

WEST VIRGINIA LEGISLATURE

# SENATE JOURNAL

EIGHTY-SECOND LEGISLATURE  
REGULAR SESSION, 2016  
FORTY-FIRST DAY

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Charleston, W. Va., Monday, February 22, 2016

The Senate met at 11 a.m.

(Senator Cole, Mr. President, in the Chair.)

Prayer was offered by the Reverend John Simmons, Associate Executive Minister of Missions and Administration for the West Virginia Baptist Convention, Parkersburg, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Herb Snyder, a senator from the sixteenth district.

Appalachian Children's Chorus, Charleston, West Virginia, then proceeded in the singing of "Mountain Lullaby", "Take Me Home, Country Roads" and "God Bless America", accompanied by Olga Young on the piano.

Pending the reading of the Journal of Saturday, February 20, 2016,

At the request of Senator Cline, unanimous consent being granted, the Journal was approved and the further reading thereof dispensed with.

The Senate proceeded to the second order of business and the introduction of guests.

On motion of Senator Carmichael, the Senate recessed for five minutes to permit Adam Craig to address the Senate on behalf of the Governor's School for the Arts and David Sokolov to address the Senate on behalf of the Governor's Honors Academy.

Upon expiration of the recess, the Senate reconvened and proceeded to the third order of business.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendment, as to

**Eng. Com. Sub. for Senate Bill 14**, Limiting successor corporation asbestos-related liabilities.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

On page four, section three, line twenty-five, by striking out the words "April 1, 2016" and inserting in lieu thereof the words "the effective date of this article".

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendment to the bill.

Engrossed Committee Substitute for Senate Bill 14, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Mullins—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 14) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended, to take effect from passage, and requested the concurrence of the Senate in the House of Delegates amendment, as to

**Eng. Com. Sub. for Senate Bill 150**, Authorizing Department of Transportation promulgate legislative rules.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the bill was reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That article 8, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 8. AUTHORIZATION FOR DEPARTMENT OF TRANSPORTATION TO PROMULGATE LEGISLATIVE RULES.**

**§64-8-1. Office of Administrative Hearings.**

The legislative rule filed in the State Register on July 31, 2015, authorized under the authority of section four-a, article five-c, chapter seventeen-c of this code, modified by the Office of Administrative Hearings to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 5, 2015, relating to the Office of Administrative Hearings (appeal procedures, 105 CSR 1), is authorized with the following amendments:

On page 16, subsection 18.1, by striking the last sentence.

On page 16, subsection 18.5, by striking the remainder of the paragraph after the words “subsection 3 of this section.”

#### **§64-8-2. Division of Highways.**

The legislative rule filed in the State Register on July 31, 2015, authorized under the authority of section five, article seventeen-b, chapter seventeen of this code, modified by the Division of Highways to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 30, 2015, relating to the Division of Highways (state transportation infrastructure fund program, 157 CSR 11), is authorized with the following amendments:

On page one, subsection 2.1, following the words “Board’ means the”, by striking out the words “board of directors of the fund” and inserting in lieu thereof the words “State Transportation Infrastructure Fund Advisory Board”;

On page three, subsection 3.1, line one, by striking out the words “A Board is hereby created” and inserting in lieu thereof the words “The State Transportation Infrastructure Fund Advisory Board is hereby created”;

And,

On page three, following subsection 3.3, by striking out all of subsection four and inserting in lieu thereof the following:

#### **“§157-11-4. Powers and Duties of the Commissioner.**

4.1 The Commissioner, in consultation with the Board, shall adopt policies and procedures consistent with W.Va. Code §17-17B-1 *et seq.*, for the administration of the fund’s affairs and the implementation of the fund’s functions, including, but not limited to, the identification and selection of eligible borrowers, eligible costs, and eligible projects as well as the determination of the amount of initial assistance and the manner in which the fund shall be capitalized.

4.2 The Commissioner shall have the following powers:

4.2.a. Make loans to eligible borrowers to finance the eligible costs of eligible projects and to acquire, hold, and subordinate loan obligations in a manner as the Board determines advisable;

4.2.b. Provide eligible borrowers with other financial assistance necessary to defray eligible costs of an eligible project;

4.2.c. Enter into contracts, arrangements, and agreements with eligible borrowers and other persons and execute and deliver all financing agreements and other instruments necessary or convenient to the exercise of the powers granted by W.Va. Code §17-17B-1 *et seq.*;

4.2.d. Enter into agreements with a government unit, private entity, department, agency, or instrumentality of the United States or of this State or another state for the purpose of planning and providing for the financing of eligible projects;

4.2.e. Establish policies and procedures for the making and administering of loans and other financial assistance and fiscal controls and accounting procedures to ensure proper accounting and reporting of the fund, government units, eligible borrowers, and private entities;

4.2.f. Collect or authorize the trustee under any trust indenture securing any bonds to collect amounts due under any loan obligations owned by it, including taking the action required to obtain payment of any sums in default;

4.2.g. Consent to any modification with respect to the rate of interest, time, and payment of any installment of principal or interest, or any other term of any loan obligations owned by it;

4.2.h. Expend funds to obtain accounting, management, legal, financial consulting, and other professional services necessary to the operations of the fund;

4.2.i. Expend funds credited to the fund as the Board determines necessary for the costs of administering the operations of the fund;

4.2.j. Procure insurance against losses in connection with its property, assets, or activities including insurance against liability for its acts or the acts of its employees or agents or to establish cash reserves to enable it to act as a self-insurer against any and all such losses;

4.2.k. Collect fees and charges in connection with its loans or other financial assistance;

4.2.l. Apply for, receive and accept from any source, aid, grants, and contributions of money, property, labor, or other things of value to be used to carry out the purposes of the fund;

4.2.m. Enter into contracts or agreements for the servicing and processing of financial agreements;

4.2.n. Enter into loan obligations and loans that may be secured or unsecured;

4.2.o. Accept notes and other forms of obligation to evidence any indebtedness as well as mortgages, liens, pledges, assignments or other security interests to secure such indebtedness;

4.2.p. Take all actions that are appropriate to protect security interests, ensure repayment of any indebtedness, and safeguard against losses of the fund, including, but not limited to, initiating foreclosures, default proceedings, and all other forms of redress, whether legal or equitable in nature;

4.2.q. Determine future capital needs of the fund. The future capital needs of the fund may be determined each year based on an actuarial valuation that reflects, among other things, anticipated revenues, project revenues, amounts in federal accounts and state accounts, fund costs, loan defaults and related risk exposure to the extent such valuation is consistent with the Actuarial Standards of Practice published by the Actuarial Standards Board.

4.2.r. Do all other things necessary or convenient to exercise powers granted or reasonably implied by W.Va. Code §17-17B-1 *et seq.*”

### **§64-8-3. Division of Public Transit.**

The legislative rule filed in the State Register on July 31, 2015, authorized under the authority of section three, article sixteen-e, chapter seventeen of this code, modified by the Division of Public Transit to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 30, 2015, relating to the Division of Public Transit (rail fixed guideway systems state safety oversight, 225 CSR 1), is authorized with the following amendment:

On page 6, subsection 7.4, by striking the words “Todd Dorcas” and the comma.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendment to the bill.

Engrossed Committee Substitute for Senate Bill 150, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Mullins—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 150) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Mullins—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 150) takes effect from passage.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Com. Sub. for Senate Bill 369**, Reducing legislative education reporting requirements.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §18-2-5g of the Code of West Virginia, 1931, as amended, be repealed; that §18-2E-3g of said code be repealed; that §18B-5-8 of said code be repealed; that §18-2E-5 of said code be amended and reenacted; that §18-2I-5 of said code be amended and reenacted; that §18-3-12 of said code be amended and reenacted; that §18-5-44 of said code be amended and reenacted; that §18-20-5 and §18-20-8 of said code be amended and reenacted; that §18A-2-3 of said code be amended and reenacted; that §18A-4-7a of said code be amended and reenacted; that §18A-5-1a of said code be amended and reenacted; that §18B-1-10 of said code be amended and reenacted; that §18B-1B-4 of said code be amended and reenacted; that §18B-1D-8 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-1D-8a; that §18B-2B-6 of said code be amended and reenacted; that §18B-2C-3 of said code be amended and reenacted; that §18B-3D-2 of said code be amended and reenacted; that §18B-10-1 of said code be amended and reenacted; that §18B-13-5 of said code be amended and reenacted; that §18B-18-6 of said code be amended and reenacted; that §18C-3-4 of said code be amended and reenacted; that §18C-5-7 of said code be amended and reenacted; and that §18C-7-5 of said code be amended and reenacted, all to read as follows:

**CHAPTER 18. EDUCATION.****ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.****§18-2E-5. Process for improving education; education standards; statewide assessment program; accountability measures; Office of Education Performance Audits; school accreditation and school system approval; intervention to correct low performance.**

(a) *Legislative findings, purpose and intent.* — The Legislature makes the following findings with respect to the process for improving education and its purpose and intent in the enactment of this section:

(1) The process for improving education includes four primary elements, these being:

(A) Standards which set forth the knowledge and skills that students should know and be able to perform as the result of a thorough and efficient education that prepares them for the twenty-first century, including measurable criteria to evaluate student performance and progress;

(B) Assessments of student performance and progress toward meeting the standards;

(C) A system of accountability for continuous improvement defined by high-quality standards for schools and school systems articulated by a rule promulgated by the state board and outlined in subsection (c) of this section that will build capacity in schools and districts to meet rigorous outcomes that assure student performance and progress toward obtaining the knowledge and skills intrinsic to a high-quality education rather than monitoring for compliance with specific laws and regulations; and

(D) A method for building the capacity and improving the efficiency of schools and school systems to improve student performance and progress;

(2) As the constitutional body charged with the general supervision of schools as provided by general law, the state board has the authority and the responsibility to establish the standards, assess the performance and progress of students against the standards, hold schools and school systems accountable and assist schools and school systems to build capacity and improve efficiency so that the standards are met, including, when necessary, seeking additional resources in consultation with the Legislature and the Governor;

(3) As the constitutional body charged with providing for a thorough and efficient system of schools, the Legislature has the authority and the responsibility to establish and be engaged constructively in the determination of the knowledge and skills that students should know and be able to do as the result of a thorough and efficient education. This determination is made by using the process for improving education to determine when school improvement is needed by evaluating the results and the efficiency of the system of schools, by ensuring accountability and by providing for the necessary capacity and its efficient use;

(4) In consideration of these findings, the purpose of this section is to establish a process for improving education that includes the four primary elements as set forth in subdivision (1) of this subsection to provide assurances that the high-quality standards are, at a minimum, being met and that a thorough and efficient system of schools is being provided for all West Virginia public school students on an equal education opportunity basis; and

(5) The intent of the Legislature in enacting this section and section five-c of this article is to establish a process through which the Legislature, the Governor and the state board can work in the spirit of cooperation and collaboration intended in the process for improving education, to consult and examine the performance and progress of students, schools and school systems and, when

necessary, to consider alternative measures to ensure that all students continue to receive the thorough and efficient education to which they are entitled. However, nothing in this section requires any specific level of funding by the Legislature.

(b) *Electronic county and school strategic improvement plans.* — The state board shall promulgate a rule consistent with the provisions of this section and in accordance with article three-b, chapter twenty-nine-a of this code establishing an electronic county strategic improvement plan for each county board and an electronic school strategic improvement plan for each public school in this state. Each respective plan shall be for a period of no more than five years and shall include the mission and goals of the school or school system to improve student, school or school system performance and progress, as applicable. The strategic plan shall be revised annually in each area in which the school or system is below the standard on the annual performance measures. The plan shall be revised when required pursuant to this section to include each annual performance measure upon which the school or school system fails to meet the standard for performance and progress, the action to be taken to meet each measure, a separate time line and a date certain for meeting each measure, a cost estimate and, when applicable, the assistance to be provided by the department and other education agencies to improve student, school or school system performance and progress to meet the annual performance measure.

The department shall make available to all public schools through its website or the West Virginia Education Information System an electronic school strategic improvement plan boilerplate designed for use by all schools to develop an electronic school strategic improvement plan which incorporates all required aspects and satisfies all improvement plan requirements of the No Child Left Behind Act.

(c) *High-quality education standards and efficiency standards.* — In accordance with the provisions of article three-b, chapter twenty-nine-a of this code, the state board shall adopt and periodically review and update high-quality education standards for student, school and school system performance and processes in the following areas:

- (1) Curriculum;
- (2) Workplace readiness skills;
- (3) Finance;
- (4) Transportation;
- (5) Special education;
- (6) Facilities;
- (7) Administrative practices;
- (8) Training of county board members and administrators;
- (9) Personnel qualifications;
- (10) Professional development and evaluation;
- (11) Student performance, progress and attendance;
- (12) Professional personnel, including principals and central office administrators, and service personnel attendance;
- (13) School and school system performance and progress;

(14) A code of conduct for students and employees;

(15) Indicators of efficiency; and

(16) Any other areas determined by the state board.

(d) *Comprehensive statewide student assessment program.* — The state board shall establish a comprehensive statewide student assessment program to assess student performance and progress in grades three through twelve. The assessment program is subject to the following:

(1) The state board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code establishing the comprehensive statewide student assessment program;

(2) Prior to the 2014-2015 school year, the state board shall align the comprehensive statewide student assessment for all grade levels in which the test is given with the college-readiness standards adopted pursuant to section thirty-nine, article two of this chapter or develop other aligned tests to be required at each grade level so that progress toward college readiness in English/language arts and math can be measured;

(3) The state board may require that student proficiencies be measured through the ACT EXPLORE and the ACT PLAN assessments or other comparable assessments, which are approved by the state board and provided by future vendors;

(4) The state board may require that student proficiencies be measured through the West Virginia writing assessment at any grade levels determined by the state board to be appropriate; and

(5) The state board may provide, through the statewide assessment program, other optional testing or assessment instruments applicable to grade levels kindergarten through grade twelve which may be used by each school to promote student achievement. The state board annually shall publish and make available, electronically or otherwise, to school curriculum teams and teacher collaborative processes the optional testing and assessment instruments.

(e) *State annual performance measures for school and school system accreditation.* —

The state board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code that establishes a system to assess and weigh annual performance measures for state accreditation of schools and school systems. The state board also may establish performance incentives for schools and school systems as part of the state accreditation system. On or before December 1, 2013, the state board shall report to the Governor and to the Legislative Oversight Commission on Education Accountability the proposed rule for establishing the measures and incentives of accreditation and the estimated cost therefore, if any. Thereafter, the state board shall provide an annual report to the Governor and to the Legislative Oversight Commission on Education Accountability on the impact and effectiveness of the accreditation system. The rule for school and school system accreditation proposed by the board may include, but is not limited to, the following measures:

(1) Student proficiency in English and language arts, math, science and other subjects determined by the board;

(2) Graduation and attendance rate;

(3) Students taking and passing AP tests;

(4) Students completing a career and technical education class;



- (5) Closing achievement gaps within subgroups of a school's student population; and
- (6) Students scoring at or above average attainment on SAT or ACT tests.

(f) *Indicators of efficiency.* — In accordance with the provisions of article three-b, chapter twenty-nine-a of this code, the state board shall adopt by rule and periodically review and update indicators of efficiency for use by the appropriate divisions within the department to ensure efficient management and use of resources in the public schools in the following areas:

- (1) Curriculum delivery including, but not limited to, the use of distance learning;
- (2) Transportation;
- (3) Facilities;
- (4) Administrative practices;
- (5) Personnel;

(6) Use of regional educational service agency programs and services, including programs and services that may be established by their assigned regional educational service agency or other regional services that may be initiated between and among participating county boards; and

- (7) Any other indicators as determined by the state board.

(g) *Assessment and accountability of school and school system performance and processes.* — In accordance with the provisions of article three-b, chapter twenty-nine-a of this code, the state board shall establish by rule a system of education performance audits which measures the quality of education and the preparation of students based on the annual measures of student, school and school system performance and progress. The system of education performance audits shall provide information to the state board, the Legislature and the Governor, upon which they may determine whether a thorough and efficient system of schools is being provided. The system of education performance audits shall include:

(1) The assessment of student, school and school system performance and progress based on the annual measures established pursuant to subsection (e) of this section;

(2) The evaluation of records, reports and other information collected by the Office of Education Performance Audits upon which the quality of education and compliance with statutes, policies and standards may be determined;

- (3) The review of school and school system electronic strategic improvement plans; and

(4) The on-site review of the processes in place in schools and school systems to enable school and school system performance and progress and compliance with the standards.

(h) *Uses of school and school system assessment information.* — The state board shall use information from the system of education performance audits to assist it in ensuring that a thorough and efficient system of schools is being provided and to improve student, school and school system performance and progress. Information from the system of education performance audits further shall be used by the state board for these purposes, including, but not limited to, the following:

- (1) Determining school accreditation and school system approval status;

(2) Holding schools and school systems accountable for the efficient use of existing resources to meet or exceed the standards; and

(3) Targeting additional resources when necessary to improve performance and progress.

The state board shall make accreditation information available to the Legislature, the Governor, the general public and to any individual who requests the information, subject to the provisions of any act or rule restricting the release of information.

(i) *Early detection and intervention programs.* — Based on the assessment of student, school and school system performance and progress, the state board shall establish early detection and intervention programs using the available resources of the Department of Education, the regional educational service agencies, the Center for Professional Development and the Principals Academy, or other resources as appropriate, to assist underachieving schools and school systems to improve performance before conditions become so grave as to warrant more substantive state intervention. Assistance shall include, but is not limited to, providing additional technical assistance and programmatic, professional staff development, providing monetary, staffing and other resources where appropriate.

(j) *Office of Education Performance Audits.* —

(1) To assist the state board in the operation of a system of education performance audits, the state board shall establish an Office of Education Performance Audits consistent with the provisions of this section. The Office of Education Performance Audits shall be operated under the direction of the state board independently of the functions and supervision of the State Department of Education and state superintendent. The Office of Education Performance Audits shall report directly to and be responsible to the state board in carrying out its duties under the provisions of this section.

(2) The office shall be headed by a director who shall be appointed by the state board and who serves at the will and pleasure of the state board. The annual salary of the director shall be set by the state board and may not exceed eighty percent of the salary of the State Superintendent of Schools.

(3) The state board shall organize and sufficiently staff the office to fulfill the duties assigned to it by law and by the state board. Employees of the State Department of Education who are transferred to the Office of Education Performance Audits shall retain their benefits and seniority status with the Department of Education.

(4) Under the direction of the state board, the Office of Education Performance Audits shall receive from the West Virginia education Information System staff research and analysis data on the performance and progress of students, schools and school systems, and shall receive assistance, as determined by the state board, from staff at the State Department of Education, the regional education service agencies, the Center for Professional Development, the Principals Academy and the School Building Authority to carry out the duties assigned to the office.

(5) In addition to other duties which may be assigned to it by the state board or by statute, the Office of Education Performance Audits also shall:

(A) Assure that all statewide assessments of student performance used as annual performance measures are secure as required in section one-a of this article;

(B) Administer all accountability measures as assigned by the state board, including, but not limited to, the following:

(i) Processes for the accreditation of schools and the approval of school systems; and

(ii) Recommendations to the state board on appropriate action, including, but not limited to, accreditation and approval action;

(C) Determine, in conjunction with the assessment and accountability processes, what capacity may be needed by schools and school systems to meet the standards established by the state board and recommend to the state board plans to establish those needed capacities;

(D) Determine, in conjunction with the assessment and accountability processes, whether statewide system deficiencies exist in the capacity of schools and school systems to meet the standards established by the state board, including the identification of trends and the need for continuing improvements in education, and report those deficiencies and trends to the state board;

(E) Determine, in conjunction with the assessment and accountability processes, staff development needs of schools and school systems to meet the standards established by the state board and make recommendations to the state board, the Center for Professional Development, the regional educational service agencies, the Higher Education Policy Commission and the county boards;

(F) Identify, in conjunction with the assessment and accountability processes, school systems and best practices that improve student, school and school system performance and communicate those to the state board for promoting the use of best practices. The state board shall provide information on best practices to county school systems; and

(G) Develop reporting formats, such as check lists, which shall be used by the appropriate administrative personnel in schools and school systems to document compliance with applicable laws, policies and process standards as considered appropriate and approved by the state board, which may include, but is not limited to, the following:

(i) The use of a policy for the evaluation of all school personnel that meets the requirements of sections twelve and twelve-a, article two, chapter eighteen-a of this code;

(ii) The participation of students in appropriate physical assessments as determined by the state board, which assessment may not be used as a part of the assessment and accountability system;

(iii) The appropriate licensure of school personnel; and

(iv) The appropriate provision of multicultural activities.

Information contained in the reporting formats is subject to examination during an on-site review to determine compliance with laws, policies and standards. Intentional and grossly negligent reporting of false information are grounds for dismissal of any employee.

(k) *On-site reviews.* —

(1) The system of education performance audits shall include on-site reviews of schools and school systems which shall be conducted only at the specific direction of the state board upon its determination that circumstances exist that warrant an on-site review. Any discussion by the state board of schools to be subject to an on-site review or dates for which on-site reviews will be conducted may be held in executive session and is not subject to the provisions of article nine-a, chapter six of this code relating to open governmental proceedings. An on-site review shall be conducted by the Office of Education Performance Audits of a school or school system for the purpose of making recommendations to the school and school system, as appropriate, and to the state board on such measures as it considers necessary. The investigation may include, but is not limited to, the following:

(A) Verifying data reported by the school or county board;

(B) Examining compliance with the laws and policies affecting student, school and school system performance and progress;

(C) Evaluating the effectiveness and implementation status of school and school system electronic strategic improvement plans;

(D) Investigating official complaints submitted to the state board that allege serious impairments in the quality of education in schools or school systems;

(E) Investigating official complaints submitted to the state board that allege that a school or county board is in violation of policies or laws under which schools and county boards operate; and

(F) Determining and reporting whether required reviews and inspections have been conducted by the appropriate agencies, including, but not limited to, the State Fire Marshal, the Health Department, the School Building Authority and the responsible divisions within the department of education, and whether noted deficiencies have been or are in the process of being corrected.

(2) The Director of the Office of Education Performance Audits shall notify the county superintendent of schools five school days prior to commencing an on-site review of the county school system and shall notify both the county superintendent and the principal five school days before commencing an on-site review of an individual school: *Provided*, That the state board may direct the Office of Education Performance Audits to conduct an unannounced on-site review of a school or school system if the state board believes circumstances warrant an unannounced on-site review.

(3) The Office of Education Performance Audits shall conduct on-site reviews which are limited in scope to specific areas in which performance and progress are persistently below standard as determined by the state board unless specifically directed by the state board to conduct a review which covers additional areas.

(4) The Office of Education Performance Audits shall reimburse a county board for the costs of substitutes required to replace county board employees who serve on a review team.

(5) At the conclusion of an on-site review of a school system, the director and team leaders shall hold an exit conference with the superintendent and shall provide an opportunity for principals to be present for at least the portion of the conference pertaining to their respective schools. In the case of an on-site review of a school, the exit conference shall be held with the principal and curriculum team of the school and the superintendent shall be provided the opportunity to be present. The purpose of the exit conference is to review the initial findings of the on-site review, clarify and correct any inaccuracies and allow the opportunity for dialogue between the reviewers and the school or school system to promote a better understanding of the findings.

(6) The Office of Education Performance Audits shall report the findings of an on-site review to the county superintendent and the principals whose schools were reviewed within thirty days following the conclusion of the on-site review. The Office of Education Performance Audits shall report the findings of the on-site review to the state board within forty-five days after the conclusion of the on-site review. A school or county that believes one or more findings of a review are clearly inaccurate, incomplete or misleading, misrepresent or fail to reflect the true quality of education in the school or county or address issues unrelated to the health, safety and welfare of students and the quality of education, may appeal to the state board for removal of the findings. The state board shall establish a process for it to receive, review and act upon the appeals. ~~The state board shall report to the Legislative Oversight Commission on Education Accountability during its July interim meetings, or as soon thereafter as practical, on each appeal during the preceding school year.~~

(7) The Legislature finds that the accountability and oversight of some activities and programmatic areas in the public schools are controlled through other mechanisms and agencies and that additional accountability and oversight may be unnecessary, counterproductive and impair necessary resources for teaching and learning. Therefore, the Office of Education Performance Audits may rely on other agencies and mechanisms in its review of schools and school systems.

(l) *School accreditation.* —

(1) The state board shall establish levels of accreditation to be assigned to schools. The establishment of levels of accreditation and the levels shall be subject to the following:

(A) The levels will be designed to demonstrate school performance in all the areas outlined in this section and also those established by the state board;

(B) The state board shall promulgate legislative rules in accordance with the provisions of article three-b, chapter twenty-nine-a of this code to establish the performance and standards required for a school to be assigned a particular level of accreditation; and

(C) The state board will establish the levels of accreditation in such a manner as to minimize the number of systems of school recognition, both state and federal, that are employed to recognize and accredit schools.

(2) The state board annually shall review the information from the system of education performance audits submitted for each school and shall issue to every school a level of accreditation as designated and determined by the state board.

