

WEST VIRGINIA LEGISLATURE

2016 FIRST EXTRAORDINARY SESSION

Introduced

House Bill 108

BY DELEGATE LANE

[Introduced May 24, 2016;

Referred to Education then Finance.]

1 A BILL to amend and reenact §5F-1-2 of the Code of West Virginia, 1931, as amended; to amend
2 and reenact §5F-2-1 of said code; to amend said code by adding thereto a new section,
3 designated §5F-2-1a; to amend and reenact §10-5-2a of said code; and to amend and
4 reenact §18-10A-1, §18-10A-2, §18-10A-2a, §18-10A-3, §18-10A-5 and §18-10A-12 of
5 said code, all relating to the termination of the Department of Education and the Arts as
6 an executive branch department; eliminating the Department of Education and the Arts as
7 a department under the executive branch of government; transferring the Library
8 Commission and Division of Culture and History from the Department of Education and
9 the Arts; transferring the Division of Rehabilitation Services to the Department of
10 Commerce; removing the Educational Broadcasting Authority as a part of the Department
11 of Education and the Arts; providing that the agencies and programs operating under the
12 auspices of the Department as of June 30, 2016 shall continue independent of the
13 Department of Education and the Arts; requiring the Governor to evaluate the agencies
14 and programs of the Department of Education and the Arts and make a written report to
15 the Joint Committee on Government and Finance; setting forth information to be provided,
16 at a minimum in the written report; removing the Secretary of the Department of Education
17 and the Arts as the contract agent on behalf of the state with institutions of higher
18 education and the state Board of Education for the development or operation, or both, of
19 state employee training programs transmitted by telecommunications technology;
20 transferring the Division of Rehabilitation Services and its related divisions to the
21 Department of Commerce; and defining terms.

Be it enacted by the Legislature of West Virginia:

1 That §5F-1-2 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted; that §5F-2-1 of said code be amended and reenacted; that said code be amended by
3 adding thereto a new section, designated §5F-2-1a; that §10-5-2a of said code be amended and

4 reenacted; and that §18-10A-1, §18-10A-2, §18-10A-2a, §18-10A-3, §18-10A-5 and §18-10A-12
5 of said code be amended and reenacted, all to read as follows:

**CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF
STATE GOVERNMENT.**

ARTICLE 1. GENERAL PROVISIONS.

§5F-1-2. Executive departments created; offices of secretary created.

1 (a) There are created, within the executive branch of the state government, the following
2 departments:

- 3 (1) Department of Administration;
- 4 ~~(2) Department of Education and the Arts;~~
- 5 ~~(3) (2) Department of Environmental Protection;~~
- 6 ~~(4) (3) Department of Health and Human Resources;~~
- 7 ~~(5) (4) Department of Military Affairs and Public Safety;~~
- 8 ~~(6) (5) Department of Revenue;~~
- 9 ~~(7) (6) Department of Transportation;~~
- 10 ~~(8) (7) Department of Commerce; and~~
- 11 ~~(9) (8) Effective July 1, 2011, Department of Veterans' Assistance.~~

12 (b) Each department will be headed by a secretary appointed by the Governor with the
13 advice and consent of the Senate. Each secretary serves at the will and pleasure of the Governor.

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

§5F-2-1. Transfer and incorporation of agencies and boards; funds.

1 (a) The following agencies and boards, including all of the allied, advisory, affiliated or
2 related entities and funds associated with any agency or board, are incorporated in and
3 administered as a part of the Department of Administration:

- 4 (1) Building Commission provided in article six, chapter five of this code;

5 (2) Public Employees Insurance Agency provided in article sixteen, chapter five of this
6 code;

7 (3) Governor's Mansion Advisory Committee provided in article five, chapter five-a of this
8 code;

9 (4) Commission on Uniform State Laws provided in article one-a, chapter twenty-nine of
10 this code;

11 (5) West Virginia Public Employees Grievance Board provided in article three, chapter six-
12 c of this code;

13 (6) Board of Risk and Insurance Management provided in article twelve, chapter twenty-
14 nine of this code;

15 (7) Boundary Commission provided in article twenty-three, chapter twenty-nine of this
16 code;

17 (8) Public Defender Services provided in article twenty-one, chapter twenty-nine of this
18 code;

19 (9) Division of Personnel provided in article six, chapter twenty-nine of this code;

20 (10) The West Virginia Ethics Commission provided in article two, chapter six-b of this
21 code;

22 (11) Consolidated Public Retirement Board provided in article ten-d, chapter five of this
23 code; and

24 (12) Real Estate Division provided in article ten, chapter five-a of this code.

