8 files, and data directly related to a student and maintained by the
9 school or local education agency, including but not limited to
10 records encompassing all the material kept in the student's
11 cumulative folder such as general identifying data, records of
12 attendance and of academic work completed, records of achievement
13 and results of evaluative tests, health data, disciplinary status,
14 test protocols, and individualized education programs.

15 (f) "Extracurricular activities" means a voluntary activity
16 sponsored by the school or local education agency or an
17 organization sanctioned by the local education agency.
18 Extracurricular activities include, but are not limited to,
19 preparation for and involvement in public performances, contests,
20 athletic competitions, demonstrations, displays, and club
21 activities.

22 (g) "Interstate Commission on Educational Opportunity for
23 Military Children" means the commission that is created under
24 Article IX of this compact, which is generally referred to as
25 Interstate Commission.

1 (h) "Local education agency" means a public authority legally
2 constituted by the state as an administrative agency to provide
3 control of and direction for Kindergarten through Twelfth (12th)
4 grade public educational institutions.

5 (i) "Member state" means a state that has enacted this
6 compact.

7 (j) "Military installation" means a base, camp, post, station,
8 yard, center, homeport facility for any ship, or other activity
9 under the jurisdiction of the Department of Defense, including any
10 leased facility, which is located within any of the several States,
11 the District of Columbia, the Commonwealth of Puerto Rico, the U.S.
12 Virgin Islands, Guam, American Samoa, the Northern Marianas Islands
13 and any other U.S. Territory. Such term does not include any
14 facility used primarily for civil works, rivers and harbors
15 projects, or flood control projects.

16 (k) "Non-member state" means a state that has not enacted this
17 compact.

18 (l) "Receiving state" means the state to which a child of a
19 military family is sent, brought, or caused to be sent or brought.

20 (m) "Rule" means a written statement by the Interstate
21 Commission promulgated pursuant to Article XII of this compact that
22 is of general applicability, implements, interprets or prescribes
23 a policy or provision of the Compact, or an organizational,
24 procedural, or practice requirement of the Interstate Commission,
25 and has the force and effect of statutory law in a member state,

1 and includes the amendment, repeal, or suspension of an existing
2 rule.

3 (n) "Sending state" means: the state from which a child of a
4 military family is sent, brought, or caused to be sent or brought.

5 (o) "State" means a state of the United States, the District
6 of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin
7 Islands, Guam, American Samoa, the Northern Marianas Islands and
8 any other U.S. Territory.

9 (p) "Student" means the child of a military family for whom
10 the local education agency receives public funding and who is
11 formally enrolled in Kindergarten through Twelfth (12th) grade.

12 (q) "Transition" means:

13 (1) the formal and physical process of transferring from
14 school to school; or

15 (2) the period of time in which a student moves from one
16 school in the sending state to another school in the receiving
17 state.

18 (r) "Uniformed service(s)" means the Army, Navy, Air Force,
19 Marine Corps, Coast Guard as well as the Commissioned Corps of the
20 National Oceanic and Atmospheric Administration, and Public Health
21 Services.

22 (s) "Veteran" means a person who served in the uniformed
23 services and who was discharged or released there from under
24 conditions other than dishonorable.

25

1 ARTICLE III. APPLICABILITY

2
3 (a) Except as otherwise provided in subsection (b), this
4 compact shall apply to the children of:

5 (1) Active duty members of the uniformed services as defined
6 in this compact, including members of the National Guard and
7 Reserve on active duty orders pursuant to 10 U.S.C. Section 1209
8 and 1211;

9 (2) Members or veterans of the uniformed services who are
10 severely injured and medically discharged or retired for a period
11 of one (1) year after medical discharge or retirement; and

12 (3) Members of the uniformed services who die on active duty
13 or as a result of injuries sustained on active duty for a period of
14 one (1) year after death.

15 (b) The provisions of this interstate compact shall only apply
16 to local education agencies as defined in this compact.

17 (c) The provisions of this compact shall not apply to the
18 children of:

19 (1) Inactive members of the National Guard and military
20 reserves;

21 (2) Members of the uniformed services now retired, except as
22 provided in subsection (a);

23 (3) Veterans of the uniformed services, except as provided in
24 subsection (a); and

25 (4) Other U.S. Dept. of Defense personnel and other federal

1 agency civilian and contract employees not defined as active duty
2 members of the uniformed services.

3

4 ARTICLE IV. EDUCATIONAL RECORDS & ENROLLMENT

5

6 (a) Unofficial or "hand-carried" education records - In the
7 event that official education records cannot be released to the
8 parents for the purpose of transfer, the custodian of the records
9 in the sending state shall prepare and furnish to the parent a
10 complete set of unofficial educational records containing uniform
11 information as determined by the Interstate Commission. Upon
12 receipt of the unofficial education records by a school in the
13 receiving state, the school shall enroll and appropriately place
14 the student based on the information provided in the unofficial
15 records pending validation by the official records, as quickly as
16 possible.

