

ENROLLED

H. B. 109

(By Mr. Speaker, (Mr. Thompson) and Delegate Armstead)

[By Request of the Executive]

[Passed June 2, 2009; in effect July 1, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18-5B-1, §18-5B-2, §18-5B-3, §18-5B-4, §18-5B-5, §18-5B-6, §18-5B-7, §18-5B-8 and §18-5B-9, all relating to school innovation zones; setting forth legislative findings, intent and purpose; authorizing state board to designate school innovation zones in schools, groups of schools and departments or subdivisions of a school or schools; establishing an application, plan review, approval and amendment process; authorizing exceptions to certain policies, rules, interpretations and statutes; providing for approval of the innovation zone plan by certain employees of a school; providing for revocation of designation and plan approval; requiring annual report by the state board; designating the order in which the state board must consider applications; providing for the voluntary transfer of employees; authorizing teacher job postings that exceed certain qualifications and requirements; providing that a state institution of higher education may establish a school designated as an innovation zone and that such school may not receive certain funds; providing the procedure in which a state institution of higher education may apply for and establish an innovation zone school; providing for the approval mechanism for an innovation zone school established by a state institution of higher education by the county board and state board; and authorizing the State Board of Education to promulgate rules and emergency rules.

Be it enacted by the Legislature of West Virginia: That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §18-5B-1, §18-5B-2, §18-5B-3, §18-5B-4, §18-5B-5, §18-5B-6, §18-5B-7, §18-5B-8 and §18-5B-9, all to read as follows:

ARTICLE 5B. SCHOOL INNOVATION ZONES ACT.

§18-5B-1. Title.

This article shall be known as the "School Innovation Zones Act".

§18-5B-2. Legislative findings and purpose.

(a) *Legislative findings.* -- The Legislature finds that:

(1) Decades of school improvement literature substantiate that schools where the principal uses a collaborative and distributed approach to leadership and where the teachers have a unity of purpose, operate in a cohesive learning-centered culture and implement consistent, pervasive and research-based approaches to learning, can and do improve student learning;

(2) As in all enterprises, rules are established in public education to manage the resources efficiently, allot time among the activities and processes required and ensure attention to the goals mandated, but rules, by their nature, also limit the flexibility of professional educators to engage in those activities and implement those approaches that may best improve the learning of their students for the twenty-first century;

(3) Allowing individual schools to seek and receive exceptions from certain statutes, policies, rules and interpretations through the creation of school innovation zones will provide them greater control over important educational factors that impact student achievement, such as curriculum, personnel, organization of the school day, organization of the school year, technology utilization and the delivery of educational services to improve student learning; and

(4) Providing greater flexibility at innovation zone schools will enable school-level, professional educators to exercise more fully their professional judgment to improve student learning for the twenty-first century by instituting creative and innovative practices.

(b) *Intent and purpose.* -- The intent and purpose of this article is to:

(1) Provide for the establishment of school innovation zones to improve educational performance;

(2) Provide principals and teachers at schools approved as innovation zones with greater flexibility and control to meet the needs of a diverse population of students by removing certain policy, rule, interpretive and statutory constraints;

(3) Provide a testing ground for innovative educational reform programs and initiatives to be applied on an individual school level;

(4) Provide information regarding the effects of specific innovations and policies on student achievement;

(5) Document educational strategies that enhance student success; and

(6) Increase the accountability of the state's public schools for student achievement as measured by the state assessment programs and local assessment processes identified by the schools.

§18-5B-3. School innovation zones; application for designation; state board rule.

(a) A school, a group of schools, a subdivision or department of a group of schools, or a subdivision or department of a school may be designated as an innovation zone in accordance with this article.

(b) The state board shall promulgate a rule, including an emergency rule if necessary, in accordance with article three-b, chapter twenty-nine-a of this code to implement the provisions of this article. The rule shall include provisions for at least the following:

(1) A process for a school, a group of schools, a subdivision or department of a group of schools or a subdivision or department of a school to apply for designation as an innovation zone that encompasses at least the following:

(A) The manner, time and process for the submission of an innovation zone application;

(B) The contents of the application, which must include a general description of the innovations the school or schools seek to institute and an estimation of the employees who may be affected by the implementation of the innovations; and

(C) Factors to be considered by the state board when evaluating an application, which shall include, but are not limited to, the following factors:

(i) The level of staff commitment to apply for designation as an innovation zone as determined by a vote by secret ballot at a special meeting of employees eligible to vote on the plan, as provided in section six of this article;

(ii) Support from parents, students, the county board of education, the local school improvement council and school business partners; and

(iii) The potential for an applicant to be successful as an innovation zone; and

(2) Standards for the state board to review applications for designation as innovation zones and to make determinations on the designation of innovation zones.

