

The Legislature

West Virginia School Boards Association



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Bill Edition

Bills Introduced Jan. 26 - 30, 2004

PUBLIC EDUCATION

Inter-County Transfers.....	1 / 2
Senate Bill 289 - Transfer code changes proposed	
Moment of Silence.....	2
House Bill 4151 - Moment of silence proposed	
School Aid Formula.....	2
SB408 - Growth county fund proposed	
School Personnel.....	3
SB282 / HB4133 - Bills cover athletic directors; SB297 - Smoking area proposed; SB314 - Locality pay proposed; HB4130 - WVDE training requires subs	
School Transportation.....	3
HB4162 - 'Safety Routes' plan proposed	

EDUCATION-RELATED

Alcohol.....	3
SB277 - Blood tests may be done	
Child Welfare.....	3 / 4
SB319 - Bill covers youth offenders	
Consumer Sales Tax.....	4
SB294 / HB4139 - ATVs subject to sales tax	
Crimes.....	4
SB288 / HB4169 - Bills concern misdemeanors; SB295 / HB4128 - Self defense immunity proposed	
Higher Education.....	4
SB302 / HB4159 - Background checks required; HB4153 - Higher weekend pay proposed	
Public Employees Insurance.....	4 / 5
SB310 - Bill concerns PEIA coverage; HB4149 - Spouse coverage may continue	
Public Employees Retirement.....	5
SB283 - Bill covers disabled employees	
Public Officials.....	5
HB4138 - Impersonating would be banned	
Teachers Retirement System.....	5
SB299 - Supplement is proposed	

BRIEFLY	5 / 6
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Session third week education bills listed

By Howard M. O'Cull, Ed.D.

The following W. Va. Senate and House of Delegates bills were introduced Jan. 26-30, the third week of the 2004 regular legislative session. Today is the 20th day of the regular session. Bill reviews are included in two primary categories—"Public Educa-

tion" and "Education-Related" bills. Other measures of interest are included in the category of "Briefly." Senate proposals are listed first.

A series of agency administrative "rules bills" were introduced this week. They, however, are not reviewed.

If you want to receive a copy of any bill, please contact me: hocull@wvsba.org or 304.346.0571.

A total 24 education and education-related bills are reviewed in this issue.

— O'Cull is W. Va. School Boards Association Executive Director. He is a registered lobbyist for WVSBA.

PUBLIC EDUCATION

Inter-County Transfers

Transfer code changes proposed

Senate Bill 289. Revised §18-5-16 would make the following changes in a statute relating to inter-county transfer of students:

- Transfers of students from one county to another may be made by the county board of the county in which the student desiring to be transferred resides. The transfer is subject to approval of both the board of the county in which the student resides and the board to which the student wishes to be transferred.
- All transfers would be subject to the amended statutory language included in this bill, namely that:
- The inter-county transfer of a student is to be approved if the student has a "sibling that is attending or has attended the same school to which the student wishes to be transferred." (Subsection 'A.')

Travel Time

- Inter-county transfers are to be approved if the travel time to the school in the district in which the student resides would violate current "state standards, and the travel time to the school in which the student wishes to be transferred is less." (Subsection 'B.')
- Transfers are to be allowed in cases where "the courses in which the student wishes to enroll cannot be provided by the school in which the student otherwise would be required to attend...and another school within the county in which the student resides is closer to the student's residence than the school in which the student wishes to be transferred." (Subsection 'C.')
- Special education students are to be transferred in accordance with Subsections 'A,' 'B,' or 'C.'

Sports

- Transfers cannot be based on a "sports related reason unless it is approved by the W. Va. Secondary Schools Activities Commis-

sion.” (Subsection ‘E.’)

- Subsection ‘F’ states that approval of an inter-county transfer cannot be based on the “convenience to a parent’s workplace.” Similarly, Subsection ‘G’ says such transfers cannot be “based on convenient access to child care except in circumstances where specialized care is needed.”