17 (b) Official education records/transcripts - Simultaneous with
18 the enrollment and conditional placement of the student, the school
19 in the receiving state shall request the student's official
20 education record from the school in the sending state. Upon
21 receipt of this request, the school in the sending state will
22 process and furnish the official education records to the school in
23 the receiving state within ten (10) days or within such time as is
24 reasonably determined under the rules promulgated by the Interstate
25 Commission.

1 (c) Immunizations - Compacting states shall give thirty (30)
2 days from the date of enrollment or within such time as is
3 reasonably determined under the rules promulgated by the Interstate
4 Commission, for students to obtain any immunization(s) required by
5 the receiving state. For a series of immunizations, initial
6 vaccinations must be obtained within thirty (30) days or within
7 such time as is reasonably determined under the rules promulgated
8 by the Interstate Commission.

9 (d) Kindergarten and First grade entrance age - Students shall
10 be allowed to continue their enrollment at grade level in the
11 receiving state commensurate with their grade level (including
12 Kindergarten) from a local education agency in the sending state at
13 the time of transition, regardless of age. A student that has
14 satisfactorily completed the prerequisite grade level in the local
15 education agency in the sending state shall be eligible for
16 enrollment in the next highest grade level in the receiving state,
17 regardless of age. A student transferring after the start of the
18 school year in the receiving state shall enter the school in the
19 receiving state on their validated level from an accredited school
20 in the sending state.

21

22 ARTICLE V. PLACEMENT & ATTENDANCE

23

24 (a) Course placement - When the student transfers before or
25 during the school year, the receiving state school shall initially

1 honor placement of the student in educational courses based on the
2 student's enrollment in the sending state school and/or educational
3 assessments conducted at the school in the sending state if the
4 courses are offered. Course placement includes, but is not limited
5 to Honors, International Baccalaureate, Advanced Placement,
6 vocational, technical and career pathways courses. Continuing the
7 student's academic program from the previous school and promoting
8 placement in academically and career challenging courses should be
9 paramount when considering placement. This does not preclude the
10 school in the receiving state from performing subsequent
11 evaluations to ensure appropriate placement and continued
12 enrollment of the student in the course(s).

13 (b) Educational program placement - The receiving state school
14 shall initially honor placement of the student in educational
15 programs based on current educational assessments conducted at the
16 school in the sending state or participation/placement in like
17 programs in the sending state. Such programs include, but
18 are not limited to:

19 (1) gifted and talented programs; and

20 (2) English as a second language (ESL). This does not
21 preclude the school in the receiving state from performing
22 subsequent evaluations to ensure appropriate placement of the
23 student.

24 (c) Special education services -

25 (1) In compliance with the federal requirements of the

1 Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A.
2 Section 1400 et seq, the receiving state shall initially provide
3 comparable services to a student with disabilities based on his or
4 her current Individualized Education Program (IEP); and

5 (2) In compliance with the requirements of Section 504 of the
6 Rehabilitation Act, 29 U.S.C.A. Section 794, and with Title II of
7 the Americans with Disabilities Act, 42 U.S.C.A. Sections 12131-
8 12165, the receiving state shall make reasonable accommodations and
9 modifications to address the needs of incoming students with
10 disabilities, subject to an existing 504 or Title II Plan, to
11 provide the student with equal access to education. This does not
12 preclude the school in the receiving state from performing
13 subsequent evaluations to ensure appropriate placement of the
14 student.

15 (d) Placement flexibility - Local education agency
16 administrative officials shall have flexibility in waiving
17 course/program prerequisites, or other preconditions for placement
18 in courses/programs offered under the jurisdiction of the local
19 education agency.

20 (e) Absence as related to deployment activities - A student
21 whose parent or legal guardian is an active duty member of the
22 uniformed services, as defined by the compact, and has been called
23 to duty for, is on leave from, or immediately returned from
24 deployment to a combat zone or combat support posting, shall be
25 granted additional excused absences at the discretion of the local

1 education agency superintendent to visit with his or her parent or
2 legal guardian relative to such leave or deployment of the parent
3 or guardian.

4

5

ARTICLE VI. ELIGIBILITY

6

7 (a) Eligibility for enrollment:

8 (1) Special power of attorney, relative to the guardianship of
9 a child of a military family and executed under applicable law
10 shall be sufficient for the purposes of enrollment and all other
11 actions requiring parental participation and consent.

12 (2) A local education agency shall be prohibited from charging
13 local tuition to a transitioning military child placed in the care
14 of a noncustodial parent or other person standing in loco parentis
15 who lives in a jurisdiction other than that of the custodial
16 parent.

17 (3) A transitioning military child, placed in the care of a
18 noncustodial parent or other person standing in loco parentis who
19 lives in a jurisdiction other than that of the custodial parent,
20 may continue to attend the school in which he or she was enrolled
21 while residing with the custodial parent.

22 (b) Eligibility for extracurricular participation - State and
23 local education agencies shall facilitate the opportunity for
24 transitioning military children's inclusion in extracurricular
25 activities, regardless of application deadlines, to the extent they

1 are otherwise qualified.

