

1                           **ENROLLED**

2                           COMMITTEE SUBSTITUTE

3                           FOR

4                           **Senate Bill No. 371**

5                           (BY SENATORS KESSLER (MR. PRESIDENT) AND HALL,

6                           BY REQUEST OF THE EXECUTIVE)

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8                           [Passed March 16, 2012; in effect from passage.]

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12 AN ACT to amend the Code of West Virginia, 1931, as amended, by  
13         adding thereto a new section, designated §18-5B-12, relating  
14         to allowing flexibility within county school systems;  
15         authorizing the State Board of Education to select a county  
16         school system to serve as a school system collaborative  
17         innovation zone; giving McDowell County first opportunity to  
18         submit application; specifying effect of change in school  
19         system approval status; requiring the State Board of Education  
20         to promulgate rules and emergency rules; providing the  
21         procedure and criteria for application and selection as a  
22         school system collaborative innovation zone; requiring  
23         development of school system collaborative innovation zone  
24         plan; setting forth potential innovations; requiring public

1 town hall meetings; requiring meeting to review input from  
2 town hall meetings and develop plan; requiring meeting to  
3 educate employees about the plan and to allow examination and  
4 discussion of plan; requiring vote to determine level of  
5 school employee support; authorizing a designated school  
6 system to submit requests for exceptions from county and state  
7 board rules, policies and interpretations; permitting  
8 exceptions from statutes subject to legislative approval;  
9 prohibiting certain exceptions; allowing revision and  
10 resubmission of approved plan; setting forth duration of  
11 designation; requiring annual performance reviews and reports;  
12 permitting the posting of certain teaching vacancies in  
13 accordance with certain procedures and approval; and for a  
14 school system collaborative innovation zone and to the extent  
15 applicable, including any land and infrastructure needs in the  
16 land use master plan, authorizing an area health association  
17 to work with county board in addressing health, wellness and  
18 fitness needs and authorizing an area institution of higher  
19 education to work with the county board to address certain  
20 challenges.

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

22 That the Code of West Virginia, 1931, as amended, be amended  
23 by adding thereto a new section, designated §18-5B-12, to read as  
24 follows:

1 **ARTICLE 5B. SCHOOL INNOVATION ZONES ACT.**

2 **§18-5B-12. School system collaborative innovation zone;**  
3 **requirements to qualify; application for**  
4 **designation; required plans for innovation zones;**  
5 **plan approval; waiver of statutes, policies, rules**  
6 **or interpretations; progress reviews and annual**  
7 **reports; teacher vacancies, job postings and**  
8 **approval.**

9 (a) The Legislature makes the following findings and  
10 expressions of legislative intent:

11 (1) The Legislature created a performance-based accreditation  
12 system in 1988 and has amended these provisions several times,  
13 significantly in 1998 to set forth a process for improving  
14 education consisting of four elements: (i) High quality education  
15 standards; (ii) an assessment of the performance and progress of  
16 schools and school systems in achieving these standards with a  
17 primary focus on student learning; (iii) holding schools and school  
18 systems accountable for performance and progress to provide  
19 assurances that a thorough and efficient education is being  
20 provided; and (iv) a process for targeting resources strategically  
21 to improve teaching and learning. These provisions include a  
22 process for the state board to declare a state of emergency and  
23 intervene in the operation of a school system when its educational  
24 program does not meet the standards and it fails to implement an

1 improvement plan or meet the plan's deadlines and improve within a  
2 reasonable time. Since the inception of these provisions, the  
3 state board has declared a state of emergency in nine county school  
4 systems and intervened, including delegating decision-making  
5 authority to the state superintendent or his or her designee for  
6 system operations. Of these nine school systems, three improved  
7 sufficiently over a period of time for the state of emergency to be  
8 rescinded, the longest of which took ten years and six months. Of  
9 the six systems remaining under state board intervention, although  
10 most are fairly recent, one school system has been under state  
11 intervention for more than ten years and its improvement is  
12 progressing slowly;