- Additionally, transfers cannot be based on “social and emotional needs or friendships...” (Subsection ‘H.’)

If a student is currently enrolled in school, an inter-county transfer may be made except for reasons itemized in Subsections ‘A,’ ‘B,’ and ‘C.’

The bill would permit the state superintendent of schools to hear any “appeals” regarding inter-county transfers, based on the above subsections, and the state superintendent would be prohibited from “(hearing) any appeal... before the local board has made a decision.”

NOTE: This section of law amends legislation last revised in 2002. Sponsored by Sen. Jon Blair Hunter (D-Monongalia). Introduced Jan. 26. Referred to Senate Education Committee.

(Similar proposals have been introduced in past sessions.)

Moment of Silence

Minute of silence proposed

House Bill 4151. Proposed §18-5-15g would require county boards to “establish the daily observance of one minute of silence in each classroom of the county.”

Teachers would be “responsible for each classroom shall take care that all pupils remain seated and silent and make no distracting display to the end that each pupil may, in the exercise of his or her

The Legislature provides county board of education members, state policymakers, school administrators, and others information, opinion and commentary regarding West Virginia legislative issues. This publication does not necessarily reflect the official views, opinions or policies of the WVSBA, unless specifically stated.

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individual choice, mediate, pray, or engage in any other silent activity which does not interfere with, distract, or impede other pupils in the like exercise of individual choice, during the one-minute period of silence.”

The bill directs the W. Va. Attorney General to “intervene and provide legal defense of this law.”

The purpose of the proposed legislation, according to the bill preamble, is to preserve the “right of every pupil to the free exercise of religion (as guaranteed) within the public schools (so that) the freedom of each individual pupil (is) subject to the least possible pressure from the state to engage in, or to refrain from, religious observation on school grounds...”

Sponsored by Lidella W. Hrutkay (D-Logan). Introduced Jan. 28. Referred to House Education Committee, then House Judiciary Committee.

NOTE: Similar legislation was adopted by the Legislature in the 1980s, but overturned by a federal court as being ‘unconstitutional.’
(Similar proposals have been introduced in past sessions.)

School Aid Formula

Growth county fund proposed

Senate Bill 408. Revised §11-8-6f and §18-9A-11 would define “growth county” status for counties which experience student net enrollment increases over a 10-year period.

If a county were to fall below these patterns of growth, the proposed statutory provisions would not be applicable.

If a county qualifies for “growth county status,” assessed property values resulting from additional appraisal or valuation due to new construction or improvements would be designated as “new property values.”

Accordingly, the statewide regular school levy rate, as established by Legislature, would be “applied to the assessed value designated as ‘new property values’ and the resulting property tax revenues collected from application of the regular school bond levy shall be placed in a separate account...designated as the ‘growth counties school facilities act fund.’”

Revenues from this fund are to be appropriated to county boards for “construction, maintenance or repair of school facilities.” Revenues could be “carried over” for an “indefinite length of time and may be used as matching funds in cooperation with appropriations by the School Building Authority of West Virginia or for the payment of bonded indebtedness incurred for school facilities.”

“Growth Counties School Facility Act Fund” moneys wouldn’t be considered as part of a county board’s local share, as per a proposed revision of §18-9A-11.

Sponsored by Sen. Herb Snyder (D-Jefferson). Introduced Jan. 30. Referred to Senate Education Committee, then Senate Finance Committee.

(Similar proposals have been introduced in past sessions.)

School Personnel

Bills cover athletic directors

Senate Bill 282. Revised §18-1-1 would amend the statutory definition of ‘teacher’ to include the position of ‘athletic director.’

(Under current law, the definition of ‘teacher’ is broad, encom-

School Transportation

‘Safe Routes’ plan proposed

House Bill 4162. Proposed §17-2A-24 would require the W. Va. Commissioner of Highways to “establish and administer a ‘Safe Routes to School Program’.”

The purpose of the program would be to distribute moneys received under the federal “Hazard Elimination Program,” whose purpose is to “improve public safety in and around areas.”

