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HIGHLIGHTS OF LEGISLATION ENACTED AT THE 2010 REGULAR SESSION AFFECTING PUBLIC EDUCATION IN WEST VIRGINIA

By the Education Law Group at Bowles Rice McDavid Graff & Love LLP

House Bill 3152 Athletic Trainers Registration Act

In Effect June 11, 2010
[Read the Entire Bill](#)

Under the new Athletic Trainers Registration Act, a person must be registered by the West Virginia Board of Physical Therapy in order to advertise or represent that he or she is an athletic trainer in West Virginia. An unregistered person may not use the initials "AT," the words "registered athletic trainer" or "athletic trainer," or any other words, abbreviations, titles, or insignia that indicates he or she is an athletic trainer. The Act specifies the registration requirements and the requirements to renew registration, including certification from the National Athletic Trainers' Association Board of Certification. *W. Va. Code §30-20A-2(a); W. Va. Code § 30-20A-5; W. Va. Code § 30-20A-6.*

However, the Act is not to be construed to prohibit or limit the use of the term "athletic trainer" in secondary school settings by persons who, prior to July 1, 2011, were practicing athletic training under a State Board of Education athletic certification and in accordance with State Board of Education Policy 5112. *W. Va. Code §30-20A-2(c).*

The Board of Physical Therapy is empowered by the Act to establish registration and renewal procedures, charge fees, maintain an accurate registry, investigate alleged violations of the Act, determine disciplinary action and issue orders, and suspend, revoke, or reinstate registration. *W. Va. Code §30-20A-3.*

House Bill 3301 Verifying Employees' Legal Employment Status

In Effect June 7, 2010
[Read the Entire Bill](#)

House Bill 3301 makes it a misdemeanor for an employer to knowingly and willfully fail to maintain, at the place of employment, records of all employees, together with proof of their legal status or authorization to work. Failure to keep records on each employee constitutes a separate offense. Convicted employers must pay \$100 per offense. *W. Va. Code § 21-1B-5.*

Additionally, in situations where an investigation or inspection causes the Commissioner of Labor to believe that an employer has violated West Virginia's laws about verifying workers' legal employment status, the Commissioner is empowered to order the employer to produce records or documents. The employer



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must then produce employment status verification records within 72 hours or, for good cause shown to the Commissioner, by some later time. An employer that fails to timely produce the records may be cited by the Commissioner. Each citation must be prominently presented to a magistrate or Circuit Court judge in the county where the violation occurred. *W. Va. Code § 21-1B-8.*

House Bill 4031 Flexibility in Funding Regional Education Service Agencies

In Effect July 1, 2010
[Read the Entire Bill](#)

An amendment to the public school support statute adjusts the foundation allowance for regional education service agencies. The allowance still equals .63% of the allocation for professional educators, but will be capped at \$3,990,000 instead of \$4,200,000. The distribution of the allowance to the RESAs will continue to be governed by State Board of Education rules. *W. Va. Code § 18-9A-8a.*

House Bill 4037 Federal Subsidy Bonds

In Effect February 25, 2010
[Read the Entire Bill](#)

Government entities that already have bonding authority, including school districts, are empowered by this legislation to issue federal subsidy bonds, including certain Build America Bonds under the American Recovery and Reinvestment Act of 2009. They must do so in the manner, and subject to the requirements of, applicable provisions of law. The bonds are exempt from tax in the manner, and subject to the requirements, of West Virginia law. *W. Va. Code § 13-4-1.*

A government entity that issues federal subsidy bonds may elect to receive credit payments, including periodic credit payments from the U. S. Treasury, to offset a portion of the interest paid on the bonds. It may also use credit payments to pay future debt service on the federal subsidy bonds, or for any other purpose allowed by law. *W. Va. Code § 13-4-2.*

House Bill 4040 180-Day Instructional Term

In Effect July 1, 2010
[Read the Entire Bill](#)

House Bill 4040 eliminates the requirement that the 180-day instructional term for students must begin no earlier than August 26 and end no later than June 8. Beginning with the 2010-2011 school year, the beginning and ending of the instructional term are not restricted by date. *W. Va. Code §18-5-45(h).*

For each instructional term, a county board must have an “icy conditions and emergencies plan” designed to guarantee an instructional term for students of no less than 180 separate instructional days. The legislation does not otherwise describe or explain the plan. *W. Va. Code §18-5-45(c)(2).*

In all other significant respects, West Virginia’s school calendar law is unchanged by H. B. 4040. As before, the annual instructional term must fall within the minimum 200-day employment term for teachers. The minimum 10-month employment term for service personnel must occur within a 43-week period. *W. Va. Code §§ 18A-4-8(a), 18-5-45(c).*

House Bill 4211 Funding of Programs for Limited English Proficient Students

In Effect June 9, 2010
[Read the Entire Bill](#)

This bill requires that when a county board receives legislative appropriations through the State Department of Education to supplement required programs for limited English proficient students, the funds must be used to supplement the cost of programs for which the county has insufficient funds. In distributing the appropriations, the State Department must take into account the varying proficiency levels of students, as well as a county’s capacity to deliver the needed programs. To receive funding, a county board must apply to the State Superintendent as directed by a State Board of Education policy. *W. Va. Code § 18-9A-22.*



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House Bill 4223 School Bus Safety

In Effect June 11, 2010
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An existing law forbade overtaking and passing a school bus that is stopped for the purpose of receiving and discharging students. Violations were misdemeanors punishable by a fine of \$50 to \$200 and/or imprisonment for up to 6 months. If the driver's identity could not be determined, the vehicle's owner or lessee could be convicted of a misdemeanor and fined \$25 to \$100.