2

3

ARTICLE VII. GRADUATION

4

5 In order to facilitate the on-time graduation of children of
6 military families states and local education agencies shall
7 incorporate the following procedures:

8 (a) Waiver requirements - Local education agency
9 administrative officials shall waive specific courses required for
10 graduation if similar course work has been satisfactorily completed
11 in another local education agency or shall provide reasonable
12 justification for denial. Should a waiver not be granted to a
13 student who would qualify to graduate from the sending school, the
14 local education agency shall provide an alternative means of
15 acquiring required coursework so that graduation may occur on time.

16 (b) Exit exams - States shall accept:

17 (1) exit or end-of-course exams required for graduation from
18 the sending state; or

19 (2) national norm-referenced achievement tests; or

20 (3) alternative testing, in lieu of testing requirements for
21 graduation in the receiving state. In the event the above
22 alternatives cannot be accommodated by the receiving state for a
23 student transferring in his or her Senior year, then the provisions
24 of Article VII, subsection (c) shall apply.

25 (c) Transfers during Senior year - Should a military student

1 transferring at the beginning or during his or her Senior year be
2 ineligible to graduate from the receiving local education agency
3 after all alternatives have been considered, the sending and
4 receiving local education agencies shall ensure the receipt of a
5 diploma from the sending local education agency, if the student
6 meets the graduation requirements of the sending local education
7 agency. In the event that one of the states in question is not a
8 member of this compact, the member state shall use best efforts to
9 facilitate the on-time graduation of the student in accordance with
10 subsections (a) and (b) of this Article.

11 ARTICLE VIII. STATE COORDINATION

12
13 (a) Each member state shall, through the creation of a State
14 Council or use of an existing body or board, provide for the
15 coordination among its agencies of government, local education
16 agencies and military installations concerning the state's
17 participation in, and compliance with, this compact and Interstate
18 Commission activities. While each member state may determine the
19 membership of its own State Council, its membership must include at
20 least: the state superintendent of education, superintendent of a
21 school district with a high concentration of military children,
22 representative from a military installation, one representative
23 each from the legislative and executive branches of government, and
24 other offices and stakeholder groups the state council deems
25 appropriate. A member state that does not have a school district

1 deemed to contain a high concentration of military children may
2 appoint a superintendent from another school district to represent
3 local education agencies on the state council.

4 (b) The state council of each member state shall appoint or
5 designate a military family education liaison to assist military
6 families and the state in facilitating the implementation of this
7 compact.

8 (c) The compact commissioner responsible for the
9 administration and management of the state's participation in the
10 compact shall be appointed by the Governor or as otherwise
11 determined by each member state.

12 (d) The compact commissioner and the military family education
13 liaison designated herein shall be ex-officio members of the state
14 Council, unless either is already a full voting member of the state
15 Council.

16

17 ARTICLE IX. INTERSTATE COMMISSION ON EDUCATIONAL

18 OPPORTUNITY FOR MILITARY CHILDREN

19

20 The member states hereby create the "Interstate Commission on
21 Educational Opportunity for Military Children." The activities of
22 the Interstate Commission are the formation of public policy and
23 are a discretionary state function. The Interstate Commission
24 shall:

25 (a) Be a body corporate and joint agency of the member states

1 and shall have all the responsibilities, powers and duties set
2 forth herein, and such additional powers as may be conferred upon
3 it by a subsequent concurrent action of the respective Legislatures
4 of the member states in accordance with the terms of this compact;

5 (b) Consist of one Interstate Commission voting representative
6 from each member state who shall be that state's compact
7 commissioner.

8 (1) Each member state represented at a meeting of the
9 Interstate Commission is entitled to one vote.

10 (2) A majority of the total member states shall constitute a
11 quorum for the transaction of business, unless a larger quorum is
12 required by the bylaws of the Interstate Commission.

13 (3) A representative shall not delegate a vote to another
14 member state. In the event the compact commissioner is unable to
15 attend a meeting of the Interstate Commission, the Governor or
16 State Council may delegate voting authority to another person from
17 their state for a specified meeting.

18 (4) The bylaws may provide for meetings of the Interstate
19 Commission to be conducted by telecommunication or electronic
20 communication;

21 (c) Consist of ex-officio, nonvoting representatives who are
22 members of interested organizations. Such ex-officio members, as
23 defined in the bylaws, may include, but not be limited to, members
24 of the representative organizations of military family advocates,
25 local education agency officials, parent and teacher groups, the

1 U.S. Department of Defense, the Education Commission of the states,
2 the Interstate Agreement on the Qualification of Educational
3 Personnel and other interstate compacts affecting the education of
4 children of military members;

5 (d) Meet at least once each calendar year. The chairperson
6 may call additional meetings and, upon the request of a simple
7 majority of the member states, shall call additional meetings;

