

**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 371**

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

BY REQUEST OF THE EXECUTIVE)

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

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5B-12, relating to allowing flexibility within county school systems; authorizing the State Board of Education to select a county school system to serve as a school system collaborative innovation zone; giving McDowell County first opportunity to submit application; specifying effect of change in school system approval status; requiring the State Board of Education to promulgate rules and emergency rules; providing the procedure and criteria for application and selection as a school system collaborative innovation zone; requiring development of school system collaborative innovation zone plan; setting forth potential innovations; requiring public town hall meetings; requiring meeting to review input from town hall meetings and develop plan; requiring meeting to educate employees about the plan and to allow examination and discussion of plan; requiring vote to determine level of school employee support; authorizing a designated school system to submit requests for exceptions from county and state board rules, policies and

interpretations; permitting exceptions from statutes subject to legislative approval; prohibiting certain exceptions; allowing revision and resubmission of approved plan; setting forth duration of designation; requiring annual performance reviews and reports; permitting the posting of certain teaching vacancies in accordance with certain procedures and approval; and for a school system collaborative innovation zone and to the extent applicable, including any land and infrastructure needs in the land use master plan, authorizing an area health association to work with county board in addressing health, wellness and fitness needs and authorizing an area institution of higher education to work with the county board to address certain challenges.

*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 section, designated §18-5B-12, to read as follows:

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

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

1 (a) The Legislature makes the following findings and  
2 expressions of legislative intent:

3 (1) The Legislature created a performance-based accredi-  
4 tation system in 1988 and has amended these provisions  
5 several times, significantly in 1998 to set forth a process for  
6 improving education consisting of four elements: (i) High  
7 quality education standards; (ii) an assessment of the  
8 performance and progress of schools and school systems in  
9 achieving these standards with a primary focus on student  
10 learning; (iii) holding schools and school systems account-  
11 able for performance and progress to provide assurances that  
12 a thorough and efficient education is being provided; and (iv)

13 a process for targeting resources strategically to improve  
14 teaching and learning. These provisions include a process for  
15 the state board to declare a state of emergency and intervene  
16 in the operation of a school system when its educational  
17 program does not meet the standards and it fails to imple-  
18 ment an improvement plan or meet the plan's deadlines and  
19 improve within a reasonable time. Since the inception of  
20 these provisions, the state board has declared a state of  
21 emergency in nine county school systems and intervened,  
22 including delegating decision-making authority to the state  
23 superintendent or his or her designee for system operations.  
24 Of these nine school systems, three improved sufficiently  
25 over a period of time for the state of emergency to be re-  
26 scinded, the longest of which took ten years and six months.  
27 Of the six systems remaining under state board intervention,  
28 although most are fairly recent, one school system has been  
29 under state intervention for more than ten years and its  
30 improvement is progressing slowly;

31 (2) School systems do not exist in a vacuum and external  
32 circumstances and events can have a significant impact on  
33 them and the students they serve, as well as on the system's  
34 capacity to deliver the thorough and efficient education to  
35 which those students are entitled. For example, the  
36 McDowell County school system which in the 1950's at its  
37 height of employment in coal production had a total popula-  
38 tion of about 100,000 residents, faced much different chal-  
39 lenges than it does today with that county's total population  
40 now at 22,113 based on the 2010 census. This school system  
41 has lost nearly 70% of its enrollment in the past 30 years,  
42 declining from 11,715 students in 1981-82 to 3,535 in 2011-  
43 12. Along with the steep decline in the historical bedrock of  
44 employment in the county in the coal industry and the large  
45 number of middle class workers and services it supported,  
46 including housing, utilities and medical care, the county's  
47 rugged mountainous topography contributes to its vulnera-  
48 bility to natural disasters such as the devastating floods in  
49 2001 and 2002 that swept away many homes and much of the  
50 infrastructure along the creek beds throughout the county.  
51 This topography also significantly limits the amount of land

52 suitable for development and transportation networks, and  
53 makes planning for future economic development alterna-  
54 tives difficult. The social and economic byproducts of these  
55 external circumstances and events leave a school system  
56 with many atypical challenges for addressing the needs of its  
57 students and making the improvements in performance and  
58 progress needed to assure a thorough and efficient education;