Various projects could be funded through the federal program, including installation of new crosswalks, multi-use trails, construction and replacement of sidewalks, and implementation of “traffic-calming programs in neighborhoods around schools,” including bike lanes/routes.

In reviewing projects, the Highways Commissioner is to “consider... the potential of the proposal(s) to reduce child injuries and fatalities,” as well as the potential of “(encouraging) walking and bicycling among students.”

Additionally, the commissioner also is to “(identify) current and potential walking and bicycling routes to school... and support for the projects proposed by local school-based associations, traffic engineers, elected officials, law-enforcement agencies, and school officials.”

The bill requires legislative rules to be proposed in regard to allocation of these funds.

There are seven House sponsors, including lead sponsor Del. Barbara Evans Fleischauer (D-Monongalia). Introduced Jan. 29. Referred to House Education Committee, then House Finance Committee. A fiscal note is requested.

EDUCATION-RELATED

Alcohol

Blood tests may be done

Senate Bill 277. The purpose of this bill is to allow law enforcement officers to seek a warrant to draw blood from those arrested for Driving Under the Influence in order to determine blood alcohol content if the arrested person refuses to submit to a secondary chemical test.

Sponsored by Sen. Andy McKenzie (R-Ohio). Introduced Jan. 26. Referred to Senate Judiciary Committee.

Child Welfare

Bill covers youth offenders

Senate Bill 319. Under provisions of this bill, young adult offenders found unfit to remain at a center for young adult offenders would be entitled to a hearing before the committing court. The bill provides a standard for review and allows for reliance on the record established at the court.

The standard for review is whether the warden, considering the offender’s overall record at the center and the offender’s compliance with the center’s rules, regulations, programs and services,

passing positions such as classroom teacher, principal, supervisor, superintendent or public school librarian, as well as registered professional nurses employed by county boards, or “any other person regularly employed for instructional purposes in a public school in this state.”)

Sponsored by Sen. Hunter. Introduced Jan. 26. Referred to Senate Education Committee, then Senate Finance Committee.

A related bill is **House Bill 4133.** Under provisions of amended §18-2-25, the W. Va. Secondary Schools Activities Commission is directed to promulgate rules that provide oversight of secondary school athletic directors.

Sponsored by Del. Brady Paxton (D-Putnam). Introduced Jan. 26. Referred to House Education Committee, then House Judiciary Committee.

Smoking area proposed

Senate Bill 297. The intent of this legislation is to provide employees and others a sheltered place outside the work premises to smoke when smoking is prohibited entirely in the building.

As directed by the bill, the sheltered area, at a minimum, would have to be “well ventilated, have a roof and walls, and in the winter months, be equipped with a safe and adequate source of heat.”

NOTE: The bill amends §23-3-19a relating to “safety and welfare of employees.”

Sponsored by Sen. Russ Weeks (R-Raleigh). Introduced Jan. 28. Referred to Senate Judiciary Committee, then Senate Finance Committee.

A fiscal note is requested.

Locality pay proposed

Senate Bill 314. Proposed §18A-4-5e would provide for teacher ‘locality pay,’ based on the U.S. Department of Labor’s Consumer Price Index Cost of Living for the state as compared with the cost-of-living increase (or decrease) in each county.

Sponsored by Sen. Snyder. Introduced Jan. 29. Referred to Senate Education Committee, then Senate Finance Committee A.

(Similar proposals have been introduced in past sessions.)

WVDE training requires subs

House Bill 4130. Revised §18A-5-4 would require the W. Va. Department of Education to employ a “highly qualified” and fully certified substitute teacher to perform the regularly assigned instructional duties of a teacher who is absent due to attendance at a meeting or professional development function held by or at the direction of the WVDE.

If a substitute isn’t employed by the WVDE, the teacher is not required to attend the activity or professional development activity.

NOTE: A committee substitute for this bill was approved by House Education Jan. 29.

There are seven House sponsors, including lead sponsor Del. Jerry L. Mezzatesta (D-Hampshire), HEC chairman.