(3) The state board, in its exercise of general supervision of the schools and school systems of West Virginia, may exercise any or all of the following powers and actions:

(A) To require a school to revise its electronic strategic plan;

(B) To define extraordinary circumstances under which the state board may intervene directly or indirectly in the operation of a school;

(C) To appoint monitors to work with the principal and staff of a school where extraordinary circumstances are found to exist and to appoint monitors to assist the school principal after intervention in the operation of a school is completed;

(D) To direct a county board to target resources to assist a school where extraordinary circumstances are found to exist;

(E) To intervene directly in the operation of a school and declare the position of principal vacant and assign a principal for the school who will serve at the will and pleasure of the state board. If the principal who was removed elects not to remain an employee of the county board, then the principal assigned by the state board shall be paid by the county board. If the principal who was removed elects to remain an employee of the county board, then the following procedure applies:

(i) The principal assigned by the state board shall be paid by the state board until the next school term, at which time the principal assigned by the state board shall be paid by the county board;

(ii) The principal who was removed is eligible for all positions in the county, including teaching positions, for which the principal is certified, by either being placed on the transfer list in accordance with section seven, article two, chapter eighteen-a of this code, or by being placed on the preferred recall list in accordance with section seven-a, article four, chapter eighteen-a of this code; and

(iii) The principal who was removed shall be paid by the county board and may be assigned to administrative duties, without the county board being required to post that position until the end of the school term; and

(F) Other powers and actions the state board determines necessary to fulfill its duties of general supervision of the schools and school systems of West Virginia.

(4) The county board may take no action nor refuse any action if the effect would be to impair further the school in which the state board has intervened.

(m) *School system approval.* — The state board annually shall review the information submitted for each school system from the system of education performance audits and issue one of the following approval levels to each county board: Full approval, temporary approval, conditional approval or nonapproval.

(1) Full approval shall be given to a county board whose schools have all been given full, temporary or conditional accreditation status and which does not have any deficiencies which would endanger student health or safety or other extraordinary circumstances as defined by the state board. A fully approved school system in which other deficiencies are discovered shall remain on full accreditation status for the remainder of the approval period and shall have an opportunity to correct those deficiencies, notwithstanding other provisions of this subsection.

(2) Temporary approval shall be given to a county board whose education system is below the level required for full approval. Whenever a county board is given temporary approval status, the county board shall revise its electronic county strategic improvement plan in accordance with subsection (b) of this section to increase the performance and progress of the school system to a full approval status level. The revised plan shall be submitted to the state board for approval.

(3) Conditional approval shall be given to a county board whose education system is below the level required for full approval, but whose electronic county strategic improvement plan meets the following criteria:

- (A) The plan has been revised in accordance with subsection (b) of this section;
- (B) The plan has been approved by the state board; and
- (C) The county board is meeting the objectives and time line specified in the revised plan.

(4) Nonapproval status shall be given to a county board which fails to submit and gain approval for its electronic county strategic improvement plan or revised electronic county strategic improvement plan within a reasonable time period as defined by the state board or which fails to meet the objectives and time line of its revised electronic county strategic improvement plan or fails to achieve full approval by the date specified in the revised plan.

(A) The state board shall establish and adopt additional standards to identify school systems in which the program may be nonapproved and the state board may issue nonapproval status whenever extraordinary circumstances exist as defined by the state board.

(B) Whenever a county board has more than a casual deficit, as defined in section one, article one of this chapter, the county board shall submit a plan to the state board specifying the county board's strategy for eliminating the casual deficit. The state board either shall approve or reject the plan. If the plan is rejected, the state board shall communicate to the county board the reason or reasons for the rejection of the plan. The county board may resubmit the plan any number of times. However, any county board that fails to submit a plan and gain approval for the plan from the state board before the end of the fiscal year after a deficit greater than a casual deficit occurred or any county board which, in the opinion of the state board, fails to comply with an approved plan may be designated as having nonapproval status.

(C) Whenever nonapproval status is given to a school system, the state board shall declare a state of emergency in the school system and shall appoint a team of improvement consultants to make recommendations within sixty days of appointment for correcting the emergency. When the

state board approves the recommendations, they shall be communicated to the county board. If progress in correcting the emergency, as determined by the state board, is not made within six months from the time the county board receives the recommendations, the state board shall intervene in the operation of the school system to cause improvements to be made that will provide assurances that a thorough and efficient system of schools will be provided. This intervention may include, but is not limited to, the following:

(i) Limiting the authority of the county superintendent and county board as to the expenditure of funds, the employment and dismissal of personnel, the establishment and operation of the school calendar, the establishment of instructional programs and rules and any other areas designated by the state board by rule, which may include delegating decision-making authority regarding these matters to the state superintendent;

(ii) Declaring that the office of the county superintendent is vacant;

(iii) Declaring that the positions of personnel who serve at the will and pleasure of the county superintendent as provided in section one, article two, chapter eighteen-a of this code, are vacant, subject to application and reemployment;

(iv) Delegating to the state superintendent both the authority to conduct hearings on personnel matters and school closure or consolidation matters and, subsequently, to render the resulting decisions and the authority to appoint a designee for the limited purpose of conducting hearings while reserving to the state superintendent the authority to render the resulting decisions;

(v) Functioning in lieu of the county board of education in a transfer, sale, purchase or other transaction regarding real property; and

(vi) Taking any direct action necessary to correct the emergency including, but not limited to, the following:

(I) Delegating to the state superintendent the authority to replace administrators and principals in low performing schools and to transfer them into alternate professional positions within the county at his or her discretion; and

(II) Delegating to the state superintendent the authority to fill positions of administrators and principals with individuals determined by the state superintendent to be the most qualified for the positions. Any authority related to intervention in the operation of a county board granted under this paragraph is not subject to the provisions of article four, chapter eighteen-a of this code.

(n) Notwithstanding any other provision of this section, the state board may intervene immediately in the operation of the county school system with all the powers, duties and responsibilities contained in subsection (m) of this section, if the state board finds the following:

(1) That the conditions precedent to intervention exist as provided in this section; and that delaying intervention for any period of time would not be in the best interests of the students of the county school system; or

(2) That the conditions precedent to intervention exist as provided in this section and that the state board had previously intervened in the operation of the same school system and had concluded that intervention within the preceding five years.

(o) *Capacity*. — The process for improving education includes a process for targeting resources strategically to improve the teaching and learning process. Development of electronic school and school system strategic improvement plans, pursuant to subsection (b) of this section, is intended, in part, to provide mechanisms to target resources strategically to the teaching and learning process to

improve student, school and school system performance. When deficiencies are detected through the assessment and accountability processes, the revision and approval of school and school system electronic strategic improvement plans shall ensure that schools and school systems are efficiently using existing resources to correct the deficiencies. When the state board determines that schools and school systems do not have the capacity to correct deficiencies, the state board shall take one or more of the following actions:

(1) Work with the county board to develop or secure the resources necessary to increase the capacity of schools and school systems to meet the standards and, when necessary, seek additional resources in consultation with the Legislature and the Governor;

(2) Recommend to the appropriate body including, but not limited to, the Legislature, county boards, schools and communities methods for targeting resources strategically to eliminate deficiencies identified in the assessment and accountability processes. When making determinations on recommendations, the state board shall include, but is not limited to, the following methods:

(A) Examining reports and electronic strategic improvement plans regarding the performance and progress of students, schools and school systems relative to the standards and identifying the areas in which improvement is needed;

(B) Determining the areas of weakness and of ineffectiveness that appear to have contributed to the substandard performance and progress of students or the deficiencies of the school or school system and requiring the school or school system to work collaboratively with the West Virginia Department of Education State System of Support to correct the deficiencies;

(C) Determining the areas of strength that appear to have contributed to exceptional student, school and school system performance and progress and promoting their emulation throughout the system;

(D) Requesting technical assistance from the School Building Authority in assessing or designing comprehensive educational facilities plans;

(E) Recommending priority funding from the School Building Authority based on identified needs;

(F) Requesting special staff development programs from the Center for Professional Development, the Principals Academy, higher education, regional educational service agencies and county boards based on identified needs;

(G) Submitting requests to the Legislature for appropriations to meet the identified needs for improving education;

(H) Directing county boards to target their funds strategically toward alleviating deficiencies;

(I) Ensuring that the need for facilities in counties with increased enrollment are appropriately reflected and recommended for funding;

(J) Ensuring that the appropriate person or entity is held accountable for eliminating deficiencies; and

(K) Ensuring that the needed capacity is available from the state and local level to assist the school or school system in achieving the standards and alleviating the deficiencies.

(p) *Building leadership capacity* — To help build the governance and leadership capacity of a county board during an intervention in the operation of its school system by the state board, and to help assure sustained success following return of control to the county board, the state board shall



require the county board to establish goals and action plans, subject to approval of the state board, to improve performance sufficiently to end the intervention within a period of not more than five years. The state superintendent shall maintain oversight and provide assistance and feedback to the county board on development and implementation of the goals and action plans. At a minimum, the goals and action plans shall include:

(A) An analysis of the training and development activities needed by the county board and leadership of the school system and schools for effective governance and school improvement;

(B) Support for the training and development activities identified which may include those made available through the state superintendent, regional education service agencies, Center for Professional Development, West Virginia School Board Association, Office of Education Performance Audits, West Virginia Education Information System and other sources identified in the goals and action plans. Attendance at these activities included in the goals and action plans is mandatory as specified in the goals and action plans; and

(C) Active involvement by the county board in the improvement process, working in tandem with the county superintendent to gather, analyze and interpret data, write time-specific goals to correct deficiencies, prepare and implement action plans and allocate or request from the State Board of Education the resources, including board development training and coaching, necessary to achieve approved goals and action plans and sustain system and school improvement.

At least once each year during the period of intervention, the Office of Education Performance Audits shall assess the readiness of the county board to accept the return of control of the system or school from the state board and sustain the improvements, and shall make a report and recommendations to the state board supported by documented evidence of the progress made on the goals and action plans. The state board may end the intervention or return any portion of control of the operations of the school system or school that was previously removed at its sole determination. If the state board determines at the fifth annual assessment that the county board is still not ready to accept return of control by the state board and sustain the improvements, the state board shall hold a public hearing in the affected county at which the attendance by all members of the county board is requested so that the reasons for continued intervention and the concerns of the citizens of the county may be heard. The state board may continue the intervention only after it holds the public hearing and may require revision of the goals and action plans.

Following the termination of an intervention in the operation of a school system and return of full control by the state board, the support for governance education and development shall continue as needed for up to three years. If at any time within this three years, the state board determines that intervention in the operation of the school system is again necessary, the state board shall again hold a public hearing in the affected county so that the reasons for the intervention and the concerns of the citizens of the county may be heard.

## **ARTICLE 2I. PROFESSIONAL DEVELOPMENT.**

### **§18-2I-5. Strategic Staff Development Fund.**

(a) There is created an account within the state board titled the Strategic Staff Development Fund. The allocation of balances which accrue in the General School Fund shall be transferred to the Strategic Staff Development Fund each year when the balances become available. Any remaining funds transferred to the Strategic Staff Development Fund during the fiscal year shall be carried over for use in the same manner the next fiscal year and shall be separate and apart from, and in addition to, the transfer of funds from the General School Fund for the next fiscal year.

(b) The money in the Strategic Staff Development Fund shall be used by the state board to provide staff development in schools, counties or both that the state board determines need additional resources. ~~The state board is required to report to the Legislative Oversight Commission on Education Accountability before December 1, annually, on the effectiveness of the staff development resulting from expenditures in this fund.~~

### **ARTICLE 3. STATE SUPERINTENDENT OF SCHOOLS.**

#### **§18-3-12. Special Community Development School Pilot Program.**

(a) The state superintendent shall establish a Special Community Development School Pilot Program to be implemented in a neighborhood of at least five public schools, which shall include at least one elementary and middle school, for the duration of five years. The neighborhood of public schools designated by the state superintendent for the pilot shall have significant enrollments of disadvantaged, minority and underachieving students. The designated neighborhood of public schools under the direction of the county board and county superintendent shall work in collaboration with higher education, community organizations, Center for Professional Development, local community leaders, affected classroom teachers, affected parents and the state board to develop and implement strategies that could be replicated in other public schools with significant enrollments of disadvantaged, minority and underachieving students to improve academic achievement. For purposes of this section "neighborhood" means an area of no more than seven square miles.

~~(b) Beginning in January, 2014, on or before the first day of the regular session of the Legislature, and each year thereafter, the state superintendent, county superintendent for the county in which the schools are located and lead community-based organizations shall make a status report to the Legislative Oversight Commission on Education Accountability and to the state board. The report may include any recommendations based on the progress of the demonstration project that he or she considers either necessary for improving the operations of the demonstration project or prudent for improving student achievement in other public schools through replication of successful demonstration school programs.~~

### **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:

- (A) Improve overall readiness when children enter school;
- (B) Decrease behavioral problems;
- (C) Improve student attendance;
- (D) Increase scores on achievement tests;
- (E) Decrease the percentage of students repeating a grade; and
- (F) Decrease the number of students placed in special education programs;

(2) Quality early childhood education programs improve school performance and low-quality early childhood education programs may have negative effects, especially for at-risk children;

(3) West Virginia has the lowest percentage of its adult population twenty-five years of age or older with a bachelor's degree and the education level of parents is a strong indicator of how their children will perform in school;

(4) During the 2006-2007 school year, West Virginia ranked thirty-ninth among the fifty states in the percentage of school children eligible for free and reduced lunches and this percentage is a strong indicator of how the children will perform in school;

(5) For the school year 2008-2009, thirteen thousand one hundred thirty-five students were enrolled in prekindergarten, a number equal to approximately sixty-three percent of the number of students enrolled in kindergarten;

(6) Excluding projected increases due to increases in enrollment in the early childhood education program, projections indicate that total student enrollment in West Virginia will decline by one percent, or by approximately two thousand seven hundred four students, by the school year 2012-2013;

(7) In part, because of the dynamics of the state aid formula, county boards will continue to enroll four-year old students to offset the declining enrollments;

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

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

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

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

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

(d) The program shall meet the following criteria:

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

(2) All children meeting the age requirement set forth in this section shall have the opportunity to enroll in a program that is full day and five days per week. The program may be for fewer than five days per week and may be less than full day based on family need if a sufficient number of families request such programs and the county board finds that such programs are in the best interest of the requesting families and students: *Provided*, That the ability of families to request programs that are fewer than five days a week or less than a full day does not relieve the county of the obligation to provide all resident children with the opportunity to enroll in a full-day program; and

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

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

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

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

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

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

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

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

(6) Any other public or private funds.

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

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

(2) An analysis of facility and personnel needs;

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

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

(5) Specific time lines for implementation; and

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

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

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

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

(3) If the Secretary of the Department of Health and Human Resources finds that the county board has not met one or more of the requirements of this subsection, but that the county board has acted in good faith and the failure to comply was not the primary fault of the county board, then the secretary shall approve the plan. Any denial by the secretary may be appealed to the circuit court of the county in which the county board is located.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(e)~~ (p) The state board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code for the purposes of implementing the provisions of this section. The state board shall consult with the Secretary of the Department of Health and Human Resources in the preparation of the rule. The rule shall contain the following:

- (1) Standards for curriculum;
- (2) Standards for preparing students;
- (3) Attendance requirements;
- (4) Standards for personnel; and
- (5) Any other terms necessary to implement the provisions of this section.

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

- (1) A requirement that the curriculum be designed to address the developmental needs of four-year old children, consistent with prevailing research on how children learn;
- (2) A requirement that the curriculum be designed to achieve long-range goals for the social, emotional, physical and academic development of young children;
- (3) A method for including a broad range of content that is relevant, engaging and meaningful to young children;
- (4) A requirement that the curriculum incorporate a wide variety of learning experiences, materials and equipment, and instructional strategies to respond to differences in prior experience, maturation rates and learning styles that young children bring to the classroom;
- (5) A requirement that the curriculum be designed to build on what children already know in order to consolidate their learning and foster their acquisition of new concepts and skills;
- (6) A requirement that the curriculum meet the recognized standards of the relevant subject matter disciplines;
- (7) A requirement that the curriculum engage children actively in the learning process and provide them with opportunities to make meaningful choices;
- (8) A requirement that the curriculum emphasize the development of thinking, reasoning, decision-making and problem-solving skills;
- (9) A set of clear guidelines for communicating with parents and involving them in decisions about the instructional needs of their children; and
- (10) A systematic plan for evaluating program success in meeting the needs of young children and for helping them to be ready to succeed in school.

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

- ~~(1) A summary of the approved county plans for providing the early childhood education programs pursuant to this section;~~
- ~~(2) An analysis of the total cost to the state and county boards of implementing the plans;~~

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

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

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

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

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

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

## **ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.**

### **§18-20-5. Powers and duties of state superintendent.**

~~(a) The State Superintendent of Schools shall organize, promote, administer and be responsible for:~~

~~(1) Stimulating and assisting county boards of education in establishing, organizing and maintaining special schools, classes, regular class programs, home-teaching and visiting-teacher services.~~

~~(2) Cooperating with all other public and private agencies engaged in relieving, caring for, curing, educating and rehabilitating exceptional children, and in helping coordinate the services of such agencies.~~

~~(3) (A) Preparing the necessary rules, policies, formula for distribution of available appropriated funds, reporting forms and procedures necessary to define minimum standards in providing suitable facilities for education of exceptional children and ensuring the employment, certification and approval of qualified teachers and therapists subject to approval by the State Board of Education: *Provided*, That no state rule, policy or standard under this article or any county board rule, policy or standard governing special education may exceed the requirements of federal law or regulation.~~

~~(B) The state superintendent shall annually review the rules, policies and standards of the state and federal law for serving the needs of exceptional children enrolled in the public schools and shall report to the Legislative Oversight commission on education accountability by December 1, or as soon thereafter as requested by the commission, 2008, and in each year thereafter, the findings of the review along with an accounting of the services provided and the costs thereof for exceptional children enrolled in the public schools of this state during the latest available school year. An appropriation shall be made to the Department of Education to be distributed to county boards to support children with high acuity needs that exceed the capacity of county to provide with funds available. Each county board shall apply to the state superintendent for receipt of this funding in a manner set forth by the state superintendent that assesses and takes into account varying acuity levels of the exceptional students. Any remaining funds at the end of a fiscal year from the~~

appropriation shall be carried over to the next fiscal year. When possible, federal funds shall be distributed to county boards for this purpose before any of the state appropriation is distributed. The state board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code that implements the provisions of this subdivision relating to distributing the funds to the county boards. The rule at least shall include a definition for "children with high acuity needs".

(4) Receiving from county boards of education their applications, annual reports and claims for reimbursement from such moneys as are appropriated by the Legislature, auditing such claims and preparing vouchers to reimburse said counties the amounts reimbursable to them.

(5) Assuring that all exceptional children in the state, including children in mental health facilities, residential institutions, private schools and correctional facilities as provided in section thirteen-f, article two of this chapter receive an education in accordance with state and federal laws: *Provided*, That the state superintendent shall also assure that adults in correctional facilities and regional jails receive an education to the extent funds are provided therefor.

(6) Performing other duties and assuming other responsibilities in connection with this program as needed.

(7) Receive the county plan for integrated classroom submitted by the county boards of education and submit a state plan, approved by the State Board of Education, to the Legislative Oversight Commission on Education Accountability no later than December 1, 1995.

(b) Nothing contained in this section shall be construed to prevent any county board of education from establishing and maintaining special schools, classes, regular class programs, home-teaching or visiting-teacher services out of funds available from local revenue.

#### **§18-20-8. Interagency plan for exceptional children; advisory council.**

(a) The state departments of health, human services and education shall enter into a collaborative agreement for the purpose of developing a statewide plan of coordinating comprehensive, multidisciplinary interagency programs providing appropriate early intervention services to all developmentally delayed and at-risk children, ages birth through five years, and their families to be phased in by the school year 1990-99.

This comprehensive, coordinated statewide plan shall include, at a minimum:

- (1) Specification of the population to be served;
- (2) The development of regulations and procedural safeguards;
- (3) The development of procedures for administration, supervision and monitoring;
- (4) The identification and coordination of all available resources; and

(5) The development of formal interagency agreements that define the financial responsibility of each agency and all additional components necessary to ensure meaningful cooperation and coordination.

(b) To assist in the development of such a plan, an advisory council consisting of twelve members shall be created. The departments of health, human services and education shall each appoint four members, and each shall include in such appointments one parent of an exceptional child under the age of six; one public or private provider of early intervention services for developmentally delayed and at-risk children; one individual involved in the education training of personnel who work with preschool handicapped; and one other person.



The functions of the council shall include the following:

(1) Meet at least quarterly;

(2) Solicit information and opinions from concerned agencies, groups and individuals; and

(3) Advise and assist the departments of health, human services and education in the development of the statewide plan herein required. ~~and~~

~~(4) Prepare and submit an annual report by December 1, of each year to the Governor, the joint committee on education, the Legislative commission on juvenile law, the Legislative Oversight commission on education accountability, and other agencies, as appropriate, which report shall recommend policies, procedures and legislation for effectively providing early intervention services and reports on the status of existing programs.~~

Following the submission of the advisory council's first annual report, the joint committee on education is authorized and empowered to disband the council or alter its functions as it deems advisable.

The members of the council may be reimbursed for actual and necessary expenses incurred in the performance of their official duties in accordance with state law from appropriations to the departments of health, human services and education or available federal funds.

## CHAPTER 18A. SCHOOL PERSONNEL.

### ARTICLE 2. SCHOOL PERSONNEL.

#### **§18A-2-3. Employment of substitute teachers; employment of retired teachers as substitutes in areas of critical need and shortage; and employment of prospective employable professional personnel.**

(a) The county superintendent, subject to approval of the county board, may employ and assign substitute teachers to any of the following duties:

(1) Fill the temporary absence of any teacher or an unexpired school term made vacant by resignation, death, suspension or dismissal;

(2) Fill a teaching position of a regular teacher on leave of absence; and

(3) Perform the instructional services of any teacher who is authorized by law to be absent from class without loss of pay, providing the absence is approved by the board of education in accordance with the law.

The substitute shall be a duly certified teacher.

(b) Notwithstanding any other provision of this code to the contrary, a substitute teacher who has been assigned as a classroom teacher in the same classroom continuously for more than one half of a grading period and whose assignment remains in effect two weeks prior to the end of the grading period, shall remain in the assignment until the grading period has ended, unless the principal of the school certifies that the regularly employed teacher has communicated with and assisted the substitute with the preparation of lesson plans and monitoring student progress or has been approved to return to work by his or her physician. For the purposes of this section, teacher and substitute teacher, in the singular or plural, mean professional educator as defined in section one, article one of this chapter.

(c) (1) The Legislature hereby finds and declares that due to a shortage of qualified substitute teachers, a compelling state interest exists in expanding the use of retired teachers to provide service as substitute teachers in areas of critical need and shortage. The Legislature further finds that diverse circumstances exist among the counties for the expanded use of retired teachers as substitutes. For the purposes of this subsection, "area of critical need and shortage for substitute teachers" means an area of certification and training in which the number of available substitute teachers in the county who hold certification and training in that area and who are not retired is insufficient to meet the projected need for substitute teachers.

(2) A person receiving retirement benefits under article seven-a, chapter eighteen of this code or who is entitled to retirement benefits during the fiscal year in which that person retired may accept employment as a critical needs substitute teacher for an unlimited number of days each fiscal year without affecting the monthly retirement benefit to which the retirant is otherwise entitled if the following conditions are satisfied:

(A) The county board adopts a policy recommended by the superintendent to address areas of critical need and shortage for substitute teachers;

(B) The policy sets forth the areas of critical need and shortage for substitute teachers in the county in accordance with the definition of area of critical need and shortage for substitute teachers set forth in subdivision (1) of this subsection;

(C) The policy provides for the employment of retired teachers as critical needs substitute teachers during the school year on an expanded basis in areas of critical need and shortage for substitute teachers as provided in this subsection;

(D) The policy provides that a retired teacher may be employed as a substitute teacher in an area of critical need and shortage for substitute teachers on an expanded basis as provided in this subsection only when no other teacher who holds certification and training in the area and who is not retired is available and accepts the substitute assignment;

(E) The policy is effective for one school year only and is subject to annual renewal by the county board;

(F) The state board approves the policy and the use of retired teachers as substitute teachers on an expanded basis in areas of critical need and shortage for substitute teachers as provided in this subsection; and

(G) Prior to employment of a retired teacher as a critical needs substitute teacher beyond the post-retirement employment limitations established by the Consolidated Public Retirement Board, the superintendent of the affected county submits to the state board in a form approved by the Consolidated Public Retirement Board and the state board, an affidavit signed by the superintendent stating the name of the county, the fact that the county has adopted a policy to employ retired teachers as substitutes to address areas of critical need and shortage, the name or names of the person or persons to be employed as a critical needs substitute pursuant to the policy, the critical need and shortage area position filled by each person, the date that the person gave notice to the county board of the person's intent to retire, and the effective date of the person's retirement. Upon verification of compliance with this section and the eligibility of the critical needs substitute teacher for employment beyond the post-retirement limit, the state board shall submit the affidavit to the Consolidated Public Retirement Board.