59 (3) Among the findings, intent and purposes of this  
60 article are that: (i) Allowing exceptions from certain statutes,  
61 policies, rules and interpretations through the creation of  
62 innovation zones will enable greater local control over the  
63 important educational factors that impact student achieve-  
64 ment and the delivery of educational services to improve  
65 student learning; and (ii) Innovation zones will provide  
66 greater flexibility and local control to meet the needs of a  
67 diverse population of students. In addition, among the  
68 findings of the Local Solution Dropout Prevention and  
69 Recovery Innovation Zone Act as set forth in section eleven  
70 of this article are findings that when educators, parents,  
71 elected officials, business leaders, faith-based leaders,  
72 human service personnel, judicial personnel and civic leaders  
73 collectively work together they are often able to find innova-  
74 tive solutions to address school and community problems.  
75 Since the creation of this article, forty-five innovation zone  
76 projects have been approved by the state board, nine of  
77 which were Dropout Prevention and Recovery Innovation  
78 Zone projects. Twenty-seven policy waivers and five statu-  
79 tory waivers have been granted to enable implementation of  
80 these projects. In one county, an innovation zone project was  
81 expanded to all of the remaining schools in the county when  
82 the schools used the Local School Improvement Council  
83 waiver process to request and receive a statutory waiver to  
84 implement a comprehensive new teacher induction process  
85 county-wide. Collectively, these projects illustrate how local  
86 schools, and in some cases school systems, have increased  
87 their capacity by using the innovation zone process to  
88 collaboratively plan and implement a variety of changes to  
89 increase student engagement, develop more flexible sched-

90 ules, enhance student and teacher ownership of the learning  
91 process and increase student achievement;

92 (4) Choosing one county school system under a declared  
93 state of emergency due to nonapproval status to designate as  
94 an innovation zone would allow the testing of innovations  
95 that could be replicated in other school systems facing  
96 similar circumstances across the state, nation and world;

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

100 (6) McDowell County is unique and should be given the  
101 first opportunity to use innovative solutions to improve its  
102 education system when the totality of the circumstances set  
103 forth in this subsection are considered. Other facts specifi-  
104 cally applicable to McDowell County include the following:

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

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

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

116 (7) This section is intended as an additional tool for an  
117 eligible school system in collaboration with community and  
118 business partners to plan and implement new approaches to  
119 improve the performance and progress of the students,  
120 schools and system to achieve full approval at the earliest  
121 possible date. It is further the intent of the Legislature that  
122 the process for an eligible school system to apply for excep-  
123 tions under this section should allow multiple opportunities  
124 to apply for additional exceptions as the system moves

125 forward with its partners toward fulfillment of its improve-  
126 ment goals; and

127 (8) In accordance with the intent of this section as an  
128 additional tool for planning and implementing new ap-  
129 proaches to improve the performance and progress of the  
130 students, schools and school system to achieve full approval  
131 at the earliest possible date, the state board shall rescind the  
132 state of emergency and nonapproval status of a school system  
133 designated as a school system collaborative innovation zone  
134 as soon as the requisite conditions are met as provided in  
135 section five, article two-e of this chapter, notwithstanding  
136 the designation. If a school system that has been designated  
137 as a school system collaborative innovation zone is subse-  
138 quently issued a school system approval status that would  
139 make it ineligible for the designation, the designation shall  
140 remain in effect as provided in this section.

141 (b) The state board is authorized to choose one county  
142 school system currently under a declared state of emergency  
143 by the state board due to nonapproval status to participate  
144 in a program to test the effectiveness of allowing such county  
145 school systems to be considered school system collaborative  
146 innovation zones. Due to the reasons set forth in subsection  
147 (a) of this section, the McDowell County Board of Education  
148 shall be provided the first opportunity to submit a school  
149 system collaborative innovation zone application under this  
150 article. If the McDowell County Board of Education has not  
151 submitted an application by April 1, 2013 or less than fifty  
152 percent cast ballots in an election to approve a school system  
153 collaborative innovation zone plan, the state board may  
154 accept applications from other county boards under a  
155 declared state of emergency by the state board due to  
156 nonapproval status.