The Legislature

WATCH FOR THE LATEST ON EDUCATION LEGISLATION.

abused his/her discretion in determining that the offender is an “unfit person to remain at the center.”

At the hearing before the committing court, the state is not required to offer “independent proof of the offender’s disciplinary infractions contained in the record of the center, when opportunity for an administrative hearing on those infractions was previously made available at the institution.”

There are other provisions.

There are four Senate sponsors, including lead sponsor Sen. Shirley Love (D-Fayette). Introduced Jan. 29. Referred to Senate Judiciary Committee.

Consumer Sales Tax

ATVs subject to sales tax

Senate Bill 294. The purpose of this legislation is to make sales of all-terrain vehicles and snowmobiles subject to the consumer sales tax rather than the privilege title tax. The bill also clarifies that sales tax revenues derived from purchases of motorized vehicles not designed for use on state roads (such as riding lawnmowers, farm tractors, bulldozers, end loaders, forklifts, motor boats, etc.) are to be deposited in the General Revenue Fund rather than the state Road Fund. According to the Bill Note, tax dollars collected on these sales historically have been deposited in the General Revenue Fund.

Sponsored by Sen. President Earl R. Tomblin (D-Logan) and Vic Sprouse, Minority Leader (R-Kanawha). Introduced Jan. 27. Referred to Senate Finance Committee.

The House companion is **House Bill 4139**. It is sponsored by House Speaker Bob Kiss (D-Raleigh) and House Minority Leader Charles V. Trump IV (R-Morgan). Introduced Jan. 27. Referred to House Finance Committee.

Both bills have been introduced at the request of the governor. A fiscal note is requested for each measure.

Crimes

Bills concern misdemeanors

Senate Bill 288. Under terms of this legislation, a continuation of misdemeanor prosecutions would be permitted in cases where a defendant is charged by complaint with both a felony and misdemeanor.

Sponsored by Sen. McKenzie. Introduced Jan. 26. Referred to Senate Judiciary Committee.

The House companion is **HB4169**. Sponsored by Del. Jack Yost (D-Brooke). Introduced Jan. 29. Referred to House Judiciary Committee.

Self-defense immunity proposed

Senate Bill 295. The purpose of this proposed legislation is to provide for limited immunity from civil liability in defense of self, others and property.

The person asserting immunity must show that his or her actions were “reasonable and proportionate to the crime being committed in order to be eligible for this protection.”

Sponsored by Sen. Steve Harrison (R-Kanawha – by request).

Introduced Jan. 27. Referred to Senate Judiciary Committee.

The House companion is **HB4128**. It is sponsored by Dels. Larry A. Faircloth (R-Berkeley) and Cindy Frich (R-Monongalia). Introduced Jan. 26. Referred to House Judiciary Committee.

Higher Education

Background checks required

Senate Bill 302. This fairly extensive bill would require certain agencies of government, including the Higher Education Policy Commission and institutions of higher education, to conduct background checks on prospective employees, employees considered for promotions or transfers and individuals seeking to provide services through personal service contracts.

The background checks would include consideration of criminal convictions as well as a credit and driving history, especially for jobs wherein considerable fiduciary responsibility exists or for which driving is essential.

Various entities of government, including the state police and Commissioner of Motor Vehicles, would be required to furnish the requested information to agencies affected by the bill’s provisions.

The bill also would relate to those persons providing personal service contracts to state governmental agencies, including the HEPC and institutions of higher education.

There are several other provisions.

The bill, as written, doesn’t specify that its provisions relate to the W. Va. Department of Education although “state employing unit” could cover the WVDE.

Sponsored by Sen. Tomblin and Edwin J. Bowman (D-Hancock). Introduced Jan. 28. Referred to Senate Judiciary Committee.

The House companion is **HB4159**. Sponsored by Dels. Kiss and J.D. Beane (D-Wood). Introduced Jan. 29. Referred to House Government Organization Committee, then House Finance Committee.