Amendments made by House Bill 4223 remove the provision under which a vehicle owner or lessee could be convicted when the driver's identity could not be ascertained. Only the driver is now punished under the statute. The amendments increase the penalties for drivers who violate the law. A first offense now carries a fine of \$150 to \$500 and/or confinement in the county jail for up to 6 months; the driver's license must be suspended for 30 days. A second offense brings a mandatory fine of \$500 and/or confinement in jail for up to 6 months; the offender's license is suspended for 90 days. Third and subsequent violations are punished by a mandatory fine of \$500, plus confinement for at least 24 hours and as much as 6 months; the driver's license must be suspended for 180 days. *W. Va. Code § 17C-12-7(b); W. Va. Code § 17C-12-7(c).*

Additionally, a willful violation that results in serious bodily injury to anyone other than the driver is now a felony for which offenders must be imprisoned for 1-3 years and fined \$500-\$2,000. Where a willful violation causes death, the prison sentence is 1-10 years and the fine is \$1,000-\$3,000. *W. Va. Code § 17C-12-7(d); W. Va. Code § 17C-12-7(e).*

The bill also authorizes county boards to mount a camera on any school bus to help enforce the statute, and for any other lawful purpose. Also, to the extent of available funds, the State Police must conduct a campaign to educate drivers about the new provisions of the statute and the importance of school bus safety. *W. Va. Code § 17C-12-7(e); W. Va. Code § 17C-12-7(h).*

House Bill 4359 Local Labor for Public Construction Projects

In Effect June 9, 2010
[Read the Entire Bill](#)

The West Virginia Jobs Act is amended to reduce to \$500,000 (from \$1,000,000) the size of contract for a public improvement construction project that triggers an employer's duty to hire at least 75% of employees from the local labor market. The definition of "local labor market" still embraces all 55 West Virginia counties, but a county outside the state is now included in the local labor market only if any portion of the county is within 50 miles (rather than 75 miles) of the border. *W. Va. Code § 21-1C-2.*

House Bill 4436 High Quality Educational Programs

In Effect June 9, 2010
[Read the Entire Bill](#)

H. B. 4436 revises one of the four primary elements of the process for improving education. Before the amendment, the standard focused on a system of monitoring for compliance with specific laws and regulations to hold schools and school systems accountable for student performance and progress, and for the efficient delivery of knowledge and skills. The revised standard is described as a system of accountability for continuous improvement. It is defined by high quality standards, to be articulated by a State Board of Education rule, that will build capacity in schools and districts to meet rigorous outcomes that assure student performance and progress. *W. Va. Code § 18-2E-5(a)(1)(C).*

The legislation identifies an additional extraordinary circumstance that will result in a school receiving low-performing accreditation status: when the most recent statewide assessment in reading and math, or other multiple measures as determined by the State Board, identify the school as low performing at its programmatic level in three of the last five years. *W. Va. Code § 18-2E-5(n)(6)(A)(iv).*



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The team of consultants required for a school that receives low-performing accreditation status will now come from the “West Virginia Department of Education State System of Support.” The consultants will no longer be given 60 days to make recommendations for the correction of the low performance; the revised statute contains no deadline. Nor must the recommendations be approved by the State Board before they are communicated to the county board. Once they are communicated, a process to correct the identified deficiencies must be established in conjunction with the State System of Support. The county board will have at least one year, rather than six months, from its implementation of the recommendations to satisfy the State Board that progress has been made in correcting the deficiencies. A county board may be given additional time by the State Board after the first year of implementation. A failure to make satisfactory progress by the designated deadline will cause the State Board to place the county board on temporary approval status, in which case the county board will receive consultation and assistance from the State Board. *W. Va. Code § 18-2E-5(n)(6)(A)(iv).*

In making the required recommendations for targeting resources strategically to eliminate school and school system deficiencies in the assessment and accountability process, the State Board will now require the school or school system to work collaboratively with the State System of Support. *W. Va. Code § 18-2E-5(r)(2).*

Every faculty senate, with the principal’s approval, may establish a “process for teacher collaboration to improve instruction and learning” as an alternative to, or in addition to, the school curriculum team. A teacher collaborative process is, by statute, assigned the mission of reviewing student academic performance based on multiple measures, identifying strategies to improve student performance, and making recommendations for improvement to be implemented if the principal approves. In designating the members of the collaborative process, a faculty senate must select persons it determines are necessary to address needed improvements in the academic performance of students. If applicable, the process may consist of multiple subject area subcommittees which may meet independently. *W. Va. Code § 18-5A-6(b).*