157 (c) The Legislature finds that an emergency exists and,  
158 therefore, no later than April 16, 2012, the state board shall  
159 promulgate an emergency rule in accordance with section  
160 ten, article three-b, chapter twenty-nine-a of this code, to  
161 implement the provisions of this section. The state board also  
162 shall promulgate a legislative rule, in accordance with article

163 three-b, chapter twenty-nine-a of this code, to implement  
164 this section. Both rules shall include, but not be limited to,  
165 the following provisions:

166 (1) The manner, time and process for the submission of a  
167 school system collaborative innovation zone application;

168 (2) The contents of the application, which must include  
169 a general description of the innovations the county school  
170 district seeks to institute;

171 (3) Factors to be considered by the state board when  
172 evaluating an application, which shall include, but are not  
173 limited to, the following factors:

174 (A) Support from teachers, staff, parents, students, the  
175 county board of education, the local school improvement  
176 council and school business partners; and

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

180 (4) Standards for the state board to review applications  
181 for designation as a school system collaborative innovation  
182 zone and to make determinations on the designation of a  
183 school system collaborative innovation zone.

184 (d) The state board shall review school system collabora-  
185 tive innovation zone applications in accordance with the  
186 standards adopted by the board and shall determine whether  
187 to designate the applicant as a school system collaborative  
188 innovation zone. The state board shall notify an applicant of  
189 the board's determination within thirty days of receipt of the  
190 application.

191 (e) Prior to designation by the state board as a school  
192 system collaborative innovation zone, county school systems  
193 submitting applications shall develop school system collabo-  
194 rative innovation zone plans. The school system collabora-  
195 tive innovation zone plan may include, but is not limited to,  
196 the following proposals:

197 (1) Allowing increased collaborative site-based deci-  
198 sion-making powers over the budgeting for and spending on  
199 programs and services for students;

200 (2) Allowing increased collaborative site-based deci-  
201 sion-making powers over teacher recruitment;

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

204 (4) Allowing a collaborative process which provides  
205 input and demonstrative buy-in from education personnel  
206 regarding appropriate professional development, supports,  
207 resources and working conditions.

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

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

214 (7) Utilizing virtual school courses aligned with the  
215 Southern Regional Education Board's Standards for Quality  
216 Online Courses; and

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

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

222 (1) The school system in collaboration with its public-  
223 private partnership shall conduct public town hall meetings  
224 in at least two schools in the county for the purpose of  
225 soliciting input from those in attendance on the challenges  
226 affecting the quality of education in the county and the  
227 potential strategies and priorities for addressing them. The  
228 two meetings shall occur within ten days of each other;



229       (2) Within fifteen days after the last town hall meeting,  
230 the county superintendent shall hold a meeting for the  
231 purpose of reviewing the input gathered at the public town  
232 hall meetings and developing the school system collaborative  
233 innovation zone plan. The meeting shall include the princi-  
234 pals employed within the county, the chairs of the faculty  
235 senates of each school in the county, employee organization  
236 representatives, a school service person from each work-site,  
237 parents and other stakeholders;

238       (3) Within fifteen days after the meeting to develop the  
239 school system collaborative innovation zone plan, the county  
240 superintendent shall hold a meeting of all regularly em-  
241 ployed school employees for the purpose of educating those  
242 employees about the plan and for the purpose of providing  
243 the employees an opportunity to examine and discuss the  
244 school system collaborative innovation zone plan; and

245       (4) At the meeting required by subdivision (3) of this  
246 subsection, the county superintendent shall direct that a vote  
247 of all regularly employed school employees in the county be  
248 conducted to determine the level of school employee support  
249 for the school system collaborative innovation zone plan. The  
250 vote shall be completed within fifteen days after the meeting  
251 required by subdivision (3) of this subsection. The vote shall  
252 be by secret ballot administered by the panels created in  
253 subsection (c), section six of this article for each school and  
254 shall be administered in accordance with that subsection.  
255 For the vote to be valid, ballots must be cast by at least fifty  
256 percent of all regularly employed school employees in the  
257 county. The plan may not be submitted to the state board  
258 and the state board may not designate the school system as  
259 a school system collaborative innovation zone unless at least  
260 two-thirds of the employees voting vote to submit the plan.