25 (b) The following agencies and boards, including all of the allied, advisory, affiliated or
26 related entities and funds associated with any agency or board, are incorporated in and
27 administered as a part of the Department of Commerce:

28 (1) Division of Labor provided in article one, chapter twenty-one of this code, which
29 includes:

30 (A) Occupational Safety and Health Review Commission provided in article three-a,

31 chapter twenty-one of this code; and

32 (B) Board of Manufactured Housing Construction and Safety provided in article nine,
33 chapter twenty-one of this code.

34 (2) Office of Miners' Health, Safety and Training provided in article one, chapter twenty-
35 two-a of this code. The following boards are transferred to the Office of Miners' Health, Safety and
36 Training for purposes of administrative support and liaison with the Office of the Governor:

37 (A) Board of Coal Mine Health and Safety and Coal Mine Safety and Technical Review
38 Committee provided in article six, chapter twenty-two-a of this code;

39 (B) Board of Miner Training, Education and Certification provided in article seven, chapter
40 twenty-two-a of this code; and

41 (C) Mine Inspectors' Examining Board provided in article nine, chapter twenty-two-a of this
42 code.

43 (3) The West Virginia Development Office provided in article two, chapter five-b of this
44 code;

45 (4) Division of Natural Resources and Natural Resources Commission provided in article
46 one, chapter twenty of this code;

47 (5) Division of Forestry provided in article one-a, chapter nineteen of this code;

48 (6) Geological and Economic Survey provided in article two, chapter twenty-nine of this
49 code; and

50 (7) Workforce West Virginia provided in chapter twenty-one-a of this code, which includes:

51 (A) Division of Unemployment Compensation;

52 (B) Division of Employment Service;

53 (C) Division of Workforce Development; and

54 (D) Division of Research, Information and Analysis.

55 (8) Division of Energy provided in article two-f, chapter five-b of this code. ;

56 (9) Division of Tourism Commission provided in article two-h, chapter five-b of this code. ;

57 and

58 (10) Division of Rehabilitation Services provided in article ten-a, chapter eighteen of this
59 code.

60 (c) The Economic Development Authority provided in article fifteen, chapter thirty-one of
61 this code is continued as an independent agency within the executive branch.

62 (d) The Water Development Authority and the Water Development Authority Board
63 provided in article one, chapter twenty-two-c of this code is continued as an independent agency
64 within the executive branch.

65 (e) The following agencies and boards, including all of the allied, advisory and affiliated
66 entities, are transferred to the Department of Environmental Protection for purposes of
67 administrative support and liaison with the office of the Governor:

68 (1) Air Quality Board provided in article two, chapter twenty-two-b of this code;

69 (2) Solid Waste Management Board provided in article three, chapter twenty-two-c of this
70 code;

71 (3) Environmental Quality Board, or its successor board, provided in article three, chapter
72 twenty-two-b of this code;

73 (4) Surface Mine Board provided in article four, chapter twenty-two-b of this code;

74 (5) Oil and Gas Inspectors' Examining Board provided in article seven, chapter twenty-
75 two-c of this code;

76 (6) Shallow Gas Well Review Board provided in article eight, chapter twenty-two-c of this
77 code; and

78 (7) Oil and Gas Conservation Commission provided in article nine, chapter twenty-two-c
79 of this code.

80 ~~(f) The following agencies and boards, including all of the allied, advisory, affiliated or~~
81 ~~related entities and funds associated with any agency or board, are incorporated in and~~
82 ~~administered as a part of the Department of Education and the Arts:~~

83 ~~(1) Library Commission provided in article one, chapter ten of this code;~~

84 ~~(2) Division of Culture and History provided in article one, chapter twenty-nine of this code;~~

85 and

86 ~~(3) Division of Rehabilitation Services provided in article ten-a, chapter eighteen of this~~

87 ~~code.~~

88 (f) Effective July 1, 2016, the Department of Education and the Arts shall not exist as an
89 executive department. Accordingly, the following agencies and boards, including all of the allied,
90 advisory, affiliated or related entities and funds associated with any agency or board, shall be
91 transferred from the Department of Education and the Arts to their own respective agency or
92 board:

93 (1) Library Commission provided in article one, chapter ten of this code; and

94 (2) Division of Culture and History provided in article one, chapter twenty-nine of this code.