(c) The state board shall review innovation zone applications in accordance with the standards adopted by the board and shall determine whether to designate the applicant as an innovation zone. The state board shall notify an applicant of the board's determination within sixty days of receipt of an innovation zone application.

When initially designating innovation zones after the enactment of this article by the first extraordinary session of the 2009 Legislature, the state board shall consider applicants for designation in the following order: (1) A school and groups of schools; (2) a group of schools seeking designation across the same subdivision or department of the schools; and (3) a school seeking designation of a subdivision or a department.

§18-5B-4. Innovation zones; required plans; plan approval; state board rule.

(a) The rule promulgated by the state board pursuant to section three of this article also shall include at least the following:

(1) Each school, group of schools, subdivision or department of a group of schools or subdivision or department of a school designated as an innovation zone or seeking designation as an innovation zone in accordance with this article shall develop an innovation zone plan;

(2) The innovation zone plan shall contain:

(A) A description of the programs, policies or initiatives the school, group of schools, subdivision or department of a group of schools or subdivision or department of a school intends to implement as an innovative strategy to improve student learning if the plan is approved in accordance with section five of this article;

(B) A list of all county and state board rules, policies and interpretations, and all statutes, if any, identified as prohibiting or constraining the implementation of the plan, including an explanation of the specific exceptions to the rules, policies and interpretations and statutes required for plan

implementation. A school, a group of schools, a subdivision or department of a group of schools or a subdivision or department of a school may not request an exception nor may an exception be granted from any of the following:

- (i) An assessment program administered by the West Virginia Department of Education;
 - (ii) Any provision of law or policy required by the No Child Left Behind Act of 2001, Public Law No. 107-110 or other federal law; and
 - (iii) Section seven, article two and sections seven-a, seven- b, eight and eight-b, article four, chapter eighteen-a of this code, except as provided in section eight of this article; and
- (C) Any other information the state board requires.

(3) The innovation zone plan may include:

(A) An emphasis in the early childhood through intermediate grade levels on ensuring that each student is prepared fully at each grade level, including additional intervention strategies at grade levels three and eight to reinforce the preparation of students who are not prepared fully for promotion, or an emphasis in the secondary grade levels on ensuring that each student is prepared fully for college or other post-secondary education, as applicable for the school; and

(B) An emphasis on innovative strategies that allows academically advanced students to pursue academic learning above grade level or not available through the normal curriculum at the school.

(b) Each school, group of schools, subdivision or department of a group of schools or subdivision or department of a school designated or seeking designation as an innovation zone shall submit its innovation zone plan to the school's employees, the county superintendent and county board having jurisdiction over the school, the state board, and the state superintendent in accordance with section five of this article.

§18-5B-5. Approval of innovation zone plans; waiver of statutes, policies, rules or interpretations.

(a) Each school, group of schools, subdivision or department of a group of schools or subdivision or department of a school designated or seeking designation as an innovation zone shall:

(1) Submit its innovation zone plan to each employee regularly employed at the school if the employee's primary job duties would be affected by the implementation of the plan. An innovation zone plan is approved by school employees when approved by a vote by secret ballot as provided in section six of this article;

(2) Submit its innovation zone plan as approved by vote of school employees to the county superintendent and board for review. The county board shall within sixty days of receipt of the plan review the plan and with recommendations from the county superintendent report its support or concerns, or both, and return the plan and report to the school principal, faculty senate and local school improvement council; and

(3) Submit its innovation zone plan as approved by vote of the school employees eligible to vote on the plan along with the report of the county board to the state board and state superintendent for review. The county board shall be given an opportunity to present its concerns with the plan, if any, to the state board during its review. Except as provided in subsection (c) of this section, the state board and state superintendent shall approve or disapprove the plan within sixty days of receipt, subject to the following:

(A) No exceptions to county or state board rules, policies or interpretations are granted unless both the state superintendent and the state board approve the plan at least conditionally pursuant to subsections (b) and (c) of this section; and

(B) If the plan is disapproved, the state superintendent, the state board or both, as applicable, shall communicate the reasons for the disapproval to the school, the group of schools, the subdivision or department of a group of schools or the subdivision or department of a school and shall make recommendations for improving the plan. The school, the group of schools, the subdivision or department of a group of schools or the subdivision or department of a school may amend the plan pursuant to subsection (d) of this section.