NOTE: Sen. Bowman and Del. Beane serve as chairpersons of the Senate and House Government Organization Committees, respectively.

Higher weekend pay proposed

House Bill 4153. This bill would require minimal additional pay for various higher education classified employees who agree to work on weekends. It also removes provisions that incremental salary increases for classified higher education employees be paid from existing funds.

There are seven House sponsors, including lead sponsor Del. Mary Poling (D-Barbour). Introduced Jan. 28. Referred to House Finance Committee. A fiscal note is requested.

(Similar proposals have been introduced in past sessions.)

Public Employees Insurance

Bill concerns PEIA coverage

Senate Bill 310. Under terms of this legislation, the term “employee,” as relating to Public Employees Insurance, would be revised to include higher education personnel who teach at least nine semester hours (currently “regularly full time”).

The bill also would require that one member of the PEIA finance board is to represent interests of retired employees. It also would reduce from three to two the number of PEIA finance board members who are selected from the public. Additionally, finance board members would be required to have experience with employee benefit programs.

An additional bill provision states that employees' premium cost-share may not include any projected costs for claims of retired employees.

Finally, the bill provides that 10 percent of projected medical and prescription drug costs for employees and retirees (covered by PEIA) is to be transferred to the established reserve fund. (Moneys saved in a 'plan year,' if exceeding 15 percent of the recommended reserve amount, are to be transferred for appropriation by the Legislature.)

Sponsored by Sen. Hunter. Introduced Jan. 29. Referred to Senate Banking and Insurance Committee, then Senate Finance Committee.

Spouse coverage may continue

House Bill 4149. This legislative proposal would provide for the continuation of medical coverage for the spouse of a deceased retired employee as per any period previously purchased with accumulated leave.

There are seven House sponsors, including lead sponsor Del. Poling. Introduced Jan. 28. Referred to House Pensions and Retirement Committee, then House Finance Committee.

Public Employees Retirement

Bill covers disabled retirees

Senate Bill 283. Under terms of this bill, current law would be amended to remove a provision of statute that reduces to 20 percent a disabled retiree's straight life annuity, which is currently operable at age 65.

Sponsored by Sen. Jeffrey V. Kessler (D-Marshall). Introduced Jan. 26. Referred to Senate Pensions and Retirement Committee, then Senate Finance Committee.

Public Officials

Impersonating would be banned

House Bill 4138. This revised section of statute would prohibit persons from impersonating a public official by copying or imitating the markings of a public agency or official on a motor vehicle.

There are five House sponsors, including lead sponsor Del. Carrie Webster (D-Kanawha). Introduced Jan. 26. Referred to House Judiciary Committee.

Teachers Retirement System

Supplement is proposed

Senate Bill 299. Proposed §18-7A-26t would provide a supplemental increase to TRS annuitants receiving a disability annuity and who have been retired for at least five years, or who are age 62 or

older and who have received a retirement annuity for at least five years.

The supplemental increase would be based on the U.S. Department of Labor's Consumers Price Index or three percent, whichever is less, multiplied by the first \$18,000 of the retiree's annual annuity.

Sponsored by Sen. Hunter. Introduced Jan. 28. Referred to Senate Pensions and Retirement Committee, then Senate Finance Committee.

(Similar proposals have been introduced in past sessions.)

BRIEFLY

A listing of bills whose introduction illustrates trends, issues facing other entities and agencies of government and proposed statutory disposition.

Senate Bill 278/House Bill 4131 would make a technical correction in a statute relating to the Workforce Development Initiative Program and its various reporting requirements... Related bills concerning reporting required of the West Virginia Guaranteed Work Force Program include **Senate Bill 279/House Bill 4132...****Senate Bill 280** would transfer the consolidated fund from the Investment and Management Board to the state Treasurer. It also has several other provisions, and would allow the state Treasurer to permit out-of-state banks to become depositories for disbursement accounts if the needed services can't be provided by an in-state bank. Additionally, the bill allows only the state treasurer to enter into contracts for banking goods and services (except for certain instances involving the state auditor's duties). There are several other provisions, one of which would allow "spending units" to collect fees to cover costs of accepting bank, charge and other cards by issuing legislative and emergency rules...