(3) Any person who retires and begins work as a critical needs substitute teacher within the same employment term shall lose those retirement benefits attributed to the annuity reserve, effective from the first day of employment as a retiree substitute in that employment term and ending with the month following the date the retiree ceases to perform service as a substitute.

(4) Retired teachers employed to perform expanded substitute service pursuant to this subsection are considered day-to-day, temporary, part-time employees. The substitutes are not eligible for additional pension or other benefits paid to regularly employed employees and may not accrue seniority.

(5) A retired teacher is eligible to be employed as a critical needs substitute to fill a vacant position only if the retired teacher's retirement became effective at least twenty days before the beginning of the employment term during which he or she is employed as a substitute.

(6) When a retired teacher is employed as a critical needs substitute to fill a vacant position, the county board shall continue to post the vacant position until it is filled with a regularly employed teacher who is fully certified or permitted for the position.

(7) When a retired teacher is employed as a critical needs substitute to fill a vacant position, the position vacancy shall be posted electronically and easily accessible to prospective employees as determined by the state board.

(8) Until this subsection is expired pursuant to subdivision (9) of this subsection, the state board, annually, shall report to the Joint Committee on Government and Finance prior to February 1 of each year. Additionally, a copy shall be provided to the Legislative Oversight Commission on Education Accountability. The report shall contain information indicating the effectiveness of the provisions of this subsection on reducing the critical need and shortage of substitute teachers including, but not limited to, the number of retired teachers, by critical need and shortage area position filled and by county, employed beyond the post-retirement employment limit established by the Consolidated Public Retirement Board, the date that each person gave notice to the county board of the person's intent to retire, and the effective date of the person's retirement.

(9) The provisions of this subsection shall expire on June 30, 2017.

(d) (1) Notwithstanding any other provision of this code to the contrary, each year a county superintendent may employ prospective employable professional personnel on a reserve list at the county level subject to the following conditions:

(A) The county board adopts a policy to address areas of critical need and shortage as identified by the state board. The policy shall include authorization to employ prospective employable professional personnel;

(B) The county board posts a notice of the areas of critical need and shortage in the county in a conspicuous place in each school for at least ten working days; and

(C) There are not any potentially qualified applicants available and willing to fill the position.

(2) Prospective employable professional personnel may only be employed from candidates at a job fair who have or will graduate from college in the current school year or whose employment contract with a county board has or will be terminated due to a reduction in force in the current fiscal year.

(3) Prospective employable professional personnel employed are limited to three full-time prospective employable professional personnel per one hundred professional personnel employed in a county or twenty-five full-time prospective employable professional personnel in a county, whichever is less.

(4) Prospective employable professional personnel shall be granted benefits at a cost to the county board and as a condition of the employment contract as approved by the county board.

(5) Regular employment status for prospective employable professional personnel may be obtained only in accordance with the provisions of section seven-a, article four of this chapter.

~~(e) The state board annually shall review the status of employing personnel under the provisions of subsection (d) of this section and annually shall report to the Legislative Oversight Commission on Education Accountability on or before November 1 of each year. The report shall include, but not be limited to, the following:~~

~~(A) The counties that participated in the program;~~

~~(B) The number of personnel hired;~~

~~(C) The teaching fields in which personnel were hired;~~

~~(D) The venue from which personnel were employed;~~

~~(E) The place of residency of the individual hired; and~~

~~(F) The state board's recommendations on the prospective employable professional personnel program.~~

#### **ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.**

##### **§18A-4-7a. Employment, promotion and transfer of professional personnel; seniority.**

(a) A county board of education shall make decisions affecting the filling of vacancies in professional positions of employment on the basis of the applicant with the highest qualifications: *Provided*, That the county superintendent shall be hired under separate criteria pursuant to section two, article four, chapter eighteen of this code.

(b) In judging qualifications for the filling of vacancies of professional positions of employment, consideration shall be given to each of the following:

(1) Appropriate certification, licensure or both;

(2) Amount of experience relevant to the position or, in the case of a classroom teaching position, the amount of teaching experience in the required certification area;

(3) The amount of course work, degree level or both in the relevant field and degree level generally;

(4) Academic achievement;

(5) In the case of a classroom teaching position or the position of principal, certification by the National Board for Professional Teaching Standards;

(6) Specialized training relevant to the performance of the duties of the job;

(7) Past performance evaluations conducted pursuant to section twelve, article two of this chapter and section two, article three-c of this chapter or, in the case of a classroom teacher, past evaluations of the applicant's performance in the teaching profession;

(8) Seniority;

(9) Other measures or indicators upon which the relative qualifications of the applicant may fairly be judged;

(10) In the case of a classroom teaching position, the recommendation of the principal of the school at which the applicant will be performing a majority of his or her duties; and

(11) In the case of a classroom teaching position, the recommendation, if any, resulting from the process established pursuant to the provisions of section five, article five-a, chapter eighteen of this code by the faculty senate of the school at which the employee will be performing a majority of his or her duties.

(c) In considering the filling of a vacancy pursuant to this section, a county board is entitled to determine the appropriate weight to apply to each of the criterion when assessing an applicant's qualifications: *Provided*, That if one or more permanently employed instructional personnel apply for a classroom teaching position and meet the standards set forth in the job posting, each criterion under subsection (b) of this section shall be given equal weight except that the criterion in subdivisions (10) and (11) shall each be double weighted.

(d) For a classroom teaching position, if the recommendations resulting from the operations of subdivisions (10) and (11), subsection (b) of this section are for the same applicant, and the superintendent concurs with that recommendation, then the other provisions of subsections (b) and (c) of this section do not apply and the county board shall appoint that applicant notwithstanding any other provision of this code to the contrary.

(e) The state board shall promulgate a rule, including an emergency rule if necessary, in accordance with the provisions of article three-b, chapter twenty-nine-a of this code to implement and interpret the provisions of this section, including provisions that may provide for the compensation based on the appropriate daily rate of a classroom teacher who directly participates in making recommendations pursuant to this section for periods beyond his or her individual contract.

(f) Recommendations made pursuant to subdivisions (10) and (11), subsection (b) of this section shall be made based on a determination as to which of the applicants is the highest qualified for the position: *Provided*, That nothing in this subsection shall require principals or faculty senates to assign any amount of weight to any factor in making a recommendation.

(g) With the exception of guidance counselors, the seniority of classroom teachers, as defined in section one, article one of this chapter, shall be determined on the basis of the length of time the employee has been employed as a regular full-time certified and/or licensed professional educator by the county board of education and shall be granted in all areas that the employee is certified, licensed or both.

(h) Upon completion of one hundred thirty-three days of employment in any one school year, substitute teachers, except retired teachers and other retired professional educators employed as substitutes, shall accrue seniority exclusively for the purpose of applying for employment as a permanent, full-time professional employee. One hundred thirty-three days or more of said employment shall be prorated and shall vest as a fraction of the school year worked by the permanent, full-time teacher.

(i) Guidance counselors and all other professional employees, as defined in section one, article one of this chapter, except classroom teachers, shall gain seniority in their nonteaching area of professional employment on the basis of the length of time the employee has been employed by the county board of education in that area: *Provided*, That if an employee is certified as a classroom teacher, the employee accrues classroom teaching seniority for the time that that employee is employed in another professional area. For the purposes of accruing seniority under this paragraph, employment as principal, supervisor or central office administrator, as defined in section one, article one of this chapter, shall be considered one area of employment.

(j) Employment for a full employment term shall equal one year of seniority, but no employee may accrue more than one year of seniority during any given fiscal year. Employment for less than the full employment term shall be prorated. A random selection system established by the employees and approved by the board shall be used to determine the priority if two or more employees accumulate identical seniority: *Provided*, That when two or more principals have accumulated identical seniority, decisions on reductions in force shall be based on qualifications.

(k) Whenever a county board is required to reduce the number of professional personnel in its employment, the employee with the least amount of seniority shall be properly notified and released from employment pursuant to the provisions of section two, article two of this chapter. The provisions of this subsection are subject to the following:

(1) All persons employed in a certification area to be reduced who are employed under a temporary permit shall be properly notified and released before a fully certified employee in such a position is subject to release;

(2) Notwithstanding any provision of this code to the contrary, all employees subject to release shall be considered applicants for any vacancy in an established, existing or newly created position that, on or before February 15, is known to exist for the ensuing school year, and for which they are qualified, and, upon recommendation of the superintendent, the board shall appoint the successful applicant from among them before posting such vacancies for application by other persons;

(3) An employee subject to release shall be employed in any other professional position where the employee is certified and was previously employed or to any lateral area for which the employee is certified, licensed or both, if the employee's seniority is greater than the seniority of any other employee in that area of certification, licensure or both;

(4) If an employee subject to release holds certification, licensure or both in more than one lateral area and if the employee's seniority is greater than the seniority of any other employee in one or more of those areas of certification, licensure or both, the employee subject to release shall be employed in the professional position held by the employee with the least seniority in any of those areas of certification, licensure or both; and

(5) If, prior to August 1 of the year a reduction in force is approved, the reason for any particular reduction in force no longer exists as determined by the county board in its sole and exclusive judgment, the board shall rescind the reduction in force or transfer and shall notify the released employee in writing of his or her right to be restored to his or her position of employment. Within five days of being so notified, the released employee shall notify the board, in writing, of his or her intent to resume his or her position of employment or the right to be restored shall terminate. Notwithstanding any other provision of this subdivision, if there is another employee on the preferred recall list with proper certification and higher seniority, that person shall be placed in the position restored as a result of the reduction in force being rescinded.

(l) For the purpose of this article, all positions which meet the definition of "classroom teacher" as defined in section one, article one of this chapter shall be lateral positions. For all other professional positions, the county board of education shall adopt a policy by October 31, 1993, and may modify the policy thereafter as necessary, which defines which positions shall be lateral positions. ~~The board shall submit a copy of its policy to the state board within thirty days of adoption or any modification, and the state board shall compile a report and submit the report to the Legislative Oversight Commission on Education Accountability by December 31, 1993, and by that date in any succeeding year in which any county board submits a modification of its policy relating to lateral positions.~~ In adopting the policy, the board shall give consideration to the rank of each position in terms of title; nature of responsibilities; salary level; certification, licensure or both; and days in the period of employment.

(m) After the twentieth day prior to the beginning of the instructional term, no person employed and assigned to a professional position may transfer to another professional position in the county during that instructional term unless the person holding that position does not have valid certification. The provisions of this subsection are subject to the following:

(1) The person may apply for any posted, vacant positions with the successful applicant assuming the position at the beginning of the next instructional term;

(2) Professional personnel who have been on an approved leave of absence may fill these vacancies upon their return from the approved leave of absence;

(3) The county board, upon recommendation of the superintendent may fill a position before the next instructional term when it is determined to be in the best interest of the students. The county superintendent shall notify the state board of each transfer of a person employed in a professional position to another professional position after the twentieth day prior to the beginning of the instructional term;

(4) The provisions of this subsection do not apply to the filling of a position vacated because of resignation or retirement that became effective on or before the twentieth day prior to the beginning of the instructional term, but not posted until after that date; and

(5) The Legislature finds that it is not in the best interest of the students, particularly in the elementary grades, to have multiple teachers for any one grade level or course during the instructional term. It is the intent of the Legislature that the filling of positions through transfers of personnel from one professional position to another after the twentieth day prior to the beginning of the instructional term should be kept to a minimum.

(n) All professional personnel whose seniority with the county board is insufficient to allow their retention by the county board during a reduction in work force shall be placed upon a preferred recall list. As to any professional position opening within the area where they had previously been employed or to any lateral area for which they have certification, licensure or both, the employee shall be recalled on the basis of seniority if no regular, full-time professional personnel, or those returning from leaves of absence with greater seniority, are qualified, apply for and accept the position.

(o) Before position openings that are known or expected to extend for twenty consecutive employment days or longer for professional personnel may be filled by the board, the board shall be required to notify all qualified professional personnel on the preferred list and give them an opportunity to apply, but failure to apply shall not cause the employee to forfeit any right to recall. The notice shall be sent by certified mail to the last known address of the employee, and it shall be the duty of each professional personnel to notify the board of continued availability annually, of any change in address or of any change in certification, licensure or both.

(p) Openings in established, existing or newly created positions shall be processed as follows:

(1) Boards shall be required to post and date notices of each opening at least once. At their discretion, boards may post an opening for a position other than classroom teacher more than once in order to attract more qualified applicants. At their discretion, boards may post an opening for a classroom teacher one additional time after the first posting in order to attract more qualified applicants only if fewer than three individuals apply during the first posting subject to the following:

(A) Each notice shall be posted in conspicuous working places for all professional personnel to observe for at least five working days;

(B) At least one notice shall be posted within twenty working days of the position openings and shall include the job description;

(C) Any special criteria or skills that are required by the position shall be specifically stated in the job description and directly related to the performance of the job;

(D) Postings for vacancies made pursuant to this section shall be written so as to ensure that the largest possible pool of qualified applicants may apply; and

(E) Job postings may not require criteria which are not necessary for the successful performance of the job and may not be written with the intent to favor a specific applicant;

(2) No vacancy shall be filled until after the five-day minimum posting period of the most recent posted notice of the vacancy;

(3) If one or more applicants under all the postings for a vacancy meets the qualifications listed in the job posting, the successful applicant to fill the vacancy shall be selected by the board within thirty working days of the end of the first posting period;

(4) A position held by a teacher who is certified, licensed or both, who has been issued a permit for full-time employment and is working toward certification in the permit area shall not be subject to posting if the certificate is awarded within five years; and

(5) Nothing provided herein shall prevent the county board of education from eliminating a position due to lack of need.

(q) Notwithstanding any other provision of the code to the contrary, where the total number of classroom teaching positions in an elementary school does not increase from one school year to the next, but there exists in that school a need to realign the number of teachers in one or more grade levels, kindergarten through six, teachers at the school may be reassigned to grade levels for which they are certified without that position being posted: *Provided*, That the employee and the county board mutually agree to the reassignment.

(r) Reductions in classroom teaching positions in elementary schools shall be processed as follows:

(1) When the total number of classroom teaching positions in an elementary school needs to be reduced, the reduction shall be made on the basis of seniority with the least senior classroom teacher being recommended for transfer; and

(2) When a specified grade level needs to be reduced and the least senior employee in the school is not in that grade level, the least senior classroom teacher in the grade level that needs to be reduced shall be reassigned to the position made vacant by the transfer of the least senior classroom teacher in the school without that position being posted: *Provided*, That the employee is certified, licensed or both and agrees to the reassignment.

(s) Any board failing to comply with the provisions of this article may be compelled to do so by mandamus and shall be liable to any party prevailing against the board for court costs and reasonable attorney fees as determined and established by the court. Further, employees denied promotion or employment in violation of this section shall be awarded the job, pay and any applicable benefits retroactive to the date of the violation and payable entirely from local funds. Further, the board shall be liable to any party prevailing against the board for any court reporter costs including copies of transcripts.



(t) The county board shall compile, update annually on July 1 and make available by electronic or other means to all employees a list of all professional personnel employed by the county, their areas of certification and their seniority.

(u) Notwithstanding any other provision of this code to the contrary, upon recommendation of the principal and approval by the classroom teacher and county board, a classroom teacher assigned to the school may at any time be assigned to a new or existing classroom teacher position at the school without the position being posted.

(v) The amendments to this section during the 2013 regular session of the Legislature shall be effective for school years beginning on or after July 1, 2013, and the provisions of this section immediately prior to those amendments remain in effect until July 1, 2013.

#### **ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.**

##### **§18A-5-1a. Possessing deadly weapons on premises of educational facilities; possessing a controlled substance on premises of educational facilities; assaults and batteries committed by students upon teachers or other school personnel; temporary suspension, hearing; procedure, notice and formal hearing; extended suspension; sale of narcotic; expulsion; exception; alternative education.**

(a) A principal shall suspend a student from school or from transportation to or from the school on any school bus if the student, in the determination of the principal after an informal hearing pursuant to subsection (d) of this section, has: (i) Violated the provisions of subsection (b), section fifteen, article two, chapter sixty-one of this code; (ii) violated the provisions of subsection (b), section eleven-a, article seven of said chapter; or (iii) sold a narcotic drug, as defined in section one hundred one, article one, chapter sixty-a of this code, on the premises of an educational facility, at a school-sponsored function or on a school bus. If a student has been suspended pursuant to this subsection, the principal shall, within twenty-four hours, request that the county superintendent recommend to the county board that the student be expelled. Upon such a request by a principal, the county superintendent shall recommend to the county board that the student be expelled. Upon such recommendation, the county board shall conduct a hearing in accordance with subsections (e), (f) and (g) of this section to determine if the student committed the alleged violation. If the county board finds that the student did commit the alleged violation, the county board shall expel the student.

(b) A principal shall suspend a student from school, or from transportation to or from the school on any school bus, if the student, in the determination of the principal after an informal hearing pursuant to subsection (d) of this section, has: (i) Committed an act or engaged in conduct that would constitute a felony under the laws of this state if committed by an adult; or (ii) unlawfully possessed on the premises of an educational facility or at a school-sponsored function a controlled substance governed by the Uniform Controlled Substances Act as described in chapter sixty-a of this code. If a student has been suspended pursuant to this subsection, the principal may request that the superintendent recommend to the county board that the student be expelled. Upon such recommendation by the county superintendent, the county board may hold a hearing in accordance with the provisions of subsections (e), (f) and (g) of this section to determine if the student committed the alleged violation. If the county board finds that the student did commit the alleged violation, the county board may expel the student.

(c) A principal may suspend a student from school, or transportation to or from the school on any school bus, if the student, in the determination of the principal after an informal hearing pursuant to subsection (d) of this section: (i) Threatened to injure, or in any manner injured, a student, teacher, administrator or other school personnel; (ii) willfully disobeyed a teacher; (iii) possessed alcohol in an educational facility, on school grounds, a school bus or at any school-sponsored function; (iv) used

profane language directed at a school employee or student; (v) intentionally defaced any school property; (vi) participated in any physical altercation with another person while under the authority of school personnel; or (vii) habitually violated school rules or policies. If a student has been suspended pursuant to this subsection, the principal may request that the superintendent recommend to the county board that the student be expelled. Upon such recommendation by the county superintendent, the county board may hold a hearing in accordance with the provisions of subsections (e), (f) and (g) of this section to determine if the student committed the alleged violation. If the county board finds that the student did commit the alleged violation, the county board may expel the student.

(d) The actions of any student which may be grounds for his or her suspension or expulsion under the provisions of this section shall be reported immediately to the principal of the school in which the student is enrolled. If the principal determines that the alleged actions of the student would be grounds for suspension, he or she shall conduct an informal hearing for the student immediately after the alleged actions have occurred. The hearing shall be held before the student is suspended unless the principal believes that the continued presence of the student in the school poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process, in which case the student shall be suspended immediately and a hearing held as soon as practicable after the suspension.

The student and his or her parent(s), guardian(s) or custodian(s), as the case may be, shall be given telephonic notice, if possible, of this informal hearing, which notice shall briefly state the grounds for suspension.

At the commencement of the informal hearing, the principal shall inquire of the student as to whether he or she admits or denies the charges. If the student does not admit the charges, he or she shall be given an explanation of the evidence possessed by the principal and an opportunity to present his or her version of the occurrence. At the conclusion of the hearing or upon the failure of the noticed student to appear, the principal may suspend the student for a maximum of ten school days, including the time prior to the hearing, if any, for which the student has been excluded from school.

The principal shall report any suspension the same day it has been decided upon, in writing, to the parent(s), guardian(s) or custodian(s) of the student by regular United States mail. The suspension also shall be reported to the county superintendent and to the faculty senate of the school at the next meeting after the suspension.

(e) Prior to a hearing before the county board, the county board shall cause a written notice which states the charges and the recommended disposition to be served upon the student and his or her parent(s), guardian(s) or custodian(s), as the case may be. The notice shall state clearly whether the board will attempt at hearing to establish the student as a dangerous student, as defined by section one, article one of this chapter. The notice also shall include any evidence upon which the board will rely in asserting its claim that the student is a dangerous student. The notice shall set forth a date and time at which the hearing shall be held, which date shall be within the ten-day period of suspension imposed by the principal.

(f) The county board shall hold the scheduled hearing to determine if the student should be reinstated or should, under the provisions of this section, must be expelled from school. If the county board determines that the student should or must be expelled from school, it also may determine whether the student is a dangerous student pursuant to subsection (g) of this section. At this, or any hearing before a county board conducted pursuant to this section, the student may be represented by counsel, may call his or her own witnesses to verify his or her version of the incident and may confront and cross examine witnesses supporting the charge against him or her. The hearing shall be recorded by mechanical means unless recorded by a certified court reporter. The hearing may be

postponed for good cause shown by the student but he or she shall remain under suspension until after the hearing. The state board may adopt other supplementary rules of procedure to be followed in these hearings. At the conclusion of the hearing the county board shall either: (1) Order the student reinstated immediately at the end of his or her initial suspension; (2) suspend the student for a further designated number of days; or (3) expel the student from the public schools of the county.

(g) A county board that did not intend prior to a hearing to assert a dangerous student claim, that did not notify the student prior to the hearing that a dangerous student determination would be considered and that determines through the course of the hearing that the student may be a dangerous student shall schedule a second hearing within ten days to decide the issue. The hearing may be postponed for good cause shown by the student, but he or she remains under suspension until after the hearing.

A county board that expels a student, and finds that the student is a dangerous student, may refuse to provide alternative education. However, after a hearing conducted pursuant to this section for determining whether a student is a dangerous student, when the student is found to be a dangerous student, is expelled and is denied alternative education, a hearing shall be conducted within three months after the refusal by the board to provide alternative education to reexamine whether or not the student remains a dangerous student and whether the student shall be provided alternative education. Thereafter, a hearing for the purpose of reexamining whether or not the student remains a dangerous student and whether the student shall be provided alternative education shall be conducted every three months for so long as the student remains a dangerous student and is denied alternative education. During the initial hearing, or in any subsequent hearing, the board may consider the history of the student's conduct as well as any improvements made subsequent to the expulsion. If it is determined during any of the hearings that the student is no longer a dangerous student or should be provided alternative education, the student shall be provided alternative education during the remainder of the expulsion period.

(h) The superintendent may apply to a circuit judge or magistrate for authority to subpoena witnesses and documents, upon his or her own initiative, in a proceeding related to a recommended student expulsion or dangerous student determination, before a county board conducted pursuant to the provisions of this section. Upon the written request of any other party, the superintendent shall apply to a circuit judge or magistrate for the authority to subpoena witnesses, documents or both on behalf of the other party in a proceeding related to a recommended student expulsion or dangerous student determination before a county board. If the authority to subpoena is granted, the superintendent shall subpoena the witnesses, documents or both requested by the other party. Furthermore, if the authority to subpoena is granted, it shall be exercised in accordance with the provisions of section one, article five, chapter twenty-nine-a of this code.

Any hearing conducted pursuant to this subsection may be postponed: (1) For good cause shown by the student; (2) when proceedings to compel a subpoenaed witness to appear must be instituted; or (3) when a delay in service of a subpoena hinders either party's ability to provide sufficient notice to appear to a witness. A student remains under suspension until after the hearing in any case where a postponement occurs.

~~The county boards are directed to report the number of students determined to be dangerous students to the state board. The state board will compile the county boards' statistics and shall report its findings to the Legislative Oversight Commission on Education Accountability.~~

(i) Students may be expelled pursuant to this section for a period not to exceed one school year, except that if a student is determined to have violated the provisions of subsection (a) of this section the student shall be expelled for a period of not less than twelve consecutive months, subject to the following:

(1) The county superintendent may lessen the mandatory period of twelve consecutive months for the expulsion of the student if the circumstances of the student's case demonstrably warrant;

(2) Upon the reduction of the period of expulsion, the county superintendent shall prepare a written statement setting forth the circumstances of the student's case which warrant the reduction of the period of expulsion. The county superintendent shall submit the statement to the county board, the principal, the faculty senate and the local school improvement council for the school from which the student was expelled. The county superintendent may use the following factors as guidelines in determining whether or not to reduce a mandatory twelve-month expulsion:

(A) The extent of the student's malicious intent;

(B) The outcome of the student's misconduct;

(C) The student's past behavior history;

(D) The likelihood of the student's repeated misconduct; and

(E) If applicable, successful completion or making satisfactory progress toward successful completion of Juvenile Drug Court pursuant to section one-d of this section.

(j) In all hearings under this section, facts shall be found by a preponderance of the evidence.

(k) For purposes of this section, nothing herein may be construed to be in conflict with the federal provisions of the Individuals with Disabilities Education Act, 20 U. S. C. §1400, *et seq.*

(l) Each suspension or expulsion imposed upon a student under the authority of this section shall be recorded in the uniform integrated regional computer information system (commonly known as the West Virginia Education Information System) described in subsection (f), section twenty-six, article two, chapter eighteen of this code.

(1) The principal of the school at which the student is enrolled shall create an electronic record within twenty-four hours of the imposition of the suspension or expulsion.

(2) Each record of a suspension or expulsion shall include the student's name and identification number, the reason for the suspension or expulsion and the beginning and ending dates of the suspension or expulsion.

