

Senate Bill 451: Comprehensive education reform

The following is a section-by-section summary of items contained in Senate Bill 451, in order of how they appear in the bill.

PEIA

- **Change in Com Sub (01-31-19):** Teachers hired after July 1, 2001, may now choose between converting that banked leave into years of service or taking a one-time bonus payout of \$500 per every 10 days of sick leave accrued.
- Amends definition of employee and employer within PEIA statute to make coverage available to employees of a public charter school established under this bill
- The charter school must include in its approved charter application a decision to participate in PEIA
- There is no requirement that a public charter school participate in PEIA
- Teachers hired before July 1, 2001, may choose between taking all unused leave at retirement and either apply it to healthcare premiums or convert that into additional years of service to increase your regular pension.

School Levies

- **NEW (02-01-19):** Requires that prior to any regular levy rate increase, such increase must be approved by a majority vote of the voters of the county.
- The bill modifies levy rates for county boards of education and the process by which they're collected.
- County boards may increase regular levy rates through a majority vote of its members.
- Rate can increase to a sum of the levy rates for classes outlined in the bill
- Counties already have the ability to do this, per code. This bill simply provides counties with greater flexibility.

Income Tax Credit for Education Expenses

- Creates a \$250 tax credit for the purchase of supplementary education materials or professional development costs incurred by a classroom teacher employed by a public or private school
- **Qualifying expenses:** Expense incurred relative to education of child under the age of 21, who is a resident of this state. **Includes:** Costs relating to computer equipment (education related software and services), textbooks, workbooks, curricula, and other written materials used for instruction
- If any amount of the tax credit is unused in a year, the amount is forfeited. It does not carry over.

Open Enrollments

- Transfer provisions amended to allow the establishment of attendance zones within counties
- Zones designated by county board, and designate the schools that its resident students are to attend
- Current statutory language regarding transfers between counties and transfers between high schools is removed

- Current statutory language related to the authorization to transfer pupils from one district to another is repealed.
- Definitions added to include “nonresident student” and “open enrollment”: Open enrollment means a policy adopted and implemented by a school district governing board to allow nonresident students to enroll in any school within the district.
- Note: This “open enrollment” is separate and distinct from a mutual agreement of two county boards regarding the mass transfer of students (under §18-5-13(f)(1)(C)).
- County boards may establish an open enrollment policy without charging tuition and without obtaining approval from the county board of the county in which a student resides.
- The policies will identify admission criteria, application procedures, transportation provisions, timelines for open enrollment periods, and restrictions on transfers due to building capacity constraints.
- The new language sets out instances in which the county board may give enrollment preference. It requires the county to comply with all enrollment requirements for children who are in foster care or who meet the definition of unaccompanied youth.
- The county board for the county educating the nonresident student may provide transportation to nonresident students but are not required to do so.
- An appeal process is created through the state board of education for when there is a refusal of a county board to accept the transfer of a student.
- For purposes of net enrollment, whenever a student is transferred on a full-time basis from one school district to another, the county to which the student is transferred shall include the student in its net enrollment.
- The provision also allows for the potential that a transferred student will choose to return to a school in his or her county of residence after the second month of any school year, and permits the county of residence to issue an invoice to the county from which the student transferred for the amount (pro rata basis) that the county of residence otherwise would have received under the state basic foundation program.

Maximum Teacher-Pupil Ratio

- **Change in Com. Sub. (01-31-19): THIS SECTION HAS BEEN REMOVED IN ITS ENTIRETY.**
- Amended to require that county boards ensure that each 1st through 6th grade classroom shall not have more than 28 pupils for each teacher of the grade. The current limit is 25 pupils for each classroom.
- The state superintendent is authorized to permit on a statewide basis, in grades 4 through 6, more than 28 pupils per teacher in a classroom for the purpose of physical education, and 28 pupils per teacher in grades 1 through 6 in the event of extraordinary circumstances and upon application by a county board.
- Removes the limit on the number of classrooms having two or more of grades K-6 that were in existence as of January 1, 1983.
- Obsolete language from the statute is also removed.

Clarifying Job Duties and Responsibilities of School Counselors

- Amends to make school counselors’ main responsibility to provide direct counseling services to students, with the **primary purpose** being to support students with their academic, social, and emotional needs.

- Language that requires school counselors to spend only 75% of work time in direct counseling with students is removed.

Assistant superintendents; directors and supervisors

- Amends §18-5-32 to remove language related to tenure
- Clarifies that central office administrators, supervisors, and directors hired **after** July 1, 2020, shall serve at the will and pleasure of the superintendent and may be removed upon approval of the county board.