95 (g) The Educational Broadcasting Authority provided in article five, chapter ten of this code
96 is part of the Department of Education and the Arts for the purposes of administrative support and
97 liaison with the office of the Governor: Provided, That effective July 1, 2016, the Educational
98 Broadcasting Authority shall no longer be deemed a part of the Department of Education and the
99 Arts.

100 (h) The following agencies and boards, including all of the allied, advisory, affiliated or
101 related entities and funds associated with any agency or board, are incorporated in and
102 administered as a part of the Department of Health and Human Resources:

103 (1) Human Rights Commission provided in article eleven, chapter five of this code;

104 (2) Division of Human Services provided in article two, chapter nine of this code;

105 (3) Bureau for Public Health provided in article one, chapter sixteen of this code;

106 (4) Office of Emergency Medical Services and the Emergency Medical Service Advisory
107 Council provided in article four-c, chapter sixteen of this code;

108 (5) Health Care Authority provided in article twenty-nine-b, chapter sixteen of this code;

109 (6) Commission on Mental Retardation provided in article fifteen, chapter twenty-nine of
110 this code;

111 (7) Women's Commission provided in article twenty, chapter twenty-nine of this code; and

112 (8) The Child Support Enforcement Division provided in chapter forty-eight of this code.

113 (i) The following agencies and boards, including all of the allied, advisory, affiliated or
114 related entities and funds associated with any agency or board, are incorporated in and
115 administered as a part of the Department of Military Affairs and Public Safety:

116 (1) Adjutant General's Department provided in article one-a, chapter fifteen of this code;

117 (2) Armory Board provided in article six, chapter fifteen of this code;

118 (3) Military Awards Board provided in article one-g, chapter fifteen of this code;

119 (4) West Virginia State Police provided in article two, chapter fifteen of this code;

120 (5) Division of Homeland Security and Emergency Management and Disaster Recovery
121 Board provided in article five, chapter fifteen of this code and Emergency Response Commission
122 provided in article five-a of said chapter;

123 (6) Sheriffs' Bureau provided in article eight, chapter fifteen of this code;

124 (7) Division of Justice and Community Services provided in article nine-a, chapter fifteen
125 of this code;

126 (8) Division of Corrections provided in chapter twenty-five of this code;

127 (9) Fire Commission provided in article three, chapter twenty-nine of this code;

128 (10) Regional Jail and Correctional Facility Authority provided in article twenty, chapter
129 thirty-one of this code; and

130 (11) Board of Probation and Parole provided in article twelve, chapter sixty-two of this
131 code.

132 (j) The following agencies and boards, including all of the allied, advisory, affiliated or
133 related entities and funds associated with any agency or board, are incorporated in and
134 administered as a part of the Department of Revenue:

- 135 (1) Tax Division provided in chapter eleven of this code;
- 136 (2) Racing Commission provided in article twenty-three, chapter nineteen of this code;
- 137 (3) Lottery Commission and position of Lottery Director provided in article twenty-two,
138 chapter twenty-nine of this code;
- 139 (4) Insurance Commissioner provided in article two, chapter thirty-three of this code;
- 140 (5) West Virginia Alcohol Beverage Control Commissioner provided in article sixteen,
141 chapter eleven of this code and article two, chapter sixty of this code;
- 142 (6) Board of Banking and Financial Institutions provided in article three, chapter thirty-one-
143 a of this code;
- 144 (7) Lending and Credit Rate Board provided in chapter forty-seven-a of this code;
- 145 (8) Division of Banking provided in article two, chapter thirty-one-a of this code;
- 146 (9) The State Budget Office provided in article two of this chapter;
- 147 (10) The Municipal Bond Commission provided in article three, chapter thirteen of this
148 code;
- 149 (11) The Office of Tax Appeals provided in article ten-a, chapter eleven of this code; and
- 150 (12) The State Athletic Commission provided in article five-a, chapter twenty-nine of this
151 code.
- 152 (k) The following agencies and boards, including all of the allied, advisory, affiliated or
153 related entities and funds associated with any agency or board, are incorporated in and
154 administered as a part of the Department of Transportation:
- 155 (1) Division of Highways provided in article two-a, chapter seventeen of this code;
- 156 (2) Parkways, Economic Development and Tourism Authority provided in article sixteen-
157 a, chapter seventeen of this code;
- 158 (3) Division of Motor Vehicles provided in article two, chapter seventeen-a of this code;
- 159 (4) Driver's Licensing Advisory Board provided in article two, chapter seventeen-b of this
160 code;

161 (5) Aeronautics Commission provided in article two-a, chapter twenty-nine of this code;

162 (6) State Rail Authority provided in article eighteen, chapter twenty-nine of this code; and

163 (7) Public Port Authority provided in article sixteen-b, chapter seventeen of this code.