13       (2) School systems do not exist in a vacuum and external  
14 circumstances and events can have a significant impact on them and  
15 the students they serve, as well as on the system's capacity to  
16 deliver the thorough and efficient education to which those  
17 students are entitled. For example, the McDowell County school  
18 system which in the 1950's at its height of employment in coal  
19 production had a total population of about 100,000 residents, faced  
20 much different challenges than it does today with that county's  
21 total population now at 22,113 based on the 2010 census. This  
22 school system has lost nearly 70% of its enrollment in the past 30  
23 years, declining from 11,715 students in 1981-82 to 3,535 in 2011-  
24 12. Along with the steep decline in the historical bedrock of

1 employment in the county in the coal industry and the large number  
2 of middle class workers and services it supported, including  
3 housing, utilities and medical care, the county's rugged  
4 mountainous topography contributes to its vulnerability to natural  
5 disasters such as the devastating floods in 2001 and 2002 that  
6 swept away many homes and much of the infrastructure along the  
7 creek beds throughout the county. This topography also  
8 significantly limits the amount of land suitable for development  
9 and transportation networks, and makes planning for future economic  
10 development alternatives difficult. The social and economic  
11 byproducts of these external circumstances and events leave a  
12 school system with many atypical challenges for addressing the  
13 needs of its students and making the improvements in performance  
14 and progress needed to assure a thorough and efficient education;

15 (3) Among the findings, intent and purposes of this article  
16 are that: (i) Allowing exceptions from certain statutes, policies,  
17 rules and interpretations through the creation of innovation zones  
18 will enable greater local control over the important educational  
19 factors that impact student achievement and the delivery of  
20 educational services to improve student learning; and (ii)  
21 Innovation zones will provide greater flexibility and local control  
22 to meet the needs of a diverse population of students. In  
23 addition, among the findings of the Local Solution Dropout  
24 Prevention and Recovery Innovation Zone Act as set forth in section

1 eleven of this article are findings that when educators, parents,  
2 elected officials, business leaders, faith-based leaders, human  
3 service personnel, judicial personnel and civic leaders  
4 collectively work together they are often able to find innovative  
5 solutions to address school and community problems. Since the  
6 creation of this article, forty-five innovation zone projects have  
7 been approved by the state board, nine of which were Dropout  
8 Prevention and Recovery Innovation Zone projects. Twenty-seven  
9 policy waivers and five statutory waivers have been granted to  
10 enable implementation of these projects. In one county, an  
11 innovation zone project was expanded to all of the remaining  
12 schools in the county when the schools used the Local School  
13 Improvement Council waiver process to request and receive a  
14 statutory waiver to implement a comprehensive new teacher induction  
15 process county-wide. Collectively, these projects illustrate how  
16 local schools, and in some cases school systems, have increased  
17 their capacity by using the innovation zone process to  
18 collaboratively plan and implement a variety of changes to increase  
19 student engagement, develop more flexible schedules, enhance  
20 student and teacher ownership of the learning process and increase  
21 student achievement;

22 (4) Choosing one county school system under a declared state  
23 of emergency due to nonapproval status to designate as an  
24 innovation zone would allow the testing of innovations that could

1 be replicated in other school systems facing similar circumstances  
2 across the state, nation and world;

3       (5) Numerous studies have shown an association between a young  
4 person's health status and his or her ability to succeed in  
5 educational settings;

6       (6) McDowell County is unique and should be given the first  
7 opportunity to use innovative solutions to improve its education  
8 system when the totality of the circumstances set forth in this  
9 subsection are considered. Other facts specifically applicable to  
10 McDowell County include the following:

11       (A) The McDowell County school system has been under a  
12 continuous declared state of emergency by the state board due to  
13 nonapproval status longer than any other county that is currently  
14 under a declared state of emergency;

15       (B) The McDowell County school system is engaged in a public-  
16 private partnership to begin addressing challenges both within the  
17 school system and in the community at large; and