Modifying Legislative Intent as to the School Calendar and Applicability to Time Lost Due to Work Stoppage/Strike

- **Change in Com. Sub. (01-31-19): Clarified that all extracurricular activities are not permitted during a work stoppage due to strike.**
- New section that modifies the school calendar
- States that the code defines the school term **both** for employees and for instruction
- Employment term consists of at least 200 days with an instructional term for students consisting of **no less than** 180 separate instructional days.
- The new language makes clear that the use of equivalent time gained to cancel days lost and the use of alternative methods to deliver instruction on canceled days are considered instructional days for meeting the 200-day minimum employment term and the 180-day minimum separate instructional day requirements.
- The legislative intent is to improve instruction and lessen the disruption to the planned school calendar. Language clarifies that the provisions of §18-5-45 permitting accrued or equivalent instructional time to cancel days lost, and the delivery of instruction through alternative methods, **do not apply to cancel days lost due to a concerted work stoppage or strike.**
- Further clarifies that when a concerted work stoppage or strike by the employees assigned to a school causes the county superintendent to close the school, the county board shall withhold the pay of the employees for each day the school is closed for that cause
- The withheld pay shall be paid by the county to employees who subsequently fulfill their assigned duties for the instructional term and the employment term as per their employment contract
- If a day originally scheduled for instruction is canceled, the school for which the day was canceled may not participate in any interscholastic athletic events during any part of that same day.

Teacher Input on Student Promotion

- Adds a provision to make clear that the teacher's recommendation relating to whether or not a student should be promoted to the next grade shall be a **primary consideration** when determining promotion.

Establishment of Public Charter Schools

- **NEW (02-01-19): Changes composition of West Virginia Public Charter School Commission. Commission will now have seven voting members – State Superintendent of Schools (or designee); Chancellor of Higher Education Policy Commission (or designee); Chancellor for Community and Technical College Education (or designee); four members appointed by the Governor with advice and consent of the Senate. Chairman of House Education Committee and Senate Education Committee serve in ex officio capacity. No more than three members may be of**

the same political party. No more than two members may be from the same congressional district. No person may be appointed who holds any other public office or public employment under the government of this state or any of its political subdivisions. No person who is an appointee or employee of any charter school governing board or an immediate family member of an employee under the jurisdiction of the commission or any charter school governing board. No person may be appointed who is engaged in, or employed by, a person or company whose primary function involves, the sale of services and activities to public charter schools or charter school governing boards. Initial appointments shall be for staggered one- and two-year terms; all appointments after are for two-year terms. Initial appointments shall be made before February 1, 2020.

- **NEW (02-01-19):** Removes proviso that a public charter school student is eligible to participate in an extracurricular activity at the noncharter public school located in his or her attendance zone if that extracurricular activity is not offered by the public charter school and the student complies with the same eligibility requirements as noncharter public school students.
- **Change in Com. Sub. (01-31-19):** Clarified that the State Board of Education has rulemaking authority regarding Public Charter Schools.
- Defines terms, including "Authorizer." An authorizer means the entity authorized to review and approve or deny charter applications, enter into charter contracts, oversee public charter schools, and determine whether to renew contracts.
- An authorizer includes a county board; two or more county boards; any WV public or private institution of higher education; or the WV Public Charter School Commission established pursuant to this new article.
- "Public charter school" is a public corporate body that exercises public power through its governing board, including the power in name to contract and be contracted with, sue and be sued, and adopt bylaws consistent with this article. The public charter school has autonomy over finance, personnel, scheduling, curriculum and instruction content decisions, and is governed by a board that is independent of a county board.
- This is a school parents must choose to send their children and it admits students on the basis of a random and open lottery if more students apply for admission than can be accommodated.
- A public charter school under this article offers a comprehensive instructional program that meets or exceeds the student performance standards adopted by the code. The article also permits "Virtual public charter schools."
- A public charter school is part of the state's system of public education but is **exempt from all statutes and administrative regulations applicable to the state and county boards**. The schools shall adhere to the same immunization, civil rights and disability rights requirements as traditional public schools.
- A public charter school is **not to have entrance requirements or charge tuition and fees**, but may charge fees to the same extent as noncharter public schools.
- Students of public charter schools may participate in extra-curricular activities to the same extent as noncharter public schools, provided that the activities are located in his or her attendance zone.
- Bill sets provisions governing the enrollment in a public charter school, and allows a charter school to enroll any student residing in the state
- Requires a randomized and transparent lottery when there is insufficient capacity to enroll all students wishing to attend
- Gives enrollment preference to students enrolled in the public charter school the previous year and their siblings
- Allows enrollment preference to be given to students eligible for free or reduced-price meals
- Allows a limited enrollment preference for children of governing board members or employees
- Includes language for recruitment and retention plans