(3) The state board shall collect and disseminate data so that any principal of a public school in West Virginia can review the complete history of disciplinary actions taken by West Virginia public schools against any student enrolled or seeking to enroll at that principal's school. The purposes of this provision are to allow every principal to fulfill his or her duty under subsection (b), section fifteen-f, article five, chapter eighteen of this code to determine whether a student requesting to enroll at a public school in West Virginia is currently serving a suspension or expulsion from another public school in West Virginia and to allow principals to obtain general information about students' disciplinary histories.

(m) Principals may exercise any other authority and perform any other duties to discipline students consistent with state and federal law, including policies of the state board.

(n) Each county board is solely responsible for the administration of proper discipline in the public schools of the county and shall adopt policies consistent with the provisions of this section to govern disciplinary actions.

(o) For the purpose of this section, "principal" means the principal, assistant principal, vice principal or the administrative head of the school or a professional personnel designee of the principal or the administrative head of the school.

## **CHAPTER 18B. HIGHER EDUCATION.**

### **ARTICLE 1. GOVERNANCE.**

#### **§18B-1-10. Potomac branch of West Virginia University.**

(a) Notwithstanding any other provision of this code to the contrary, by July 1, 2005, Potomac State College shall merge and consolidate with West Virginia University, and become a fully integrated division of the university. All administrative and academic units shall be consolidated with primary responsibility for direction and support assigned to West Virginia University. The advisory board previously appointed for Potomac State College shall be known as the board of visitors and shall provide guidance to the division in carrying out its mission.

(b) Operational costs for the Potomac campus may not exceed by more than ten percent the average cost per full-time equivalent student for freestanding community and technical colleges or the southern regional education board average expenditures for two-year institutions. West Virginia University shall reduce these costs to the mandated level within four years.

(c) Auxiliary enterprises shall be incorporated into the West Virginia University auxiliary enterprise system. The West Virginia University Board of Governors shall determine if operations at the Potomac campus can be operated on a self-sufficient basis when establishing rates for auxiliary services and products.

(d) Potomac State College has a strong reputation in agriculture and forestry instruction, preprofessional programs in business, computer science and education, and basic liberal arts instruction. These programs shall be further cultivated and emphasized as the sustaining mission of the Potomac campus over the next decade, except that the Higher Education Policy Commission may change the mission of the Potomac campus at any time the commission determines appropriate. In order to focus its resources on these programs, the campus shall contract through Eastern West Virginia Community and Technical College to provide work force development training, literacy education and technical education programs which are most efficiently offered within a flexible community and technical college curriculum. This collaborative relationship shall serve to strengthen both institutions and generate a model relationship between traditional and community and technical college education for institutions throughout the state.

~~(e) Beginning November 1, 2003, and annually thereafter, Potomac state college and eastern West Virginia community and technical college shall report to the Higher Education Policy Commission on plans, accomplishments and recommendations in implementing the cooperative relationship authorized in subsection (d) of this section. The commission shall report to the Legislative Oversight commission on education accountability on the cooperative activities, results and recommendations for changes by December 15, 2003, and annually thereafter.~~

### **ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.**

#### **18B-1B-4. Powers and duties of Higher Education Policy Commission.**

(a) The primary responsibility of the commission is to develop, establish and implement policy that will achieve the goals, objectives and priorities found in section one-a, article one and article one-d of this chapter. The commission shall exercise its authority and carry out its responsibilities in a manner that is consistent and not in conflict with the powers and duties assigned by law to the West

Virginia Council for Community and Technical College Education and the powers and duties assigned to the governing boards. To that end, the commission has the following powers and duties relating to the governing boards under its jurisdiction:

(1) Develop, oversee and advance the public policy agenda pursuant to article one-d of this chapter to address major challenges facing the state, including, but not limited to, the following:

(A) The goals, objectives and priorities established in this chapter including specifically those goals, objectives and priorities pertaining to the compacts created pursuant to section seven, article one-d of this chapter; and

(B) Development and implementation of the master plan described in section five, article one-d of this chapter for the purpose of accomplishing the mandates of this section;

(2) Develop, oversee and advance the promulgation and implementation of a financing rule for state institutions of higher education under its jurisdiction. The rule shall meet the following criteria:

(A) Provide for an adequate level of educational and general funding for institutions pursuant to section five, article one-a of this chapter;

(B) Serve to maintain institutional assets, including, but not limited to, human and physical resources and eliminating deferred maintenance; and

(C) Invest and provide incentives for achieving the priority goals in the public policy agenda, including, but not limited to, those found in section one-a, article one and article one-d of this chapter;

(3) In collaboration with the council, create a policy leadership structure capable of the following actions:

(A) Developing, building public consensus around and sustaining attention to a long-range public policy agenda. In developing the agenda, the commission and council shall seek input from the Legislature and the Governor and specifically from the state Board of Education and local school districts in order to create the necessary linkages to assure smooth, effective and seamless movement of students through the public education and post-secondary education systems and to ensure that the needs of public school courses and programs can be fulfilled by the graduates produced and the programs offered;

(B) Ensuring that the governing boards carry out their duty effectively to govern the individual institutions of higher education; and

(C) Holding the governing boards and the higher education systems as a whole accountable for accomplishing their missions and implementing their compacts;

(4) Develop and adopt each compact for the governing boards under its jurisdiction;

(5) Review and adopt the annual updates of the institutional compacts;

(6) Serve as the accountability point to state policymakers:

(A) The Governor for implementation of the public policy agenda; and

(B) The Legislature by maintaining a close working relationship with the legislative leadership and the Legislative Oversight Commission on Education Accountability;

(7) Jointly with the council, promulgate legislative rules pursuant to article three-a, chapter twenty-nine-a of this code to fulfill the purposes of section five, article one-a of this chapter;

(8) Establish and implement a peer group for each institution as described in section three, article one-a of this chapter;

(9) Establish and implement the benchmarks and performance indicators necessary to measure institutional progress in achieving state policy priorities and institutional missions pursuant to section seven, article one-d of this chapter;

~~(10) Report to the Legislature and to the Legislative Oversight Commission on Education Accountability annually during the January interim meeting period on a date and at a time and location to be determined by the President of the Senate and the Speaker of the House of Delegates. The report shall address at least the following:~~

~~(A) The performance of its system of higher education during the previous fiscal year, including, but not limited to, progress in meeting the goals, objectives and priorities set forth in section one-a, article one and article one-d of this chapter and in the commission's master plan and institutional compacts;~~

~~(B) The commission's priorities for new operating and capital investments and the justification for the priority;~~

~~(C) Recommendations of the commission for statutory changes necessary or expedient to achieve state goals, objectives and priorities;~~

(14)(10) Establish a formal process for identifying capital investment needs and for determining priorities for these investments for consideration by the Governor and the Legislature as part of the appropriation request process pursuant to article nineteen of this chapter;

(15)(11) Develop standards and evaluate governing board requests for capital project financing in accordance with article nineteen of this chapter;

(16)(12) Ensure that governing boards manage capital projects and facilities needs effectively, including review and approval or disapproval of capital projects, in accordance with article nineteen of this chapter;

(17)(13) Acquire legal services as considered necessary, including representation of the commission, its governing boards, employees and officers before any court or administrative body, notwithstanding any other provision of this code to the contrary. The counsel may be employed either on a salaried basis or on a reasonable fee basis. In addition, the commission may, but is not required to, call upon the Attorney General for legal assistance and representation as provided by law;

(18)(14) Employ a Chancellor for Higher Education pursuant to section five of this article;

(19)(15) Employ other staff as necessary and appropriate to carry out the duties and responsibilities of the commission and the council, in accordance with article four of this chapter;

(20)(16) Provide suitable offices in Kanawha County for the chancellor, vice chancellors and other staff;

(21)(17) Advise and consent in the appointment of the presidents of the institutions of higher education under its jurisdiction pursuant to section six of this article. The role of the commission in approving an institutional president is to assure through personal interview that the person selected understands and is committed to achieving the goals, objectives and priorities set forth in the compact, in section one-a, article one and article one-d of this chapter;

(22)(18) Approve the total compensation package from all sources for presidents of institutions under its jurisdiction, as proposed by the governing boards. The governing boards must obtain approval from the commission of the total compensation package both when institutional presidents

are employed initially and afterward when any change is made in the amount of the total compensation package;

~~(20)~~(19) Establish and implement the policy of the state to assure that parents and students have sufficient information at the earliest possible age on which to base academic decisions about what is required for students to be successful in college, other post-secondary education and careers related, as far as possible, to results from current assessment tools in use in West Virginia;

~~(21)~~(20) Approve and implement a uniform standard jointly with the council to determine which students shall be placed in remedial or developmental courses. The standard shall be aligned with college admission tests and assessment tools used in West Virginia and shall be applied uniformly by the governing boards throughout the public higher education system. The chancellors shall develop a clear, concise explanation of the standard which they shall communicate to the State Board of Education and the State Superintendent of Schools;

~~(22)~~(21) Jointly with the council, develop and implement an oversight plan to manage systemwide technology including, but not limited to, the following:

(A) Expanding distance learning and technology networks to enhance teaching and learning, promote access to quality educational offerings with minimum duplication of effort; and

(B) Increasing the delivery of instruction to nontraditional students, to provide services to business and industry and increase the management capabilities of the higher education system.

(C) Notwithstanding any other provision of law or this code to the contrary, the council, commission and governing boards are not subject to the jurisdiction of the Chief Technology Officer for any purpose;

~~(23)~~(22) Establish and implement policies and procedures to ensure that a student may transfer and apply toward the requirements for a bachelor's degree the maximum number of credits earned at any regionally accredited in-state or out-of-state community and technical college with as few requirements to repeat courses or to incur additional costs as are consistent with sound academic policy;

~~(24)~~(23) Establish and implement policies and procedures to ensure that a student may transfer and apply toward the requirements for a degree the maximum number of credits earned at any regionally accredited in-state or out-of-state higher education institution with as few requirements to repeat courses or to incur additional costs as are consistent with sound academic policy;

~~(25)~~(24) Establish and implement policies and procedures to ensure that a student may transfer and apply toward the requirements for a master's degree the maximum number of credits earned at any regionally accredited in-state or out-of-state higher education institution with as few requirements to repeat courses or to incur additional costs as are consistent with sound academic policy;

~~(26)~~(25) Establish and implement policies and programs, in cooperation with the council and the governing boards, through which a student who has gained knowledge and skills through employment, participation in education and training at vocational schools or other education institutions, or Internet-based education programs, may demonstrate by competency-based assessment that he or she has the necessary knowledge and skills to be granted academic credit or advanced placement standing toward the requirements of an associate's degree or a bachelor's degree at a state institution of higher education;

~~(27)~~(26) Seek out and attend regional, national and international meetings and forums on education and workforce development-related topics as, in the commission's discretion, are critical



for the performance of their duties as members, for the purpose of keeping abreast of education trends and policies to aid it in developing the policies for this state to meet the established education goals, objectives and priorities pursuant to section one-a, article one and article one-d of this chapter;

~~(28)~~(27) Promulgate and implement a rule for higher education governing boards and institutions to follow when considering capital projects pursuant to article nineteen of this chapter;

~~(29)~~(28) Consider and submit to the appropriate agencies of the executive and legislative branches of state government an appropriation request that reflects recommended appropriations for the commission and the governing boards under its jurisdiction. The commission shall submit as part of its appropriation request the separate recommended appropriation request it received from the council, both for the council and for the governing boards under the council's jurisdiction. The commission annually shall submit the proposed allocations based on each institution's progress toward meeting the goals of its compact;

~~(30)~~(29) The commission may assess institutions under its jurisdiction, including Marshall University and West Virginia University, for the payment of expenses of the commission or for the funding of statewide higher education services, obligations or initiatives related to the goals set forth for the provision of public higher education in the state;

~~(31)~~(30) Promulgate rules allocating reimbursement of appropriations, if made available by the Legislature, to governing boards for qualifying noncapital expenditures incurred in providing services to students with physical, learning or severe sensory disabilities;

~~(32)~~(31) Make appointments to boards and commissions where this code requires appointments from the State College System Board of Directors or the University of West Virginia System Board of Trustees which were abolished effective June 30, 2000, except in those cases where the required appointment has a specific and direct connection to the provision of community and technical college education, the appointment shall be made by the council. Notwithstanding any provisions of this code to the contrary, the commission or the council may appoint one of its own members or any other citizen of the state as its designee. The commission and council shall appoint the total number of persons in the aggregate required to be appointed by these previous governing boards;

~~(33)~~(32) Pursuant to article three-a, chapter twenty-nine-a of this code and section six, article one of this chapter, promulgate rules necessary or expedient to fulfill the purposes of this chapter. The commission and the council shall promulgate a uniform joint legislative rule for the purposes of standardizing, as much as possible, the administration of personnel matters among the state institutions of higher education and implementing the provisions of articles seven, eight, nine and nine-a of this chapter;

~~(34)~~(33) Determine when a joint rule among the governing boards under its jurisdiction is necessary or required by law and, in those instances, in consultation with the governing boards under its jurisdiction, promulgate the joint rule;

~~(35)~~(34) Promulgate and implement a rule jointly with the council whereby course credit earned at a community and technical college transfers for program credit at any other state institution of higher education and is not limited to fulfilling a general education requirement;

~~(36)~~(35) By October 1, 2011, promulgate a rule pursuant to section one, article ten of this chapter, establishing tuition and fee policy for all governing boards under the jurisdiction of the commission, including Marshall University and West Virginia University. The rule shall include, but is not limited to, the following:

(A) Comparisons with peer institutions;

- (B) Differences among institutional missions;
- (C) Strategies for promoting student access;
- (D) Consideration of charges to out-of-state students; and
- (E) Such other policies as the commission and council consider appropriate;

~~(37)~~(36) Implement general disease awareness initiatives to educate parents and students, particularly dormitory residents, about meningococcal meningitis; the potentially life-threatening dangers of contracting the infection; behaviors and activities that can increase risks; measures that can be taken to prevent contact or infection; and potential benefits of vaccination. The commission shall encourage governing boards that provide medical care to students to provide access to the vaccine for those who wish to receive it; and

~~(38)~~(37) Notwithstanding any other provision of this code to the contrary sell, lease, convey or otherwise dispose of all or part of any real property that it owns, in accordance with article nineteen of this chapter.

(b) In addition to the powers and duties listed in subsection (a) of this section, the commission has the following general powers and duties related to its role in developing, articulating and overseeing the implementation of the public policy agenda:

(1) Planning and policy leadership, including a distinct and visible role in setting the state's policy agenda and in serving as an agent of change;

(2) Policy analysis and research focused on issues affecting the system as a whole or a geographical region thereof;

(3) Development and implementation of institutional mission definitions, including use of incentive funds to influence institutional behavior in ways that are consistent with public priorities;

(4) Academic program review and approval for governing boards under its jurisdiction. The review and approval includes use of institutional missions as a template to judge the appropriateness of both new and existing programs and the authority to implement needed changes.

(A) The commission's authority to review and approve academic programs for either Marshall University or West Virginia University is limited to programs that are proposed to be offered at a new location not presently served by that institution;

(B) The commission shall approve or disapprove proposed academic degree programs in those instances where approval is required as soon as practicable, but in any case not later than six months from the date the governing board makes an official request. The commission may not withhold approval unreasonably.

(5) Distribution of funds appropriated to the commission, including incentive and performance-based funds;

(6) Administration of state and federal student aid programs under the supervision of the vice chancellor for administration, including promulgation of rules necessary to administer those programs;

(7) Serving as the agent to receive and disburse public funds when a governmental entity requires designation of a statewide higher education agency for this purpose;

(8) Developing, establishing and implementing information, assessment, accountability and personnel systems, including maintaining statewide data systems that facilitate long-term planning and accurate measurement of strategic outcomes and performance indicators;

(9) Jointly with the council, promulgating and implementing rules for licensing and oversight for both public and private degree-granting and nondegree-granting institutions that provide post-secondary education courses or programs in the state. The council has authority and responsibility for approval of all post-secondary courses or programs providing community and technical college education as defined in section two, article one of this chapter;

(10) Developing, implementing and overseeing statewide and regional projects and initiatives related to providing post-secondary education at the baccalaureate level and above such as those using funds from federal categorical programs or those using incentive and performance-based funds from any source;

(11) Quality assurance that intersects with all other duties of the commission particularly in the areas of research, data collection and analysis, personnel administration, planning, policy analysis, program review and approval, budgeting and information and accountability systems; and

(12) Developing budgets and allocating resources for governing boards under its jurisdiction:

(A) For all governing boards under its jurisdiction, except the governing boards of Marshall University and West Virginia University, the commission shall review institutional operating budgets, review and approve capital budgets, and distribute incentive and performance-based funds;

(B) For the governing boards of Marshall University and West Virginia University, the commission shall distribute incentive and performance-based funds and may review and comment upon the institutional operating budgets and capital budgets. The commission's comments, if any, shall be made part of the governing board's minute record.

(c) In addition to the powers and duties provided in subsections (a) and (b) of this section and any other powers and duties assigned to it by law, the commission has other powers and duties necessary or expedient to accomplish the purposes of this article.

(d) The commission may withdraw specific powers of a governing board under its jurisdiction for a period not to exceed two years, if the commission determines that any of the following conditions exist:

(1) The governing board has failed for two consecutive years to develop or implement an institutional compact as required in article one-d of this chapter;

(2) The commission has received information, substantiated by independent audit, of significant mismanagement or failure to carry out the powers and duties of the governing board according to state law; or

(3) Other circumstances which, in the view of the commission, severely limit the capacity of the governing board to exercise its powers or carry out its duties and responsibilities.

The commission may not withdraw specific powers for a period exceeding two years. During the withdrawal period, the commission shall take all steps necessary to reestablish sound, stable and responsible institutional governance.

## **ARTICLE 1D. HIGHER EDUCATION ACCOUNTABILITY.**

### **§18B-1D-8. Institutional and system report cards.**

(a) The purpose of the institutional and statewide report cards is to make information available to parents, students, faculty, staff, state policymakers and the general public on the quality and performance of public higher education. The focus of the report cards is to determine annual progress of the commission, the council and institutions under their respective jurisdictions toward achieving state goals and objectives identified in this article and section one-a, article one of this chapter and system goals and objectives contained in the statewide master plans of the commission and council created pursuant to section five of this article.

(b) The information contained in the report cards shall be consistent and comparable between and among state institutions of higher education. If applicable, the information shall allow for easy comparison with higher education-related data collected and disseminated by the Southern Regional Education Board, the United States Department of Education and other education data-gathering and data-disseminating organizations upon which state policymakers frequently rely in setting policy.

(c) The rules required by subsection (c), section one of this article shall provide for the collection, analysis and dissemination of information on the performance of the state institutions of higher education, including health sciences education, in relation to the findings, goals and objectives set forth in this article and section one-a, article one of this chapter and those contained in the statewide master plans of the commission and council developed pursuant to section five of this article.

(1) The objective of this portion of the rule is to ensure that the Legislative Oversight Commission on Education Accountability and others identified in subsection (a) of this section are provided with full and accurate information while minimizing the institutional burden of recordkeeping and reporting.

(2) This portion of the rule shall identify various indicators of student and institutional performance that, at a minimum, must be reported annually, set forth general guidelines for the collection and reporting of data and provide for the preparation, printing and distribution of report cards under this section.

(d) The report cards shall be analysis-driven, rather than simply data-driven, and shall present information in a format that can inform education policymaking. They shall include an executive summary which outlines significant trends, identifies major areas of concern and discusses progress toward meeting state and system goals and objectives. They shall be brief and concise, reporting required information in nontechnical language. Any technical or supporting material to be included shall be contained in a separate appendix.

(e) The statewide report card shall include the data for each separately listed, applicable indicator identified in the rule promulgated pursuant to subsection (c) of this section and the aggregate of the data for all public institutions of higher education.

(f) The statewide report card shall be prepared using actual institutional, state, regional and national data, as applicable and available, indicating the present performance of the individual institutions, the governing boards and the state systems of higher education. Statewide report cards shall be based upon information for the current school year or for the most recent school year for which the information is available, in which case the year shall be clearly noted.

(g) The president or chief executive officer of each state institution of higher education shall prepare and submit annually all requested data to the commission at the times established by the commission.

(h) The higher education central office staff, under the direction of the Vice Chancellor for Administration, shall provide technical assistance to each institution and governing board in data collection and reporting and is responsible for assembling the statewide report card from information submitted by each governing board.

(i) The statewide report card shall be completed and disseminated with copies to the Legislative Oversight Commission on Education Accountability prior to January 1, of each year and the staff of the commission and the council shall prepare a report highlighting specifically the trends, progress toward meeting goals and objectives and major areas of concern for public higher education, including medical education, for presentation to the Legislative Oversight Commission on Education Accountability at the interim meetings in January, 2009, and annually thereafter.

~~(j) Notwithstanding any other provisions of this code to the contrary, the following statutorily mandated reports are not required to be prepared and submitted annually unless a member of the Legislature makes a specific request for a particular report:~~

~~(1) An annual report, pursuant to subsection (a), section forty-eight, article three, chapter five-a of this code, on vehicle fleets;~~

~~(2) An annual report, pursuant to subsection (e), section ten, article one of this chapter, on plans, accomplishments and recommendations in implementing a cooperative relationship between Potomac State College and Eastern West Virginia Community and Technical College;~~

~~(3) An annual report, pursuant to paragraphs (A) and (B), subdivision (10), subsection (a), section four, article one-b of this chapter, concerning higher education performance and enrollment data;~~

~~(4) An annual report, pursuant to paragraph (A), subdivision (11), subsection (b), section six, article two-b of this chapter, concerning community and technical college performance;~~

~~(5) An annual report, pursuant to subsection (b), section seven, article five of this chapter, on all sales of obsolete, unusable or surplus commodities;~~

~~(6) An annual report, pursuant to section eight, article five of this chapter, on purchases from West Virginia businesses;~~

~~(7) An annual report, pursuant to subsection (j), section one, article ten of this chapter, on the amount of auxiliary fees collected to replace state funds subsidizing auxiliary services;~~

~~(8) An annual report, pursuant to subsection (c), section five, article thirteen of this chapter, on technical assistance provided to qualified businesses within approved research parks, research zones or technology centers;~~

~~(9) An annual report, pursuant to subsection (e), section six, article eighteen of this chapter, on the status of the Eminent Scholars Endowment Trust Fund; and~~

~~(10) An annual report, pursuant to subsection (e), section one, article three, chapter eighteen-c of this code, relevant to the health education loan program.~~

~~(k) (j) For a reasonable fee, the Vice Chancellor for Administration shall make copies of the report cards, including any appendices of supporting material, available to any individual requesting them.~~

**§18B-1D-8a. Modification to reporting requirements to the Legislative Oversight Commission on Education Accountability.**

(a) Notwithstanding any other provisions of this code to the contrary, the following statutorily mandated reports are not required to be prepared and submitted annually to the Legislature but this information and data previously contained therein shall be combined with other reports in a manner that reduces the cost and increases the efficacy of those reports. This includes:

(1) All personnel, classification, compensation and human resources reports set out in section four, article one-b of this chapter, section six, article two-b of this chapter and article nine-a of this chapter;

(2) All capital appropriation requests, priorities and campus and state capital development plans set out in section four, article one-b of this chapter, section six, article two-b of this chapter and article nineteen of this chapter;

(3) All academic related matters and reports including those detailing institutional reauthorization at section seven, article four of this chapter; training of institutional Boards of Governors set out in section nine, article one-d of this chapter and section one, article ten of this chapter dealing with institutional compliance with tuition and fee increases;

(4) All financial aid reports including PROMISE, HEAPS, the Higher Education Grant Program, the Nursing Scholarship Program, the Underwood-Smith Teacher Scholarship Program and others set out in chapter eighteen-c of this code.

(b) In order to create more efficiency, reporting deadlines of statutorily or rule mandated reports may be altered, as needed by the Commission without a statutory or rule-making change: *Provided*, That the reports are always provided within any given calendar year.

## **ARTICLE 2B. WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION.**

### **§18B-2B-6. Powers and duties of the council.**

(a) The council is the sole agency responsible for administration of vocational-technical-occupational education and community and technical college education in the state. The council has jurisdiction and authority over the community and technical colleges and the statewide network of independently accredited community and technical colleges as a whole, including community and technical college education programs as defined in section two, article one of this chapter.

(b) The council shall propose rules pursuant to section six, article one of this chapter and article three-a, chapter twenty-nine-a of this code to implement the provisions of this section and applicable provisions of article one-d of this chapter:

(1) To implement the provisions of article one-d of this chapter relevant to community and technical colleges, the council may propose rules jointly with the commission or separately and may choose to address all components of the accountability system in a single rule or may propose additional rules to cover specific components;

(2) The rules pertaining to financing policy and benchmarks and indicators required by this section shall be filed with the Legislative Oversight Commission on Education Accountability by October 1, 2008. Nothing in this subsection requires other rules of the council to be promulgated again under the procedure set forth in article three-a, chapter twenty-nine-a of this code unless such rules are rescinded, revised, altered or amended; and

(3) The Legislature finds that an emergency exists and, therefore, the council shall propose an emergency rule or rules to implement the provisions of this section relating to the financing policy and benchmarks and indicators in accordance with section six, article one of this chapter and article three-

a, chapter twenty-nine-a of this code by October 1, 2008. The emergency rule or rules may not be implemented without prior approval of the Legislative Oversight Commission on Education Accountability.