18       (C) McDowell County has a chronic shortage of good roads,  
19 public transportation, housing, Internet bandwidth, recreation  
20 centers and health clinics;

21       (7) This section is intended as an additional tool for an  
22 eligible school system in collaboration with community and business  
23 partners to plan and implement new approaches to improve the  
24 performance and progress of the students, schools and system to

1 achieve full approval at the earliest possible date. It is further  
2 the intent of the Legislature that the process for an eligible  
3 school system to apply for exceptions under this section should  
4 allow multiple opportunities to apply for additional exceptions as  
5 the system moves forward with its partners toward fulfillment of  
6 its improvement goals; and

7       (8) In accordance with the intent of this section as an  
8 additional tool for planning and implementing new approaches to  
9 improve the performance and progress of the students, schools and  
10 school system to achieve full approval at the earliest possible  
11 date, the state board shall rescind the state of emergency and  
12 nonapproval status of a school system designated as a school system  
13 collaborative innovation zone as soon as the requisite conditions  
14 are met as provided in section five, article two-e of this chapter,  
15 notwithstanding the designation. If a school system that has been  
16 designated as a school system collaborative innovation zone is  
17 subsequently issued a school system approval status that would make  
18 it ineligible for the designation, the designation shall remain in  
19 effect as provided in this section.

20       (b) The state board is authorized to choose one county school  
21 system currently under a declared state of emergency by the state  
22 board due to nonapproval status to participate in a program to test  
23 the effectiveness of allowing such county school systems to be  
24 considered school system collaborative innovation zones. Due to

1 the reasons set forth in subsection (a) of this section, the  
2 McDowell County Board of Education shall be provided the first  
3 opportunity to submit a school system collaborative innovation zone  
4 application under this article. If the McDowell County Board of  
5 Education has not submitted an application by April 1, 2013 or less  
6 than fifty percent cast ballots in an election to approve a school  
7 system collaborative innovation zone plan, the state board may  
8 accept applications from other county boards under a declared state  
9 of emergency by the state board due to nonapproval status.

10       (c) The Legislature finds that an emergency exists and,  
11 therefore, no later than April 16, 2012, the state board shall  
12 promulgate an emergency rule in accordance with section ten,  
13 article three-b, chapter twenty-nine-a of this code, to implement  
14 the provisions of this section. The state board also shall  
15 promulgate a legislative rule, in accordance with article three-b,  
16 chapter twenty-nine-a of this code, to implement this section.  
17 Both rules shall include, but not be limited to, the following  
18 provisions:

19           (1) The manner, time and process for the submission of a  
20 school system collaborative innovation zone application;  
21           (2) The contents of the application, which must include a  
22 general description of the innovations the county school district  
23 seeks to institute;  
24           (3) Factors to be considered by the state board when

1 evaluating an application, which shall include, but are not limited  
2 to, the following factors:

3       (A) Support from teachers, staff, parents, students, the  
4 county board of education, the local school improvement council and  
5 school business partners; and

6       (B) The potential for an applicant to be successful in raising  
7 student achievement as a school system collaborative innovation  
8 zone; and

9       (4) Standards for the state board to review applications for  
10 designation as a school system collaborative innovation zone and to  
11 make determinations on the designation of a school system  
12 collaborative innovation zone.

13       (d) The state board shall review school system collaborative  
14 innovation zone applications in accordance with the standards  
15 adopted by the board and shall determine whether to designate the  
16 applicant as a school system collaborative innovation zone. The  
17 state board shall notify an applicant of the board's determination  
18 within thirty days of receipt of the application.