- Requires a conversion charter school to adopt and maintain a policy giving enrollment preference to students who reside within the former attendance area of that public school.
- Bill includes other requirements to which public charter schools must adhere (i.e., criminal background checks, adherence to generally accepted accounting principles, compliance with FOIA, disclosure report to the authorizer identifying potential conflicts of interest, etc.).
- **It also sets forth an extensive application process.** If the applicant intends to contract with an education service provider for educational program implementation or comprehensive management, the applicant must provide information with respect to the educational service provider (such as student performance data and financial audit reports for all current and past public charter schools).
- This article includes language governing Authorizer duties and responsibilities, provides criteria that an authorizer must consider in deciding to approve a charter application, and explains that each public charter school must cover authorizer costs for overseeing public charter schools.
- Requires the state board to establish a statewide formula for authorizer funding – which shall apply uniformly to every authorizer in the state – and the state board **shall establish a cap on the total amount of funding that an authorizer may withhold from a full-time charter school.**
- The state formula for authorizer funding is to be reviewed annually.
- The article further sets out the requirements for virtual charter schools, charter contracts, and requirements for the renewal or nonrenewal of charter contracts, revocation of charter contracts, rulemaking and the right to appeal to the WV Public Charter School Commission.
- The bill creates the WV Public Charter School Commission and establishes its members, their appointments, and its meetings.
- Prohibits home-based public charter schools and discrimination.
- Funding for charter school enrollment is included in the article and states that **90% of the per-pupil total basic foundation allowance follow the student to the public charter school.**
- Within 60 days of the end of each school fiscal year, an authorizer must submit an annual report to the state superintendent.
- Statutes governing the state teachers retirement system and the teachers’ defined contribution retirement system are amended to include, **“if the charter school elects to participate, a public charter school within the definition of ‘nonteaching member,’ and any person employed by a public charter school within the definition of ‘teaching member’ and ‘member’ or ‘employee.’”**

Compulsory School Attendance

- Changes provision of the statute governing school attendance and what must occur in the case of 3 and 5 unexcused absences.
- Modification requires that the attendance director or assistant, or principal, shall make meaningful contact with the parent, guardian or custodian of the student to ascertain the reasons for the unexcused absences and what measures the school may employ to assist the student in attending.

Public School Support

- Adds language to the definition of “Professional student support personnel” to include professional personnel who provide **direct social and emotional support services to students**, including social workers and psychologists.

Modifying the Foundation Allowance & County Basic Foundation

- For the 2019-2020 fiscal year and thereafter, the basic foundation allowance to the county for professional student support personnel is the amount of money required to pay the state minimum salaries subject to certain criteria.
- Example: Each county shall receive an allowance for 4.70 state aid-eligible professional student support personnel positions to each 1,000 students in net enrollment.
- Amends the percentage of each county's allowance for current expenses from 70.25% to 71.25% of the county's state average costs per square footage per student for operations and maintenance amount.
- Proviso is added to the statute governing county basic foundation and total basic state aid allowance. It states that for all years after 2018 in calculating the allocated state aid share of the county's basic foundation program, when subtracting the amount of the county's local share, if the county's local share is **greater than it was for fiscal year 2015-16**, then the allocated state aid share of the county's basic foundation program shall be the difference between the cost of its basic foundation program and the county's 2015-16 local share.

Education of Exceptional Children

- Amends the powers and duties of the state superintendent as to exceptional children
Adds language that a separate appropriation shall be made to the Department of Education to be disbursed to county boards **and** public charter schools to assist them with serving exceptional children with high cost/high acuity special needs that exceed the capacity of the county.
- Allows public charter schools to apply for and receive funding as any county board for exceptional students.
- Modification also **removes** language referencing the receipt of a county plan for integrated classrooms

Education Savings Account Program

- **NEW (02-01-19):** Adds that the treasurer shall verify with the Department of Education within 30 days that the student has withdrawn from public school under one of the compulsory attendance exemptions listed in code (private school, parochial school, home school).
- **NEW (02-01-19):** Strikes "if funds are available," and instead states that the Treasurer shall renew the ESA after verifying with the Department of Education that: 1) For an ESA student who chooses to attend a private school, the school board will communicate their continued attendance; or 2) For an ESA student who chooses an individualized instructional program, he or she must annually take a nationally normed standardized test of academic achievement and received a score within or above the fourth stanine or if below the fourth stanine, shows improvement from the previous year's results, or a certified teacher conducts a review of the student's academic work and determines that the student is making academic progress commensurate with their age and ability and reports the results to the county board in which the student resides no later than July 30. A student who has failed to maintain good standing under this subsection may re-establish eligibility for an ESA after complying with another exemption for compulsory school attendance for a period of one school year.
- **NEW (02-01-19):** Requires the household income of an eligible student shall be less than \$150,000 per year to qualify for the education savings account program. (Household income shall be the adjusted gross income claimed for federal income tax purposes by the biological parent or parents, legal guardian or guardians, custodian or custodians, or person or persons with legal

authority to act on behalf of an eligible student plus any income of the eligible student.) The treasurer shall develop a process for verifying the income of any applicant for the education savings account.

