

**H. B. 2391**

(By Delegates Pasdon, Duke, Statler, Kurcaba, Upson, Rohrbach,  
D. Evans, Cooper, Romine, Wagner and Rowan)

[Introduced January 27, 2015; referred to the  
Committee on Education.]

A BILL to amend and reenact §18-5-44 of the Code of West Virginia, 1931, as amended, relating to authorizing additional annual waiver to full implementation of five full day early childhood education program for a certain purpose.

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

That §18-5-44 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 5. COUNTY BOARD OF EDUCATION.**

**§18-5-44. Early childhood education programs.**

(a) For the purposes of this section, "early childhood education" means programs for children who have attained the age of four prior to September 1 of the school year in which the pupil enters the program created in this section.

(b) *Findings.* –

(1) Among other positive outcomes, early childhood education programs have been determined to:

- 1 (A) Improve overall readiness when children enter school;
- 2 (B) Decrease behavioral problems;
- 3 (C) Improve student attendance;
- 4 (D) Increase scores on achievement tests;
- 5 (E) Decrease the percentage of students repeating a grade; and
- 6 (F) Decrease the number of students placed in special education programs;
- 7 (2) Quality early childhood education programs improve school performance and low-quality
- 8 early childhood education programs may have negative effects, especially for at-risk children;
- 9 (3) West Virginia has the lowest percentage of its adult population twenty-five years of age
- 10 or older with a bachelor's degree and the education level of parents is a strong indicator of how their
- 11 children will perform in school;
- 12 (4) During the 2006-2007 school year, West Virginia ranked thirty-ninth among the fifty
- 13 states in the percentage of school children eligible for free and reduced lunches and this percentage
- 14 is a strong indicator of how the children will perform in school;
- 15 (5) For the school year 2008-2009, 13,135 students were enrolled in prekindergarten, a
- 16 number equal to approximately sixty-three percent of the number of students enrolled in
- 17 kindergarten;
- 18 (6) Excluding projected increases due to increases in enrollment in the early childhood
- 19 education program, projections indicate that total student enrollment in West Virginia will decline
- 20 by one percent, or by approximately 2704 students, by the school year 2012-2013;
- 21 (7) In part, because of the dynamics of the state aid formula, county boards will continue to
- 22 enroll four-year old students to offset the declining enrollments;

1 (8) West Virginia has a comprehensive kindergarten program for five-year olds, but the  
2 program was established in a manner that resulted in unequal implementation among the counties  
3 which helped create deficit financial situations for several county boards;

4 (9) Expansion of current efforts to implement a comprehensive early childhood education  
5 program should avoid the problems encountered in kindergarten implementation;

6 (10) Because of the dynamics of the state aid formula, counties experiencing growth are at  
7 a disadvantage in implementing comprehensive early childhood education programs; and

8 (11) West Virginia citizens will benefit from the establishment of quality comprehensive  
9 early childhood education programs.

10 (c) Beginning no later than the school year 2012-2013, and continuing thereafter, county  
11 boards shall provide early childhood education programs for all children who have attained the age  
12 of four prior to September 1 of the school year in which the pupil enters the early childhood  
13 education program. Beginning no later than the school year 2016-2017, and continuing thereafter,  
14 early childhood education programs that are full day and five days per week shall be available to all  
15 children meeting the age requirement set forth in the subsection.

16 (d) The program shall meet the following criteria:

17 (1) It shall be voluntary, except, upon enrollment, the provisions of section one, article eight  
18 of this chapter apply to an enrolled student, subject to subdivision (3) of this subsection;

19 (2) All children meeting the age requirement set forth in this section shall have the  
20 opportunity to enroll in a program that is full day and five days per week. The program may be for  
21 fewer than five days per week and may be less than full day based on family need if a sufficient  
22 number of families request such programs and the county board finds that such programs are in the

1 best interest of the requesting families and students: *Provided*, That the ability of families to request  
2 programs that are fewer than five days a week or less than a full day does not relieve the county of  
3 the obligation to provide all resident children with the opportunity to enroll in a full-day program;  
4 and

5 (3) A parent of a child enrolled in an early education program may withdraw a child from that  
6 program for good cause by notifying the district. Good cause includes, but is not limited to,  
7 enrollment of the child in another program or the immaturity of the child. A child withdrawn under  
8 this section is not subject to the attendance provisions of this chapter until that child again enrolls  
9 in a public school in this state.