164 (l) Effective July 1, 2011, the Veterans' Council provided in article one, chapter nine-a of
165 this code, including all of the allied, advisory, affiliated or related entities and funds associated
166 with it, is incorporated in and administered as a part of the Department of Veterans' Assistance.

167 (m) Except for powers, authority and duties that have been delegated to the secretaries
168 of the departments by the provisions of section two of this article, the position of administrator and
169 the powers, authority and duties of each administrator and agency are not affected by the
170 enactment of this chapter.

171 (n) Except for powers, authority and duties that have been delegated to the secretaries of
172 the departments by the provisions of section two of this article, the existence, powers, authority
173 and duties of boards and the membership, terms and qualifications of members of the boards are
174 not affected by the enactment of this chapter. All boards that are appellate bodies or are
175 independent decision makers shall not have their appellate or independent decision-making
176 status affected by the enactment of this chapter.

177 (o) Any department previously transferred to and incorporated in a department by prior
178 enactment of this section means a division of the appropriate department. Wherever reference is
179 made to any department transferred to and incorporated in a department created in section two,
180 article one of this chapter, the reference means a division of the appropriate department and any
181 reference to a division of a department so transferred and incorporated means a section of the
182 appropriate division of the department.

183 (p) When an agency, board or commission is transferred under a bureau or agency other
184 than a department headed by a secretary pursuant to this section, that transfer is solely for
185 purposes of administrative support and liaison with the Office of the Governor, a department
186 secretary or a bureau. Nothing in this section extends the powers of department secretaries under

187 section two of this article to any person other than a department secretary and nothing limits or
188 abridges the statutory powers and duties of statutory commissioners or officers pursuant to this
189 code.

§5F-2-1a. Transfer of Department of Education and the Arts programs and agencies;

Report to Legislature.

1 (a) Effective July 1, 2016, the Department of Education and the Arts shall not exist as an
2 executive branch department. The agencies and programs operated under the auspices of the
3 Department as of June 30, 2016, shall continue independent of the Department effective July 1,
4 2016.

5 (b) Those agencies and programs that require the Secretary of the Department of
6 Education and the Arts, or his or her designee, to serve as a chair or member of the agency or
7 chair shall deem that position vacant and shall pursue appointment of a new member or chair.
8 To the extent appointment is necessitated by action of the Governor, the Governor shall make
9 such appointments forthwith to avoid any loss of quorum or disruption of services.

10 (c) In order to ensure continued, efficient operation of the agencies and programs of the
11 Department of Education and the Arts, the Governor shall evaluate these agencies and programs
12 and make a written report to the Joint Committee on Government and Finance by September 1,
13 2016. The report shall include, at a minimum, the following:

14 (1) Summary of goals and objectives of each agency and program;

15 (2) Statutes, if any, enabling each agency or program;

16 (3) Identification of the hierarchy and governing body, if any, of each agency and program;

17 (4) Identification of public moneys and appropriations from Fiscal Year 2012 to Fiscal Year
18 2106 of each agency and program; and

19 (5) Recommendations, if any, for transfer of an agency or program to another existing
20 executive branch department for administrative or oversight purposes.

**CHAPTER 10. PUBLIC LIBRARIES; PUBLIC RECREATION;
ATHLETIC ESTABLISHMENTS; MONUMENTS AND MEMORIALS;
ROSTER OF SERVICEMEN; EDUCATIONAL BROADCASTING
AUTHORITY.**

ARTICLE 5. EDUCATIONAL BROADCASTING AUTHORITY.

§10-5-2a. West Virginia distance learning coordinating council; creation; duties.