(b) Upon the approval of an innovation zone plan by the state board and state superintendent, all exceptions to county and state board rules, policies and interpretations listed within the plan are

granted, subject to the limitations contained in subdivision (B), subparagraph (2), subsection (a) of section four of this article.

(c) If an innovation zone plan, or a part thereof, may not be implemented unless an exception to a statute is granted by Act of the Legislature, the state board and state superintendent may approve the plan, or the part thereof, only upon the condition that the Legislature acts to grant the exception. If the state board and state superintendent approve a plan on that condition, the state board and state superintendent shall submit the plan with the request for an exception to a statute, along with supporting reasons, to the Legislative Oversight Commission on Education Accountability. The commission shall review the plan and exemption request and make a recommendation to the Legislature regarding the exception requested.

(d) The rule promulgated by the state board pursuant to section three of this article shall include a process for amending or revising an innovation zone plan. The process shall require that any amendments or revisions to an innovation zone plan are subject to the approval requirements of subsection (a) of this section.

§18-5B-6. Employee approval of innovation plan application and plan; transfer of employees.

(a) An employee shall be eligible to vote in accordance with the provisions of this section if: (1) The employee is regularly employed at the school; and (2) the employee's primary job duties will be affected by the implementation of the innovation zone plan. The panel created in subsection (c) of this section and the principal shall determine which employees are eligible to vote in accordance with this subsection. No employee may be eligible to vote unless both the panel and the principal determine that the employee is eligible to vote.

(b) A secret ballot vote at a special meeting of all employees regularly employed at the school who are eligible to vote in accordance with this section shall be conducted to determine the following:

(1) The level of employee commitment to apply for designation as an innovation zone in accordance with section three of this article; and

(2) The approval of an innovation zone plan as required by section five of this article.

(c) A panel consisting of the elected officers of the faculty senate of the school or schools, one representative of the service personnel employed at the school and three parent members appointed by the local school improvement council shall call the meeting required in subsection (b) of this section,

conduct the votes and certify the results to the principal, the county superintendent and the president of the county board. The panel shall provide notice of the special meeting to all employees eligible to vote at least two weeks prior to the meeting and shall provide an absentee ballot to each employee eligible to vote who cannot attend the meeting to vote.

(d) At least eighty percent of the employees who are eligible to vote in accordance with this section must vote to apply for designation as an innovation zone and to approve the school's innovation zone plan before the level of staff commitment at the school is sufficient for the school to apply for designation and before the plan is approved by the school.

(e) An employee regularly employed at a school applying for or designated as an innovation zone whose job duties may be affected by implementation of the innovation zone plan or proposed plan may request a transfer to another school in the school district. The county board shall make every reasonable effort to accommodate the transfer.

§18-5B-7. Progress reviews and annual reports.

(a) At least annually, the state board or its designated committee shall review the progress of the development or implementation of an innovation zone plan. If, following such a review, the state board determines that a designated school, group of schools, subdivision or department of a group of schools, subdivision or department of a school or a school created by a state institution of higher education in accordance with section nine of this article has not made adequate progress toward developing or implementing its plan, the board shall submit a report to the designated school, group of schools, subdivision or department of a group of schools, subdivision or department of a school or a school created by a state institution of higher education in accordance with section nine of this article identifying its areas of concern. The state board or its designated committee may conduct an additional review within six months of submitting a report in accordance with this section. If, following such additional review, the state board or its designated committee determines that the designated school, group of schools, subdivision or department of a group of schools, subdivision or department of a school or a school created by a state institution of higher education in accordance with section nine of this article has not made adequate progress toward developing or implementing its innovation zone plan, the state board may revoke the designation as an innovation zone or, if the innovation zone plan has been approved in accordance with section five of this article, rescind its approval of the plan.

(b) The state board shall provide an annual report on innovation zones and the progress of innovation zone plans to the Legislative Oversight Committee for Educational Accountability.

§18-5B-8. Teacher vacancies in an innovation zone; job postings exceeding certain qualifications and requirements; approval of postings.

A school, group of schools, subdivision or department of a group of schools, or a subdivision or department of a school whose school innovation zone plan has been approved in accordance with section five of this article may make a job posting for a teacher vacancy at the school, the group of schools, the subdivision or department of a group of schools, or the subdivision or department of a school designated as an innovation zone that sets forth standards or qualifications that exceed the standards and qualifications provided in section seven-a, article four, chapter eighteen-a of this code: *Provided*, That teachers in the county approve the job posting by majority vote: *Provided, however*, That the county superintendent administers the vote and the record of the vote remains on file in the personnel office of the county board until the school group of schools, subdivision or department of a group of schools, or a subdivision or department of a school is no longer designated as an innovation zone.