8 (e) Establish an executive committee, whose members shall
9 include the officers of the Interstate Commission and such other
10 members of the Interstate Commission as determined by the bylaws.
11 Members of the executive committee shall serve a one year term.
12 Members of the executive committee shall be entitled to one vote
13 each. The executive committee shall have the power to act on
14 behalf of the Interstate Commission, with the exception of
15 rulemaking, during periods when the Interstate Commission is not in
16 session. The executive committee shall oversee the day-to-day
17 activities of the administration of the compact including
18 enforcement and compliance with the provisions of the compact, its
19 bylaws and rules, and other such duties as deemed necessary. The
20 U.S. Dept. of Defense, shall serve as an ex-officio, nonvoting
21 member of the executive committee;

22 (f) Establish bylaws and rules that provide for conditions and
23 procedures under which the Interstate Commission shall make its
24 information and official records available to the public for
25 inspection or copying. The Interstate Commission may exempt from

1 disclosure information or official records to the extent they would
2 adversely affect personal privacy rights or proprietary interests;

3 (g) Give public notice of all meetings and all meetings shall
4 be open to the public, except as set forth in the rules or as
5 otherwise provided in the compact. The Interstate Commission and
6 its committees may close a meeting, or portion thereof, where it
7 determines by two-thirds vote that an open meeting would be likely
8 to:

9 (1) Relate solely to the Interstate Commission's internal
10 personnel practices and procedures;

11 (2) Disclose matters specifically exempted from disclosure by
12 federal and state statute;

13 (3) Disclose trade secrets or commercial or financial
14 information which is privileged or confidential;

15 (4) Involve accusing a person of a crime, or formally
16 censuring a person;

17 (5) Disclose information of a personal nature where disclosure
18 would constitute a clearly unwarranted invasion of personal
19 privacy;

20 (6) Disclose investigative records compiled for law
21 enforcement purposes; or

22 (7) Specifically relate to the Interstate Commission's
23 participation in a civil action or other legal proceeding;

24 (h) Cause its legal counsel or designee to certify that a
25 meeting may be closed and shall reference each relevant exemptable

1 provision for any meeting or portion of a meeting which is closed
2 pursuant to this provision. The Interstate Commission shall keep
3 minutes which shall fully and clearly describe all matters
4 discussed in a meeting and shall provide a full and accurate
5 summary of actions taken, and the reasons therefore, including a
6 description of the views expressed and the record of a roll call
7 vote. All documents considered in connection with an action shall
8 be identified in such minutes. All minutes and documents of a
9 closed meeting shall remain under seal, subject to release by a
10 majority vote of the Interstate Commission.

11 (i) Collect standardized data concerning the educational
12 transition of the children of military families under this compact
13 as directed through its rules which shall specify the data to be
14 collected, the means of collection and data exchange and reporting
15 requirements. Such methods of data collection, exchange and
16 reporting shall, in so far as is reasonably possible, conform to
17 current technology and coordinate its information functions with
18 the appropriate custodian of records as identified in the bylaws
19 and rules.

20 (j) Create a process that permits military officials,
21 education officials and parents to inform the Interstate Commission
22 if and when there are alleged violations of the compact or its
23 rules or when issues subject to the jurisdiction of the compact or
24 its rules are not addressed by the state or local education agency.
25 This section shall not be construed to create a private right of

1 action against the Interstate Commission or any member state.

2

3 ARTICLE X. POWERS AND DUTIES OF THE INTERSTATE COMMISSION

4

5 The Interstate Commission shall have the following powers:

6 (a) To provide for dispute resolution among member states;

7 (b) To promulgate rules and take all necessary actions to

8 effect the goals, purposes and obligations as enumerated in this

9 compact. The rules shall have the force and effect of statutory

10 law and shall be binding in the compact states to the extent and in

11 the manner provided in this compact;

12 (c) To issue, upon request of a member state, advisory

13 opinions concerning the meaning or interpretation of the interstate

14 compact, its bylaws, rules and actions;

15 (d) To enforce compliance with the compact provisions, the

16 rules promulgated by the Interstate Commission, and the bylaws,

17 using all necessary and proper means, including but not limited to

18 the use of judicial process;

19 (e) To establish and maintain offices which shall be located

20 within one or more of the member states;

21 (f) To purchase and maintain insurance and bonds;

22 (g) To borrow, accept, hire or contract for services of

23 personnel;

24 (h) To establish and appoint committees including, but not

25 limited to, an executive committee as required by Article IX,

1 subsection (e), which shall have the power to act on behalf of the
2 Interstate Commission in carrying out its powers and duties
3 hereunder;

4 (i) To elect or appoint such officers, attorneys, employees,
5 agents, or consultants, and to fix their compensation, define their
6 duties and determine their qualifications; and to establish the
7 Interstate Commission's personnel policies and programs relating to
8 conflicts of interest, rates of compensation, and qualifications of
9 personnel;

10 (j) To accept any and all donations and grants of money,
11 equipment, supplies, materials, and services, and to receive,
12 utilize, and dispose of it;

