

# WEST VIRGINIA LEGISLATURE

## 2021 REGULAR SESSION

Introduced

### Senate Bill 238

FISCAL  
NOTE

BY SENATORS BALDWIN, BEACH, CAPUTO, IHLENFELD,  
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UNGER, AND WOELFEL

[Introduced February 11, 2021; referred  
to the Committee on Education; and then to the  
Committee on Finance]

1 A BILL to amend and reenact §18-5-44 of the Code of West Virginia, 1931, as amended, relating  
 2 to expanding permissive early childhood education programs to children who are three  
 3 years old beginning in the 2021-2022 school year; providing counties with the authority to  
 4 implement three-year-old early childhood education programs; and clarifying that the state  
 5 board rules should take into consideration curriculum appropriate for three-year-old  
 6 children in such programs.

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

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

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

1 (a) For the purposes of this section, an “early childhood education program” means a  
 2 program created under this section for children who have attained the age of four prior to  
 3 September 1 of the school year in which the children enter the program. ~~(b)~~ For the purposes of  
 4 this section beginning in the school year 2018-2019, an “early childhood education program”  
 5 means a program created under this section for children who have attained the age of four prior  
 6 to July 1 of the school year in which the children enter the program. For the purposes of this  
 7 section, beginning in the school year 2021-2022, an “early childhood education program” may  
 8 also include, at the discretion of each county board of education, a program created under this  
 9 section for children who have attained the age of three prior to July 1 of the school year in which  
 10 the children enter the program.

11 ~~(e)~~ (b) *Findings.* –

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

14 (A) Improve overall readiness when children enter school;

15 (B) Decrease behavioral problems;

16 (C) Improve student attendance;

17 (D) Increase scores on achievement tests;

- 18 (E) Decrease the percentage of students repeating a grade; and
- 19 (F) Decrease the number of students placed in special education programs;
- 20 (2) Quality early childhood education programs improve school performance and low-
- 21 quality early childhood education programs may have negative effects, especially for at-risk
- 22 children;
- 23 (3) West Virginia has the lowest percentage of its adult population 25 years of age or older
- 24 with a bachelor's degree and the education level of parents is a strong indicator of how their
- 25 children will perform in school;
- 26 (4) During the 2006-2007 school year, West Virginia ranked 39th among the 50 states in
- 27 the percentage of school children eligible for free and reduced lunches and this percentage is a
- 28 strong indicator of how the children will perform in school;
- 29 (5) For the school year 2008-2009, 13,135 students were enrolled in prekindergarten, a
- 30 number equal to approximately 63 percent of the number of students enrolled in kindergarten;
- 31 (6) Excluding projected increases due to increases in enrollment in the early childhood
- 32 education program, projections indicate that total student enrollment in West Virginia will decline
- 33 by one percent, or by approximately 2,704 students, by the school year 2012-2013;
- 34 (7) In part, because of the dynamics of the state aid formula, county boards will continue
- 35 to enroll four-year-old students and three-year-old students to offset the declining enrollments;
- 36 (8) West Virginia has a comprehensive kindergarten program for five-year-olds, but the
- 37 program was established in a manner that resulted in unequal implementation among the
- 38 counties, which helped create deficit financial situations for several county boards;
- 39 (9) Expansion of current efforts to implement a comprehensive early childhood education
- 40 program should avoid the problems encountered in kindergarten implementation;
- 41 (10) Because of the dynamics of the state aid formula, counties experiencing growth are
- 42 at a disadvantage in implementing comprehensive early childhood education programs; and
- 43 (11) West Virginia citizens will benefit from the establishment of quality comprehensive

44 early childhood education programs.

45 ~~(d)~~ (c) County boards shall provide early childhood education programs for all children  
46 who have attained the age of four prior to September 1 of the school year in which the children  
47 enter the early childhood education program. These early childhood education programs shall  
48 provide at least 48,000 minutes annually and no less than 1,500 minutes of instruction per week.  
49 ~~(e)~~ Beginning in the school year 2018-2019, county boards shall provide early childhood  
50 education programs for all children who have attained the age of four prior to July 1 of the school  
51 year in which the children enter the early childhood education program. Beginning in the school  
52 year 2021-2022, county boards may provide early childhood education programs for all children  
53 who have attained the age of three prior to July 1 of the school year in which the children enter  
54 the early childhood education program.

55 ~~(f)~~ (d) The program shall meet the following criteria:

56 (1) It shall be voluntary, except that, upon enrollment, the provisions of §18-8-1a of this  
57 code apply to an enrolled student, subject to subdivision (4) of this subsection;

58 (2) It shall be open to all children meeting the age requirement set forth in this section;

59 (3) It shall provide no less than 1,500 minutes of instruction per week, in a full-day program  
60 with at least 48,000 minutes of instruction annually; and

61 (4) It shall permit a parent of an enrolled child to withdraw the child from that program by  
62 notifying the district in writing. A child withdrawn under this section is not subject to the attendance  
63 provisions of this chapter until that child again enrolls in a public school in this state.