(c) The council has the following powers and duties relating to the authority established in subsection (a) of this section:

(1) Develop, oversee and advance the public policy agenda for community and technical college education for the purpose of accomplishing the mandates of this section, including, but not limited to, the following:

(A) Achieving the goals and objectives established in articles one and one-d of this chapter;

(B) Addressing the goals and objectives contained in the institutional compacts created pursuant to section seven, article one-d of this chapter; and

(C) Developing and implementing the master plan described in section five, article one-d of this chapter;

(2) Propose a legislative rule pursuant to subsection (b) of this section and article three-a, chapter twenty-nine-a of this code to develop and implement a financing policy for community and technical college education in West Virginia. The rule shall meet the following criteria:

(A) Provide an adequate level of education and general funding for institutions pursuant to section five, article one-a of this chapter;

(B) Serve to maintain institutional assets, including, but not limited to, human and physical resources and deferred maintenance;

(C) Establish a plan for strategic funding to strengthen capacity for support of community and technical college education; and

(D) Establish a plan that measures progress and provides performance-based funding to institutions which make significant progress in the following specific areas:

(i) Achieving the objectives and priorities established in article one-d of this chapter;

(ii) Serving targeted populations, especially working age adults twenty-five years of age and over;

(iii) Providing access to high-cost, high-demand technical programs in every region of the state;

(iv) Increasing the percentage of functionally literate adults in every region of the state; and

(v) Providing high quality community and technical college education services to residents of every region of the state.

(3) Create a policy leadership structure relating to community and technical college education capable of the following actions:

(A) Developing, building public consensus around and sustaining attention to a long-range public policy agenda. In developing the agenda, the council shall seek input from the Legislature and the Governor and specifically from the State Board of Education and local school districts in order to create the necessary linkages to assure smooth, effective and seamless movement of students through the public education and post-secondary education systems and to ensure that the needs of public school courses and programs can be fulfilled by the graduates produced and the programs offered;

(B) Ensuring that the governing boards of the institutions under the council's jurisdiction carry out their duty effectively to govern the individual institutions of higher education; and

(C) Holding each community and technical college and the statewide network of independently accredited community and technical colleges as a whole accountable for accomplishing their missions and achieving the goals and objectives established in articles one, one-d, and three-c of this chapter;

(4) Develop for inclusion in the statewide public agenda, a plan for raising education attainment, increasing adult literacy, promoting workforce and economic development and ensuring access to advanced education for the citizens of West Virginia;

(5) Provide statewide leadership, coordination, support, and technical assistance to the community and technical colleges and to provide a focal point for visible and effective advocacy for their work and for the public policy agendas approved by the commission and council;

(6) Review and adopt annually all institutional compacts for the community and technical colleges pursuant to the provisions of section seven, article one-d of this chapter;

(7) Fulfill the mandates of the accountability system established in article one-d of this chapter and report on progress in meeting established goals, objectives, and priorities to the elected leadership of the state;

(8) Propose a legislative rule pursuant to subsection (b) of this section and article three-a, chapter twenty-nine-a of this code to establish benchmarks and indicators in accordance with the provisions of this subsection;

(9) Establish and implement the benchmarks and performance indicators necessary to measure institutional progress:

(A) In meeting state goals, objectives, and priorities established in articles one and one-d of this chapter;

(B) In carrying out institutional missions; and

(C) In meeting the essential conditions established in article three-c of this chapter;

~~(10) Collect and analyze data relating to the performance of community and technical colleges in every region of West Virginia and report periodically or as directed to the Legislative Oversight Commission on Education Accountability on the progress in meeting the goals and objectives established in articles one and one-d of this chapter.~~

~~Additionally, the council shall report annually during the January interim meetings on a date and at a time and location to be determined by the President of the Senate and the Speaker of the House of Delegates.~~

~~The annual report shall address at least the following:~~

~~(A) The performance of the community and technical college network during the previous fiscal year, including, but not limited to, progress in meeting goals stated in the compacts and progress of the institutions and the network as a whole in meeting the goals and objectives established in articles one and one-d of this chapter;~~

~~(B) The priorities established for capital investment needs pursuant to subdivision (11) of this subsection and the justification for such priority; and~~



~~(C) Recommendations of the council for statutory changes necessary or expedient to achieve established state goals and objectives.~~

~~(14)~~(10) Establish a formal process for identifying needs for capital investments and for determining priorities for these investments for consideration by the Governor and the Legislature as part of the appropriation request process. Notwithstanding the language in subdivision eleven, subsection a, section four, article one-b of this chapter, the commission is not a part of the process for identifying needs for capital investments for the statewide network of independently accredited community and technical colleges;

~~(12)~~(11) Draw upon the expertise available within the Governor's Workforce Investment Office and the West Virginia Development Office as a resource in the area of workforce development and training;

~~(13)~~(12) Acquire legal services that are considered necessary, including representation of the council, its institutions, employees and officers before any court or administrative body, notwithstanding any other provision of this code to the contrary. The counsel may be employed either on a salaried basis or on a reasonable fee basis. In addition, the council may, but is not required to, call upon the Attorney General for legal assistance and representation as provided by law;

~~(14)~~(13) Employ a chancellor for community and technical college education pursuant to section three of this article;

~~(15)~~(14) Employ other staff as necessary and appropriate to carry out the duties and responsibilities of the council consistent with the provisions of section two, article four of this chapter;

~~(16)~~(15) Employ other staff as necessary and appropriate to carry out the duties and responsibilities of the council who are employed solely by the council;

~~(17)~~(16) Provide suitable offices in Charleston for the chancellor and other staff: *Provided*, That the offices may be located outside of Charleston at a technology and research center: *Provided, however*, That the current employees of WVNET shall not be moved from Monongalia County without legislative approval;

~~(18)~~(17) Approve the total compensation package from all sources for presidents of community and technical colleges, as proposed by the governing boards. The governing boards must obtain approval from the council of the total compensation package both when presidents are employed initially and subsequently when any change is made in the amount of the total compensation package;

~~(19)~~(18) Establish and implement policies and procedures to ensure that students may transfer and apply toward the requirements for a degree the maximum number of credits earned at any regionally accredited in-state or out-of-state higher education institution with as few requirements to repeat courses or to incur additional costs as is consistent with sound academic policy;

~~(20)~~(19) Establish and implement policies and programs, jointly with the community and technical colleges, through which students who have gained knowledge and skills through employment, participation in education and training at vocational schools or other education institutions, or internet-based education programs, may demonstrate by competency-based assessment that they have the necessary knowledge and skills to be granted academic credit or advanced placement standing toward the requirements of an associate degree or a bachelor's degree at a state institution of higher education;

~~(21)~~(20) Seek out and attend regional and national meetings and forums on education and workforce development-related topics, as council members consider critical for the performance of

their duties. The council shall keep abreast of national and regional community and technical college education trends and policies to aid members in developing the policies for this state that meet the education goals and objectives established in articles one and one-d of this chapter;

~~(22)~~(21) Assess community and technical colleges for the payment of expenses of the council or for the funding of statewide services, obligations or initiatives related specifically to the provision of community and technical college education;

~~(23)~~(22) Promulgate rules allocating reimbursement of appropriations, if made available by the Legislature, to community and technical colleges for qualifying noncapital expenditures incurred in the provision of services to students with physical, learning or severe sensory disabilities;

~~(24)~~(23) Assume the prior authority of the commission in examining and approving tuition and fee increase proposals submitted by community and technical college governing boards as provided in section one, article ten of this chapter;

~~(25)~~(24) Develop and submit to the commission, a single budget for community and technical college education that reflects recommended appropriations for community and technical colleges and that meets the following conditions:

(A) Incorporates the provisions of the financing rule mandated by this section to measure and provide performance funding to institutions which achieve or make significant progress toward achieving established state objectives and priorities;

(B) Considers the progress of each institution toward meeting the essential conditions set forth in section three, article three-c of this chapter, including independent accreditation; and

(C) Considers the progress of each institution toward meeting the goals, objectives, and priorities established in article one-d of this chapter and its approved institutional compact.

~~(26)~~(25) Administer and distribute the independently accredited community and technical college development account;

~~(27)~~(26) Establish a plan of strategic funding to strengthen capacity for support and assure delivery of high quality community and technical college education in all regions of the state;

~~(28)~~(27) Foster coordination among all state-level, regional and local entities providing post-secondary vocational education or workforce development and coordinate all public institutions and entities that have a community and technical college mission;

~~(29)~~(28) Assume the principal responsibility for oversight of those community and technical colleges seeking independent accreditation and for holding governing boards accountable for meeting the essential conditions pursuant to article three-c of this chapter;

~~(30)~~(29) Advise and consent in the appointment of the presidents of the community and technical colleges pursuant to section six, article one-b of this chapter. The role of the council in approving a president is to assure through personal interview that the person selected understands and is committed to achieving the goals and objectives established in the institutional compact and in articles one, one-d and three-c of this chapter;

~~(31)~~(30) Provide a single, statewide link for current and prospective employers whose needs extend beyond one locality;

~~(32)~~(31) Provide a mechanism capable of serving two or more institutions to facilitate joint problem-solving in areas including, but not limited to the following:

(A) Defining faculty roles and personnel policies;

(B) Delivering high-cost technical education programs across the state;

(C) Providing one-stop service for workforce training to be delivered by multiple institutions; and

(D) Providing opportunities for resource-sharing and collaborative ventures;

~~(33)~~(32) Provide support and technical assistance to develop, coordinate, and deliver effective and efficient community and technical college education programs and services in all regions of the state;

~~(34)~~(33) Assist the community and technical colleges in establishing and promoting links with business, industry and labor in the geographic areas for which each community and technical college is responsible;

~~(35)~~(34) Develop alliances among the community and technical colleges for resource sharing, joint development of courses and courseware, and sharing of expertise and staff development;

~~(36)~~(35) Serve aggressively as an advocate for development of a seamless curriculum;

~~(37)~~(36) Cooperate with all providers of education services in the state to remove barriers relating to a seamless system of public and higher education and to transfer and ~~articulation~~ articulate between and among community and technical colleges, state colleges and universities and public education, preschool through grade twelve;

~~(38)~~(37) Encourage the most efficient use of available resources;

~~(39)~~(38) Coordinate with the commission in informing public school students, their parents and teachers of the academic preparation that students need in order to be prepared adequately to succeed in their selected fields of study and career plans, including presentation of academic career fairs;

~~(40)~~(39) Jointly with the commission, approve and implement a uniform standard, as developed by the chancellors, to determine which students shall be placed in remedial or developmental courses. The standard shall be aligned with college admission tests and assessment tools used in West Virginia and shall be applied uniformly by the governing boards throughout the public higher education system. The chancellors shall develop a clear, concise explanation of the standard which the governing boards shall communicate to the State Board of Education and the State Superintendent of Schools;

~~(41)~~(40) Develop and implement strategies and curriculum for providing developmental education which shall be applied by any state institution of higher education providing developmental education;

~~(42)~~(41) Develop a statewide system of community and technical college programs and services in every region of West Virginia for competency-based certification of knowledge and skills, including a statewide competency-based associate degree program;

~~(43)~~(42) Review and approve all institutional master plans for the community and technical colleges pursuant to section four, article two-a of this chapter;

~~(44)~~(43) Propose rules for promulgation pursuant to subsection (b) of this section and article three-a, chapter twenty-nine-a of this code that are necessary or expedient for the effective and efficient performance of community and technical colleges in the state;

~~(45)~~(44) In its sole discretion, transfer any rule under its jurisdiction, other than a legislative rule, to the jurisdiction of the governing boards who may rescind, revise, alter or amend any rule transferred pursuant to rules adopted by the council and provide technical assistance to the institutions under its jurisdiction to aid them in promulgating rules;

~~(46)~~(45) Develop for inclusion in the higher education report card, as defined in section eight, article one-d of this chapter, a separate section on community and technical colleges. This section shall include, but is not limited to, evaluation of the institutions based upon the benchmarks and indicators developed in subdivision (9) of this subsection;

~~(47)~~(46) Facilitate continuation of the Advantage Valley Community College Network under the leadership and direction of Marshall Community and Technical College;

~~(48)~~(47) Initiate and facilitate creation of other regional networks of affiliated community and technical colleges that the council finds to be appropriate and in the best interests of the citizens to be served;

~~(49)~~(48) Develop with the State Board of Education plans for secondary and post-secondary vocational-technical-occupational and adult basic education, including, but not limited to the following:

(A) Policies to strengthen vocational-technical-occupational and adult basic education; and

(B) Programs and methods to assist in the improvement, modernization and expanded delivery of vocational-technical-occupational and adult basic education programs;

~~(50)~~(49) Distribute federal vocational education funding provided under the Carl D. Perkins Vocational and Technical Education Act of 1998, PL 105-332, with an emphasis on distributing financial assistance among secondary and post-secondary vocational-technical-occupational and adult basic education programs to help meet the public policy agenda.

In distributing funds the council shall use the following guidelines:

(A) The State Board of Education shall continue to be the fiscal agent for federal vocational education funding;

(B) The percentage split between the State Board of Education and the council shall be determined by rule promulgated by the council under the provisions of article three-a, chapter twenty-nine-a of this code. The council shall first obtain the approval of the State Board of Education before proposing a rule;

~~(51)~~(50) Collaborate, cooperate and interact with all secondary and post-secondary vocational-technical-occupational and adult basic education programs in the state, including the programs assisted under the federal Carl D. Perkins Vocational and Technical Education Act of 1998, PL 105-332, and the Workforce Investment Act of 1998, to promote the development of seamless curriculum and the elimination of duplicative programs;

~~(52)~~(51) Coordinate the delivery of vocational-technical-occupational and adult basic education in a manner designed to make the most effective use of available public funds to increase accessibility for students;

~~(53)~~(52) Analyze and report to the State Board of Education on the distribution of spending for vocational-technical-occupational and adult basic education in the state and on the availability of vocational-technical-occupational and adult basic education activities and services within the state;

~~(54)~~(53) Promote the delivery of vocational-technical-occupational education, adult basic education and community and technical college education programs in the state which emphasize the involvement of business, industry and labor organizations;

~~(55)~~(54) Promote public participation in the provision of vocational-technical-occupational education, adult basic education and community and technical education at the local level, emphasizing programs which involve the participation of local employers and labor organizations;

~~(56)~~(55) Promote equal access to quality vocational-technical-occupational education, adult basic education and community and technical college education programs to handicapped and disadvantaged individuals, adults in need of training and retraining, single parents, homemakers, participants in programs designed to eliminate sexual bias and stereotyping and criminal offenders serving in correctional institutions;

~~(57)~~(56) Meet annually between the months of October and December with the Advisory Committee of Community and Technical College Presidents created pursuant to section eight of this article to discuss those matters relating to community and technical college education in which advisory committee members or the council may have an interest;

~~(58)~~(57) Accept and expend any gift, grant, contribution, bequest, endowment or other money for the purposes of this article;

~~(59)~~(58) Assume the powers set out in section nine of this article. The rules previously promulgated by the State College System Board of Directors pursuant to that section and transferred to the commission are hereby transferred to the council and shall continue in effect until rescinded, revised, altered or amended by the council;

~~(60)~~(59) Pursuant to the provisions of subsection (b) of this section and article three-a, chapter twenty-nine-a of this code, promulgate a uniform joint legislative rule with the commission for the purpose of standardizing, as much as possible, the administration of personnel matters among the institutions of higher education;

~~(64)~~(60) Determine when a joint rule among the governing boards of the community and technical colleges is necessary or required by law and, in those instances and in consultation with the governing boards, promulgate the joint rule;

~~(62)~~(61) Promulgate a joint rule with the commission establishing tuition and fee policy for all institutions of higher education. The rule shall include, but is not limited to, the following:

- (A) Comparisons with peer institutions;
- (B) Differences among institutional missions;
- (C) Strategies for promoting student access;
- (D) Consideration of charges to out-of-state students; and
- (E) Any other policies the commission and council consider appropriate;

~~(63)~~(62) In cooperation with the West Virginia Division of Highways, study a method for increasing the signage signifying community and technical college locations along the state interstate highways, and report to the Legislative Oversight Commission on Education Accountability regarding any recommendations and required costs; and

~~(64)~~(63) Implement a policy jointly with the commission whereby any course credit earned at a community and technical college transfers for program credit at any other state institution of higher education and is not limited to fulfilling a general education requirement.

(d) In addition to the powers and duties listed in subsections (a), (b) and (c) of this section, the council has the following general powers and duties related to its role in developing, articulating and overseeing the implementation of the public policy agenda for community and technical colleges:

(1) Planning and policy leadership including a distinct and visible role in setting the state's policy agenda for the delivery of community and technical college education and in serving as an agent of change;

(2) Policy analysis and research focused on issues affecting the community and technical college network as a whole or a geographical region thereof;

(3) Development and implementation of each community and technical college mission definition including use of incentive and performance funds to influence institutional behavior in ways that are consistent with achieving established state goals, objectives, and priorities;

(4) Academic program review and approval for the institutions under its jurisdiction, including the use of institutional missions as a template to judge the appropriateness of both new and existing programs and the authority to implement needed changes;

(5) Development of budget and allocation of resources for institutions delivering community and technical college education, including reviewing and approving institutional operating and capital budgets and distributing incentive and performance-based funding;

(6) Acting as the agent to receive and disburse public funds related to community and technical college education when a governmental entity requires designation of a statewide higher education agency for this purpose;

(7) Development, establishment and implementation of information, assessment and internal accountability systems, including maintenance of statewide data systems that facilitate long-term planning and accurate measurement of strategic outcomes and performance indicators for community and technical colleges;

(8) Jointly with the commission, development, establishment and implementation of policies for licensing and oversight of both public and private degree-granting and nondegree-granting institutions that provide post-secondary education courses or programs;

(9) Development, implementation and oversight of statewide and regionwide projects and initiatives related specifically to providing community and technical college education such as those using funds from federal categorical programs or those using incentive and performance-based funding from any source; and

(10) Quality assurance that intersects with all other duties of the council particularly in the areas of planning, policy analysis, program review and approval, budgeting and information and accountability systems.

(e) The council may withdraw specific powers of a governing board under its jurisdiction for a period not to exceed two years if the council makes a determination that any of the following conditions exist:

(1) The governing board has failed for two consecutive years to develop an institutional compact as required in section seven, article one-d of this chapter;

(2) The council has received information, substantiated by independent audit, of significant mismanagement or failure to carry out the powers and duties of the board of governors according to state law; or

(3) Other circumstances which, in the view of the council, severely limit the capacity of the board of governors to carry out its duties and responsibilities.

The period of withdrawal of specific powers may not exceed two years during which time the council is authorized to take steps necessary to reestablish the conditions for restoration of sound, stable and responsible institutional governance.

(f) In addition to the powers and duties provided for in subsections (a), (b), (c) and (d) of this section and any others assigned to it by law, the council has those powers and duties necessary or expedient to accomplish the purposes of this article; and

(g) When the council and commission, each, is required to consent, cooperate, collaborate or provide input into the actions of the other the following conditions apply:

(1) The body acting first shall convey its decision in the matter to the other body with a request for concurrence in the action;

(2) The commission or the council, as the receiving body, shall place the proposal on its agenda and shall take final action within sixty days of the date when the request for concurrence is received; and

(3) If the receiving body fails to take final action within sixty days, the original proposal stands and is binding on both the commission and the council.

## **ARTICLE 2C. WEST VIRGINIA COMMUNITY AND TECHNICAL COLLEGE.**

### **§18B-2C-3. Authority and duty of council to determine progress of community and technical colleges; conditions; authority to create West Virginia Community and Technical College.**

(a) The council annually shall review and analyze all the state community and technical colleges, and any branches, centers, regional centers or other delivery sites with a community and technical college mission, to determine their progress toward meeting the goals, objectives, priorities, and essential conditions established in articles one, one-d and three-c of this chapter.

(b) The analysis required in subsection (a) of this section shall be based, in whole or in part, upon the findings made pursuant to the rule establishing benchmarks and indicators promulgated by the council pursuant to section six, article two-b of this chapter.

(c) Based upon their analysis in subsections (a) and (b) of this section, the council shall make a determination whether any one or more of the following conditions exists:

(1) A community and technical college required to do so has not achieved or is not making sufficient, satisfactory progress toward achieving the essential conditions, including independent accreditation;

(2) One or more of the public community and technical colleges, branches, centers, regional centers and other delivery sites with a community and technical college mission requires financial assistance or other support to meet the goals and essential conditions set forth in this chapter;

(3) It is in the best interests of the people of the state or a region within the state to have a single, accredited institution which can provide an umbrella of statewide accreditation;

(4) One or more of the state community and technical colleges, branches, centers, regional centers or other delivery sites with a community and technical college mission requests from the council the type of assistance which can best be delivered through implementation of the provisions of section four of this article. Institutional requests that may be considered by the council include, but are not limited to, assistance in seeking and/or attaining independent accreditation, in meeting the goals, priorities and essential conditions established in articles one, one-d and three-c of this chapter, or in establishing and implementing regional networks;

(5) One or more state community and technical colleges, branches, centers, regional centers or other delivery sites with a community and technical college mission has not achieved, or is not making sufficient, satisfactory progress toward achieving, the goals, objectives and essential conditions established in articles one, one-d and three-c of this chapter; and

(6) The council determines that it is in the best interests of the people of the state or a region of the state to create a statewide, independently accredited community and technical college.

(d) The council may not make a determination subject to the provisions of this section that a condition does not exist based upon a finding that the higher education entity lacks sufficient funds to make sufficient, satisfactory progress.

~~(e) By December 1, annually, the council shall prepare and file with the Legislative Oversight Commission on Education Accountability a written report on the findings and determinations required by this section, together with a detailed history of any actions taken by the council under the authority of this article.~~

#### **ARTICLE 3D. WORKFORCE DEVELOPMENT INITIATIVE.**

##### **§18B-3D-2. Workforce Development Initiative Program continued; purpose; program administration; rule required.**

(a) The Workforce Development Initiative Program is continued under the supervision of the council. The purpose of the program is to administer and oversee grants to community and technical colleges to implement the provisions of this article in accordance with legislative intent.

(b) It is the responsibility of the council to administer the state fund for community and technical college and workforce development, including setting criteria for grant applications, receiving applications for grants, making determinations on distribution of funds and evaluating the performance of workforce development initiatives.

(c) The chancellor, under the direction of the council, shall review and approve the expenditure of all grant funds, including development of application criteria, the review and selection of applicants for funding and the annual review and justification of applicants for grant renewal.

(1) To aid in decisionmaking, the Chancellor appoints an advisory committee consisting of the Executive Director of the West Virginia Development Office or designee; the Secretary of Education and the Arts or designee; the Assistant State Superintendent for Technical and Adult Education; the Chair of the West Virginia Council for Community and Technical College Education; the Chair of the West Virginia Workforce Investment Council; the Executive Director of Workforce West Virginia; two members representing business and industry; and one member representing labor. The advisory committee shall review all applications for workforce development initiative grants and make recommendations for distributing grant funds to the council. The advisory committee also shall make recommendations on methods to share among the community and technical colleges any curricula developed as a result of a workforce development initiative grant.



(2) When determining which grant proposals will be funded, the council shall give special consideration to proposals by community and technical colleges that involve businesses with fewer than fifty employees.

(3) The council shall weigh each proposal to avoid awarding grants which will have the ultimate effect of providing unfair advantage to employers new to the state who will be in direct competition with established local businesses.

(d) The council may allocate a reasonable amount, not to exceed five percent up to a maximum of \$50,000 of the funds available for grants on an annual basis, for general program administration.

~~(e) The council shall report to the Legislative Oversight Commission on Education Accountability and the Legislative Oversight Commission on Workforce Investment for Economic Development on the status of the Workforce Development Initiative Program annually by December 1.~~

~~(f)~~(e) Moneys appropriated or otherwise available for the Workforce Development Initiative Program shall be allocated by line item to an appropriate account. Any moneys remaining in the fund at the close of a fiscal year are carried forward for use in the next fiscal year.

~~(g)~~(f) Nothing in this article requires a specific level of appropriation by the Legislature.

## **ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.**

### **§18B-10-1. Enrollment, tuition and other fees at education institutions; refund of fees.**

(a) Each governing board shall fix tuition and other fees for each academic term for the different classes or categories of students enrolling at the state institution of higher education under its jurisdiction and may include among the tuition and fees any one or more of the following as defined in section one-b of this article:

- (1) Tuition and required educational and general fees;
- (2) Auxiliary and auxiliary capital fees; and
- (3) Required educational and general capital fees.

(b) A governing board may establish a single special revenue account for each of the following classifications of fees:

- (1) All tuition and required educational and general fees collected;
- (2) All auxiliary and auxiliary capital fees collected; and

(3) All required educational and general capital fees collected to support existing systemwide and institutional debt service and future systemwide and institutional debt service, capital projects and campus renewal for educational and general facilities.