13 (k) To lease, purchase, accept contributions or donations of,
14 or otherwise to own, hold, improve or use any property, real,
15 personal, or mixed;

16 (l) To sell, convey, mortgage, pledge, lease, exchange,
17 abandon, or otherwise dispose of any property, real, personal or
18 mixed;

19 (m) To establish a budget and make expenditures;

20 (n) To adopt a seal and bylaws governing the management and
21 operation of the Interstate Commission;

22 (o) To report annually to the Legislatures, Governors,
23 judiciary, and state councils of the member states concerning the
24 activities of the Interstate Commission during the preceding year.
25 Such reports shall also include any recommendations that may have

1 been adopted by the Interstate Commission;

2 (p) To coordinate education, training and public awareness
3 regarding the compact, its implementation and operation for
4 officials and parents involved in such activity;

5 (q) To establish uniform standards for the reporting,
6 collecting and exchanging of data;

7 (r) To maintain corporate books and records in accordance with
8 the bylaws;

9 (s) To perform such functions as may be necessary or
10 appropriate to achieve the purposes of this compact; and

11 (t) To provide for the uniform collection and sharing of
12 information between and among member states, schools and military
13 families under this compact.

14

15 ARTICLE XI. ORGANIZATION AND OPERATION OF THE INTERSTATE
16 COMMISSION

17

18 (a) The Interstate Commission shall, by a majority of the
19 members present and voting, within twelve months after the first
20 Interstate Commission meeting, adopt bylaws to govern its conduct
21 as may be necessary or appropriate to carry out the purposes of the
22 compact, including, but not limited to:

23 (1) Establishing the fiscal year of the Interstate Commission;

24 (2) Establishing an executive committee, and such other
25 committees as may be necessary;

1 (3) Providing for the establishment of committees and for
2 governing any general or specific delegation of authority or
3 function of the Interstate Commission;

4 (4) Providing reasonable procedures for calling and conducting
5 meetings of the Interstate Commission, and ensuring reasonable
6 notice of each such meeting;

7 (5) Establishing the titles and responsibilities of the
8 officers and staff of the Interstate Commission;

9 (6) Providing a mechanism for concluding the operations of the
10 Interstate Commission and the return of surplus funds that may
11 exist upon the termination of the compact after the payment and
12 reserving of all of its debts and obligations; and

13 (7) Providing "start up" rules for initial administration of
14 the compact.

15 (b) The Interstate Commission shall, by a majority of the
16 members, elect annually from among its members a chairperson, a
17 vice-chairperson, and a treasurer, each of whom shall have such
18 authority and duties as may be specified in the bylaws. The
19 chairperson or, in the chairperson's absence or disability, the
20 vice-chairperson, shall preside at all meetings of the Interstate
21 Commission. The officers so elected shall serve without
22 compensation or remuneration from the Interstate Commission;
23 provided that, subject to the availability of budgeted funds, the
24 officers shall be reimbursed for ordinary and necessary costs and
25 expenses incurred by them in the performance of their

1 responsibilities as officers of the Interstate Commission.

2 (c) Executive Committee, Officers and Personnel:

3 (1) The executive committee shall have such authority and
4 duties as may be set forth in the bylaws, including but not limited
5 to:

6 (A) Managing the affairs of the Interstate Commission in a
7 manner consistent with the bylaws and purposes of the Interstate
8 Commission;

9 (B) Overseeing an organizational structure within, and
10 appropriate procedures for the Interstate Commission to provide for
11 the creation of rules, operating procedures, and administrative and
12 technical support functions; and

13 (C) Planning, implementing, and coordinating communications
14 and activities with other state, federal and local government
15 organizations in order to advance the goals of the Interstate
16 Commission.

17 (2) The executive committee may, subject to the approval of
18 the Interstate Commission, appoint or retain an executive director
19 for such period, upon such terms and conditions and for such
20 compensation, as the Interstate Commission may deem appropriate.

21 The executive director shall serve as secretary to the Interstate
22 Commission, but shall not be a Member of the Interstate Commission.

23 The executive director shall hire and supervise such other persons
24 as may be authorized by the Interstate Commission.

25 (d) The Interstate Commission's executive director and its

1 employees shall be immune from suit and liability, either
2 personally or in their official capacity, for a claim for damage to
3 or loss of property or personal injury or other civil liability
4 caused or arising out of or relating to an actual or alleged act,
5 error, or omission that occurred, or that such person had a
6 reasonable basis for believing occurred, within the scope of
7 Interstate Commission employment, duties, or responsibilities;
8 provided, that such person shall not be protected from suit or
9 liability for damage, loss, injury, or liability caused by the
10 intentional or willful and wanton misconduct of such person.