§18-5B-9. Establishment of new innovation zone schools by state institutions of higher education.

(a) A state institution of higher education may establish a new innovation zone school subject to the following:

- (1) The school will be under the jurisdiction of the state institution of higher education;
- (2) The county board with jurisdiction over the school district in which the new school is planned to be located must approve the establishment of the new innovation zone school;
- (3) The state institution of higher education must enter into cooperative agreements with the county board or county boards whose students attend the new innovation zone school. The agreements shall include at least required reporting on student attendance, academic progress and any other matters relating to the administration, operation and support of the school agreed to by institution and the board or boards;

(4) Students attending the school shall be enrolled in a school in their county of residence subject to the policies of the county. The students may participate in extracurricular and cocurricular activities at the county school in which they are enrolled and, subject to the cooperative agreement with the state institution of higher education, participate in curricular activities at the county school in which they are enrolled;

(5) No funds provided to support the planning and implementation of school innovation zones pursuant to this article may be used for a state institution of higher education to establish a new innovation zone school ; and

(6) A school established in accordance with this section may not be funded with: (1) Moneys appropriated by the Legislature to fund the innovation zone program; or (2) state or county moneys that result from the school aid formula.

(b) The state board shall promulgate a rule, including an emergency rule if necessary, in accordance with article three-b, chapter twenty-nine-a of this code for a state institution of higher education to establish a new innovation zone school . The rule shall include provisions for at least the following:

(1) A process for a state institution of higher education in accordance with this section to apply for designation as innovation zone and for approval of its innovation zone plan that encompasses at least the following:

(A) The manner, time and process for the submission of an application for innovation zone designation and for approval of its innovation zone plan;

(B) The contents of the application; and

(C) Factors to be considered by the state board when evaluating an application and plan, which shall include, but are not limited to, support from parents, students, county board or boards of education, the local school improvement council or councils and school business partners and the potential for a school to be successful as an innovation zone.

(2) A school created by state institution of higher education designated as an innovation zone or seeking designation as an innovation zone in accordance with this section shall develop an innovation zone plan that includes at least the following:

(A) A description of the programs, policies or initiatives the state institution of higher education intends to implement as an innovative strategy to improve student learning if the plan is approved;

(B) The approval of the county board of education with jurisdiction over the school district in which the new school is planned to be or is located and the cooperative agreements with the county board or county boards whose students attend the new innovation zone school;

(C) A list of all county and state board rules, policies and interpretations, and all statutes, if any, identified as prohibiting or constraining the implementation of the plan, including an explanation of the specific exceptions to the rules, policies and interpretations and statutes required for plan implementation;

(D) A policy under which the state institution of higher education and participating county board or boards of education agree to meet the accountability requirements for student assessment under all applicable assessment programs administered by the West Virginia Department of Education and provisions of law or policy required by the No Child Left Behind Act of 2001, Public Law No. 107-110 or other federal law; and

(E) Any other information the state board requires.

(3) Standards for the state board to review applications for designation as innovation zones and to make determinations on the approval of innovation zone plans.

(c) The state board and state superintendent shall review innovation zone applications and plans of a school created by a state institution of higher education in accordance with the standards adopted by the board and shall determine whether to designate it as an innovation zone or approve it plan, as applicable. The state board and state superintendent shall notify an applicant of the board's determination within sixty days of receipt of an innovation zone application and receipt of an innovation zone plan. If the plan is disapproved, the state board and state superintendent shall communicate the reasons for the disapproval to the school and make recommendations for improving the plan. The school may amend and resubmit the plan to the state board.

(d) Upon the approval of an innovation zone plan by the state board and state superintendent, all exceptions to county and state board rules, policies and interpretations listed within the plan are granted. If an innovation zone plan, or a part thereof, may not be implemented unless an exception to a

statute is granted by Act of the Legislature, the state board and state superintendent may approve the plan, or the part thereof, only upon the condition that the Legislature acts to grant the exception. If the state board and state superintendent approve a plan on that condition, the state board and state superintendent shall submit the plan with the request for an exception to a statute, along with supporting reasons, to the Legislative Oversight Commission on Education Accountability. The commission shall review the plan and request and make a recommendation to the Legislature on the exception requested.