1 (a) The Legislature finds that the educational benefits of making a broader range of
2 courses available to West Virginia students, and the economic benefits from continuing education
3 and staff development for businesses, industry and the professions, are immeasurable and that
4 distance learning technology offers an efficient means of delivering such education and personnel
5 development courses. The Legislature further finds that distance learning technology requires a
6 substantial financial investment and the acquisition and utilization of such technology should,
7 therefore, be coordinated among the various affected agencies.

8 (b) To facilitate such coordination, there is hereby created a West Virginia distance
9 learning coordinating council which shall be composed of one representative of each of the
10 following: SatNet, EdNet, the educational broadcasting authority, the West Virginia Library
11 Commission, the state Department of Education, the higher education central office, the
12 Department of Administration's division of information systems and communications and the office
13 of the secretary of education and the arts. The chair elected by the council shall serve a term of
14 one year, at which time the council shall elect a new chair. A member of the council may not serve
15 for more than two consecutive terms as chair, except by unanimous vote of the council.

16 The council shall meet at least quarterly and shall develop long-range plans to integrate
17 the instructional telecommunications system, to coordinate distance learning in West Virginia and
18 to clarify the roles of the agencies involved in the state's distance learning enterprise. The council

19 shall submit an annual report to the Governor and the Legislature, which includes its
20 recommendations for achieving the best use of limited resources in the development and
21 operation of a distance learning technology system.

22 (c) A goal of the council is the creation of a statewide technology system linking
23 universities and colleges, schools, libraries and, eventually, homes with software, databases and
24 video learning capabilities. In pursuit of this goal, the council shall determine the most effective
25 and efficient ways to integrate the capabilities of the state for producing, delivering and receiving
26 electronic instruction and establish a comprehensive long-range plan to further the cooperation
27 and coordination of the various educational and other agencies of the state, and the county boards
28 of education, in establishing distance learning technology.

29 (d) There is hereby created in the State Treasury a special fund designated the "Distance
30 Learning Fund" which shall be under the jurisdiction of the secretary of education and the arts for
31 use solely for the purposes of the distance learning grant program as provided in this section.

32 Appropriate guidelines for participation by school districts, state institutions of higher
33 education, public libraries and public broadcasting stations, in the grant program, shall be
34 established by the distance learning coordinating council subject to approval by the Legislative
35 Oversight Commission on Education Accountability. Such guidelines shall include application
36 procedures and shall establish policies for awarding grants in the event that more grant
37 applications are received than there are funds available to honor the applications in any fiscal
38 year. In allocating funds to applicants, the council may give due consideration to revenues
39 available from all other sources. The State Board of Education shall approve courses offered
40 through this program at the elementary and secondary education level. The higher education
41 governing boards shall approve courses taught at the post-secondary level.

42 (e) In any fiscal year moneys in the fund shall be used first to ensure that any and all
43 school districts, state institutions of higher education, public libraries and public television stations
44 seeking aid under this program shall receive telecommunications equipment necessary to

45 participate in the satellite learning process; second, to provide the school districts and state
46 institutions of higher education with access to subjects at the advanced level or the remedial level
47 or which are not taught in the schools of the district or the service area or campus; and third, to
48 provide enrichment classes, continuing education and professional development. However, the
49 council may set aside a portion of the funds to be used to contract with state institutions of higher
50 education, state institutions of public education and public broadcasting stations to develop
51 instructional programs for grades kindergarten through twelve. Funds may also be used for
52 undergraduate and graduate course work suitable for broadcast to the school districts, state
53 institutions of higher education, as appropriate, for continuing education and professional
54 development for business and industry seminars and to develop the capability to transmit
55 programs cited in this section.

56 (f) Participation by a local school district, a state institution of higher education, a public
57 library or a public broadcasting station in the program established by this section shall be
58 voluntary. No school district, state institution of higher education, public library or public
59 broadcasting station receiving funds under this program shall use those funds for any purpose
60 other than that for which they were intended. Any school district, state institution of higher
61 education, public library or public broadcasting station shall be eligible to receive funds under this
62 program regardless of its curriculum, local wealth or previous contractual arrangements to receive
63 satellite broadcast instruction.