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

265 (h) The plan is intended to serve as the basis for the  
266 innovation zone activities of the school system and to  
267 provide a vision for the school improvement goals it will  
268 work to accomplish in collaboration with its school and  
269 community partners. The plan is not intended as a limit on  
270 the normal school improvement activities that all school  
271 systems are expected to pursue, nor is the plan intended as  
272 a restriction on the ability of the school system or its schools  
273 to pursue other innovative strategies in accordance with the  
274 other provisions of this article, specifically the designation  
275 as a Local Solution Dropout Prevention and Recovery  
276 Innovation Zone in accordance with section eleven of this  
277 article.

278 (i) The designation as a school system collaborative  
279 innovation zone authorizes the school system to submit  
280 requests as provided in subsection (j) of this section to the  
281 state board for exceptions to statutes, policies, rules and  
282 interpretations that are required to permit implementation  
283 by the school system of the innovative strategies contem-  
284 plated in its school system collaborative innovation zone  
285 plan. The designation shall be for a period of five years,  
286 during which the school system may submit multiple individ-  
287 ual requests for exceptions to permit implementation of  
288 different strategies contemplated in the plan as the strategies  
289 are developed. Each request for an exception shall be  
290 submitted and may be approved by the state board in  
291 accordance with subsection (j) of this subsection.

292 (j) (1) A school system designated as a school system  
293 collaborative innovation zone may request an exception to a  
294 statute, policy, rule or interpretation by submitting an  
295 application to the state board that contains the following  
296 information:

297 (A) A description of the program or initiative the school  
298 system intends to implement as an innovative strategy to  
299 improve student achievement if the request is approved by  
300 the state board;

301 (B) An explanation of the specific exception to a statute,  
302 policy, rule or interpretation, in the singular or plural, that  
303 the school system has identified as prohibiting or constrain-  
304 ing the implementation of the program or initiative and why  
305 the exception is necessary;

306 (C) An explanation of how the program or initiative  
307 furthers the activities contemplated in the school system  
308 collaborative innovation zone plan;

309 (D) A certification by the county superintendent that the  
310 request for an exception was approved by a vote of the  
311 eligible employees in accordance with the process for voting  
312 as set forth in section six of this article, except that notwith-  
313 standing subsection (d) of said section six, at least two-thirds  
314 of the eligible employees voting must vote to request the  
315 exception for it to be approved for submission to the state  
316 board: *Provided*, That for the vote to be valid, ballots must  
317 be cast by at least fifty percent of the eligible employees; and

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

320 (2) The state board shall review the request in accor-  
321 dance with the standards adopted by the board in its rule  
322 and shall determine whether to approve or disapprove the  
323 request. The approval or disapproval of a request is at the  
324 sole discretion of the state board. Any approval requirement  
325 not contained within this section does not apply.

326 (3) Except as provided in subdivision (5) of this subsec-  
327 tion, the state board shall approve or disapprove the request  
328 within thirty days of receipt, subject to the following:

329 (A) No exceptions to state board policies, rules or  
330 interpretations are granted unless the state board approves  
331 the request at least conditionally pursuant to subdivisions (2)  
332 and (5) of this subsection; and

333 (B) If the request is disapproved, the state board shall  
334 communicate its reasons for the disapproval to the school  
335 system and shall make recommendations for improving the

336 request. The school system may amend and resubmit the  
337 request.

338 (4) Upon approval of the request by the state board, all  
339 of the exceptions to state board policies, rules and interpre-  
340 tations that were requested are granted; and

341 (5) If a request, or a part thereof, may not be imple-  
342 mented unless an exception to a statute is granted by an Act  
343 of the Legislature, the state board may approve the request,  
344 or the part thereof, only upon the condition that the Legisla-  
345 ture acts to grant the exception. If the state board approves  
346 a request on that condition, the state board shall submit the  
347 request for an exception to a statute, along with supporting  
348 reasons, to the Legislative Oversight Commission of Educa-  
349 tion Accountability. The commission shall review the request  
350 and make a recommendation to the Legislature regarding the  
351 exception requested.