19       (e) Prior to designation by the state board as a school system  
20 collaborative innovation zone, county school systems submitting  
21 applications shall develop school system collaborative innovation  
22 zone plans. The school system collaborative innovation zone plan  
23 may include, but is not limited to, the following proposals:

24       (1) Allowing increased collaborative site-based

1 decision-making powers over the budgeting for and spending on  
2 programs and services for students;

3       (2)     Allowing     increased     collaborative     site-based  
4 decision-making powers over teacher recruitment;

5       (3)     Allowing     a     collaborative     process     which     ensures  
6 accountability and transparency to all stakeholders;

7       (4)     Allowing a collaborative process which provides input and  
8 demonstrative buy-in from education personnel regarding appropriate  
9 professional development, supports, resources and working  
10 conditions.

11       (5)     Allowing a collaborative site-based process to reduce  
12 certain requirements to allow staff to meet the school's mission;

13       (6)     Allowing, through a collaborative site-based process,  
14 flexibility to the alternative teacher certification provided in  
15 section one-a, article three, chapter eighteen-a of this code;

16       (7)     Utilizing virtual school courses aligned with the Southern  
17 Regional Education Board's Standards for Quality Online Courses;  
18 and

19       (8)     Other innovation zone plans approved under the provisions  
20 of this article and being implemented in other schools and school  
21 systems throughout the state.

22       (f)     Prior     to     submitting     a     school     system     collaborative  
23 innovation zone plan to the state board:

24       (1)     The school system in collaboration with its public-private

1 partnership shall conduct public town hall meetings in at least two  
2 schools in the county for the purpose of soliciting input from  
3 those in attendance on the challenges affecting the quality of  
4 education in the county and the potential strategies and priorities  
5 for addressing them. The two meetings shall occur within ten days  
6 of each other;

7       (2) Within fifteen days after the last town hall meeting, the  
8 county superintendent shall hold a meeting for the purpose of  
9 reviewing the input gathered at the public town hall meetings and  
10 developing the school system collaborative innovation zone plan.  
11 The meeting shall include the principals employed within the  
12 county, the chairs of the faculty senates of each school in the  
13 county, employee organization representatives, a school service  
14 person from each work-site, parents and other stakeholders;

15       (3) Within fifteen days after the meeting to develop the  
16 school system collaborative innovation zone plan, the county  
17 superintendent shall hold a meeting of all regularly employed  
18 school employees for the purpose of educating those employees about  
19 the plan and for the purpose of providing the employees an  
20 opportunity to examine and discuss the school system collaborative  
21 innovation zone plan; and

22       (4) At the meeting required by subdivision (3) of this  
23 subsection, the county superintendent shall direct that a vote of  
24 all regularly employed school employees in the county be conducted

1 to determine the level of school employee support for the school  
2 system collaborative innovation zone plan. The vote shall be  
3 completed within fifteen days after the meeting required by  
4 subdivision (3) of this subsection. The vote shall be by secret  
5 ballot administered by the panels created in subsection (c),  
6 section six of this article for each school and shall be  
7 administered in accordance with that subsection. For the vote to  
8 be valid, ballots must be cast by at least fifty percent of all  
9 regularly employed school employees in the county. The plan may  
10 not be submitted to the state board and the state board may not  
11 designate the school system as a school system collaborative  
12 innovation zone unless at least two-thirds of the employees voting  
13 vote to submit the plan.

14 (g) Approval of a school system collaborative innovation zone  
15 plan pursuant to this section is at the sole discretion of the  
16 state board. Any approval requirement not contained within this  
17 section does not apply.

18 (h) The plan is intended to serve as the basis for the  
19 innovation zone activities of the school system and to provide a  
20 vision for the school improvement goals it will work to accomplish  
21 in collaboration with its school and community partners. The plan  
22 is not intended as a limit on the normal school improvement  
23 activities that all school systems are expected to pursue, nor is  
24 the plan intended as a restriction on the ability of the school

1 system or its schools to pursue other innovative strategies in  
2 accordance with the other provisions of this article, specifically  
3 the designation as a Local Solution Dropout Prevention and Recovery  
4 Innovation Zone in accordance with section eleven of this article.