64 ~~(g) The secretary of education and the arts on behalf of the State of West Virginia may~~
65 ~~contract with institutions of higher education and the state Board of Education for the development~~
66 ~~or operation, or both, of state employee training programs transmitted by telecommunications~~
67 ~~technology~~

68 Instructional programs developed under this section which are transmitted one-way
69 through the airwaves or by cable shall be available to all residents of this state without charge or
70 fee to the extent permitted by the West Virginia Constitution. "Without charge or fee" shall not

71 require the providing of equipment to transmit or receive telecommunications instruction or the
72 providing of commercial cable service. If the instructional program involves two-way, interactive
73 communication between the instructor and the participant, the district or institution operating the
74 program may prescribe academic prerequisites and limit the number of persons who may enroll
75 in the specific program and give preference to residents of the district or institutional attendance
76 area who are age twenty-one or younger but shall not discriminate against any resident on any
77 other basis. A fee may be charged which will be paid directly by the individual participant for the
78 specific program, but the fee shall be equal for all such participants. If a subscription fee is charged
79 by the originator of the program, the district or institution may pay the subscription fee for all
80 participants from a grant under this section or from any other public or private fund legally
81 authorized to be used for this purpose. Printed materials designed to facilitate or complement
82 telecommunications programs or electronic reproduction thereof may be made available for loan
83 by the school district, institution of higher education through the public library system or the
84 curriculum technology resource center, subject to the normal rules and regulations of the lending
85 system and in such quantities as may be approved by the governing body of the district or
86 institution.

CHAPTER 18. EDUCATION.

ARTICLE 10A. REHABILITATION SERVICES.

§18-10A-1. Definitions.

1 As used in this article and article ten-b:

2 (1) "State board" means the Secretary of the Department of Education and the arts, or
3 where required by federal law, the board, commission or council designated by the Secretary of
4 the Department of Education and the Arts to oversee certain functions of the Division of
5 Rehabilitation Services: Provided, That effective July 1, 2016, "State board" means the
6 Department of Commerce or where required by federal law, the board, commission or council

7 designated by the Secretary of the Department of Commerce to oversee certain functions of the
8 Division of Rehabilitation Services. All references in this code to the state board of vocational
9 education, except where the context clearly indicates the provision of vocational education to
10 other than disabled individuals, shall mean the state board defined by this subsection.

11 (2) "Division" means the division of vocational rehabilitation established by this article.

12 (3) "Director" means the director of the division of vocational rehabilitation.

13 (4) "Employment handicap" means a physical or mental condition which constitutes,
14 contributes to, or if not corrected will probably result in, an obstruction to occupational
15 performance.

16 (5) "Disabled individual" means any person who has a substantial employment handicap.

17 (6) "Vocational rehabilitation" and "vocational rehabilitation services" means any services,
18 provided directly or through public or private instrumentalities, found by the director to be
19 necessary to compensate a disabled individual for his or her employment handicap and to enable
20 him or her to engage in a remunerative occupation including, but not limited to, medical and
21 vocational diagnosis, vocational guidance, counseling and placement, rehabilitation training,
22 attendant care services, physical restoration, transportation, occupational licenses, occupational
23 tools and equipment, including motor vehicles, maintenance, and training books and materials.

24 (7) "Rehabilitation training" means all necessary training provided to a disabled individual
25 to compensate for his or her employment handicap including, but not limited to, manual,
26 preconditioning, prevocational, vocational, and supplementary training and training provided for
27 the purpose of achieving broader or more remunerative skills and capacities.

28 (8) "Physical restoration" means any medical, surgical or therapeutic treatment necessary
29 to correct or substantially reduce a disabled individual's employment handicap within a
30 reasonable length of time including, but not limited to, medical, psychiatric, dental and surgical
31 treatment, nursing services, hospital care not to exceed ninety days, convalescent home care,
32 drugs, medical and surgical supplies, and prosthetic appliances, but excluding curative treatment

33 for acute or transitory conditions.

34 (9) "Prosthetic appliance" means any artificial device necessary to support or take the
35 place of a part of the body or to increase the acuity of a sense organ.

36 (10) "Occupational licenses" means any license, permit or other written authority required
37 by any governmental unit to be obtained in order to engage in an occupation.

38 (11) "Maintenance" means money payments not exceeding the estimated cost of
39 subsistence during vocational rehabilitation.

40 (12) "Regulations" means regulations made by the director with the approval of the
41 Secretary of the Department of Education and the Arts or the state board.

42 (13) "Attendant care evaluation unit" means any agency certified by the division of
43 vocational rehabilitation that employs a qualified evaluator to provide evaluations and attendant
44 referrals such as the centers for independent living, the West Virginia rehabilitation center and
45 any other unit approved by the division.