352 (k) A school system collaborative innovation zone may  
353 not request an exception nor may an exception be granted  
354 from any of the following:

355 (A) A required statewide assessment program adminis-  
356 tered by the West Virginia Department of Education;

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

360 (C) Sections two and seven, article two, chapter eighteen-  
361 a of this code and sections seven-a, seven-b, eight and  
362 eight-b, article four, chapter eighteen-a of this code, except  
363 that a school system collaborative innovation zone may make  
364 a job posting for a teacher vacancy in accordance with the  
365 procedures and the approval by a vote of the teachers as  
366 provided in section eight of this article.

367 (l) A county board designated as an school system  
368 collaborative innovation zone pursuant to this section that  
369 has an approved innovation zone plan may revise its plan  
370 and resubmit its plan to the state board for approval after

371 conducting the vote pursuant to subdivision (4), subsection  
372 (f) of this section and complying with all other applicable  
373 plan requirements set forth in this section except for holding  
374 the public town hall meetings required by subdivision (1),  
375 subsection (f) of this section.

376 (m) The designation of a county school system as a school  
377 system collaborative innovation zone shall be for a period of  
378 five years. The state board, upon request of the school  
379 system, may extend the designation for an additional two  
380 years if the school system has outstanding items in its school  
381 system collaborative innovation zone plan that it still wants  
382 to pursue and only for the purpose of pursuing those out-  
383 standing items. The expiration of the designation does not  
384 negate any exceptions to statutes, policies, rules or interpre-  
385 tations granted to the school system, unless and until  
386 specifically revoked, repealed or modified by the state board  
387 or by the Legislature, as applicable.

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

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

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

399 (1) The county commission of the designated county shall  
400 collaborate with the Office of Coalfield Community Develop-  
401 ment in including any land and infrastructure needs in the  
402 land use master plan provided for in section nine, article  
403 two-a, chapter five-b of this code. These needs may include,  
404 but are not limited to, advancement of public education,  
405 economic development, highway development, recreational  
406 amenities and housing development;

407 (2) An area health organization, such as Tug River Health  
408 Association, Inc., is authorized to work with the county  
409 board to address the health, wellness and fitness needs of  
410 students, parents, school personnel and all others in the  
411 county. Tug River Health Association may partner with the  
412 Robert C. Byrd Center for Rural Health and the Marshall  
413 University Medical School in addressing these needs. In  
414 addressing the health, wellness and fitness needs, the  
415 following should be considered:

416 (A) New evaluations of school-aged children are needed  
417 to reassess their health status and direct further interven-  
418 tions;

419 (B) Prior to developing new assessment tools and initiat-  
420 ing programs, a comprehensive inventory of prior assessment  
421 tools and programs is needed to determine their strengths  
422 and weaknesses. This can direct further studies and inter-  
423 ventions;

424 (C) New assessment tools should include objective  
425 markers of disease as well as subjective opinions of individ-  
426 ual health status and barriers to health;

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

429 (E) Disease-specific data may be used to address common  
430 barriers to health as perceived by a specific population and  
431 tailor interventions to these specific populations;

432 (F) The effectiveness of interventions should be assessed  
433 using the same health status markers used to develop the  
434 intervention;

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

438 (H) Assessments and interventions should be developed  
439 and implemented using community-based participatory  
440 research models; and

441 (I) Assessments and interventions should be  
442 multidisciplinary, collaborative efforts with existing organi-  
443 zations and programs; and

444 (3) Area institutions of higher education, such as Concord  
445 University and the June Harless Center at Marshall Univer-  
446 sity, are authorized to work with the county board on  
447 innovative strategies to address challenges facing the school  
448 system and community, including but not limited to, the  
449 areas of critical need and shortage in the teaching force,  
450 educator professional development and improving the college  
451 going rate. In addressing the areas of critical need shortage  
452 in the teaching force, consideration should be given to the  
453 implementation of an intensively supervised and mentored  
454 teacher-in-residence program for prospective teachers  
455 during their senior year in lieu of student teaching.

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

.....  
*Chairman Senate Committee*

.....  
*Chairman House Committee*

Originated in the Senate.

In effect from passage.

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*Clerk of the Senate*

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*Clerk of the House of Delegates*

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*President of the Senate*

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*Speaker of the House of Delegates*

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The within ..... this the .....  
Day of ....., 2012.

.....  
*Governor*