The bill also clarifies a school’s option to use certain testing or assessment instruments provided by the State Board of Education as part of the comprehensive statewide student assessment program. The State Board is required to annually make the optional testing and assessment instruments available to school curriculum teams and teacher collaborative processes. The optional instruments may be used in a school with the approval of either the school curriculum team or the teacher collaborative process. However, a school may not be cited in any accreditation review for not using optional testing and assessment. Nor may the school or its principal be cited, in an accreditation review or the principal’s personnel evaluation, for exercising discretion in using the assessments, and for implementing instructional strategies and programs that the school determines best to promote student achievement. *W. Va. Code § 18-2E-5(d).*

School curriculum teams are now authorized to apply for waivers of any state or county policy requirement that students be assessed using a specific assessment (other than WESTEST2, the Alternative Performance Task Assessment, the Online Writing Assessment, and the NAEP). School curriculum teams may also apply for waivers from any policy requiring that a specific instructional strategy or program be used to achieve content standards for courses required by the State Board. In deciding whether to grant such a waiver, consideration must be given to whether the school attained at least full accreditation status for the previous year. Without going through the local school improvement council, a school curriculum team may also seek a waiver from approved and adopted instructional resources if the team judges that instructional resources best suited to teach the school’s curriculum are not available through the normal adoption process. *W. Va. Code § 18-2E-5(a).*

House Bill 4512 Service Personnel

In Effect July 1, 2010
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Under this bill, every service personnel job vacancy notice must



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include not only the same information as in the past, but also the work site and the starting and ending times of the daily shift. Additionally, every notice of a vacancy in the aide classification categories must also include the program or primary assignment of the position. *W. Va. Code § 18A-4-8b(g)(2)*.

A service employee holding the class title of “director or coordinator of services” may not be “exclusively assigned” to perform the duties of any other class title as defined in *W. Va. Code § 18A-4-8(i)*. Nevertheless, a director or coordinator of services may lawfully be multiclassified. *W. Va. Code § 18A-4-8(i)(34)(E)*.

A service employee with the class title of “school bus supervisor” must either currently be certified to operate a bus or have previously been certified to operate a bus. Additionally, after July 1, 2010, any person employed for the first time with the class title of “supervisor of transportation” must have five years of experience working in a county board’s transportation department as a bus operator, bus aide, assistant mechanic, or chief mechanic, or in a transportation department clerical position. *W. Va. Code § 18A-4-8(i)(75)(B)*; *W. Va. Code § 18A-4-8(i)(80)*.

The legislation defines the term “itinerant status” to mean “a service person who does not have a fixed work site and may be involuntarily reassigned to another work site.” An employee can hold itinerant status only by bidding upon a position that is posted as itinerant or by agreeing to accept the status. The only service positions to which a county board may assign itinerant status are in the classification categories of aide and autism mentor, and then only when the job duties involve exceptional students. Once designated as itinerant, an employee may be assigned to a different work site without posting and without the employee’s consent, but only with ten days prior written notice; an itinerant employee may be involuntarily reassigned only twice per school year. At the end of each school year, the county board must post and fill all positions that have been filled, without posting, by an employee holding itinerant status. *W. Va. Code § 18A-4-8(r)*.

A service employee is not considered to hold itinerant status if he or she is assigned to a beginning and ending work site and, at county expense, travels to other work sites during the daily schedule. *W. Va. Code § 18A-4-8(r)*.

Finally, the bill limits the frequency with which the bus operator certification test is to be administered, regardless of any different requirements in State Board of Education regulations. The test is to be administered annually to substitute bus operators and probationary regular bus operators. It is to be administered triennially to regular bus operators who hold continuing contracts, and to substitute bus operators who are retired from a county board and, at the time of retirement, had ten years of experience as regular full-time bus operators. The State Board is directed to enact revised rules that comply with these testing requirements. *W. Va. Code § 18A-4-8e(k)*.

House Bill 4593

High School Graduation Improvement

In Effect July 1, 2010

[Read the Entire Bill](#)

To address the high school dropout crisis and assist students who are at risk of dropping out to stay in school, earn a high school diploma, and become productively contributing members of society, the Legislature establishes the “High School Graduation Improvement Act.” House Bill 4593 also amends provisions of the compulsory school attendance statutes.

The amendments center around an increase in the age at which compulsory school attendance ends. Beginning with the 2011-2012 high school freshman cohort class of students, compulsory school attendance (which begins with the school year in which the sixth birthday is reached prior to September 1, or upon enrolling in a publicly supported kindergarten program) will continue until the seventeenth birthday (rather than the sixteenth birthday) or for so long as the student continues to be enrolled in a school system after the seventeenth birthday. Beginning with the December 2010 interim legislative meeting period, and then semiannually, the State Superintendent must make a report to the Legislative Oversight Commission on



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Education Accountability about the impact of the increased age requirement. *W. Va. Code § 18-8-1a.*

The exemption from compulsory attendance based upon graduation from a standard senior high school is amended by adding an exemption for completion of an alternate secondary program as determined by the State Board of Education. Also, the county superintendent's authority to grant work permits now applies to youths under the age of 17 (rather than 16). Another amendment increases funding for alternative education programs from \$12 per student to \$18 per student. *W. Va. Code § 18-8-1(f); W. Va. Code § 18-8-1(g); W. Va. Code § 18-9A-21.*