Raleigh Magistrate

...**Senate Bill 281** would add an additional magistrate to Raleigh County...**Senate Bill 290/Senate Bill 293/House Bill 4147** would allow for use of returnable containers for soft drinks, soda water, carbonated natural or mineral water, other non-alcoholic carbonated drinks and for beer, ale or malt drinks. NOTE: This is the first time in several years that a 'bottle bill' has been introduced in the Legislature. "Operator of a vending machine" would refer to the machine owners, including machines installed in schools. Non-returnable containers would be prohibited...**Senate Bill 292** would increase the quantity of real estate that may be held by the branch of a religious sect from 10 to 200 acres of land...**Senate Bill 300** would prohibit discrimination or retaliation against a health care worker who refuses to participate in treatment of a patient based upon "good faith belief" that the treatment is contrary to the religious/moral beliefs or conscience of the health care worker...

Harrison Co. Special Election

...**Senate Bill 301** would allow the Harrison County Commission to meet as a levying body for the purpose of presenting an excess levy regarding "vital public services" to county voters...**Senate Bill 303/House Bill 4160** would require an investigation of adult abuse or neglect upon notification to local adult protective service agencies. They would have to interview the alleged adult victim within 14 days or within 72 hours if notification of imminent danger to the adult is received...**Senate Bill 304** would increase salaries for magistrate clerks, magistrate assistants and magistrate deputy

clerks...**Senate Bill 305** would authorize the Director of the state Purchasing Division to solicit competitive bids and award a contract for intrastate air service for state employees and others...**Senate Bill 315** would create a “mental hygiene pilot program.” Its primary purpose is to reduce the cost of the hearing process involved in involuntary hospitalizations, while implementing judicial measures intended to “more successfully address problems associated with addiction as well as failure or refusal of individuals to take prescribed medications...” (This information is taken from the Bill Note.)...**Senate Bill 322** would reconstitute the Public Energy Au-

thority, including establishment of long-term contracts for sale of electric power from the construction of flood mitigation dams with small electric generator capacity...**Senate Bill 407** would establish additional internal controls and procedures for the state purchase card program, renaming the program the “payment card program.”...**Senate Bill 409** would require the state Senate to print the *West Virginia Blue Book* every other year...**House Bill 4137** would establish nonpartisan election of justices of the W. Va. Supreme Court of Appeals...**House Bill 4140** would establish a code of conduct for state administrative law judges.

Cracker barrel session planned for Winter Conf.

W. Va. School Boards Association President William J. Raglin (Kanawha) has announced that the WVSBA Winter Conference will feature an open-forum “cracker barrel” session relating to association issues and legislative matters.

The program will be held Thursday, Feb. 12, beginning at 7:45 p.m. It will follow the association’s Executive Board meeting, slated for 6:00 p.m. that evening.

Raglin, in making the announcement, says the purpose of the activity is to allow members to discuss “issues and concerns they have with WVSBA, with the legislative session and to speak their minds about these issues and matters. I’m hereby inviting all WVSBA members and superintendents to attend,” he said.

In other conference-related matters, legislators will receive no-

tice that WVSBA members are attending the WC, and that members may visit Delegates and Senators. (Individual visits are to be arranged with legislators.)

Other conference highlights include a presentation regarding community involvement (Jamie Vollmer), a major session regarding school facilities policy in West Virginia, and several workshops.

Also slated: The FY05 Annual Business Meeting, various exhibits, a buffet dinner and travel to the Capitol for legislative visitations, which are slated from 8:45 to Noon, Friday, Feb. 13.

Invited gubernatorial candidates also are slated to attend a Friday session.

For more information on the program, please contact WVSBA conference registrar Shirley Davidson at sdavidson@wvsba.org.

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