- **Change in Com. Sub. (01-31-19): Capped number of ESAs at 2500 accounts.**
- Creates the Education Savings Account Act, or the ESA Act.
- An ESA is an education saving account to which funds are allocated by the Treasurer to the parent or parents of an ESA student in order the pay qualifying education expenses to educate the student.
- New language defines the basic elements of the ESA program – including that the amount of funds deposited in an account shall be an amount **equivalent to 75% of the prior year's statewide average net state aid allotted per pupil based on net enrollment adjusted for state aid purposes.**
- The funds shall be derived from a line-item appropriation.
- ESA program funds are to be used for tuition and/or fees at a private school; tuition and/or fees for nonpublic online learning programs; tutoring services provided by an individual or tutoring facility; services contracted for and provided by a public district, charter, or magnet school; textbooks, curriculum, or other instructional materials; computer hardware or other technological devices used to meet the student's educational needs; educational software and applications; school uniforms; fees for nationally standardized tests and advanced placement examinations; fees for summer education programs and specialized after-school education programs (not after-school care); tuition, fees, instructional materials, and examination fees at a career or technical school or provider; educational services and therapies; tuition and fees at an institution of higher education; fees for transportation to and from an education service provider; and any other educational expense approved by the Treasurer.
- Provides for an application for an ESA and sets out the responsibilities of the Treasurer.
- Provides for a parent review committee; sets forth requirements for and rights of education service providers.
- The ESA Act also includes language governing legal proceedings; provides that no liability arises on the part of the Treasurer or the state or of any county school district based on the award or use of an ESA.

Salary Increase for Teachers and School Service Personnel

- Increases the 2019-20 salaries for teachers and school service personnel.
- Increase for teachers is \$2,120 annually, and for school service personnel the increase is approximately \$115 per month.
- Effective July 1, 2020, each teacher providing math instruction in the teacher's certified area of student for at least 60% of time shall be considered to have 3 additional years of experience for purposes of the salary schedule.
- Bill includes a teacher incentive for math.
- Incentive is for a classroom teacher who completes a specialized math course and is a one-time salary supplement of \$2,000 from the Mathematics Incentive Program line item established for the department of education for this purpose.
- Salary supplement may not be counted as part of the teacher's average final salary for purposes of calculating retirement and no retirement contribution will be withheld from the payment.

Salary Equity Among Counties & County Salary Supplements for Teachers

- Modifies the current statute for salary equity and the state salary supplement.
- Legislative intent is not to deter counties from growing economically or from using county resources in a manner that best meets their specific educational needs.
- New language gives counties the discretion and flexibility to use local county funds not otherwise factored into the public school support program to provide the best education to their students, **including by providing salary supplements to teachers.**
- State funds for equity supplemental amounts to teachers and school service personnel shall be apportioned between teachers and school service personnel in direct proportion to that amount necessary to support the professional salaries and service personnel salaries statewide.
- Allows counties to provide additional compensation for teachers who are assigned and fully certified to teach in a subject area that the county board finds it has a critical need and shortage of fully certified teachers.
- Counties also may provide additional compensation to teachers who teach in schools that are in remote geographical locations or have experienced high rates of turnover in experienced teachers.
- Counties may provide additional compensation to teachers who, in addition to regularly assigned duties, are assigned as a master teacher, mentor, academic coach or other title whose duties include providing strong school-based support and supervision to assist individuals to improve their professional practice.