The new High School Graduation Improvement Act begins with extensive legislative findings about the dropout crisis. The findings articulate a shift in focus from merely compelling students to attend school to providing "vibrant and engaging programs that allow students to recognize the value of a high school diploma or workforce credential and inspire students to graduate from high school, especially those students who are at risk of dropping out of school." *W. Va. Code § 18-8-6(b).*

The Act commits the state to (a) continue to explore instructional delivery strategies to accommodate various learning styles, (b) focus on a statewide dropout intervention and prevention program to provide support for students having academic difficulty, (c) implement a statewide general credit recovery program, to include delivery through virtual schools, (d) establish up to five additional juvenile drug courts, and (e) invest additional resources in strategies and programs that engage disconnected and discouraged students in a positive learning environment. *W. Va. Code § 18-8-6(c); W. Va. Code § 62-15-4.*

The State Superintendent or designee is directed to pursue designation of West Virginia as a "GED Option" state as soon as practicable. If the designation is achieved, the State Board must implement a program under which students may pursue a GED diploma while enrolled in high school, and the State Board must ensure that the GED Option is offered to Mountaineer

Challenge Academy students. The Act requires the State Board to continue to expand both the Techademics program (to include each major academic subject and increase the academic credit available) and HSTA (to ensure that it is available for any school containing any of the grade levels of eligible students). The State Board is also required to ensure that dropout information is provided annually to the Mountaineer Challenge Academy as already required by state law. *W. Va. Code § 18-8-6(e); W. Va. Code § 18-8-6(f); W. Va. Code § 18-8-6(g).*

Each county board is required to develop a plan to show how it will use available funds to implement the intent of the High School Graduation Improvement Act. *W. Va. Code § 18-8-6(d).*

Each county board must also include in its alternative education program plan a plan, subject to approval by the State Board, to improve student retention and increase the graduation rate. The plan must include strategies the board will use to increase the county's graduation rate, identify at the earliest age possible the students who are at risk of dropping out prior to graduation, and provide additional options for delivering academic credentials and career-technical training to at-risk students, if appropriate or desired by the students. The latter options may include programs such as Techademics, EDGE, HSTA, GEAR UP, truancy diversion, early intervention, dropout prevention, prevention resource officers, GED option, credit recovery, alternative learning environments, or any other program or strategy approved by the State Board. *W. Va. Code § 18-8-6(d).*

Career and technical education programs that only accept students in certain upper high school grade levels are authorized by the Act to make exceptions for students in grade nine and above who are identified as at risk of dropping out of school prior to graduation. *W. Va. Code § 18-8-6(h).*

Beginning with the December 2010 interim legislative meeting period, and then semiannually, the State Superintendent must make a report to the Legislative Oversight Commission on Education Accountability about the progress of the State Board and county boards in implementing the new Act. *W. Va. Code § 18-8-1a.*



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House Bill 4615 **Workers' Compensation Risk Pools**

In Effect March 12, 2010

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House Bill 4615 authorizes political subdivisions, including county boards, to establish risk pools to insure their workers' compensation risks. They may do so beginning July 1, 2010, but are not permitted to apply to the Insurance Commissioner to operate a risk pool until the Commissioner makes rules regulating such programs and the rules take effect. The Commissioner is empowered by the bill to adopt emergency rules. *W. Va. Code § 29-12A-16.*

House Bill 4669 **Statutory Exceptions for Certain Innovation Zones**

In Effect June 9, 2010

[Read the Entire Bill](#)

For the first time under the Innovation Zones Act, the Legislature grants exemptions from certain West Virginia statutes so that specific innovation plans, already approved by the State Board of Education, can be implemented. *W. Va. Code § 18-5B-10.*

Piedmont Elementary School in Kanawha County is exempted from the planning period statute, *W. Va. Code § 18A-4-14(3)*, in order to allow specialist teachers to take their planning periods before and after school. It is also exempted from the class size statute, *W. Va. Code § 18-5-18*, to allow time for professional learning communities to meet while students attend larger music and physical education classes. *W. Va. Code § 18-5B-10(b)(1).*

A consortium of Putnam County secondary schools is given an exemption from the school calendar statute, *W. Va. Code § 18-5-45*, for two purposes. The first is to establish a freshman transition program to be held one day before the start of the regular instructional term. The second is to create time for teachers to work in professional learning communities. *W. Va. Code § 18-5B-10(b)(2).*

In Boone County, Nellis Elementary School is granted an

exception to the local school improvement council provisions of *W. Va. Code § 18-5A-2(a)* in order to expand the membership of its LSIC. *W. Va. Code § 18-5B-10(b)(3).*

A consortium of Cabell County secondary schools is granted exemptions from certain provisions of the compulsory school laws, *W. Va. Code § 18-8-1* and *W. Va. Code § 18-8-1a*. The exemptions will enable the consortium to raise the compulsory school attendance age to 18. The consortium also receives an exemption from the beginning teacher internship statute, *W. Va. Code § 18A-3-2b*, for the purpose of implementing a customized and high quality beginning teacher induction program. *W. Va. Code § 18-5B-10(b)(4).*

All of the legislatively-approved exemptions are expressly limited to the purposes described in the innovation plans that were approved by the State Board of Education. The bill specifies that an exemption will automatically end if the purpose for the exemption is changed by a plan's modification or implementation. An exemption will also end if the State Board of Education either withdraws the associated plan or revokes the designated innovation zone. *W. Va. Code § 18-5B-10(a).*