64 ~~(g)~~ (e) Enrollment of students in Head Start, or in any other program approved by the state  
65 superintendent as provided in this section, may be counted toward satisfying the requirement of  
66 subsection (c) of this section.

67 ~~(h)~~ (f) For the purposes of implementation financing, all counties are encouraged to make  
68 use of funds from existing sources, including:

69 (1) Federal funds provided under the Elementary and Secondary Education Act pursuant

70 to 20 U. S. C. §6301, *et seq.*;

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

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

74 (4) Funds provided by the School Building Authority pursuant to §18-9D-1 *et seq.* of this  
75 code;

76 (5) In the case of counties with declining enrollments, funds from the state aid formula  
77 above the amount indicated for the number of students actually enrolled in any school year; and

78 (6) Any other public or private funds.

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

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

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

84 (3) Financial requirements for implementation and potential sources of funding to assist  
85 implementation;

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

89 (5) Specific time lines for implementation; and

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

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

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

95 (2) The county board has provided for the maximum implementation of Head Start

96 programs and other public and private programs approved by the state superintendent pursuant  
97 to the terms of this section; or

98 (3) The secretary finds that, if the county board has not met one or more of the  
99 requirements of this subsection, the county board has acted in good faith and the failure to comply  
100 was not the primary fault of the county board. Any denial by the secretary may be appealed to the  
101 circuit court of the county in which the county board is located.

102 ~~(k)~~ (i) The county board shall submit its plan for approval to the state board. The state  
103 board shall approve the plan if the county board has complied substantially with the requirements  
104 of subsection (g) of this section and has obtained the approval required in subsection (h) of this  
105 section.

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

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

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

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

118 (A) It does not have sufficient facilities available; or

119 (B) It does not and has not had available funds sufficient to implement the program;

120 (2) The county has not experienced a decline in enrollment at least equal to the total  
121 number of students to be enrolled; and

122 (3) Other agencies of government have not made sufficient funds or facilities available to  
123 assist in implementation.

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

127 ~~(e)~~ (m) The provisions of §18-5-18 (b), (c) and (d) of this code relating to kindergarten  
128 apply to early childhood education programs in the same manner in which they apply to  
129 kindergarten programs.

130 ~~(f)~~ (n) Except as required by federal law or regulation, no county board may enroll students  
131 who will be less than four years of age prior to September 1 for the year they enter school. ~~(g)~~  
132 Except as required by federal law or regulation, beginning in the school year 2018-2019, no county  
133 board may enroll students who will be less than four years of age prior to July 1 for the year they  
134 enter school. Except as required by federal law or regulation, beginning in the school year 2021-  
135 2022, no county board may enroll students who will be less than three years of age prior to July  
136 1 for the year they enter school.

137 ~~(h)~~ (o) Neither the state board nor the state department may provide any funds to any  
138 county board for the purpose of implementing this section unless the county board has a plan  
139 approved pursuant to subsections ~~(h), (i) and (j)~~ (f), (g) and (h) of this section.

140 ~~(i)~~ (p) The state board shall promulgate a rule in accordance with the provisions of §29A-  
141 3-1 *et seq.* of this code for the purposes of implementing the provisions of this section. The state  
142 board shall consult with the Secretary of the Department of Health and Human Resources in the  
143 preparation of the rule. The rule shall contain the following:

- 144 (1) Standards for curriculum;  
145 (2) Standards for preparing students;  
146 (3) Attendance requirements;  
147 (4) Standards for personnel; and

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

149 ~~(t)~~ (q) The rule shall include the following elements relating to curriculum standards:

150 (1) A requirement that the curriculum be designed to address the developmental needs of  
151 three-year-old and four-year-old children, respectively, consistent with prevailing research on how  
152 children learn;

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

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

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

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

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

164 (7) A requirement that the curriculum engage children actively in the learning process and  
165 provide them with opportunities to make meaningful choices;

166 (8) A requirement that the curriculum emphasize the development of thinking, reasoning,  
167 decision-making, and problem-solving skills;

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

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

172 ~~(u)~~ (r) After the school year 2012-2013, on or before July 1 of each year, each county  
173 board shall report the following information to the Secretary of the Department of Health and



174 Human Resources and the state superintendent:  
175           (1) Documentation indicating the extent to which county boards are maximizing resources  
176 by using the existing capacity of community-based programs, including, but not limited to, Head  
177 Start and child care; and  
178           (2) For those county boards that are including eligible children attending approved,  
179 contracted community-based programs in their net enrollment for the purposes of calculating state  
180 aid pursuant to article nine-a of this chapter, documentation that the county board is equitably  
181 distributing funding for all children regardless of setting.

NOTE: The purpose of this bill will authorize, beginning in the school year 2021-2022, county boards provide early childhood education programs for all children who have attained the age of three.

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