5       (i) The designation as a school system collaborative  
6 innovation zone authorizes the school system to submit requests as  
7 provided in subsection (j) of this section to the state board for  
8 exceptions to statutes, policies, rules and interpretations that  
9 are required to permit implementation by the school system of the  
10 innovative strategies contemplated in its school system  
11 collaborative innovation zone plan. The designation shall be for  
12 a period of five years, during which the school system may submit  
13 multiple individual requests for exceptions to permit  
14 implementation of different strategies contemplated in the plan as  
15 the strategies are developed. Each request for an exception shall  
16 be submitted and may be approved by the state board in accordance  
17 with subsection (j) of this section.

18       (j) (1) A school system designated as a school system  
19 collaborative innovation zone may request an exception to a  
20 statute, policy, rule or interpretation by submitting an  
21 application to the state board that contains the following  
22 information:

23       (A) A description of the program or initiative the school  
24 system intends to implement as an innovative strategy to improve

1 student achievement if the request is approved by the state board;

2       (B) An explanation of the specific exception to a statute,  
3 policy, rule or interpretation, in the singular or plural, that the  
4 school system has identified as prohibiting or constraining the  
5 implementation of the program or initiative and why the exception  
6 is necessary;

7       (C) An explanation of how the program or initiative furthers  
8 the activities contemplated in the school system collaborative  
9 innovation zone plan;

10       (D) A certification by the county superintendent that the  
11 request for an exception was approved by a vote of the eligible  
12 employees in accordance with the process for voting as set forth in  
13 section six of this article, except that notwithstanding subsection  
14 (d) of said section six, at least two-thirds of the eligible  
15 employees voting must vote to request the exception for it to be  
16 approved for submission to the state board: *Provided*, That for the  
17 vote to be valid, ballots must be cast by at least fifty percent of  
18 the eligible employees; and

19       (E) Any other information the state board requires as set  
20 forth in its rule pursuant to subsection (c) of this section.

21       (2) The state board shall review the request in accordance  
22 with the standards adopted by the board in its rule and shall  
23 determine whether to approve or disapprove the request. The  
24 approval or disapproval of a request is at the sole discretion of

1 the state board. Any approval requirement not contained within  
2 this section does not apply.

3       (3) Except as provided in subdivision (5) of this subsection,  
4 the state board shall approve or disapprove the request within  
5 thirty days of receipt, subject to the following:

6           (A) No exceptions to state board policies, rules or  
7 interpretations are granted unless the state board approves the  
8 request at least conditionally pursuant to subdivisions (2) and (5)  
9 of this subsection; and

10          (B) If the request is disapproved, the state board shall  
11 communicate its reasons for the disapproval to the school system  
12 and shall make recommendations for improving the request. The  
13 school system may amend and resubmit the request.

14          (4) Upon approval of the request by the state board, all of  
15 the exceptions to state board policies, rules and interpretations  
16 that were requested are granted; and

17          (5) If a request, or a part thereof, may not be implemented  
18 unless an exception to a statute is granted by an Act of the  
19 Legislature, the state board may approve the request, or the part  
20 thereof, only upon the condition that the Legislature acts to grant  
21 the exception. If the state board approves a request on that  
22 condition, the state board shall submit the request for an  
23 exception to a statute, along with supporting reasons, to the  
24 Legislative Oversight Commission of Education Accountability. The

1 commission shall review the request and make a recommendation to  
2 the Legislature regarding the exception requested.

3       (k) A school system collaborative innovation zone may not  
4 request an exception nor may an exception be granted from any of  
5 the following:

6           (A) A required statewide assessment program administered by  
7 the West Virginia Department of Education;

8           (B) Any provision of law or policy required by the No Child  
9 Left Behind Act of 2001, Public Law No. 107-110 or other federal  
10 law; and

11          (C) Sections two and seven, article two, chapter eighteen-a of  
12 this code and sections seven-a, seven-b, eight and eight-b, article  
13 four, chapter eighteen-a of this code, except that a school system  
14 collaborative innovation zone may make a job posting for a teacher  
15 vacancy in accordance with the procedures and the approval by a  
16 vote of the teachers as provided in section eight of this article.