Senate Bill 183 **Diesel-Powered Motor Vehicle Idling Act**

In Effect June 11, 2010

[Read the Entire Bill](#)

The new Diesel-Powered Motor Vehicle Idling Act places restrictions on the operation of the main propulsion engines of stationary diesel-powered motor vehicles. Generally speaking, the Act prohibits the driver or owner of a diesel-powered motor vehicle with a gross vehicle weight of 10,001 pounds or more from causing the engine to idle for more than 15 minutes in any 60-minute period. The Act also prohibits the owner or operator of the location where the vehicle loads, unloads, or parks from allowing such vehicles to idle in excess of the standard. The new law supersedes local ordinances and rules. It may be enforced by state, county, and municipal law enforcement officers, and by officers designated by the Public Service Commission. Violations are misdemeanors punished by a fine of \$150-300 and court



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costs. *W. Va. Code § 17C-13A-1; W. Va. Code § 17C-13A-2; W. Va. Code § 17C-13A-5; W. Va. Code § 17C-13A-7; W. Va. Code § 17C-13A-9.*

Among the 18 exceptions to the idling restriction are some that most likely will affect diesel-powered school buses: (a) idling while forced to remain motionless because of highway traffic or when directed to do so by an official traffic control device or a law enforcement official; (b) idling required to prevent a safety or health emergency by operating defrosters or air conditioners, or installing equipment (and not for the purpose of a rest period); (c) idling to comply with the manufacturer's operating requirements and warranties in accordance with safety regulations or local requirements; (d) idling if required for maintenance, particulate matter trap regeneration, servicing or repair of the vehicle, or diagnostic procedures; (e) idling required as part of a federal or state inspection to verify that all equipment is in good working order; (f) idling a school bus to provide heating or air conditioning when passengers other than the driver are onboard and idling is necessary to maintain a safe temperature for the passengers; and (g) idling a school bus off school grounds during queuing for the sequential discharge or pickup of students, and necessitated because the physical configuration of a school or its surrounding streets does not allow for stopping. *W. Va. Code § 17C-13A-3(c).*

The owner or operator of a location where regulated vehicles load or unload, or of a location that provides 15 or more parking spaces for regulated vehicles, must erect and maintain a permanent sign informing drivers that idling is restricted pursuant to the Act. *W. Va. Code § 17C-13A-8.*

Senate Bill 229 School Building Authority Bonds

In Effect March 13, 2010
[Read the Entire Bill](#)

This legislation amends a statute that limited to \$500 million the aggregate face value of bonds the School Building Authority could issue for which moneys in the School Building and Excess Lottery School Building Debt Service Funds are pledged. The

amendment limits to \$500 million the aggregate amount of bonds the SBA can have outstanding at any time for which money in the funds is pledged. Excluded from that calculation is the amount of bonds for which money has been deposited in a sinking fund, reserve fund, or other fund established to pay principal or interest. *W. Va. Code § 18-9D-8(a).*

Senate Bill 229 authorizes the SBA to deposit federal subsidies in debt service funds. When amounts deposited in the debt service funds exceed the amount the SBA is authorized to spend, the excess must be set aside in a special SBA surplus fund, from which expenditures may be made pursuant to a plan submitted by the SBA and approved by the Governor. *W. Va. Code § 18-9D-4b; W. Va. Code § 18-9D-6.*

Copies of all SBA resolutions authorizing revenue bonds must now be sent to the Governor, the Senate President, and the Speaker of the House within five days of their approval. Additionally, SBA bonds are no longer to be signed by the Governor and the SBA president or vice president. Instead, they are to be signed by the Governor or the Governor's designee or the SBA vice chair. *W. Va. Code § 18-9D-8(a); W. Va. Code § 18-9D-8(b).*

Senate Bill 237 Lottery Revenue Bond Act

In Effect March 13, 2010
[Read the Entire Bill](#)

Senate Bill 237 establishes the Lottery Revenue Bond Act. Under the Act, the county board of a growth county may issue certain revenue bonds, exempt from West Virginia taxation, if (a) the county board is situated in a county that has enacted the Local Powers Act, (b) a racetrack located in the county has participated since before January 2, 1991, in the West Virginia Thoroughbred Development Fund, and (c) the county board is receiving lottery revenues. The permitted revenue bonds must be for the purpose of financing or refinancing all or part of the costs of a public project, they must mature in at least 40 years, and they must be secured by and payable only from lottery revenue. *W. Va. Code § 13-2H-2; W. Va. Code § 13-2H-6; W. Va. Code § 13-2H-11.*



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For purposes of the Act, a growth county is one with an averaged population growth rate in excess of 1% per year as determined by the most recent decennial census counts and forecasted, within decennial census count years, by official records of government or generally approved standard statistical estimate procedures. Once “growth county” status is achieved, it is permanent. *W. Va. Code § 7-20-3.*

Among the public projects that may be financed or refinanced with lottery revenue bonds are the acquisition, improvement, renovation, enlargement, repair, construction, maintenance, and operation of public buildings, property, infrastructure, and appurtenant facilities of any type on which the county board is permitted to spend public funds. *W. Va. Code § 13-2H-2(f).*

The Act makes provision for the refunding of lottery revenue bonds and for the joint issuance of lottery revenue bonds by authorized county boards, county commissions, and/or municipalities. The Act is not to be construed to require an election by voters prior to the issuance of lottery revenue bonds. *W. Va. Code § 13-2H-10; W. Va. Code § 13-2H-12.*

Senate Bill 391 Board Members' Eligibility

In Effect February 22, 2010

[Read the Entire Bill](#)

At its regular session in 2009, the Legislature enacted certain restrictions on county board of education candidates and members-elect. Senate Bill 391 removes most of those restrictions.