11 (1) The liability of the Interstate Commission's executive
12 director and employees or Interstate Commission representatives,
13 acting within the scope of such person's employment or duties for
14 acts, errors, or omissions occurring within such person's state may
15 not exceed the limits of liability set forth under the Constitution
16 and laws of that state for state officials, employees, and agents.
17 The Interstate Commission is considered to be an instrumentality of
18 the states for the purposes of any such action. Nothing in this
19 subsection shall be construed to protect such person from suit or
20 liability for damage, loss, injury, or liability caused by the
21 intentional or willful and wanton misconduct of such person.

22 (2) The Interstate Commission shall defend the executive
23 director and its employees and, subject to the approval of the
24 Attorney General or other appropriate legal counsel of the member
25 state represented by an Interstate Commission representative, shall

1 defend such Interstate Commission representative in any civil
2 action seeking to impose liability arising out of an actual or
3 alleged act, error or omission that occurred within the scope of
4 Interstate Commission employment, duties or responsibilities, or
5 that the defendant had a reasonable basis for believing occurred
6 within the scope of Interstate Commission employment, duties, or
7 responsibilities, provided that the actual or alleged act, error,
8 or omission did not result from intentional or willful and wanton
9 misconduct on the part of such person.

10 (3) To the extent not covered by the state involved, member
11 state, or the Interstate Commission, the representatives or
12 employees of the Interstate Commission shall be held harmless in
13 the amount of a settlement or judgment, including attorney's fees
14 and costs, obtained against such persons arising out of an actual
15 or alleged act, error, or omission that occurred within the scope
16 of Interstate Commission employment, duties, or responsibilities,
17 or that such persons had a reasonable basis for believing occurred
18 within the scope of Interstate Commission employment, duties, or
19 responsibilities, provided that the actual or alleged act, error,
20 or omission did not result from intentional or willful and wanton
21 misconduct on the part of such persons.

22

23 ARTICLE XII. RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

24

25 (a) Rulemaking Authority - The Interstate Commission shall

1 promulgate reasonable rules in order to effectively and efficiently
2 achieve the purposes of this Compact. Notwithstanding the
3 foregoing, in the event the Interstate Commission exercises its
4 rulemaking authority in a manner that is beyond the scope of the
5 purposes of this Act, or the powers granted hereunder, then such an
6 action by the Interstate Commission shall be invalid and have no
7 force or effect.

8 (b) Rulemaking Procedure - Rules shall be made pursuant to a
9 rulemaking process that substantially conforms to the "Model State
10 Administrative Procedure Act," of 1981 Act, Uniform Laws Annotated,
11 Vol. 15, p.1 (2000) as amended, as may be appropriate to the
12 operations of the Interstate Commission.

13 (c) Not later than thirty (30) days after a rule is
14 promulgated, any person may file a petition for judicial review of
15 the rule: Provided, That the filing of such a petition shall not
16 stay or otherwise prevent the rule from becoming effective unless
17 the court finds that the petitioner has a substantial likelihood of
18 success. The court shall give deference to the actions of the
19 Interstate Commission consistent with applicable law and shall not
20 find the rule to be unlawful if the rule represents a reasonable
21 exercise of the Interstate Commission's authority.

22 (d) If a majority of the Legislatures of the compacting states
23 rejects a Rule by enactment of a statute or resolution in the same
24 manner used to adopt the compact, then such rule shall have no
25 further force and effect in any compacting state.

1 ARTICLE XIII. OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION

2
3 (a) Oversight:

4 (1) The executive, legislative and judicial branches of state
5 government in each member state shall enforce this compact and
6 shall take all actions necessary and appropriate to effectuate the
7 compact's purposes and intent. The provisions of this compact and
8 the rules promulgated hereunder shall have standing as statutory
9 law.

10 (2) All courts shall take judicial notice of the compact and
11 the rules in any judicial or administrative proceeding in a member
12 state pertaining to the subject matter of this compact which may
13 affect the powers, responsibilities or actions of the Interstate
14 Commission.

15 (3) The Interstate Commission shall be entitled to receive all
16 service of process in any such proceeding, and shall have standing
17 to intervene in the proceeding for all purposes. Failure to
18 provide service of process to the Interstate Commission shall
19 render a judgment or order void as to the Interstate Commission,
20 this compact or promulgated rules.

21 (b) Default, Technical Assistance, Suspension and Termination

22 - If the Interstate Commission determines that a member state has
23 defaulted in the performance of its obligations or responsibilities
24 under this compact, or the bylaws or promulgated rules, the
25 Interstate Commission shall:

1 (1) Provide written notice to the defaulting state and other
2 member states, of the nature of the default, the means of curing
3 the default and any action taken by the Interstate Commission. The
4 Interstate Commission shall specify the conditions by which the
5 defaulting state must cure its default.

6 (2) Provide remedial training and specific technical
7 assistance regarding the default.

8 (3) If the defaulting state fails to cure the default, the
9 defaulting state shall be terminated from the compact upon an
10 affirmative vote of a majority of the member states and all rights,
11 privileges and benefits conferred by this compact shall be
12 terminated from the effective date of termination. A cure of the
13 default does not relieve the offending state of obligations or
14 liabilities incurred during the period of the default.