Allowing Employment, Promotion and Transfer Decisions on Professional Personnel to be Made on Qualifications

- **NEW (02-01-19):** Shall consider including the criteria set forth in subsection (b) of this section (certification, experience, academic achievement, specialized training, etc.) and may not include salary as one of the criteria in the definition.
- Allows county boards of education to base its employment decisions on an employee's qualifications as defined in county board policy.
- Allows the judging of qualifications for the filing of vacancies, transfers, reassignments, reducing the number of professional personnel, reductions in classroom teaching positions and reductions in force of professional positions of employment to be defined by qualifications.
- Removes the random selection system that was established by employees and approved by the county board, to no longer be used to determine priority between two or more employees with identical seniority, but rather qualifications will be applied to all reductions in force.
- What this means: Whenever a county board is required to reduce the number of professional personnel in its employment, the employee who is least qualified shall be properly notified and released as opposed to seniority being the determinative factor.
- Clarifies that 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 – *provided* that the employee is the most qualified for the position.
- Reductions in classroom teaching positions in elementary schools shall be determined based on, and transfers will be determined by qualifications rather than seniority being the determinative factor.
- Requires the county board to compile and update annually a list of all professional personnel employed by the county, their areas of certification and their qualifications, rather than an employee's seniority.

County Administrators Become At-Will Employees

- Currently, county board of education central office administrators, supervisors, and directors are given continuing contract status as a teacher and shall hold that status unless dismissed for statutory reasons.
- This bill provides that central office administrators, supervisors, and directors hired after July 1, 2020, shall serve at the **will and pleasure of the superintendent and may be removed by the superintendent upon approval of the county board.**

BRIM

- The bill requires county boards to provide annual notice of insurance coverage to school employees, with notice being sent via email or first-class mail.
- BRIM provides all school employees with at least \$1M per occurrence of comprehensive coverage, personal injury coverage, malpractice coverage, corporal punishment coverage, legal liability coverage
- It also includes a provision for the payment of the cost of attorney's fees in connection with any claim, demand, action, suit or judgment arising from such alleged negligence or other act resulting in bodily injury.
- Requires each county board to purchase from BRIM excess coverage of at least \$5 million for each occurrence.

Teacher and Other Employees' Withholdings

- Section §18A-4-9 is modified to protect the wages of teachers and other employees.
- No amount of an employee's pay may be withheld or deducted by the county board for the purpose of paying dues to an employee organization that provides representation, lobbying or other employee related services **unless the employee within the last year has submitted a request for the withholding or deduction.**

Personal Leave

- **NEW (02-01-19): A classroom teacher who has not been absent for more than four days during the 200-day employment term shall receive a bonus of \$500 at the end of the school year.**
- Requires personal leave to be accrued at the end of each pay period based on a 10-month pay calendar or on the last workday for separating employees.
- Clarifies that where the cause for leave originated prior to the beginning of the employment term, the employee shall be paid for time lost after the start of the employment term
- Pay shall not exceed the total amount of leave the employee has accrued.

Underwood-Smith Teaching scholars Program

- Modifies the Underwood-Smith Teaching scholars Program, which is a student financial aid program designed to enable and encourage students to pursue teaching careers at the preschool, elementary, middle or secondary school level.
- Currently, undergraduate and graduate scholarships, not to exceed \$5,000 per academic year, are awarded on the basis of academic qualifications and interest in teaching.
- Purpose of the program is to assist West Virginians interested in obtaining a teaching certificate and committed to the pursuit of a teaching career in West Virginia's public schools.

- Due to limited funding, priority is given to junior, senior, and graduate students. Awards are contingent upon annual funding of the program by the West Virginia State Legislature.
- This bill provides that the program shall now be eligible to those individuals pursuing teaching careers in the public schools in mathematics, science, or special education at the elementary, middle or secondary levels.
- **Scholarship recipients would be required to teach in a public school in this state in mathematics, science, or special education at the elementary, middle or secondary level in a geographic area of critical need.**

Underwood-Smith Teaching Scholars recipients must receive additional academic support and training from mathematics, science or special education mentors beginning with the freshman year and continuing through degree completion and the teaching obligation.

- Qualification requirements are modified – instead of having to be ranked in the top 10% of a high school graduating class or the state, applicants must have a cumulative GPA of at least 3.25 on a 4.0 scale.
- For mathematics and science majors, an applicant must have met the college algebra ready assessment standards and college readiness English, reading, and writing standards as established by the commission.
- For special education majors, an applicant must have met the college statistics readiness standards and college readiness English, reading, and writing standards as established by the commission. Applicants must agree to teach in the subject area of mathematics, science or special education in a public school in the state in a geographic area of critical need.
- Currently, applicants are eligible for up to \$5,000 of assistance per academic year. **Bill expands that.**
- Each award shall be in an amount equal to the lower of the average annual undergraduate tuition and mandatory fee rates charged to state resident students among all baccalaureate state institutions of higher education, or the actual tuition and mandatory fee rates charged to all students at that institution.
- Institution that accepts any moneys from the Underwood-Smith Teaching Scholars Fund may not charge an Underwood-Smith Teaching Scholar any tuition or fees in excess of the amount of the scholarship award.