As a result, a candidate or member-elect is no longer prohibited from being employed by the county board on which he or she seeks to serve. A candidate or member-elect is also no longer prohibited from (a) running for or holding any other public office (provided that he or she resigns from the other office prior to taking the oath as a county board member); (b) becoming a candidate for, or serving as an elected member of, a political party executive committee; (c) becoming a candidate for, or serving as a delegate, alternate, or proxy to, a national political

convention; or (d) soliciting or receiving political contributions to support the election, or retire the campaign debt, of a candidate for partisan office. *W. Va. Code § 18-5-1a(a).*

Note: The new legislation did not repeal any of the limitations upon sitting school board members. While serving on a school board, it is unlawful for a member to be (a) an employee of that board; (b) a candidate for another office except to succeed him or herself as a board member; (c) a candidate for, or an elected member of, a political party executive committee; or (d) a candidate for, or a delegate, alternate or proxy to, a national political convention. While serving on a county board, a member may not lawfully solicit or receive political contributions to support the election, or retire the campaign debt, of any candidate for partisan office. *W. Va. Code § 18-5-1a(a).*

Senate Bill 396 Commercial Driver's License

In Effect June 11, 2010

[Read the Entire Bill](#)

An amendment to a statute prohibiting certain persons from driving school buses clarifies that in order to drive a school bus transporting school children, a person must not only have the appropriate license from the Division of Motor Vehicles, but must also be in compliance with Uniform Commercial Driver's License Act and with rules of the State Board of Education. *W. Va. Code § 17B-2-4.*

The legislation amends numerous other statutes regarding the issuance, suspension, and revocation of driver's licenses. Among other things, it requires the surrender of any previously issued driver's license as a condition to the issuance by the Division of Motor Vehicles of a renewed or duplicate license with updated information. It increases, to \$25,000 (from \$10,000), the maximum civil penalty to be paid by an employer that knowingly allows or requires a driver to drive a commercial motor vehicle in violation of any law or regulation pertaining to railroad highway grade crossings. *W. Va. Code § 17E-1-4; W. Va. Code § 17E-1-6.*



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Another amendment requires the Commissioner of Motor Vehicles to suspend the driver's license of the holder of a commercial driver's license, or of the operator of a commercial motor vehicle, when the Commissioner is notified by another state or jurisdiction of a failure to pay fines, costs, forfeitures or penalties imposed, or of a failure to appear or respond, for any violation of a state or local law relating to motor vehicle traffic control. Also, the period of disqualification from operating a commercial motor vehicle after conviction for operating in violation of an out-of-service order is increased, for a first offense, to 180 days (from 90 days), and for a second offense, to 2 years (from 1 year). The civil penalty to be imposed by the Division of Motor Vehicles for operating a commercial motor vehicle in violation of an out-of-service order is increased to \$2,500 (from \$1,100). *W. Va. Code § 17E-1-7(f); W. Va. Code § 17E-1-13(e); W. Va. Code § 17E-1-25.*

Senate Bill 401 Ad Valorem Property Taxes

In Effect June 11, 2010

[Read the Entire Bill](#)

Senate Bill 401 amends existing statutes and enacts new provisions, all related to the taxation of real and personal property for ad valorem property tax purposes. Particularly significant for county boards, the bill requires that where the calculation of local share for public school support purposes does not reflect available local funds because the county is under a final decision of a board of assessment appeals to refund or credit property taxes paid in prior years, the allocated state aid share shall be the county's basic foundation program, minus the local share, plus the amount of property tax the county is unable to collect or must refund due to the final decision of the board of assessment appeals. (The statute already contained a corresponding provision concerning final court orders to refund or credit property taxes paid in prior years.) *W. Va. Code §18-9A-12(b)(1).*

Senate Bill 442 Offsetting Certain PEIA Retiree Premium Increases

In Effect March 13, 2010

[Read the Entire Bill](#)

This bill clarifies that the Public Employees Insurance Agency Finance Board may offset annual retiree premium increases with amounts held in the Retirement Health Benefit Trust Fund. *W. Va. Code § 5-16D-1(q).*

Senate Bill 446 Insurance for Deceased Public Employees' Survivors

In Effect June 11, 2010

[Read the Entire Bill](#)

Senate Bill 446 clarifies that the surviving spouse and dependents of a deceased public employee participating in a Public Employees Insurance Agency plan may participate only in comprehensive group health insurance coverage provided by the PEIA to which the deceased employee was entitled. The surviving spouse and dependents must bear the premium cost of the insurance. *W. Va. Code § 5-16-13(j).*