46 (14) "Attendant care services" means services which include, but are not limited to:

47 (a) Routine bodily functions such as bowel and bladder care;

48 (b) Dressing;

49 (c) Ambulation;

50 (d) Meal preparation and consumption;

51 (e) Assistance in moving in and out of bed;

52 (f) Bathing and grooming;

53 (g) Housecleaning and laundry; and

54 (h) Any other similar activity of daily living.

55 (15) "Attendant" means a self-employed individual who is trained to perform attendant
56 care services and who works as an independent contractor.

§18-10A-2. Division of Rehabilitation Services.

1 (a) Effective July 1, 2016, the Division of Rehabilitation Services is transferred to the

2 Department of ~~education and the arts~~ Commerce created in article one, chapter five-f of this code.
3 The secretary shall appoint any such board, commission or council over the division to the extent
4 required by federal law to qualify for federal funds for providing rehabilitation services for disabled
5 persons. The secretary and such boards, commissions or councils as he or she is required by
6 federal law to appoint are authorized and directed to cooperate with the federal government to
7 the fullest extent in an effort to provide rehabilitation services for disabled persons.

8 (b) References in this article or article ten-b of this chapter to the State Board of Vocational
9 Education, the State Board of Rehabilitation or the state board as the governing board of
10 vocational or other rehabilitation services or facilities means the Secretary of ~~Education and the~~
11 ~~Arts~~ Commerce. All references in the code to the Division of Vocational Rehabilitation means the
12 Division of Rehabilitation Services and all references to the Director of the Division of Vocational
13 Rehabilitation means the Director of the Division of Rehabilitation Services.

§18-10A-2a. Rehabilitation teachers.

1 (a) Notwithstanding any other provision of this code to the contrary, beginning July 1,
2 2012, rehabilitation teachers shall be paid at the equivalent rate of pay of teachers, pursuant to
3 section two, article four, chapter eighteen-a of this code. Rehabilitation teachers shall be paid
4 outside the public school support plan, defined in section one, article nine-a of this chapter, and
5 shall receive the equivalent of the salary supplement paid to teachers employed by the county
6 board within the county where the administrative headquarters of the division are located,
7 pursuant to section five-a, article four, chapter eighteen-a of this code.

8 (b) For purposes of this section, the following words shall be construed as follows:

9 (1) "Rehabilitation teacher" means any person employed by the division and who meets
10 the certification requirements of section two-a, article three, chapter eighteen-a of this code, or
11 who has been certified to teach by a state or nationally recognized organization, as approved by
12 the office of the Secretary of ~~education and the arts~~ Commerce. The teachers shall maintain
13 current certification in their teaching areas in order to remain employed and may teach only in the

14 areas in which they are certified: *Provided*, That teachers who were employed on or before April
15 1, 1995, are exempt from the following requirements:

16 (A) Certification pursuant to section two-a, article three, chapter eighteen-a of this code;

17 (B) Maintenance of current certification in their teaching areas in order to remain
18 employed; and

19 (C) Teaching only in the areas in which they are certified.

20 (2) "Equivalent rate of pay" means an annualized rate based on a two hundred forty-day
21 teaching schedule and includes pay for vacation and legal state holidays.

§18-10A-3. Director of division of vocational rehabilitation; powers and duties.

1 The division shall be administered, under the general supervision and direction of the
2 Secretary of the Department of ~~Education and the arts~~ Commerce or, if required by federal law
3 his or her designated state board, by a director appointed by said secretary, or if required by
4 federal law his or her designated state board in accordance with established personnel standards
5 and on the basis of his or her education, training, experience and demonstrated ability.

6 In carrying out his or her duties under this article, the director shall:

7 (1) Appoint such personnel as he or she deems necessary for the efficient performance
8 of the functions of the division.

9 (2) Establish a merit system of personnel management, or in lieu thereof, avail himself or
10 herself of the services of the state merit system upon payment of a fair share of the expenses of
11 the operation of such system.

12 (3) Make regulations governing the protection of records and confidential information; the
13 manner and form of filing applications for vocational rehabilitation services, eligibility therefor, and
14 investigation and determination thereof; procedures for fair hearings; and such other matters as
15 may be necessary or desirable in accomplishing the purposes of this article.