15 (4) Suspension or termination of membership in the compact
16 shall be imposed only after all other means of securing compliance
17 have been exhausted. Notice of intent to suspend or terminate
18 shall be given by the Interstate Commission to the Governor, the
19 majority and minority leaders of the defaulting state's
20 Legislature, and each of the member states.

21 (5) The state which has been suspended or terminated is
22 responsible for all assessments, obligations and liabilities
23 incurred through the effective date of suspension or termination
24 including obligations, the performance of which extends beyond the
25 effective date of suspension or termination.

1 (6) The Interstate Commission shall not bear any costs
2 relating to any state that has been found to be in default or which
3 has been suspended or terminated from the compact, unless otherwise
4 mutually agreed upon in writing between the Interstate Commission
5 and the defaulting state.

6 (7) The defaulting state may appeal the action of the
7 Interstate Commission by petitioning the U.S. District Court for
8 the District of Columbia or the federal district where the
9 Interstate Commission has its principal offices. The prevailing
10 party shall be awarded all costs of such litigation including
11 reasonable attorney's fees.

12 (c) Dispute Resolution:

13 (1) The Interstate Commission shall attempt, upon the request
14 of a member state, to resolve disputes which are subject to the
15 compact and which may arise among member states and between member
16 and nonmember states.

17 (2) The Interstate Commission shall promulgate a rule
18 providing for both mediation and binding dispute resolution for
19 disputes as appropriate.

20 (d) Enforcement:

21 (1) The Interstate Commission, in the reasonable exercise of
22 its discretion, shall enforce the provisions and rules of this
23 compact.

24 (2) The Interstate Commission, may by majority vote of the
25 members, initiate legal action in the United State District Court

1 for the District of Columbia or, at the discretion of the
2 Interstate Commission, in the federal district where the Interstate
3 Commission has its principal offices, to enforce compliance with
4 the provisions of the compact, its promulgated rules and bylaws,
5 against a member state in default. The relief sought may include
6 both injunctive relief and damages. In the event judicial
7 enforcement is necessary the prevailing party shall be awarded all
8 costs of such litigation including reasonable attorney's fees.

9 (3) The remedies herein shall not be the exclusive remedies of
10 the Interstate Commission. The Interstate Commission may avail
11 itself of any other remedies available under state law or the
12 regulation of a profession.

13

14 ARTICLE XIV. FINANCING OF THE INTERSTATE COMMISSION

15

16 (a) The Interstate Commission shall pay, or provide for the
17 payment of the reasonable expenses of its establishment,
18 organization and ongoing activities.

19 (b) The Interstate Commission may levy on and collect an
20 annual assessment from each member state to cover the cost of the
21 operations and activities of the Interstate Commission and its
22 staff which must be in a total amount sufficient to cover the
23 Interstate Commission's annual budget as approved each year. The
24 aggregate annual assessment amount shall be allocated based upon a
25 formula to be determined by the Interstate Commission, which shall

1 promulgate a rule binding upon all member states.

2 (c) The Interstate Commission shall not incur obligations of
3 any kind prior to securing the funds adequate to meet the same; nor
4 shall the Interstate Commission pledge the credit of any of the
5 member states, except by and with the authority of the member
6 state.

7 (d) The Interstate Commission shall keep accurate accounts of
8 all receipts and disbursements. The receipts and disbursements of
9 the Interstate Commission shall be subject to the audit and
10 accounting procedures established under its bylaws. However, all
11 receipts and disbursements of funds handled by the Interstate
12 Commission shall be audited yearly by a certified or licensed
13 public accountant and the report of the audit shall be included in
14 and become part of the annual report of the Interstate Commission.

15

16 ARTICLE XV. MEMBER STATES, EFFECTIVE DATE AND AMENDMENT

17

18 (a) Any state is eligible to become a member state.

19 (b) The compact shall become effective and binding upon
20 legislative enactment of the compact into law by no less than ten
21 (10) of the states. The effective date shall be no earlier than
22 December 1, 2007. Thereafter it shall become effective and binding
23 as to any other member state upon enactment of the compact into law
24 by that state. The Governors of nonmember states or their
25 designees shall be invited to participate in the activities of the

1 Interstate Commission on a nonvoting basis prior to adoption of the
2 compact by all states.

3 (c) The Interstate Commission may propose amendments to the
4 compact for enactment by the member states. No amendment shall
5 become effective and binding upon the Interstate Commission and the
6 member states unless and until it is enacted into law by unanimous
7 consent of the member states.

8

9 ARTICLE XVI. WITHDRAWAL AND DISSOLUTION

10

11 (a) Withdrawal:

12 (1) Once effective, the compact shall continue in force and
13 remain binding upon each and every member state: *Provided*, That a
14 member state may withdraw from the compact specifically repealing
15 the statute, which enacted the compact into law.

16 (2) Withdrawal from this compact shall be by the enactment of
17 a statute repealing the same, but shall not take effect until one
18 (1) year after the effective date of such statute and until written
19 notice of the withdrawal has been given by the withdrawing state to
20 the Governor of each other member jurisdiction.