(4) Subject to any covenants or restrictions imposed with respect to revenue bonds payable from the accounts, a governing board may expend funds from each special revenue account for any purpose for which funds were collected within that account regardless of the original purpose for which the funds were collected.

(c) The purposes for which tuition and fees may be expended include, but are not limited to, health services, student activities, recreational, athletic and extracurricular activities. Additionally, tuition and fees may be used to finance a ~~students'~~ student's attorney to perform legal services for students in

civil matters at the institutions. The legal services are limited to those types of cases, programs or services approved by the president of the institution where the legal services are to be performed.

(d) By October 1, 2011, the commission and council each shall propose a rule for legislative approval in accordance with article three-a, chapter twenty-nine-a of this code to govern the fixing, collection and expenditure of tuition and other fees by the governing boards under their respective jurisdictions.

(e) The schedule of all tuition and fees, and any changes in the schedule, shall be entered in the minutes of the meeting of the appropriate governing board and the board shall file with the commission or council, or both, as appropriate, and the Legislative Auditor a certified copy of the schedule and changes.

(f) The governing boards shall establish the rates to be charged full-time students, as defined in section one-b of this article, who are enrolled during a regular academic term.

(1) Undergraduate students taking fewer than twelve credit hours in a regular term shall have their fees reduced pro rata based upon one twelfth of the full-time rate per credit hour and graduate students taking fewer than nine credit hours in a regular term shall have their fees reduced pro rata based upon one ninth of the full-time rate per credit hour.

(2) Fees for students enrolled in summer terms or other nontraditional time periods shall be prorated based upon the number of credit hours for which the student enrolls in accordance with this subsection.

(g) All fees are due and payable by the student upon enrollment and registration for classes except as provided in this subsection:

(1) The governing boards shall permit fee payments to be made in installments over the course of the academic term. All fees shall be paid prior to awarding course credit at the end of the academic term.

(2) The governing boards also shall authorize the acceptance of credit cards or other payment methods which may be generally available to students for the payment of fees. The governing boards may charge the students for the reasonable and customary charges incurred in accepting credit cards and other methods of payment.

(3) If a governing board determines that a student's finances are affected adversely by a legal work stoppage, it may allow the student an additional six months to pay the fees for any academic term. The governing board shall determine on a case-by-case basis whether the finances of a student are affected adversely.

(4) The commission and council jointly shall propose a rule in accordance with article three-a, chapter twenty-nine-a of this code defining conditions under which a governing board may offer tuition and fee deferred payment plans itself or through third parties.

(5) A governing board may charge interest or fees for any deferred or installment payment plans.

(h) In addition to the other fees provided in this section, each governing board may impose, collect and distribute a fee to be used to finance a nonprofit, student-controlled public interest research group if the students at the institution demonstrate support for the increased fee in a manner and method established by that institution's elected student government. The fee may not be used to finance litigation against the institution.

(i) Governing boards shall retain tuition and fee revenues not pledged for bonded indebtedness or other purposes in accordance with the tuition rules proposed by the commission and council pursuant to this section. The tuition rules shall address the following areas:

(1) Providing a basis for establishing nonresident tuition and fees;

(2) Allowing governing boards to charge different tuition and fees for different programs;

(3) Authorizing a governing board to propose to the commission, council or both, as appropriate, a mandatory auxiliary fee under the following conditions:

(A) The fee shall be approved by the commission, council or both, as appropriate, and either the students below the senior level at the institution or the Legislature before becoming effective;

(B) Increases may not exceed previous state subsidies by more than ten percent;

(C) The fee may be used only to replace existing state funds subsidizing auxiliary services such as athletics or bookstores;

(D) If the fee is approved, the amount of the state subsidy shall be reduced annually by the amount of money generated for the institution by the fees. All state subsidies for the auxiliary services shall cease five years from the date the mandatory auxiliary fee is implemented;

~~(E) The commission or council or both, as appropriate, shall certify to the Legislature annually by October 1 the amount of fees collected for each of the five years;~~

(4) Establishing methodology, where applicable, to ensure that, within the appropriate time period under the compact, community and technical college tuition rates for students in all community and technical colleges will be commensurate with the tuition and fees charged by their peer institutions.

(j) A penalty may not be imposed by the commission or council upon any governing board based upon the number of nonresidents who attend the institution unless the commission or council determines that admission of nonresidents to any institution or program of study within the institution is impeding unreasonably the ability of resident students to attend the institution or participate in the programs of the institution. The governing boards shall report annually to the commission or council on the numbers of nonresidents and any other enrollment information the commission or council may request.

(k) Tuition and fee increases of the governing boards, including the governing boards of Marshall University and West Virginia University, are subject to rules adopted by the commission and council pursuant to this section and in accordance with article three-a, chapter twenty-nine-a of this code. The commission or council, as appropriate, shall examine individually each request from a governing board for an increase and make its determinations as follows:

(1) A tuition and fee increase greater than five percent for resident students proposed by a governing board requires the approval of the commission or council, as appropriate.

(2) A fee used solely for the purpose of complying with the athletic provisions of 20 U. S. C. §1681, *et seq.*, known as Title IX of the Education Amendment of 1972, is exempt from the limitations on fee increases set forth in this subsection for three years from the effective date of the section.

(3) In determining whether to approve or deny a governing board's request for a tuition and/or fee increase for resident students greater than the increases granted pursuant to subdivision (1) of this subsection, the commission or council shall determine the progress the governing board has made toward meeting the conditions outlined in this subsection and shall make this determination the

predominate factor in its decision. The commission or council shall consider the degree to which each governing board has met the following conditions:

(A) Maximizes resources available through nonresident tuition and fee charges to the satisfaction of the commission or council;

(B) Consistently achieves the benchmarks established in the compact pursuant to article one-d of this chapter;

(C) Continuously pursues the statewide goals for post-secondary education and the statewide compact established in this chapter;

(D) Demonstrates to the satisfaction of the commission or council that an increase will be used to maintain high-quality programs at the institution;

(E) Demonstrates to the satisfaction of the commission or council that the governing board is making adequate progress toward achieving the goals for education established by the southern regional education board;

(F) Demonstrates to the satisfaction of the commission or council that the governing board has considered the average per capita income of West Virginia families and their ability to pay for any increases; and

(G) Demonstrates to the satisfaction of the commission or council that base appropriation increases have not kept pace with recognized nation-wide inflationary benchmarks;

(4) This section does not require equal increases among governing boards nor does it require any level of increase by a governing board.

(5) The commission and council shall report to the Legislative Oversight Commission on Education Accountability regarding the basis for approving or denying each request as determined using the criteria established in this subsection.

### **ARTICLE 13. HIGHER EDUCATION – INDUSTRY PARTNERSHIPS.**

#### **§18B-13-5. Use of state property and equipment; faculty.**

(a) The governing boards are authorized to provide for the low cost and economical use and sharing of state property and equipment, including computers, research labs and other scientific and necessary equipment to assist any qualified business within an approved research park or zone or technology center. The Commission shall approve a schedule of nominal or reduced-cost reimbursements to the state for such use.

(b) The governing boards shall develop and provide for a program of release time, sabbaticals or other forms of faculty involvement or participation with any qualifying business.

(c) The Legislature finds that cooperation, communication and coordination are integral components of higher education's involvement in economic development. In order to proceed in a manner that is cost effective and time efficient, it is the duty of the Commission to review and coordinate such aspects of the programs administered by the governing boards. The review and coordination may not operate to affect adversely sources of funding or any statutory characterization of any program as an independent entity. ~~The Commission shall report annually to the Legislature and the Governor. The report shall contain the following information:~~

~~(1) The number of seminars and workshops conducted;~~

- ~~(2) The subject matter addressed in each seminar and workshop;~~
- ~~(3) The number of feasibility studies conducted and the subject matter contained in each study;~~
- ~~(4) An accounting of the cost of all travel expenses, seminars, workshops and feasibility studies;~~  
and
- ~~(5) The extent to which the authority provided for in subsection (b) of this section has been exercised, stating specifically the names of the institutions and faculty members involved in the program.~~

#### **ARTICLE 18. EMINENT SCHOLARS ENDOWMENT TRUST FUND ACT.**

##### **§18B-18-6. Duties of Higher Education Policy Commission.**

The Higher Education Policy Commission shall:

- (a) Establish documentation standards and review procedures to determine the eligibility of donor gifts to participate in the eminent scholars program when the gift is initially received or whenever the terms are significantly changed;
- (b) Require that each participating institution report on total gifts received, investment earnings realized and anticipated expenditures in its annual operating budget request;
- (c) Annually develop and submit a consolidated budget request for the eminent scholars program to the Governor for the fiscal year beginning on July 1, 2003. The budget request shall include a request for an appropriation by the Legislature to each institutional account each fiscal year in an amount equal to the investment earnings in the previous fiscal year which are intended for use in the fiscal year to supplement the salaries of eminent scholars;
- (d) Allocate any funds appropriated by the Legislature among the participating institutions in equal installments at the beginning of each quarter; ~~and~~
- ~~(e) Submit to the Legislature no later than December 1, of each year an annual report on the status of the programs, the qualifications and accomplishments of the eminent scholars, the value of endowment holdings, the investment earnings realized and salary supplements paid.~~

#### **CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS AND STATE AID.**

##### **ARTICLE 3. HEALTH PROFESSIONALS STUDENT LOAN PROGRAM.**

##### **§18C-3-4. Nursing Scholarship Program; Center for Nursing Fund; administration; scholarship awards; service requirements.**

(a) There is continued in the State Treasury a special revenue account known as the "Center for Nursing Fund" to be administered by the commission to implement the provisions of this section and article seven-b, chapter thirty of this code. Any moneys in the account on the effective date of this section are transferred to the commission's administrative authority. Balances remaining in the fund at the end of the fiscal year do not expire or revert to the general revenue. All costs associated with the administration of this section and article seven-b, chapter thirty of this code shall be paid from the Center for Nursing Fund under the direction of the Vice Chancellor for Administration. Administrative costs are to be minimized and the maximum amount feasible is to be used to fund awards for students in nursing programs.

- (b) The account is funded from the following sources:

(1) A supplemental licensure fee, not to exceed \$10 per year, to be paid by all nurses licensed by the Board of Examiners for Registered Professional Nurses, pursuant to section eight-a, article seven, chapter thirty of this code, and the Board of Examiners for Licensed Practical Nurses, pursuant to section seven-a, article seven-a, chapter thirty of this code;

(2) Repayments, including interest as set by the Vice Chancellor for Administration, collected from recipients who fail to practice or teach in West Virginia under the terms of the scholarship agreement; and

(3) Any other funds from any source as may be added to the account.

(c) In consultation with the board of directors of the West Virginia Center for Nursing, established pursuant to article seven-b, chapter thirty of this code, the commission shall administer a scholarship, designated the Nursing Scholarship Program, designed to benefit nurses who practice in hospitals and other health care institutions or teach in state nursing programs.

(1) Awards are available for students enrolled in accredited nursing programs in West Virginia. A recipient shall execute an agreement to fulfill a service requirement or repay the amount of any award received.

(2) Awards are made as follows, subject to the rule required by this section:

(A) An award for any student may not exceed the full cost of education for program completion.

(B) An award of up to \$3,000 is available for a student in a licensed practical nurse education program. A recipient is required to practice nursing in West Virginia for one year following program completion.

(C) An award of up to \$7,500 is available for a student who has completed one-half of a registered nurse education program. A recipient is required to teach or practice nursing in West Virginia for two years following program completion.

(D) An award of up to \$15,000 is available to a student in a nursing master's degree program or a doctoral nursing or education program. A recipient is required to teach in West Virginia for two years following program completion.

(E) An award of up to \$1,000 per year is available for a student obtaining a licensed practical nurse teaching certificate. A recipient is required to teach in West Virginia for one year per award received.

(d) An award recipient shall satisfy one of the following conditions:

(1) Fulfill the service requirement pursuant to this section and the legislative rule; or

(2) Repay the commission for the amount awarded, together with accrued interest as stipulated in the service agreement.

(e) The commission shall promulgate a rule for legislative approval pursuant to article three-a, chapter twenty-nine-a of this code to implement and administer this section. The rule shall provide for the following:

(1) Eligibility and selection criteria for program participation;

(2) Terms of a service agreement which a recipient shall execute as a condition of receiving an award;

- (3) Repayment provisions for a recipient who fails to fulfill the service requirement;
- (4) Forgiveness options for death or disability of a recipient;
- (5) An appeal process for students denied participation or ordered to repay awards; and
- (6) Additional provisions as necessary to implement this section.

~~(f) The commission shall report annually by December 1, to the Legislative Oversight Commission on Health and Human Resources Accountability and the Legislative Oversight Commission on Education Accountability on the number of award recipients and all other matters relevant to the provisions of this section.~~

## **ARTICLE 5. HIGHER EDUCATION GRANT PROGRAM.**

### **§18C-5-7. Higher education adult part-time student grant program.**

(a) There is established the higher education adult part-time student grant program, referred to in this section as the HEAPS grant program. The grant program established and authorized by this section is administered by the vice chancellor for administration. Moneys appropriated or otherwise available for the grant program shall be allocated by line item to an appropriate account. Any moneys remaining in the fund at the close of a fiscal year shall be carried forward for use in the next fiscal year.

(b) As used in this section, the following terms have the meanings ascribed to them:

(1) "Approved distance education" means a course of study offered via electronic access that has been approved for inclusion in the applicant's program of study by the eligible institution of higher education at which the applicant is enrolled or has been accepted for enrollment;

(2) "Part-time" means enrollment for not less than three nor more than eleven semester or term hours: *Provided*, That in the case of enrollment in postsecondary certificate, industry recognized credential and other skill development programs in demand occupations in this state, "part-time" means enrollment on such basis as is established for the program in which enrolled;

(3) "Satisfactory academic progress" means maintaining a cumulative grade point average of at least 2.0 on a 4.0 grading scale with a goal of obtaining a certificate, associate degree or bachelor's degree. In the case of postsecondary certificate, industry recognized credential and other skill development programs, satisfactory academic progress means continuous advancement toward completion of the program on the normal schedule established for the program in which enrolled;

(4) "Eligible institution" means:

(A) Any community college; community and technical college; adult technical preparatory education program or training;

(B) Any state college or university, as those terms are defined in section two, article one, chapter eighteen-b of this code;

(C) Any approved institution of higher education as that term is defined in section two of this article; and

(D) Any approved distance education, including world wide web based courses;

(5) "Eligible program or programs" or "eligible course or courses" means, in addition to programs and courses offered by eligible institutions as defined in subdivision (4) of this subsection:

(A) Programs and courses offered by any nationally accredited degree granting institution of higher learning permitted pursuant to section five, article three, chapter eighteen-b of this code and approved by the joint commission for vocational-technical-occupational education; and

(B) Any postsecondary certificate, industry recognized credential and other skill development programs of study as defined in this section in a demand occupation in this state;

(6) "State resident" means a student who has lived in West Virginia continuously for a minimum of twelve months immediately preceding the date of application for a HEAPS grant or renewal of a grant;

(7) "Postsecondary certificate program" means an organized program of study, approved by the joint commission for vocational-technical-occupational education, with defined competencies or skill sets that may be offered for credit or noncredit and which culminates in the awarding of a certificate: *Provided*, That postsecondary certificate programs offered by eligible institutions as defined in subdivision (4) of this subsection do not require the approval of the joint commission for vocational-technical-occupational education;

(8) "Demand occupation" means any occupation having documented verification from employers that job opportunities in that occupation are currently available or are projected to be available within a year within the state or regions of the state. The joint commission for vocational-technical-occupational education shall prepare and update annually a list of occupations that they determine meet the requirements of this definition;

(9) "Industry-recognized credential program" means an organized program that meets nationally recognized standards in a particular industry, is approved by the joint commission for vocational-technical-occupational education and which culminates in the awarding of a certification or other credential commonly recognized in that industry: *Provided*, That industry recognized credential programs offered by eligible institutions as defined in subdivision (4) of this subsection do not require the approval of the joint commission for vocational-technical-occupational education; and

(10) "Skill development program" means a structured sequence or set of courses, approved by the joint commission for vocational-technical-occupational education, with defined competencies that are designed to meet the specific skill requirements of an occupation and which culminates in the awarding of a certificate of completion that specifically lists the competencies or skills mastered: *Provided*, That skill development programs offered by eligible institutions as defined in subdivision (4) of this subsection do not require the approval of the joint commission.

(c) A person is eligible for consideration for a HEAPS grant if the person:

(1) Demonstrates that he or she has applied for, accepted, or both, other student financial assistance in compliance with federal financial aid rules, including the federal Pell grant;

(2) Demonstrates financial need for funds, as defined by legislative rule;

(3) Is a state resident and may not be considered a resident of any other state;

(4) Is a United States citizen or permanent resident thereof;

(5) Is not incarcerated in a correctional facility;

(6) Is not in default on a higher education loan; and

(7) Is enrolled in a program of study at less than the graduate level on a part-time basis in an eligible institution or program of study and is making satisfactory academic progress at the time of



application: *Provided*, That the requirement that the student be making satisfactory academic progress may not preclude a HEAPS grant award to a student who has been accepted for enrollment in an eligible institution or program of study but has not yet been enrolled.

(d) Each HEAPS grant award is eligible for renewal until the course of study is completed, but not to exceed an additional nine years beyond the first year of the award.

(e) The Higher Education Policy Commission shall propose a legislative rule pursuant to article three-a, chapter twenty-nine-a of this code to implement the provisions of this section which shall be filed with the Legislative Oversight Commission on Education Accountability by September 1, 2003. The Legislature hereby declares that an emergency situation exists and, therefore, the policy commission may establish, by emergency rule, under the procedures of article three-a, chapter twenty-nine-a of this code, a rule to implement the provisions of this section, after approval by the Legislative Oversight Commission on Education Accountability.

(f) The legislative rule shall provide at least the following:

(1) That consideration of financial need, as required by subdivision (3), subsection (c) of this section, include the following factors:

(A) Whether the applicant has dependents as defined by federal law;

(B) Whether the applicant has any personal hardship as determined at the discretion of the vice chancellor for administration; and

(C) Whether the applicant will receive any other source of student financial aid during the award period.

(2) That an appropriate allocation process be provided for distribution of funds directly to the eligible institutions or programs based on the part-time enrollment figures of the prior year;

(3) That not less than twenty-five percent of the funds appropriated in any one fiscal year be used to make grants to students enrolled in postsecondary certificate, industry recognized credential and other skill development programs of study: *Provided*, That after giving written notice to the Legislative Oversight Commission on Education Accountability, the vice chancellor for administration may allocate less than twenty-five percent of the funds for such grants;

(4) That ten percent of the funds appropriated in any one fiscal year shall be granted to state community and technical colleges by the council for community and technical college education in accordance with a process specified in the rule for noncredit and customized training programs which further the economic development goals of the state, help meet the training and skill upgrade needs of employers in the state, and for which funds are not available from other sources;

(5) That any funds not expended by an eligible institution or program at the end of each fiscal year shall be returned to the vice chancellor for administration for distribution under the provisions of this section;

(6) That grants under this section shall be available for approved distance education throughout the calendar year, subject only to the availability of funds; and

(7) That the amount of each HEAPS grant award be determined using the following guidelines:

(A) The amount of any HEAPS grant awarded to a student per semester, term hour or program for those students who are enrolled in eligible institutions or programs operated under the jurisdiction of an agency of the state or a political subdivision thereof shall be based upon the following:

(i) Actual cost of tuition and fees;

(ii) The portion of the costs determined to be appropriate by the commission; and

(iii) In addition to factors (i) and (ii) above, in determining the amount of the award, the vice chancellor may consider the demand for the program pursuant to subdivision (8), subsection (b) of this section; and

(B) The amount of any HEAPS grant awarded to a student who is enrolled in any other eligible institution, program or course shall be no greater than the average amount for comparable programs or courses as determined pursuant to the provisions of paragraph (A) above.

~~(g) The vice chancellor for administration shall report annually, by December 1, on the status of the HEAPS grant program to the Legislative Oversight commission on education accountability.~~

~~(h)~~(g) The HEAPS grant program is subject to any provision of this article not inconsistent with the provisions of this section.

## **ARTICLE 7. WEST VIRGINIA PROVIDING REAL OPPORTUNITIES FOR MAXIMIZING IN-STATE STUDENT EXCELLENCE SCHOLARSHIP PROGRAM.**

### **§18C-7-5. Powers and duties of the West Virginia Higher Education Policy Commission regarding the PROMISE Scholarship.**

(a) *Powers of commission.* — In addition to the powers granted by any other provision of this code, the commission has the powers necessary or convenient to carry out the purposes and provisions of this article including, but not limited to, the following express powers:

(1) To promulgate legislative rules in accordance with the provisions of article three-a, chapter twenty-nine-a of this code to effectuate the purposes of this article;

(2) To invest any of the funds of the West Virginia PROMISE Scholarship Fund established in section seven of this article with the West Virginia Investment Management Board in accordance with the provisions of article six, chapter twelve of this code. Any investments made pursuant to this article shall be made with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in conducting an enterprise of a like character and with like aims. Fiduciaries shall diversify plan investments to the extent permitted by law to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so;

(3) To execute contracts and other necessary instruments;

(4) To impose reasonable requirements for residency for students applying for the PROMISE scholarship. Except as provided in section four, article one of this chapter, a student shall have met the following requirements to be eligible:

(A) Completed at least one half of the credits required for high school graduation in a public or private high school in this state; or

(B) Received instruction in the home or other approved place pursuant to subsection (c), section one, article eight, chapter eighteen of this code for the two years immediately preceding application;

(C) This subsection does not establish residency requirements for matriculation or fee payment purposes at state institutions of higher education;

(5) To contract for necessary goods and services, to employ necessary personnel and to engage the services of private persons for administrative and technical assistance in carrying out the responsibilities of the scholarship program. Any services provided or secured to implement or administer the provisions of this section remain under the direction and authority of the Vice Chancellor for Administration;

(6) To solicit and accept gifts, including bequests or other testamentary gifts made by will, trust or other disposition, grants, loans and other aid from any source and to participate in any federal, state or local governmental programs in carrying out the purposes of this article;

(7) To define the terms and conditions under which scholarships are awarded with the minimum requirements being set forth in section six of this article; and

(8) To establish other policies, procedures and criteria necessary to implement and administer the provisions of this article.

(b) *Duties of commission.* — In addition to any duty required by any other provision of this code, the commission has the following responsibilities:

(1) To operate the program in a fiscally responsible manner and within the limits of available funds;

(2) To operate the program as a merit-based program;

(3) To adjust academic eligibility requirements should projections indicate that available funds will not be sufficient to cover future costs; and

(4) To maintain contact with graduates who have received PROMISE scholarships and to provide a written statement of intent to recipients who are selected to receive a PROMISE scholarship notifying them that acceptance of the scholarship entails a responsibility to supply the following:

(A) Information requested by the commission to determine the number and percentage of recipients who shall:

(i) Continue to live in West Virginia after graduation;

(ii) Obtain employment in West Virginia after graduation; and

(iii) Enroll in post-graduate education programs;

(B) For PROMISE scholars who enroll in post-graduate education programs, the name of the state in which each post-graduate institution is located; and

(C) Any other relevant information the commission reasonably requests to implement the provisions of this subdivision.