16 (4) Have the authority to establish and operate a staff development program for the
17 employees of the division and may, in furtherance of such a program, and utilizing any funds

18 appropriated or made available, for such purpose, pay to such employees compensation or
19 expenses, or both, while such employees are pursuing approved training courses or academic
20 studies for the purpose of becoming better equipped for their employment in such division; such
21 staff development program shall be conducted subject to appropriate rules as adopted by the
22 director and approved by the state board: *Provided*, That such rules shall include reasonable
23 provisions for the return of any employee, receiving the benefits of such training, for a reasonable
24 period of duty, or for reimbursement to the state for expenditures incurred on behalf of the training
25 of such employee.

26 (5) Establish appropriate subordinate administrative units within the division.

27 (6) Prepare and submit to the Secretary of the Department of ~~Education and the arts~~
28 Commerce or his or her designated state board annual reports of activities and expenditures and,
29 prior to each regular session of the Legislature, estimates of sums required for carrying out the
30 provisions of this article and estimates of the amounts to be made available for this purpose from
31 all sources.

32 (7) Make requisition for disbursement, in accordance with regulations of the funds
33 available for vocational rehabilitation purposes.

34 (8) Take such other action as may be deemed necessary or appropriate to carry out the
35 purposes of this article.

§18-10A-5. Cooperation with federal government.

1 The division, or if required by federal law the board, commission or council appointed by
2 the Secretary of the Department of ~~Education and the arts~~ Commerce to oversee certain functions
3 of the division, shall make agreements or plans to cooperate with the federal government in
4 carrying out the purposes of any federal statutes pertaining to vocational rehabilitation and to this
5 end may adopt such methods of administration as are found by the federal government to be
6 necessary for the proper and efficient operation of such agreements or plans for vocational
7 rehabilitation and to comply with such conditions as may be necessary to secure the full benefits

8 of such federal statutes.

§18-10A-12. Vocational evaluation and work adjustment program for disadvantaged individuals.

1 The division, under the direction of any federally mandated board, commission or council
2 appointed by the Secretary of the Department of ~~Education and the arts~~ Commerce, is authorized
3 and directed to cooperate with the federal government in providing vocational evaluation and work
4 adjustment services to disadvantaged individuals.

5 "Vocational evaluation and work adjustment services" include, as appropriate in each
6 case, such services as:

7 (a) A preliminary diagnostic study to determine that the individual is disadvantaged, has
8 an employment handicap, and that services are needed;

9 (b) A thorough diagnostic study consisting of a comprehensive evaluation of pertinent
10 medical, psychological, vocational, educational, cultural, social, and environmental factors which
11 bear on the individual's handicap to employment and rehabilitation potential including, to the
12 degree needed, an evaluation of the individual's personality, intelligence level, educational
13 achievements, work experience, vocational aptitudes and interests, personal and social
14 adjustments, employment opportunities, and other pertinent data helpful in determining the nature
15 and scope of services needed;

16 (c) Services to appraise the individual's patterns of work behavior and ability to acquire
17 occupational skills, and to develop work attitudes, work habits, work tolerance, and social and
18 behavior patterns suitable for successful job performance, including the utilization of work,
19 simulated or real, to assess and develop the individual's capacities to perform adequately in a
20 work environment;

21 (d) Any other goods or services provided to a disadvantaged individual, determined (in
22 accordance with regulations of the federal government) to be necessary for, and which are
23 provided for the purpose of, ascertaining the nature of the handicap to employment and whether

24 it may reasonably be expected the individual can benefit from vocational rehabilitation services
25 or other services available to disadvantaged individuals;

26 (e) Outreach, referral, and advocacy; and

27 (f) The administration of these evaluation and work adjustment services.

28 As used in this section, the term "disadvantaged individuals" means: (1) Disabled
29 individuals as defined in subdivision (5), section one of this article; (2) individuals disadvantaged
30 by reason of their youth or advanced age, low educational attainments, ethnic or cultural factors,
31 prison or delinquency records, or other conditions which constitute a barrier to employment; and
32 (3) other members of their families when the provision of vocational rehabilitation services to
33 family members is necessary for the rehabilitation of the individual described in subdivision (1) or
34 (2) above

NOTE: The purpose of this bill is to eliminate the Department of Education and the Arts as an executive branch department effective July 1, 2016. The bill continues the agencies and programs overseen by the Department and requires the Governor to evaluate the agencies and programs and make a report, with recommendations, to the Legislature's Joint Committee on Government and Finance. The bill also transfers the Division of Rehabilitative Services to the Department of Commerce.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.