21 (3) The withdrawing state shall immediately notify the
22 chairperson of the Interstate Commission in writing upon the
23 introduction of legislation repealing this compact in the
24 withdrawing state. The Interstate Commission shall notify the
25 other member states of the withdrawing state's intent to withdraw

1 within sixty (60) days of its receipt thereof.

2 (4) The withdrawing state is responsible for all assessments,
3 obligations and liabilities incurred through the effective date of
4 withdrawal, including obligations, the performance of which extend
5 beyond the effective date of withdrawal.

6 (5) Reinstatement following withdrawal of a member state shall
7 occur upon the withdrawing state reenacting the compact or upon
8 such later date as determined by the Interstate Commission.

9 (b) Dissolution of Compact:

10 (1) This compact shall dissolve effective upon the date of the
11 withdrawal or default of the member state which reduces the
12 membership in the compact to one (1) member state.

13 (2) Upon the dissolution of this compact, the compact becomes
14 null and void and shall be of no further force or effect, and the
15 business and affairs of the Interstate Commission shall be
16 concluded and surplus funds shall be distributed in accordance with
17 the bylaws.

18

19 ARTICLE XVII. SEVERABILITY AND CONSTRUCTION

20

21 (a) The provisions of this compact shall be severable, and if
22 any phrase, clause, sentence or provision is deemed unenforceable,
23 the remaining provisions of the compact shall be enforceable.

24 (b) The provisions of this compact shall be liberally
25 construed to effectuate its purposes.

1 (c) Nothing in this compact shall be construed to prohibit the
2 applicability of other interstate compacts to which the states are
3 members.

4

5 ARTICLE XVIII. BINDING EFFECT OF COMPACT AND OTHER LAWS

6

7 (a) Other Laws:

8 (1) Nothing herein prevents the enforcement of any other law
9 of a member state that is not inconsistent with this compact.

10 (2) All member states' laws conflicting with this compact are
11 superseded to the extent of the conflict.

12 (b) Binding Effect of the Compact:

13 (1) All lawful actions of the Interstate Commission, including
14 all rules and bylaws promulgated by the Interstate Commission, are
15 binding upon the member states.

16 (2) All agreements between the Interstate Commission and the
17 member states are binding in accordance with their terms.

18 (3) In the event any provision of this compact exceeds the
19 Constitutional limits imposed on the Legislature of any member
20 state, such provision shall be ineffective to the extent of the
21 conflict with the Constitutional provision in question in that
22 member state.

23 **§18-10F-3. West Virginia Council for Educational Opportunities for**
24 **military children; membership; powers and duties.**

25 (a) Pursuant to the provisions of Article VIII of the

1 Interstate Compact on Educational Opportunity for Military Children
2 set forth in §18-10F-2, the West Virginia Council for Educational
3 Opportunities for Military Children is hereby established. The
4 membership of the council shall consist of five members as follows:

5 (1) The state superintendent of secondary schools;

6 (2) The superintendent of a school district in the state with
7 a high concentration of military children which shall be appointed
8 by the Governor: *Provided*, That in the event there is no school
9 district deemed to contain a high concentration of military
10 children, the Governor may appoint a superintendent from another
11 school district to represent local education agencies on the state
12 council;

13 (3) A person appointed by the Governor with the advice and
14 consent of the Senate who is a representative from a military
15 installation in this state. The term of this member shall be for
16 a term of four years, beginning July 1, 2011, and ending June 30,
17 2015. Each subsequent appointment shall be for a term of June 30 of
18 the fourth year following the year the preceding term expired;

19 (4) One member of the West Virginia Senate, appointed by the
20 President of the West Virginia Senate; and

21 (5) One member of the West Virginia House of Delegates,
22 appointed by the Speaker of the West Virginia House of Delegates.
23 Members so appointed shall have the qualifications specified in
24 said Article VIII of the compact.

25 (b) The council has and may exercise all powers necessary or

1 appropriate to carry out and effectuate the purpose and intent of
2 the compact set forth in §18-10F-1, including, but not limited to
3 the following:

4 (1) All of the powers and duties of a state council set forth
5 in Article VIII of the compact;

6 (2) Provide for the coordination among agencies of West
7 Virginia, including local education agencies and military
8 installations concerning the state's participation in, and
9 compliance with, the compact and Interstate Commission activities;

10 (3) Appoint or designate a military family education liaison
11 to assist military families and the state in facilitating the
12 implementation of the compact.

NOTE: The purpose of this bill is to provide for the adoption and enactment of the Interstate Compact on Educational Opportunity for Military Children. The bill also establishes the West Virginia Council for Educational Opportunities for Military Children as mandated by the compact; establishes the membership, powers and duties of the council.

This article is new; therefore, it has been completely underscored.

This bill was recommended for introduction and passage during the 2011 Regular Session of the Legislature by the Select Committee on Veterans' Affairs - Interim.