Senate Bill 449 PEIA Preexisting Conditions Limitations

In Effect June 11, 2010

[Read the Entire Bill](#)

This legislation clarifies, for purposes of the West Virginia Public Employees Insurance Act, the definition of pre-existing condition. A condition is now considered to be preexisting no matter how long prior to the effective date of coverage it was diagnosed, treated, or resulted in expense to the plan participant. The definition is also streamlined by removing exclusions for handicaps and provisions crediting participants with time when they were covered under certain other insurance plans. *W. Va. Code § 5-16-17* Senate Bill 449 repeals the rule prohibiting payments by PEIA for expenses incurred by participants during the first year of their participation in the plan in connection with a preexisting condition. It also states that enrollment and plan selections may be made only at the time of hire, the annual open enrollment period, and the occurrence of a "qualifying event" under the Internal Revenue Code. *W. Va. Code § 5-16-17.*



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Senate Bill 533

Revising Statutory Language Related to Child Abuse

In Effect June 11, 2010

[Read the Entire Bill](#)

In Senate Bill 533, the Legislature corrects a technical oversight in the statute that makes it a felony for a parent, guardian, custodian or person in a position of trust to knowingly procure or allow another person to engage in or attempt to engage in sexual exploitation of, or sexual intercourse, sexual intrusion or sexual contact with, a child less than 16 years old who is under his or her care, custody, custody or control. (The oversight was an omission of the phrase “or allow.”) *W. Va. Code § 61-8D-5.*

Senate Bill 547

School Board Levies

In Effect March 13, 2010

[Read the Entire Bill](#)

Senate Bill 547 corrects a statutory inconsistency regarding the dates when a county board must meet as a levying body. The correction recognizes that when a levy is placed on the ballot for consideration during a primary election, the county board, which otherwise would be required by statute to meet as a levying body between March 7 and March 28 and then stand adjourned until the third Tuesday of April, may lawfully extend until June 1 its time to meet as a levying body. *W. Va. Code § 11-8-12.*

Senate Bill 548

Boone County Board of Education Meeting as a Levying Body

In Effect February 26, 2010

[Read the Entire Bill](#)

This legislation authorized the Boone County Board of Education to extend until May 28, 2010, the time for it to meet as a levying body, set the levying rate, and certify its actions to the Auditor. Otherwise the county board would have been required by statute to hold the meeting on the third Tuesday of April. The purpose of the extension was to give the county board time to submit to the voters a renewal of the excess levy scheduled to expire on June 30, 2010.

Senate Bill 553

Extended Time to Purchase Full Service Credit

In Effect March 6, 2010

[Read the Entire Bill](#)

Senate Bill 553 extended the time for certain members of the State Teachers Retirement System to purchase additional service credit for service in the Teachers’ Defined Contribution Retirement System.

Specifically, any member who transferred to the State Teachers Retirement System from the Teachers Defined Contribution Retirement System and, by June 30, 2009, provided to the Consolidated Public Retirement Board a signed “verification of cost for service credit purchase form,” but who was unable to complete the purchase of the 1.5% contribution, was allowed by this bill to request, on or before April 15, 2010, that the CPRB recalculate the contribution for 2010. The same opportunity was extended to any member who did not request a verification of cost letter but attempted to purchase the 1.5% contribution and was denied by the CPRB, in writing, before December 31, 2009. To receive full credit, a member who took advantage of the extended time is required to pay the recalculated amount into the State Teacher Retirement System by the later of June 30, 2010, or 60 days after the postmark of a contribution recalculation from the CPRB. The recalculated amount must include lost interest at the rate of 7.5%. *W. Va. Code § 18-7D-6.*

Senate Bill 573

Publishing Audits Electronically

In Effect June 11, 2010

[Read the Entire Bill](#)

If the annual examination of a county board’s financial affairs by the chief inspector or a certified public accountant discloses misfeasance, malfeasance, or nonfeasance in office by a public officer or employee, the chief inspector must now electronically publish a certified copy of the report. The chief inspector must send written notice of the electronic publication to the proper legal authority of the county board, the county prosecuting attorney, and the Attorney General. (Under prior law, the chief



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inspector was required to file a certified copy of the report with each of those officers.) *W. Va. Code § 18-9-7(m)*.

Senate Bill 631 Updating Textbook Selection Process

In Effect July 1, 2010

[Read the Entire Bill](#)

Senate Bill 631 generally replaces the term “textbooks” with the term “instructional resources” in the statutes that, until now, regulated the adoption of textbooks. With this change, instructional resources approved for adoption and listed on the state multiple list may consist of a single resource, print or electronic, or a compilation of resources, print or electronic, that together cover the required criteria established for approval as a primary instructional resource. The resources may be updated or otherwise changed and improved on an ongoing basis to ensure that they are current and accurate. *W. Va. Code § 18-2A-1(a)*; *W. Va. Code § 18-2A-1(b)*.