10 (e) Enrollment of students in Head Start, in any other program approved by the state  
11 superintendent as provided in subsection (k) of this section may be counted toward satisfying the  
12 requirement of subsection (c) of this section.

13 (f) For the purposes of implementation financing, all counties are encouraged to make use  
14 of funds from existing sources, including:

15 (1) Federal funds provided under the Elementary and Secondary Education Act pursuant to  
16 20 U. S. C. §6301, *et seq.*;

17 (2) Federal funds provided for Head Start pursuant to 42 U. S. C. §9831, *et seq.*;

18 (3) Federal funds for temporary assistance to needy families pursuant to 42 U. S. C. §601,  
19 *et seq.*;

20 (4) Funds provided by the School Building Authority pursuant to article nine-d of this  
21 chapter;

22 (5) In the case of counties with declining enrollments, funds from the state aid formula above

1 the amount indicated for the number of students actually enrolled in any school year; and

2 (6) Any other public or private funds.

3 (g) Each county board shall develop a plan for implementing the program required by this  
4 section. The plan shall include the following elements:

5 (1) An analysis of the demographics of the county related to early childhood education  
6 program implementation;

7 (2) An analysis of facility and personnel needs;

8 (3) Financial requirements for implementation and potential sources of funding to assist  
9 implementation;

10 (4) Details of how the county board will cooperate and collaborate with other early childhood  
11 education programs including, but not limited to, Head Start, to maximize federal and other sources  
12 of revenue;

13 (5) Specific time lines for implementation; and

14 (6) Any other items the state board may require by policy.

15 (h) A county board shall submit its plan to the Secretary of the Department of Health and  
16 Human Resources. The secretary shall approve the plan if the following conditions are met:

17 (1) The county board has maximized the use of federal and other available funds for early  
18 childhood programs;

19 (2) The county board has provided for the maximum implementation of Head Start programs  
20 and other public and private programs approved by the state superintendent pursuant to the terms of  
21 subsection (k) of this section; and

22 (3) If the Secretary of the Department of Health and Human Resources finds that the county

1 board has not met one or more of the requirements of this subsection, but that the county board has  
 2 acted in good faith and the failure to comply was not the primary fault of the county board, then the  
 3 secretary shall approve the plan. Any denial by the secretary may be appealed to the circuit court of  
 4 the county in which the county board is located.

5 (i) The county board shall submit its plan for approval to the state board. The state board  
 6 shall approve the plan if the county board has complied substantially with the requirements of  
 7 subsection (g) of this section and has obtained the approval required in subsection (h) of this section.

8 (j) Every county board shall submit its plan for reapproval by the Secretary of the Department  
 9 of Health and Human Resources and by the state board at least every two years after the initial  
 10 approval of the plan and until full implementation of the early childhood education program in the  
 11 county. As part of the submission, the county board shall provide a detailed statement of the  
 12 progress made in implementing its plan. The standards and procedures provided for the original  
 13 approval of the plan apply to any reapproval.

14 (k) A county board may not increase the total number of students enrolled in the county in  
 15 an early childhood program until its program is approved by the Secretary of the Department of  
 16 Health and Human Resources and the state board.

17 (l) The state board annually may grant a county board a waiver for total or partial  
 18 implementation if the state board finds that ~~all~~ of the following conditions exist:

19 (1) The county board is unable to comply ~~either~~ because:

20 (A) ~~It~~ Either the county board does not have sufficient facilities available, ~~or (B) it or the~~  
 21 county board does not and has not had available funds sufficient to implement the program; and

22 ~~(2)~~ (B) The county has not experienced a decline in enrollment at least equal to the total

1 number of students to be enrolled; and

2 ~~(3)~~ (C) Other agencies of government have not made sufficient funds or facilities available  
3 to assist in implementation; or

4 (2) The county board has complied or may be able to comply and seeks a waiver with the  
5 support of a majority the participating families to implement a full day early childhood education  
6 program that has children in attendance four days per week and uses the fifth day for staff to work  
7 on program delivery to improve student learning.

8 Any county board seeking a waiver shall apply with the supporting data to meet the criteria  
9 for which they are eligible on or before March 25 for the following school year. The state  
10 superintendent shall grant or deny the requested waiver on or before April 15 of that same year.