~~(5) To analyze and use the data collected pursuant to subdivision (4) of this subsection to:~~

~~(A) Report the findings annually to the Legislative Oversight Commission on Education Accountability; and~~

~~(B) Make annual recommendations to the Legislative Oversight Commission on Education Accountability regarding any actions the commission considers necessary or expedient to encourage PROMISE recipients to live and work in the state after graduation.;~~

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Com. Sub. for Senate Bill 369**—A Bill to repeal §18-2-5g of the Code of West Virginia, 1931, as amended; to repeal §18-2E-3g of said code; to repeal §18B-5-8 of said code; to amend and reenact §18-2E-5 of said code; to amend and reenact §18-2I-5 of said code; to amend and reenact §18-3-12 of said code; to amend and reenact §18-5-44 of said code; to amend and reenact §18-20-5 and §18-20-8 of said code; to amend and reenact §18A-2-3 of said code; to amend and reenact §18A-4-7a of said code; to amend and reenact §18A-5-1a of said code; to amend and reenact §18B-1-10 of said code; to amend and reenact §18B-1B-4 of said code; to amend and reenact §18B-1D-8 of said code; to amend said code by adding thereto a new section, designated §18B-1D-8a; to amend and reenact §18B-2B-6 of said code; to amend and reenact §18B-2C-3 of said code; to amend and reenact §18B-3D-2 of said code; to amend and reenact §18B-10-1 of said code; to amend and reenact §18B-13-5 of said code; to amend and reenact §18B-18-6 of said code; to amend and reenact §18C-3-4 of said code; to amend and reenact §18C-5-7 of said code; and to amend and reenact §18C-7-5 of said code, all relating to legislative education reporting requirements; repealing obsolete section providing for establishment of a special five-year demonstration professional development school project for improving academic achievement including requirement for status reports to commission; repealing requirement for review, evaluation and report to commission on reports required to be written by principals and teachers; repealing section requiring Higher Education Policy Commission to report to commission on in-state and out-of-state contracts and purchases; removing requirement for Office of Education Performance Audits to report to commission on each appeal of on-site review findings; removing requirement for report to the commission on the effectiveness of staff development resulting from expenditures from Strategic Staff Development Fund; removing requirement for status report to commission relating to Special Community Development School Pilot Program; removing requirement for report to commission on progress of implementation of early childhood education programs for all children who have attained the age of four prior to September 1 of the school year in which the pupil enters the program; removing requirement for report to the commission and the Joint Committee on Government and Finance that addresses, at a minimum, certain early childhood education program issues; removing requirement for State Superintendent of Schools to review the rules, policies and standards of the state and federal law for serving the needs of certain exceptional children and removing requirement for report to commission on the findings of the review along with an accounting of the services provided and the costs thereof; removing requirement for annual report to commission, the Joint Committee on Education, the Legislative Commission on Juvenile Law, and other agencies, as appropriate, which recommends policies, procedures and legislation for effectively providing early intervention services and reports on the status of existing programs; removing requirement for State Board of Education to review the status of employing prospective employable professional personnel and the requirement for an annual report to the commission which must include certain minimum prospective employable professional personnel-related items; removing requirement that county board of education submit a copy of its policy defining which policies are lateral positions to the state board within thirty days of any adoption or modification and the requirement that the state board compile a report and submit the report to the commission; removing the requirement that county boards report the number of students determined to be dangerous students to the state board and the requirement that the state board compile the statistics and report its findings to the commission; removing the reporting requirements on the cooperative relationship between Potomac State College and Eastern West Virginia Community and Technical College; removing the requirement that the Higher Education Policy Commission report on its performance, capital investment priorities, and recommendations for statutory changes; removing numerous reports from list of reports that are not required to be made annually to the Legislature and requiring remaining reports on list to be combined with other reports, including certain personnel, classification, compensation and human resources reports, all capital appropriation requests, priorities and campus and state capital development plans, all academic related matters and reports, and all financial aid reports; permitting the Commission to modify deadlines for statutory or rule

mandated reports without a statutory or rule-making change as long as provided within calendar year; removing requirement that Council collect and analyze data, report on community and technical college performance in every region, and report on progress toward meeting goals and objectives; removing annual requirement that Council report on its performance, capital investment priorities and recommendations for statutory changes; removing annual requirement that Council report on progress toward meeting statutory goals and whether statewide independently accredited community and technical college should be created; removing requirement for status report on workforce development initiatives; removing requirement for annual report on auxiliary fees; removing requirement that Higher Education Policy Commission report on technical assistance and associated costs provided to qualified businesses within the higher education and industry partnership; removing requirement for annual status report on the Eminent Scholars Endowment Trust Fund; removing requirement of an annual report on number of nursing scholarship recipients; removing requirement to report on status of Higher Education Adult Part-Time Student Grant Program; and removing requirement for annual recommendation to encourage PROMISE recipients to live and work in West Virginia after graduation.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Committee Substitute for Senate Bill 369, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Mullins—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 369) passed with its House of Delegates amended title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the passage by that body, to take effect from passage, and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 2852**—A Bill to repeal §11-12-86 of the Code of West Virginia, 1931, as amended; to repeal §29-3-23, §29-3-24, §29-3-25 and §29-3-26 of said code; to amend said code by adding thereto a new article, designated §29-3E-1, §29-3E-2, §29-3E-3, §29-3E-4, §29-3E-5, §29-3E-6, §29-3E-7, §29-3E-8, §29-3E-9, §29-3E-10, §29-3E-11, §29-3E-12 and §29-3E-13; and to amend and reenact §61-3E-1 and §61-3E-11 of said code, all relating the regulation of fireworks generally; creating unlawful acts; authorizing sale of consumer fireworks; defining consumer fireworks; establishing regulatory framework for sale of fireworks; defining terms; requiring certificate; establishing fees; requiring permits; dedicating certain fees to Veterans Facilities Support Fund and Fire Protection Fund; establishing rule-making authority; creating criminal penalties related to the sale, manufacturing, importing or storage of fireworks; defining terms; authorizing exemptions; requiring reporting; and establishing internal effective dates for certain provisions.

Referred to the Committee on the Judiciary.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 4040**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §33-16I-1, §33-16I-2 and §33-16I-3, all relating to regulating step therapy protocols in health benefit plans which provide prescription drug benefits.

Referred to the Committee on Health and Human Resources.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 4053**—A Bill to amend and reenact article 3, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Environmental Protection; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of annual nitrogen oxide emissions, authorizing the Department of Environmental Protection to promulgate a legislative rule relating to standards of performance for new stationary sources, authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of air pollution from combustion of solid waste, authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of air pollution from hazardous waste treatment, storage and disposal facilities, authorizing the Department of Environmental Protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants, authorizing the Department of Environmental Protection to promulgate a legislative rule relating to control of ozone season nitrogen oxides emissions, authorizing the Department of Environmental Protection to promulgate a legislative rule relating to control of annual sulfur dioxide emissions, authorizing the Department of Environmental Protection to promulgate a legislative rule relating to surface mining reclamation, authorizing the Department of Environmental Protection to promulgate a legislative rule relating to administrative proceedings and civil penalty assessment, authorizing the Department of Environmental Protection to promulgate a legislative rule relating to above ground storage tank fee assessments, authorizing the Department of Environmental Protection to promulgate a legislative rule relating to above ground storage tank administrative proceedings and civil penalty assessment, authorizing the Department of Environmental Protection to promulgate a legislative rule relating to above ground storage tanks, authorizing the Department of Environmental Protection to promulgate a legislative rule relating to requirements governing water quality standards, and authorizing the Department of Environmental Protection to promulgate a legislative rule relating to horizontal well development.

Referred to the Committee on the Judiciary.

A message from The Clerk of the House of Delegates announced the passage by that body, to take effect from passage, and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 4060**—A Bill to amend and reenact article 6, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Military Affairs and Public Safety; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing the Fire Commission to promulgate a legislative rule relating to the fire code; authorizing the Fire Commission to promulgate a legislative rule relating to the state building code; and authorizing the Fire Commission to promulgate a

legislative rule relating to the standards for the certification of continuing education of municipal, county and other public sector building code officials, inspectors and plans examiners.

Referred to the Committee on the Judiciary.

A message from The Clerk of the House of Delegates announced the passage by that body, to take effect from passage, and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 4080**—A Bill to amend and reenact article 11, chapter 64 of the Code of West Virginia, 1931, as amended, relating to authorizing the Department of Veterans' Assistance to promulgate a legislative rule relating to VA headstones or markers; and relating to authorizing the Department of Veterans' Assistance to promulgate a legislative rule relating to the state home for veterans.

Referred to the Committee on the Judiciary.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 4521**—A Bill to amend and reenact §62-6B-2, §62-6B-3 and §62-6B-4 of the Code of West Virginia, 1931, as amended, all relating to modifying the requirements that allow a child witness to testify by live, one-way, closed circuit television; defining terms; expanding the allowance of such closed circuit testimony to other alleged criminal offenses; authorizing use for persons with certain intellectual disabilities; clarifying the use and requirements of one-way closed-circuit television; setting forth findings to be made by the circuit court prior to ordering testimony through live, one-way, closed circuit television; granting the court discretion to appoint a psychiatrist, licensed psychologist or licensed social worker to provide an expert opinion regarding the factors and findings to be made by the Court in deciding whether to order testimony through live, one-way, closed circuit television; requiring court-appointed expert witness to provide written report within established deadline; providing for the effect of failure to comply with filing deadline; revising the procedures required for taking testimony of child witness by live, one-way, closed-circuit television; setting forth the procedures for testimony by live, one-way, closed-circuit television; establishing a location for witness testimony and individuals allowed in the witness room; setting requirements for display in the courtroom; requirements; providing who may question the child witness and the procedures therefor; providing for requirement of electronic means for defendant to confer with counsel during the taking of the testimony; providing for instruction to jury regarding use of live, one-way, closed-circuit television; authorizing the defendant to waive jury instruction regarding use of live, one-way, closed-circuit television; prohibiting counsel from making comments in the presence of the jury; authorizing the court to establish measures for the physical safety of the child witness and for the confidentiality of sensitive information; authorizing the court to allow accommodations for child witness testimony in court rather than by live, one-way, closed-circuit television; authorizing the allowance of a toy, blanket or similar item to be in possession of child witness while testifying; authorizing the allowance of a designated support person and seating of such support person in the courtroom; and providing requirements for allowance of a designated support person by motion.

Referred to the Committee on the Judiciary.

The Senate proceeded to the fourth order of business.

Senator Blair, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

**Senate Bill 94**, Designating State Police Superintendent as administrator and enforcer of motor vehicle inspection program.

And reports the same back with the recommendation that it do pass.

Respectfully submitted,

Craig Blair,  
*Chair.*

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Senate Bill 476**, Relating to driving restrictions in school zones.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Senate Bill 531**, Providing for court-appointed special advocate in each judicial circuit.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

The bill, under the original double committee reference, was then referred to the Committee on Finance, with amendments from the Committee on the Judiciary pending.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Senate Concurrent Resolution 10**, Urging Congress call convention to amend constitution of United States.

And reports the same back with the recommendation that it be adopted.



Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

Senator Blair, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

**Senate Concurrent Resolution 33**, Requesting WV Infrastructure and Jobs Development Council study and report on consolidation regarding public water and sewer utilities.

And reports back a committee substitute for same as follows:

**Com. Sub. for Senate Concurrent Resolution 33** (originating in the Committee on Government Organization)—Requesting the West Virginia Infrastructure and Jobs Development Council (IJDC) to study and report on the issue of consolidation, regarding public water and sewer utilities.

Whereas, The Legislature is concerned that over five hundred municipal and public service district water and sewer utilities are providing service to customers. The capital cost associated with the repair or replacement of existing infrastructure that serves current customers and the construction of upgrades to existing facilities or new facilities to serve new customers is far greater than available public funding sources and the ability of the utilities to raise money from existing rate-payers; and

Whereas, In its 1994 regular session, the Legislature created the West Virginia Infrastructure and Jobs Development Council in article fifteen-a, chapter thirty-one of the Code of West Virginia, 1931, as amended. Among other things, section four of the 1994 legislation requires the IJDC to develop guidelines for evaluating requests by project sponsors for funding assistance that include “the degree to which the project or infrastructure project encourages effective and efficient consolidation of water or sewage treatment systems consistent with the comprehensive plan developed pursuant to section six of the legislation.” Section six of the 1994 legislation contains subsection (c) which states that “the council shall study the viability of the consolidation of public service districts throughout the state” and report their findings and conclusions on or before January 16, 1995, to the Governor, Speaker of the House and President of the Senate; and

Whereas, Section six (b) of the 1994 act requires an assessment of water and sewer infrastructure to be filed by IJDC every three years which includes, among other things, an assessment to identify “obstacles, issues and problems which prevent or inhibit development of adequate infrastructure throughout the state, including financial, governmental, physical, or geographical factors and make recommendations as the council considers appropriate regarding the obstacles, issues or problems identified.” In reviewing proposed projects, the IJDC consolidation committee, upon the request of another IJDC committee or the council itself, will review the project and determine the potential for consolidation; and

Whereas, The Legislature believes that potential economies of scale and efficiencies in providing public water and sewer service could be realized through consolidation, regional planning and cooperation between municipal and county governments; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the West Virginia Infrastructure and Jobs Development Council study and report on the issue of consolidation, regarding public water and sewer utilities; and, be it

*Further Resolved*, That the Legislature hereby requests that the IJDC refer every proposed public water and sewer project to its consolidation committee to consider the issues related to potential consolidation or other measures that could result in efficiencies and more productive use of public moneys for new treatment facilities or replacement of facilities, or major expansion of service, or any proposed within close proximity to other existing treatment, collection, and/or distribution facilities; and, be it

*Further Resolved*, That the IJDC submit a report to the Legislature at the beginning of its 2017 regular session that identifies the potential for consolidation; the IJDC's treatment of that issue through its funding decisions; the problems that exist with the issue, including barriers that may impede cooperation between municipalities and public service districts in obtaining the desired result of providing quality water and sewer service to the residents of West Virginia at the lowest possible cost.

With the recommendation that the committee substitute be adopted.

Respectfully submitted,

Craig Blair,  
*Chair.*

Senator Blair, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

**Eng. Com. Sub. for House Bill 3019**, Requiring official business and records of the state and its political subdivisions be conducted in English.

And reports the same back with the recommendation that it do pass.

Respectfully submitted,

Craig Blair,  
*Chair.*

The Senate proceeded to the sixth order of business.

On motions for leave, severally made, the following bills were introduced, read by their titles, and referred to the appropriate committees:

**By Senators Maynard, Gaunch, Karnes and Takubo:**

**Senate Bill 663**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17-2A-8d, relating to authorizing the Commissioner of Highways to permit the Division of Highways to participate in construction or maintenance of publically funded highway jobs.

Referred to the Committee on Finance.

**By Senators Stollings, Ashley, Williams and Plymale:**

**Senate Bill 664**—A Bill to amend and reenact §30-20A-1, §30-20A-2, §30-20A-3, §30-20A-4, §30-20A-5, §30-20A-6 and §30-20A-7 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto nine new sections, designated §30-20A-8, §30-20A-9, §30-20A-10, §30-20A-11, §30-20A-12, §30-20A-13, §30-20A-14, §30-20A-15 and §30-20A-16, all relating to licensing the practice of athletic training; and providing criminal penalties.

Referred to the Committee on Health and Human Resources; and then to the Committee on Government Organization.

**By Senator Kessler:**

**Senate Bill 665**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17A-4-11, relating to the sale of vehicles whose title is branded as total loss, salvage or similar brand; requiring a record of all sales of such vehicles to be kept; requiring the Department of Transportation to contract for the development of a statewide database of such vehicle sales; authorizing the department to adopt rules to facilitate implementation of the database; requiring reports of the sale or purchase of such vehicles to be reported to the database; and creating a civil infraction fine for failure to report.

Referred to the Committee on the Judiciary.

**By Senator Trump:**

**Senate Bill 666**—A Bill to amend and reenact §16-2-11 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §16-2-13a, all relating to local indoor smoking prohibitions; exempting certain veterans' organizations and video lottery licenses from local indoor smoking prohibition; requiring veterans organization facilities and video lottery licenses allowing smoking to have nonsmoking areas; requiring posted notices smoking is allowed; requiring ventilation of smoking areas in video lottery facilities; and establishing a procedure for certain establishments to apply for exemption from local indoor smoking prohibition.

Referred to the Committee on the Judiciary.

**By Senator Karnes:**

**Senate Bill 667**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §19-1-13, relating to the right to farm; and protecting agricultural operations from nuisance litigation if the facility has been in operation for more than one year.

Referred to the Committee on the Judiciary.

**By Senators Miller, Kessler and Stollings:**

**Senate Bill 668**—A Bill to amend and reenact §11-19-2 of the Code of West Virginia, 1931, as amended, relating to increasing the excise tax on bottled soft drinks, syrups and dry mixtures; and dedicating the additional proceeds to the maintenance and operation of the Joan C. Edwards School of Medicine of Marshall University and the West Virginia School of Osteopathic Medicine beginning in the year 2016.

Referred to the Committee on Finance.

**By Senators Boley, Plymale and Blair:**

**Senate Bill 669**—A Bill to amend and reenact §18-2-6 of the Code of West Virginia, 1931, as amended, relating to the demonstration of proficiency in civics as a condition of receiving a high school diploma or General Educational Development diplomas.

Referred to the Committee on Education.

**By Senators Carmichael and Ferns:**

**Senate Bill 670**—A Bill to amend and reenact §3-10-1, §3-10-3 and §3-10-4 of the Code of West Virginia, 1931, as amended, all relating to filling of vacancies in elected offices; requiring the Governor to call a special election in the event of a vacancy in the office of United States Senator except in certain circumstances; requiring the Governor to fill a vacancy in the United States Senate by appointment; and allowing the appointee to serve until a successor is elected and certified to fill the unexpired term.

Referred to the Committee on the Judiciary.

**By Senators Carmichael and Blair:**

**Senate Bill 671**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-1-5, relating to creating a digital learning pilot project; establishing a purpose; establishing goals; establishing objectives; establishing key components of the pilot project; establishing qualifications; and establishing a deadline.

Referred to the Committee on Education; and then to the Committee on Finance.

**By Senators Hall and Trump:**

**Senate Bill 672**—A Bill to amend and reenact §11-21-32 and §11-21-77 of the Code of West Virginia, 1931, as amended, all relating to clarifying that a lottery prize is a West Virginia source income for a nonresident; and providing that lottery winnings are not compensation for personal services performed within the state by nonresidents.

Referred to the Committee on Finance.

**By Senator Boso:**

**Senate Bill 673**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-13A-4a, relating to providing a safe harbor valuation for the measure of tax upon limestone and sandstone quarried or mined for purposes of the West Virginia Severance and Business Privilege Tax.

Referred to the Committee on Finance.

**By Senator Kessler:**

**Senate Bill 674**—A Bill to amend and reenact §11-16-13 of the Code of West Virginia, 1931, as amended; to amend and reenact §60-3A-21 of said code; and to amend and reenact §60-8-4 of said code, all relating to taxes on alcohol; providing an increase to the barrel tax on nonintoxicating beer; providing an increase on the tax on purchases of liquor; and providing an increase to the wine liter tax.

Referred to the Committee on Finance.

**By Senator Snyder:**

**Senate Bill 675**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-13A-4a, relating to providing a safe harbor valuation for the measure of tax upon limestone and sandstone quarried or mined for purposes of the West Virginia Severance and Business Privilege Tax.

Referred to the Committee on Finance.

**By Senator Sypolt:**

**Senate Bill 676**—A Bill to amend and reenact §18-2E-5 of the Code of West Virginia, 1931, as amended, relating to the comprehensive statewide student assessment.

Referred to the Committee on Education.

**By Senators Takubo, Ashley, Gaunch, Maynard, Walters and Plymale:**

**Senate Bill 677**—A Bill to amend and reenact §18B-10-1 of the Code of West Virginia, 1931, as amended, relating to tuition rates set by the Higher Education Policy Commission; allowing increase in tuition for undergraduate and graduate students taking more than fifteen and twelve hours, respectively, a semester; and allowing the fixing of different tuition and fees for online course delivery.

Referred to the Committee on Education.

**By Senator Walters:**

**Senate Bill 678**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §24-2E-3, relating to ownership and use of certain conduit that provides service by a telephone public utility; requiring the telephone company to permit a customer to own and use the conduit for other purposes; and providing for rule-making authority.

Referred to the Committee on Government Organization.

**By Senators Maynard, Karnes and Cline:**

**Senate Bill 679**—A Bill to amend and reenact §11-1C-11b of the Code of West Virginia, 1931, as amended, relating generally to the valuation of managed timberland and timberland that is not managed timberland for ad valorem property tax purposes; establishing a specific methodology for such valuations; providing remedies to persons aggrieved by the valuations and for compliance inspections, notice of revocation and appeals; and effective date.

Referred to the Committee on Finance.

**By Senator Unger:**

**Senate Bill 680**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §30-41-1, §30-41-2, §30-41-3, §30-41-4, §30-41-5, §30-41-6 and §30-41-7, all relating to providing for the establishment, appointment and membership of the Board of Music Therapy; requiring licensure of music therapists by the Board of Music Therapy; providing for definitions; providing for licensure application and qualifications; providing for license renewal; providing for waiver of examination; providing for disciplinary actions; and providing for related matters.

Referred to the Committee on Government Organization.

**By Senators Maynard, Ashley, Boley, Leonhardt and Cline:**

**Senate Bill 681**—A Bill to amend and reenact §18-2E-7 of the Code of West Virginia, 1931, as amended, relating to providing teachers' lesson plans to be readily and easily available on the internet to all students and parents.

Referred to the Committee on Education.

**By Senators Maynard, Ashley, Boley, Gaunch, Karnes, Leonhardt, Miller, Romano, Takubo, Woelfel, Williams, Plymale, Stollings, Cline and Ferns:**

**Senate Bill 682**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §24-9-1 and §24-9-2, all relating to authorizing telephone public utilities providing cellular services to implement a system of centrally located cellular telephone hot spots in communities where cellular phone signals are weak or not currently available; and requiring the Public Service Commission to propose rules to implement the administration of this system.

Referred to the Committee on Government Organization.

**By Senators Maynard, Ashley, Boley, Carmichael, Gaunch, Miller, Romano, Woelfel, Plymale, Stollings, Blair, Cline and Laird:**

**Senate Bill 683**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §20-5-23, relating to allowing old and abandoned railroad beds that trail along rivers, lakes or creeks to be used for biking, hiking or off-road vehicle use.

Referred to the Committee on the Judiciary.

**By Senators Maynard, Boley, Carmichael, Karnes, Leonhardt, Miller, Romano, Takubo, Woelfel, Stollings, Cline and Laird:**

**Senate Bill 684**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §20-5-5a, relating to authorizing the Director of the Division of Natural Resources to lease unused or abandoned coal railway routes where intact railroad track exists to qualified persons or individuals to operate tourist excursions; providing for legislative findings and declarations; and requiring the director to propose legislative rules in order to implement the purpose of allowing train excursions on unused or abandoned coal railway routes.

Referred to the Committee on Finance.

**By Senators Maynard, Gaunch, Karnes and Blair:**

**Senate Bill 685**—A Bill to amend and reenact §17C-15-44 of the Code of West Virginia, 1931, as amended, relating to allowing individuals at least twenty-one years of age to operate or ride a motorcycle without a helmet under specified conditions; and authorizing rules.

Referred to the Committee on the Judiciary.

**By Senators Maynard, Carmichael, Gaunch, Karnes, Takubo, Walters and Blair:**

**Senate Bill 686**—A Bill to amend and reenact §17C-6-8 of the Code of West Virginia, 1931, as amended, relating to racing on highways or streets; and allowing races on county or municipal roads when the race is sanctioned by the local governing authority and the road is closed to other traffic.

Referred to the Committee on the Judiciary.

**By Senators Maynard, Walters, Stollings and Cline:**

**Senate Bill 687**—A Bill to amend and reenact §22-3-10 of the Code of West Virginia, 1931, as amended, relating to allowing mine reclamation plans to include usage of the reclaimed land for purposes of the construction and installation of military bases or satellite offices under the authority of the United States Department of Defense or the United States Department of Homeland Security.

Referred to the Committee on the Judiciary.

**By Senators Maynard, Ashley, Boley, Carmichael, Karnes, Miller, Romano, Takubo and Woelfel:**

**Senate Bill 688**—A Bill to amend and reenact §22C-4-24 and §22C-4-25 of the Code of West Virginia, 1931, as amended, all relating to county and regional solid waste facility siting plans; including consideration of the waste reduction benefits of recycling and composting facilities as part of facility siting plans; recognizing benefits from composting certain wastes into useful agricultural products; providing for inclusion in siting plans of composting facilities that are owned or operated by municipalities and other local governments; and specifying that net economic impact of composting facilities be included in siting plan determinations.

Referred to the Committee on Government Organization.

**By Senators Maynard, Cline, Kirkendoll, Mullins, Plymale, Romano, Stollings and Woelfel:**

**Senate Bill 689**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17-17A-8, relating to providing for special obligation notes to finance construction of completion of Interstate 73 and Interstate 74 through West Virginia; and providing for the repayment of the bonds by unmanned toll booth collections.

Referred to the Committee on Finance.

**By Senators Mullins and Cline:**

**Senate Bill 690**—A Bill to amend and reenact §3-5-1 and §3-5-7 of the Code of West Virginia, 1931, as amended, all relating to making the second Friday in February on even numbered years the primary election day in West Virginia beginning in 2018; and changing the dates for filing announcements of the candidates.

Referred to the Committee on the Judiciary.

**By Senator Boso:**

**Senate Bill 691**—A Bill to amend and reenact §22-5-20 of the Code of West Virginia, 1931, as amended, relating to modifying certain air pollution standards; changing certain mandatory requirements to permissive ones; changing a meter-based standard to a mass-based standard; and providing that the standards of performance for existing coal-fired electric generating units does not preclude coal-fired generating units from co-firing with other fuels.

Referred to the Committee on the Judiciary.

**By Senators Mullins, Walters, Stollings, Cline and Ferns:**

**Senate Bill 692**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18-5E-1, §18-5E-2, §18-5E-3, §18-5E-4, §18-5E-5 and §18-5E-6, all relating to school shared use agreements.

Referred to the Committee on Education; and then to the Committee on Finance.

**By Senators Mullins, Plymale and Cline:**

**Senate Bill 693**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17-17A-8, relating to providing for special obligation notes to finance construction of completion of the Coalfields Expressway through West Virginia; providing for the repayment of the bonds by automated toll booth collections; directing the Commissioner of Highways to propose legislative rules designed to implement placement of automated toll booths; and authorizing the commissioner to enter into agreements, with the Governor's consent, with the United States Department of Transportation to erect automated toll booths along interstate highways.

Referred to the Committee on Finance.