The new law replaces the previous limits on adoption cycles (six years for science and health textbooks, and eight years for all other textbooks) with a single six-year limit within which the State Board of Education is to establish a schedule for the periods of adoption. Senate Bill 631 also requires the State Board to develop, within one year, a method to review new and substantially revised instructional materials from vendors or available as open resources. When found to comply with established criteria, an instructional resource may be added to the official multiple list and be available for county boards to adopt. County board “instructional resource adoption committees” are authorized to request a State Board waiver of the adoption cycle. Moreover, without having to comply with the adoption procedures, county boards are authorized to purchase software, print and electronic magazines, print and electronic newspapers, and other print and electronic periodicals, as well as licensed or subscription-based instructional resources for classroom use to supplement items on the state multiple list. *W. Va. Code § 18-2A-1(c)*.

Software, electronic periodicals, and print and electronic

magazines and newspapers are to be treated as instructional resources under excess levies for textbooks or instructional resources. *W. Va. Code § 18-2A-1(d)*.

With State Board approval, a county board that selects an electronic instructional resource may, before the end of the established contract period, choose not to renew the selection, replacing it with a different instructional resource from the official multiple listing. With advance notice to the State Board and under State Board guidelines and procedures, the vendor of an adopted electronic resource may, without charge, update navigational features, the management system, and content to accurately reflect current knowledge or information. Vendors must continue to support the version adopted, and cannot require the purchase of a new operating system during the established contract period. *W. Va. Code § 18-2A-1(e)*; *W. Va. Code § 18-2A-1(f)*.

Other changes in the adoption process require the State Board to accept for consideration recently developed and substantially revised instructional resources for content areas not in the current adoption cycle; empower the State Board to set and collect review fees from publishers and vendors participating in the state instructional resources approval and adoption process; and authorize the State Board to create a standing committee (to include teachers and other specialists with experience in electronic instructional resources) for each subject and grade level, to review new or revised instructional resources submitted after the initial approvals for adoption. Additionally, vendor contracts and bonds will now be filed under the appropriate State Board of Education process (rather than a Board of Public Works process). *W. Va. Code § 18-2A-2*.

For efficiency, if all county superintendents in a regional education service agency agree, a RESA instructional resources team of representatives of all the counties may review resources on the state multiple list and make recommendations to each superintendent for consideration, review, and adoption by each county board. *W. Va. Code § 18-2A-5*.



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Any county board that adopts electronic instructional resources must ensure equity of access for all students at school and have a plan to provide equity of access at home, if necessary, through alternate avenues such as print, software, and hardware support. *W. Va. Code § 18-2A-5.*

Senate Bill 633 Depositing Public Funds

In Effect June 11 2010

[Read the Entire Bill](#)

Senate Bill 631 enables county boards, in lieu of bond or other collateral required of the depository institution, to deposit funds into deposit accounts that are swept periodically into multiple federally fully insured deposit accounts through a deposit placement program with full federal insurance. *W. Va. Code § 18-9-6.*

Senate Bill 648 Repealing Outdated and Obsolete Education Code Provisions

In Effect June 11, 2010

[Read the Entire Bill](#)

Because they are considered to be outdated and obsolete, the Legislature repeals the “West Virginia Share in Your Future Act” (*W. Va. Code § 18-2F-1 through 9*), and certain statutory provisions related to the Teachers Retirement Board (*W. Va. Code § 18-7A-5 through 10*).

RESOLUTIONS

House Concurrent Resolution No. 58 Labor History Week

[Read the Entire Resolution](#)

The Legislature requests that the week following the Labor Day Holiday be annually designated and observed as Labor History Week in West Virginia. Each public school is encouraged to provide instruction during Labor History Week on labor history, including the events and timeliness of the development of workers’ rights; the contributions of specific workers, political

leaders, workers’ rights advocates, unions, and union leaders; and labor management relations and collective bargaining. The resolution recognizes that school administrators and teachers should have flexibility in designing and implementing labor history instruction on these topics by integrating them into the existing school curriculum, holding school assemblies, inviting guest speakers, or providing other school activities.

The resolution, which is to be sent to the State Superintendent of Schools, lists recognized resources for labor history information, materials, and speakers that may assist with activities in the observance. It also states that Labor History Week is not intended to create a burden, financial or otherwise, for public schools or teachers.

House Concurrent Resolution No. 102 Fostering Innovative Planning Strategies

[Read the Entire Resolution](#)

The Joint Committee on Government and Finance is requested to study the creation of a matching grant pilot program to foster innovative planning to enhance communities with key foundations of economic and environmental sustainability, including programs designed to foster academic innovation in kindergarten through twelfth grade. The Committee is to make a report, of its findings, with drafts of any proposed legislation, on the first day of the 2011 regular session.

Senate Resolution No. 17 Encouraging a New Approach to Truancy

[Read the Entire Resolution](#)

The resolution “strongly encourages” all judicial circuits and county boards to implement a new approach to addressing truancy that is similar to the approach being implemented in Nicholas and Taylor counties. The Clerk of the Supreme Court of Appeals is asked to distribute the resolution to all judicial circuits and all county boards.

The Nicholas/Taylor County approach is described as adjudicating a truant student as a status offender with a plan of



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improvement. Monitoring is by a juvenile probation officer in cooperation with school personnel, and includes examining the student's home environment, receiving monthly attendance and grade reports from school, and monitoring medical excuses. The juvenile officer contacts the doctor's office regarding excessive

medical excuses and may subpoena the doctor to court. The approach also uses the abuse and neglect laws, with potential for removal of a child from home and placement with DHHR, to ensure school attendance.



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