17          (l) A county board designated as an school system  
18 collaborative innovation zone pursuant to this section that has an  
19 approved innovation zone plan may revise its plan and resubmit its  
20 plan to the state board for approval after conducting the vote  
21 pursuant to subdivision (4), subsection (f) of this section and  
22 complying with all other applicable plan requirements set forth in  
23 this section except for holding the public town hall meetings  
24 required by subdivision (1), subsection (f) of this section.

1           (m) The designation of a county school system as a school  
2 system collaborative innovation zone shall be for a period of five  
3 years. The state board, upon request of the school system, may  
4 extend the designation for an additional two years if the school  
5 system has outstanding items in its school system collaborative  
6 innovation zone plan that it still wants to pursue and only for the  
7 purpose of pursuing those outstanding items. The expiration of the  
8 designation does not negate any exceptions to statutes, policies,  
9 rules or interpretations granted to the school system, unless and  
10 until specifically revoked, repealed or modified by the state board  
11 or by the Legislature, as applicable.

12           (n) The state board or its designated committee shall perform  
13 annual performance reviews and provide annual reports in accordance  
14 with section seven of this article.

15           (o) A county school system whose plan has been approved may  
16 make a job posting for a teacher vacancy in accordance with the  
17 procedures and approval provided by section eight of this article.

18           (p) For any county that is designated as a school system  
19 collaborative innovation zone under the provisions of this section  
20 and to the extent the following provisions are applicable:

21           (1) The county commission of the designated county shall  
22 collaborate with the Office of Coalfield Community Development in  
23 including any land and infrastructure needs in the land use master  
24 plan provided for in section nine, article two-a, chapter five-b of

1 this code. These needs may include, but are not limited to,  
2 advancement of public education, economic development, highway  
3 development, recreational amenities and housing development;

4       (2) An area health organization, such as Tug River Health  
5 Association, Inc., is authorized to work with the county board to  
6 address the health, wellness and fitness needs of students,  
7 parents, school personnel and all others in the county. Tug River  
8 Health Association may partner with the Robert C. Byrd Center for  
9 Rural Health and the Marshall University Medical School in  
10 addressing these needs. In addressing the health, wellness and  
11 fitness needs, the following should be considered:

12       (A) New evaluations of school-aged children are needed to  
13 reassess their health status and direct further interventions;

14       (B) Prior to developing new assessment tools and initiating  
15 programs, a comprehensive inventory of prior assessment tools and  
16 programs is needed to determine their strengths and weaknesses.  
17 This can direct further studies and interventions;

18       (C) New assessment tools should include objective markers of  
19 disease as well as subjective opinions of individual health status  
20 and barriers to health;

21       (D) Objective and subjective data should be linked at  
22 individual and disease-specific levels;

23       (E) Disease-specific data may be used to address common  
24 barriers to health as perceived by a specific population and tailor

1 interventions to these specific populations;

2           (F) The effectiveness of interventions should be assessed  
3 using the same health status markers used to develop the  
4 intervention;

5           (G) Interventions should use available technology that allows  
6 individuals to track measures of health and provide assistance in  
7 making informed decisions about their health;

8           (H) Assessments and interventions should be developed and  
9 implemented using community-based participatory research models;  
10 and

11           (I) Assessments and interventions should be multidisciplinary,  
12 collaborative efforts with existing organizations and programs; and

13           (3) Area institutions of higher education, such as Concord  
14 University and the June Harless Center at Marshall University, are  
15 authorized to work with the county board on innovative strategies  
16 to address challenges facing the school system and community,  
17 including but not limited to, the areas of critical need and  
18 shortage in the teaching force, educator professional development  
19 and improving the college going rate. In addressing the areas of  
20 critical need shortage in the teaching force, consideration should  
21 be given to the implementation of an intensively supervised and  
22 mentored teacher-in-residence program for prospective teachers  
23 during their senior year in lieu of student teaching.