**By Senator Gauch:**

**Senate Bill 694**—A Bill to amend and reenact §33-46-2 and §33-46-18 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto four new sections, designated §33-46-21, §33-46-22, §33-46-23 and §33-46-24, all relating to regulation of pharmacy benefits managers; defining terms; providing that pharmacy benefits managers conducting audits for public health programs are not exempt from pharmacy audit restrictions; imposing restrictions upon audits conducted by pharmacy benefits managers; providing internal review process applicable to disputed findings of pharmacy benefits manager upon audit; requiring pharmacy benefits managers to provide notice to purchasers, pharmacists and pharmacies of information relating to maximum allowable costs; and requiring pharmacy benefits managers to provide a process relating to the appropriate use of maximum allowable cost pricing.

Referred to the Committee on Health and Human Resources; and then to the Committee on Finance.

**By Senator Boso:**

**Senate Bill 695**—A Bill to repeal §21-5A-1, §21-5A-2, §21-5A-3, §21-5A-5, §21-5A-6, §21-5A-7, §21-5A-8, §21-5A-9 and §21-5A-11 of the Code of West Virginia, 1931, as amended; and to amend and reenact §21-5A-10 of said code, relating to discontinuing the requirements pertaining to the

payment of wages established by state law currently required to be paid to all workers employed by or on behalf of any public authority engaged in the construction of public improvements to take effect after April 1, 2016.

Referred to the Committee on Government Organization.

**By Senator Karnes:**

**Senate Bill 696**—A Bill to amend and reenact §20-7-8 of the Code of West Virginia, 1931, as amended, relating to disposition of seized firearms.

Referred to the Committee on the Judiciary.

**By Senators Snyder, Romano, Kessler and Williams:**

**Senate Bill 697**—A Bill to amend and reenact §3-8-1a, §3-8-2, §3-8-5, §3-8-5a, §3-8-5b, §3-8-7, §3-8-8, §3-8-9 and §3-8-12 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §3-8-5c and §3-8-8a, all relating generally to the regulation and control of elections; modifying and adding definitions; modifying what committees qualify for a federal reporting exemption; modifying reporting requirements for independent expenditures; clarifying scope of reporting obligations by committee treasurers; requiring certain contributions be reported to State Election Commission within forty-eight hours of their receipt; requiring financial statements for candidates for State Senate, House of Delegates, circuit judge and family court judge to be filed electronically with the Secretary of State; permitting certain financial statements to be filed by mail, in person or by facsimile or other electronic means; establishing a processing fee for financial statements not filed electronically; requiring Secretary of State to maintain an online searchable database; setting contribution limits to state party executive committee, or subsidiary thereof, or state party legislative caucus committee; prohibiting contributions by foreign nationals; directing Secretary of State to publish an online list of late filing violators; prohibiting contributions to candidates or candidate committees by corporations or membership organizations; clarifying and modifying disclosure requirements for covered organizations; identifying additional lawful election expenses; identifying additional lawful expenditures for excess campaign funds; creating criminal offenses and setting penalties; and setting requirements for disclosures on certain communications.

Referred to the Committee on the Judiciary; and then to the Committee on Finance.

**By Senators Boso, Boley and Walters:**

**Senate Bill 698**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §37-16-1, relating to permitting natural gas companies to enter upon real property in certain instances for limited purposes; setting forth those instances and purposes; making legislative findings; establishing a procedure to enter upon the property; requiring the company to pay for damages; excluding certain activities; exempting the company and its agents from trespass penalties if certain conditions are met; and providing that certain other rights are not impaired.

Referred to the Committee on the Judiciary.

**By Senator Karnes:**

**Senate Bill 699**—A Bill to amend and reenact §64-5-2 of the Code of West Virginia, 1931, as amended, relating to reauthorizing, with amendment, the legislative rule contained in title sixty-four, series seventeen of the Code of State Rules relating to food establishments (64 CSR 17); and allowing certain foods to be produced in a private home kitchen for sale at a farmers market, consignment farmers market, on-farm stand, roadside stand and online market under specified conditions.

Referred to the Committee on Health and Human Resources.



Senators Maynard, Gaunch and Karnes offered the following resolution:

**Senate Concurrent Resolution 43**—Requesting the Joint Committee on Government and Finance study if it would be economically beneficial to create a commission to map, name and promote all existing unpaved trails open to the public in West Virginia so that the information would be available to be used to promote tourism in West Virginia.

Whereas, There are many trails in West Virginia that are open to the public for which little information is easily available to the public; and

Whereas, If complete and detailed information about West Virginia's trail system was readily available to the public and individuals from other states and countries, the potential would exist for attracting additional tourism dollars into West Virginia's economy; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study if it would be economically beneficial to create a commission to map, name and promote all existing unpaved trails open to the public in West Virginia so that the information would be available to be used to promote tourism in West Virginia; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2017, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

*Further Resolved*, That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

Which, under the rules, lies over one day.

Senators Carmichael, Kessler, Williams, Prezioso, Stollings, Blair, Boso and Laird offered the following resolution:

**Senate Resolution 43**—Designating February 22, 2016, as West Virginia Arts Day.

Whereas, The great State of West Virginia is celebrating the 50th Anniversary of the National Endowment for the Arts and its impact on the rich culture and diverse arts of our state; and

Whereas, The partnership between the National Endowment for the Arts and the West Virginia Division of Culture and History has meant that all 55 counties have benefitted from arts programming through federal and state funding; and

Whereas, The arts are the embodiment of all things beautiful and entertaining in the world—the enduring record of human achievement; and

Whereas, The arts enhance every aspect of life in West Virginia—growing our creative economy, enriching our civic life, enhancing tourism and exerting a profound positive influence on the education of our children; and

Whereas, Support for the arts advances, fosters and promotes the traditional and contemporary creativity of our residents through music, theater, literature, dance and fine arts; and

Whereas, Arts education research shows that the arts help to foster discipline, creativity, imagination, self expression and problem-solving skills while also helping to develop a heightened appreciation of beauty and cross-cultural understanding; and

Whereas, The arts play a unique and intrinsically valuable role in the lives of our families, our communities and our state; therefore, be it

*Resolved by the Senate:*

That the Senate hereby designates February 22, 2016, as West Virginia Arts Day; and, be it

*Further Resolved,* That the Senate calls upon all citizens to celebrate and promote arts and culture in the Mountain State; and, be it

*Further Resolved,* That the Clerk is hereby directed to forward a copy of this resolution to Commissioner of the West Virginia Division of Culture and History.

At the request of Senator Carmichael, unanimous consent being granted, the resolution was taken up for immediate consideration, reference to a committee dispensed with, and adopted.

On motion of Senator Carmichael, the Senate recessed for one minute.

Upon expiration of the recess, the Senate reconvened and resumed business under the sixth order.

Senators Unger, Trump, Kessler, Williams, Prezioso, Sypolt, Plymale, Stollings and Laird offered the following resolution:

**Senate Resolution 44**—Recognizing the West Virginia State Historic Preservation Office for 50 years of preserving and protecting the state's legacy of historic resources for today and the future.

Whereas, The United States Congress passed, and President Lyndon B. Johnson signed, on October 15, 1966, the National Historic Preservation Act; and

Whereas, With heritage so rich, the West Virginia State Historic Preservation Office was formed. For 50 years its efforts have led the state and its residents in recognizing our historic resources and investing in their rehabilitation and protection; and

Whereas, More than 900 individual resources and 157 historic districts represent West Virginia's historic resources as listed in the National Register of Historic Places; and

Whereas, West Virginia State Historic Preservation Office programs help to infuse the state's economy with federal and state historic preservation rehabilitation tax credits that have resulted in more than \$133 million in construction projects and more than \$26 million in tax credits; and

Whereas, Through \$3.5 million dollars in state matching grants, historic buildings, archaeological sites, structures and other historic resources have been successfully rehabilitated, stabilized and repaired; and

Whereas, Four million dollars in federally funded survey and planning grants have helped citizens promote and protect West Virginia's historic resources; and

Whereas, Through the Certified Local Government program, 54 historic landmark commissions have participated in local community projects that identify, preserve and protect historic resources; and

Whereas, The West Virginia State Historic Preservation Office has consulted with federal and state agencies on approximately 54,000 infrastructure and development projects to help avoid adverse impacts to historic resources and helped preserve our history; and

Whereas, The West Virginia State Historic Preservation Office has reached thousands of West Virginians with an educational program that includes the annual historic preservation calendar, workshops and training programs, youth programs and other public activities; and

Whereas, The West Virginia State Historic Preservation Office GIS website links documentation to individual locations and districts encompassing approximately 61,589 resources in West Virginia, providing an invaluable resource; therefore, be it

*Resolved by the Senate:*

That the Senate hereby recognizes the West Virginia State Historic Preservation Office for 50 years of preserving and protecting the state's legacy of historic resources for today and the future; and, be it

*Further Resolved,* That the Clerk is hereby directed to forward a copy of this resolution to the West Virginia State Historic Preservation Office.

At the request of Senator Carmichael, unanimous consent being granted, the resolution was taken up for immediate consideration, reference to a committee dispensed with, and adopted.

On motion of Senator Carmichael, the Senate recessed for one minute.

Upon expiration of the recess, the Senate reconvened and proceeded to the seventh order of business.

**Senate Concurrent Resolution 40**, Encouraging Congress pass Toxic Exposure Research Act of 2016.

On unfinished business, coming up in regular order, was reported by the Clerk and referred to the Committee on Health and Human Resources.

**Senate Concurrent Resolution 41**, US Army SGT Philip Ray Casto Memorial Bridge.

On unfinished business, coming up in regular order, was reported by the Clerk and referred to the Committee on Transportation and Infrastructure.

**Senate Concurrent Resolution 42**, US Navy LCDR Helen Elizabeth Peck Memorial Bridge.

On unfinished business, coming up in regular order, was reported by the Clerk and referred to the Committee on Transportation and Infrastructure.

The Senate proceeded to the eighth order of business.

**Eng. Com. Sub. for Senate Bill 339**, Establishing Judicial Compensation Commission.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Mullins—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 339) passed.

On motion of Senator Trump, the following amendment to the title of the bill was reported by the Clerk and adopted:

**Eng. Com. Sub. for Senate Bill 339**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §51-12-1, §51-12-2 and §51-12-3, all relating to establishing a judicial compensation commission; setting responsibilities for commission; establishing membership of commission; setting terms of service for appointed members; setting eligibility requirements for certain commission members; providing that members of commission are ineligible for appointment to state judicial position while serving on commission; providing for reimbursement of expenses incurred in carrying out responsibilities of commission; providing for filling of vacancies on commission; giving commission authority to make salary recommendations for certain judicial officers to the Legislature; providing for location of commission meetings; setting meeting notice requirements; directing election of a chairperson; setting quorum requirements; permitting commission to request staff assistance from Joint Committee on Government and Finance and administrative office of Supreme Court of Appeals; requiring meetings be conducted pursuant to open meetings laws; directing commission to study compensation structure for certain judicial officers for purposes of preparing a report; setting forth required factors to be considered in making recommendations regarding compensation; providing for filling of commission vacancies; establishing certain dates for commission action; providing for filing of commission reports and recommendations with certain offices; requiring a bill enacting commission's salary recommendations be introduced by the presiding officers of the Senate and House of Delegates no later than the twentieth day of the legislative session following receipt of report; requiring a bill enacting commission's salary recommendations be reintroduced by the presiding officers of the Senate and House of Delegates in each subsequent legislative session if not enacted; providing that commission be adjourned for three years following submission of report; and making technical corrections.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Senate Bill 478**, Authorizing licensees who sell growlers to offer samples.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Yost and Cole (Mr. President)—32.

The nays were: Woelfel—1.

Absent: Mullins—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 478) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

**Eng. Senate Bill 478**—A Bill to amend and reenact §11-16-6b of the Code of West Virginia, 1931, as amended, relating to authorizing licensee's authorized to sell growlers of nonintoxicating beer to offer complimentary samples to patrons from their licensed premises; permitting licensees to offer

complimentary samples of nonintoxicating beer or nonintoxicating craft beer to patrons; limiting size of samples; limiting number of samples; requiring licensee to verify patron's age using proper identification prior to sampling; and requiring licensee to verify prior to sampling that patron is not visibly intoxicated.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for Senate Bill 481**, Authorizing distillery operators to offer liquor for purchase and consumption on premises.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Mullins—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 481) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for Senate Bill 500**, Authorizing Superintendent of State Police hold training classes to use West Virginia Automated Police Network.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Mullins—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 500) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Senate Bill 505**, Exempting certain uses of field gas from motor fuel excise taxes.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Mullins—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 505) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for Senate Bill 520**, Allowing PEIA ability to recover benefits or claims obtained through fraud.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Mullins—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 520) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for Senate Bill 581**, Eliminating sunset provision terminating pilot domestic violence court program.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Mullins—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 581) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 4145**, Relating to carry or use of a handgun or deadly weapon.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Pending extended discussion,

The question being "Shall Engrossed Committee Substitute for House Bill 4145 pass?"

On the passage of the bill, the yeas were: Blair, Boley, Boso, Carmichael, Cline, Ferns, Gaunch, Karnes, Kessler, Kirkendoll, Leonhardt, Maynard, Plymale, Prezioso, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—24.

The nays were: Ashley, Beach, Facemire, Hall, Laird, Miller, Palumbo, Romano and Snyder—9.

Absent: Mullins—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4145) passed.

On motion of Senator Trump, the following amendment to the title of the bill was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 4145**—A Bill to repeal §20-2-6a of the Code of West Virginia, 1931, as amended; to amend and reenact §61-7-3, §61-7-4, §61-7-6, §61-7-7 and §61-7-11a of said code; and to amend said code by adding thereto three new sections, designated §61-7-4a and §61-7-15a and §61-7-17, all relating to the carrying of firearms and deadly weapons generally; establishing that criminal penalties for carrying a concealed deadly weapon without state license or other lawful authorization apply only to persons under twenty-one years of age and prohibited persons; requiring an applicant for a concealed weapon permit be a United States citizen or legal resident thereof, a resident of this state and of the county in which application is made; requiring training courses in handling and firing a handgun to include the actual live firing of ammunition; requiring certificates of completion of a training course which are submitted with license applications include the instructor's name, signature and NRA or state instructor identification number; requiring that on or after January 1, 2017, all duplicate license cards issued by county sheriffs be uniform across all fifty-five counties and feature a photograph of the licensee; requiring State Police, in cooperation with the Sheriffs' Bureau of Professional Standards, prepare uniform applications for licenses and license cards; establishing a provisional license to carry concealed deadly weapons for persons at least eighteen years of age and less than twenty-one years of age; establishing provisional license application requirements and procedures; providing for exceptions as to prohibitions against carrying handguns concealed for persons at least eighteen years of age and fewer than twenty-one years of age; providing for any United States citizen or legal resident thereof at least twenty-one years of age and not otherwise prohibited from possessing a firearm may carry a concealed deadly weapon without a license; creating felony offenses for any persons prohibited from possessing firearms who carry concealed firearms and providing for criminal penalties; providing that it shall not be unlawful to possess a firearm in or on a private primary or secondary education building, structure or facility when such institution has adopted written policies allowing for possession of firearms; exempting probation officers from prohibition against possessing firearms on premises of educational facilities; requiring a school principal to report certain violations to the State Police; creating felony offense for persons using or presenting a firearm while engaged in the commission of a felony and providing for criminal penalties; and providing for construction of article.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Thereafter, at the request of Senator Boso, and by unanimous consent, the remarks by Senators Trump, Snyder, Palumbo, Leonhardt, Romano, Beach, Blair and Karnes regarding the passage of Engrossed Committee Substitute for House Bill 4145 were ordered printed in the Appendix to the Journal.

**Eng. House Bill 4161**, Relating to levies on classifications of property by the Board of Public Works.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Mullins—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4161) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

The Senate proceeded to the ninth order of business.

**Com. Sub. for Senate Bill 420**, Increasing tax rate on cigarette and tobacco products.

On second reading, coming up in regular order, was read a second time.

On motion of Senator Prezioso, the following amendment to the bill was reported by the Clerk and adopted:

On page two, section three, line twenty-five, by striking out “2016” and inserting in lieu thereof “2017”.

The bill (Com. Sub. for S. B. 420), as amended, was then ordered to engrossment and third reading.

**Com. Sub. for Senate Bill 485**, Establishing regional recreation authorities and areas.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for Senate Bill 508**, Relating to civil claims for private nuisance.

On second reading, coming up in regular order, was read a second time.

On motion of Senator Kessler, the following amendments to the bill were reported by the Clerk and considered simultaneously:

On page two, section thirty, line fifteen, after the word “thereto”, by striking out the word “unless” and inserting in lieu thereof the word “when”;

And,

On page two, section thirty, line sixteen, after the words “nuisance is” by striking out the words “in violation of” and inserting in lieu thereof the words “expressly authorized or required by”.

Following discussion,

The question being on the adoption of Senator Kessler’s amendments to the bill, and on this question, Senator Kessler demanded the yeas and nays.

The roll being taken, the yeas were: Beach, Facemire, Kessler, Kirkendoll, Laird, Miller, Romano, Snyder, Stollings, Unger, Walters, Woelfel and Yost—13.



The nays were: Ashley, Blair, Boley, Boso, Carmichael, Cline, Ferns, Gaunch, Hall, Karnes, Leonhardt, Maynard, Palumbo, Plymale, Prezioso, Sypolt, Takubo, Trump, Williams and Cole (Mr. President)—20.

Absent: Mullins—1.

So, a majority of those present and voting not having voted in the affirmative, the President declared Senator Kessler's amendments to the bill rejected.

The bill (Com. Sub. for S. B. 508) was then ordered to engrossment and third reading.

Thereafter, at the request of Senator Unger, and by unanimous consent, the remarks by Senators Kessler, Trump, Romano, Facemire and Carmichael regarding the adoption of Senator Kessler's amendment to Engrossed Committee Substitute for Senate Bill 508 were ordered printed in the Appendix to the Journal.

**Com. Sub. for Senate Bill 565**, Allowing well pad and road construction for oil and gas activities.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for Senate Bill 591**, Relating to voter registration list maintenance and combined voter registration and driver licensing fund.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

The Senate proceeded to the tenth order of business.

The following bills on first reading, coming up in regular order, were each read a first time and ordered to second reading:

**Com. Sub. for Senate Bill 252**, Amending Wiretapping and Electronic Surveillance Act excluding from protection oral communications.

**Com. Sub. for Senate Bill 274**, Relating to increasing civil jurisdictional amount in magistrate courts.

**Com. Sub. for Senate Bill 291**, Law enforcement use of unmanned aircraft systems.

**Com. Sub. for Senate Bill 376**, Expanding authority of Secretary of State and State Police.

**Senate Bill 416**, Allowing terminally ill patients access to investigational products.

**Senate Bill 438**, Requiring DHHR be present at judicial proceedings.

**Com. Sub. for Senate Bill 474**, Exempting DEP construction and reclamation contracts from review and approval.

**Com. Sub. for Senate Bill 575**, Requiring leases for state office space provide landlord or owner be responsible for cleaning or janitorial services.

**Com. Sub. for Senate Bill 592**, Relating to pipeline safety.

And,

**Com. Sub. for Senate Bill 621**, Exempting taxicab companies with independent contract drivers from providing workers' compensation coverage.

The Senate proceeded to the twelfth order of business.

Remarks were made by Senator Prezioso.

Thereafter, at the request of Senator Plymale, and by unanimous consent, the remarks by Senator Prezioso were ordered extended in the Journal as follows:

SENATOR PREZIOSO: Thank you, Mr. President, ladies and gentlemen of the Senate.

You know, I've been honored over the years in my tenure in the House of Delegates and the West Virginia State Senate to serve with so many talented individuals throughout the state.

You know, I, I certainly admire all your talent, your knowledge and your dedication not only to your community, to your state and to the nation. I admire each and every one of you I've served with and I've developed great relationships with almost everybody in this corner of the state. Although at times we have taken different paths to achieve our goals, I think our targets are the same: To make West Virginia great, to make West Virginia safe and make West Virginia healthy.

Tomorrow one of our colleagues and one of our best friends will travel to the nation's capital to receive a prestigious award. The American Medical Association's Dr. Nathan Davis Award for Outstanding Government Service. This award is given as one of the most prestigious honors extended to elected officials for, for outstanding endeavors that advance public health.

Through the award, though the award, named for the founder of the AMA, the American Medical Association strives to encourage and to stipulate public recognition for significant accomplishments attained by men and women who are giving of themselves to advance the well-being of all.

The AMA presents these awards in seven categories of public service, including local, state and federal government. Each year the caliber of the nominees is a testament to the incredible initiatives being advanced by government and elected officials throughout this nation.

Two thousand sixteen awards will be presented at a recognition dinner in Washington, D. C. tomorrow. The Senator from Boone is one of the recipients of this year's Nathan Davis Award.

The doctor from Madison is the third West Virginian to receive this award. Other physician leaders previously recognized with this award includes Surgeon Generals Dr. C. Everett Koop and Dr. David Satcher.

The Senator from Boone earned both a bachelor's and a master's degree from West Virginia University, is a graduate of, graduate of Marshall University School of Medicine and completed the residency in internal medicine at the Bowman [Gray] School of Medicine at Wake Forest University. Board certified in internal medicine, he has been in private practice at, at Madison Medical Group and on the staff at Boone Memorial Hospital since 1985. He has been elected as a Fellow to the American College of Physicians and is a Professor of Medicine for West Virginia University School of Medicine. Also, he serves on visiting committees at WVU School of Medicine and the WVU School of Public Health. On a national level he is Cochair of the Council of State Governments Health Policy Committee.

Please stand with me and recognize our colleague, our friend, the Senator from Boone, the doctor from Madison, Dr. Ron Stollings.

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Remarks were made by Senators Walters and Miller.

Thereafter, at the request of Senator Woelfel, and by unanimous consent, the remarks by Senator Miller were ordered printed in the Appendix to the Journal.

On motion of Senator Carmichael, a leave of absence for the day was granted Senator Mullins.

Pending announcement of meetings of standing committees of the Senate, including a majority party caucus,

On motion of Senator Carmichael, the Senate adjourned until tomorrow, Tuesday, February 23, 2016, at 11 a.m.

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## **SENATE CALENDAR**

**Tuesday, February 23, 2016  
11:00 AM**

### **UNFINISHED BUSINESS**

- S. C. R. 10 - Urging Congress call convention to amend constitution of United States.
- Com. Sub. for S. C. R. 33 - Requesting WV Infrastructure and Jobs Development Council study and report on consolidation regarding public water and sewer utilities.
- S. C. R. 43 - Requesting Joint Committee on Government and Finance study if economically beneficial to map, name and promote all existing unpaved trails.

### **THIRD READING**

- Eng. Com. Sub. for S. B. 420 - Increasing tax rate on cigarette and tobacco products (original similar to HB4494, SB607).
- Eng. Com. Sub. for S. B. 485 - Establishing regional recreation authorities and areas.
- Eng. Com. Sub. for S. B. 508 - Relating to civil claims for private nuisance.
- Eng. Com. Sub. for S. B. 565 - Allowing well pad and road construction for oil and gas activities.
- Eng. Com. Sub. for S. B. 591 - Relating to voter registration list maintenance and combined voter registration and driver licensing fund.

### **SECOND READING**

- Com. Sub. for S. B. 252 - Amending Wiretapping and Electronic Surveillance Act excluding from protection oral communications.
- Com. Sub. for S. B. 274 - Relating to increasing civil jurisdictional amount in magistrate courts.
- Com. Sub. for S. B. 291 - Law enforcement use of unmanned aircraft systems (original similar to SB560).
- Com. Sub. for S. B. 376 - Expanding authority of Secretary of State and State Police (original similar to HB4359, HB4367).
- S. B. 416 - Allowing terminally ill patients access to investigational products.
- S. B. 438 - Requiring DHHR be present at judicial proceedings.
- Com. Sub. for S. B. 474 - Exempting DEP construction and reclamation contracts from review and approval (original similar to HB4573).

- Com. Sub. for S. B. 575 - Requiring leases for state office space provide landlord or owner be responsible for cleaning or janitorial services.
- Com. Sub. for S. B. 592 - Relating to pipeline safety.
- Com. Sub. for S. B. 621 - Exempting taxicab companies with independent contract drivers from providing workers' compensation coverage.

#### **FIRST READING**

- S. B. 94 - Designating State Police Superintendent as administrator and enforcer of motor vehicle inspection program.
- S. B. 476 - Relating to driving restrictions in school zones - (Com. title amend. pending).
- Eng. Com. Sub. for H. B. 3019 - Requiring official business and records of the state and its political subdivisions be conducted in English.

## **ANNOUNCED SENATE COMMITTEE MEETINGS**

### **Regular Session 2016**

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#### **Tuesday, February 23, 2016**

|         |                                 |             |
|---------|---------------------------------|-------------|
| 10 a.m. | Transportation & Infrastructure | (Room 451M) |
| 10 a.m. | Labor                           | (Room 208W) |
| 1 p.m.  | Energy, Industry & Mining       | (Room 208W) |
| 2 p.m.  | Government Organization         | (Room 208W) |
| 3 p.m.  | Finance                         | (Room 451M) |