11 (m) The provisions of subsections (b), (c) and (d), section eighteen of this article relating to  
12 kindergarten apply to early childhood education programs in the same manner in which they apply  
13 to kindergarten programs.

14 (n) Annually, the state board shall report to the Legislative Oversight Commission on  
15 Education Accountability on the progress of implementation of this section.

16 (o) Except as required by federal law or regulation, no county board may enroll students who  
17 will be less than four years of age prior to September 1 for the year they enter school.

18 (p) Neither the state board nor the state department may provide any funds to any county  
19 board for the purpose of implementing this section unless the county board has a plan approved  
20 pursuant to subsections (h), (i) and (j) of this section.

21 (q) The state board shall promulgate a rule in accordance with the provisions of article  
22 three-b, chapter twenty-nine-a of this code for the purposes of implementing the provisions of this

1 section. The state board shall consult with the Secretary of the Department of Health and Human

2 Resources in the preparation of the rule. The rule shall contain the following:

3 (1) Standards for curriculum;

4 (2) Standards for preparing students;

5 (3) Attendance requirements;

6 (4) Standards for personnel; and

7 (5) Any other terms necessary to implement the provisions of this section.

8 (r) The rule shall include the following elements relating to curriculum standards:

9 (1) A requirement that the curriculum be designed to address the developmental needs of  
10 four-year old children, consistent with prevailing research on how children learn;

11 (2) A requirement that the curriculum be designed to achieve long-range goals for the social,  
12 emotional, physical and academic development of young children;

13 (3) A method for including a broad range of content that is relevant, engaging and meaningful  
14 to young children;

15 (4) A requirement that the curriculum incorporate a wide variety of learning experiences,  
16 materials and equipment, and instructional strategies to respond to differences in prior experience,  
17 maturation rates and learning styles that young children bring to the classroom;

18 (5) A requirement that the curriculum be designed to build on what children already know  
19 in order to consolidate their learning and foster their acquisition of new concepts and skills;

20 (6) A requirement that the curriculum meet the recognized standards of the relevant subject  
21 matter disciplines;

22 (7) A requirement that the curriculum engage children actively in the learning process and



1 provide them with opportunities to make meaningful choices;

2 (8) A requirement that the curriculum emphasize the development of thinking, reasoning,  
3 decisionmaking and problem-solving skills;

4 (9) A set of clear guidelines for communicating with parents and involving them in decisions  
5 about the instructional needs of their children; and

6 (10) A systematic plan for evaluating program success in meeting the needs of young children  
7 and for helping them to be ready to succeed in school.

8 (s) The secretary and the state superintendent shall submit a report to the Legislative  
9 Oversight Commission on Education Accountability and the Joint Committee on Government and  
10 Finance which addresses, at a minimum, the following issues:

11 (1) A summary of the approved county plans for providing the early childhood education  
12 programs pursuant to this section;

13 (2) An analysis of the total cost to the state and county boards of implementing the plans;

14 (3) A separate analysis of the impact of the plans on counties with increasing enrollment; and

15 (4) An analysis of the effect of the programs on the maximization of the use of federal funds  
16 for early childhood programs.

17 The intent of this subsection is to enable the Legislature to proceed in a fiscally responsible  
18 manner, make any necessary program improvements based on reported information prior to  
19 implementation of the early childhood education programs.

20 (t) After the school year 2012-2013, on or before July 1 of each year, each county board shall  
21 report the following information to the Secretary of the Department of Health and Human Resources  
22 and the state superintendent:

1           (1) Documentation indicating the extent to which county boards are maximizing resources  
2 by using the existing capacity of community-based programs, including, but not limited to, Head  
3 Start and child care; and

4           (2) For those county boards that are including eligible children attending approved,  
5 contracted community-based programs in their net enrollment for the purposes of calculating state  
6 aid pursuant to article nine-a of this chapter, documentation that the county board is equitably  
7 distributing funding for all children regardless of setting.

NOTE: This bill authorizes the state board to annually grant a waiver to a county board to implement a full day early childhood education program that has children in attendance four days per week and uses the fifth day for staff to work on program delivery to improve student learning. The request for a waiver must have the support of a majority of the participating families. The current statute requires the programs to be available full day, five days per week.

Strike-throughs indicate existing language that would be removed, and underscoring indicates new language that would be added.