

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 280**

4 (By Senators Plymale, Barnes, Foster, Wells and Beach)

5 _____
6 [Originating in the Committee on Education;
7 reported February 9, 2011.]
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11 A BILL to amend and reenact §18A-2-2, §18A-2-6, §18A-2-7 and §18A-
12 2-8a of the Code of West Virginia, 1931, as amended, all
13 relating to changing certain deadlines associated with the
14 termination, resignation and transfer of school personnel and
15 rehiring of probationary employees.

16 *Be it enacted by the Legislature of West Virginia:*

17 That §18A-2-2, §18A-2-6, §18A-2-7 and §18A-2-8a of the Code of
18 West Virginia, 1931, as amended, be amended and reenacted, all to
19 read as follows:

20 **ARTICLE 2. SCHOOL PERSONNEL.**

21 **§18A-2-2. Employment of teachers; contracts; continuing contract**
22 **status; how terminated; dismissal for lack of need;**
23 **released time; failure of teacher to perform contract**
24 **or violation thereof; written notice bonus for**
25 **teachers and professional personnel.**

26 (a) Before entering upon their duties, all teachers shall
27 execute a contract with their county boards, which shall state the

1 salary to be paid and shall be in the form prescribed by the state
2 superintendent. Each contract shall be signed by the teacher and
3 by the president and secretary of the county board and shall be
4 filed, together with the certificate of the teacher, by the
5 secretary of the office of the county board: *Provided*, That when
6 necessary to facilitate the employment of employable professional
7 personnel and prospective and recent graduates of teacher education
8 programs who have not yet attained certification, the contract may
9 be signed upon the condition that the certificate is issued to the
10 employee prior to the beginning of the employment term in which the
11 employee enters upon his or her duties.

12 (b) Each teacher's contract, under this section, shall be
13 designated as a probationary or continuing contract. A probationary
14 teacher's contract shall be for a term of not less than one nor more
15 than three years, one of which shall be for completion of a
16 beginning teacher internship pursuant to the provisions of section
17 two-b, article three of this chapter, if applicable. If, after
18 three years of such employment, the teacher who holds a professional
19 certificate, based on at least a bachelor's degree, has met the
20 qualifications for a bachelor's degree and the county board enter
21 into a new contract of employment, it shall be a continuing
22 contract, subject to the following:

23 (1) Any teacher holding a valid certificate with less than a
24 bachelor's degree who is employed in a county beyond the three-year
25 probationary period shall upon qualifying for the professional
26 certificate based upon a bachelor's degree, if reemployed, be
27 granted continuing contract status; and

28 (2) A teacher holding continuing contract status with one

1 county shall be granted continuing contract status with any other
2 county upon completion of one year of acceptable employment if the
3 employment is during the next succeeding school year or immediately
4 following an approved leave of absence extending no more than one
5 year.

6 (c) The continuing contract of any teacher shall remain in
7 full force and effect except as modified by mutual consent of the
8 school board and the teacher, unless and until terminated, subject
9 to the following:

10 (1) A continuing contract may not be terminated except:

11 (A) By a majority vote of the full membership of the county
12 board on or before ~~February 1~~ May 1 of the then current year, after
13 written notice, served upon the teacher, return receipt requested,
14 stating cause or causes and an opportunity to be heard at a meeting
15 of the board prior to the board's action on the termination issue;
16 or

17 (B) By written resignation of the teacher on or before
18 ~~February 1~~ May 1 to initiate termination of a continuing contract;

19 (2) The termination shall take effect at the close of the
20 school year in which the contract is terminated;

21 (3) The contract may be terminated at any time by mutual
22 consent of the school board and the teacher;

23 (4) This section does not affect the powers of the school
24 board to suspend or dismiss a principal or teacher pursuant to
25 section eight of this article;

26 (5) A continuing contract for any teacher holding a
27 certificate valid for more than one year and in full force and
28 effect during the school year 1984-1985 shall remain in full force

1 and effect;

2 (6) A continuing contract does not operate to prevent a
3 teacher's dismissal based upon the lack of need for the teacher's
4 services pursuant to the provisions of law relating to the
5 allocation to teachers and pupil-teacher ratios. The written
6 notification of teachers being considered for dismissal for lack of
7 need shall be limited to only those teachers whose consideration for
8 dismissal is based upon known or expected circumstances which will
9 require dismissal for lack of need. An employee who was not
10 provided notice and an opportunity for a hearing pursuant to this
11 subsection may not be included on the list. In case of dismissal
12 for lack of need, a dismissed teacher shall be placed upon a
13 preferred list in the order of their length of service with that
14 board. No teacher may be employed by the board until each qualified
15 teacher upon the preferred list, in order, has been offered the
16 opportunity for reemployment in a position for which he or she is
17 qualified, not including a teacher who has accepted a teaching
18 position elsewhere. The reemployment shall be upon a teacher's
19 preexisting continuing contract and has the same effect as though
20 the contract had been suspended during the time the teacher was not
21 employed.

22 (d) In the assignment of position or duties of a teacher under
23 a continuing contract, the board may provide for released time of
24 a teacher for any special professional or governmental assignment
25 without jeopardizing the contractual rights of the teacher or any
26 other rights, privileges or benefits under the provisions of this
27 chapter. Released time shall be provided for any professional
28 educator while serving as a member of the Legislature during any

1 duly constituted session of that body and its interim and statutory
2 committees and commissions without jeopardizing his or her
3 contractual rights or any other rights, privileges, benefits or
4 accrual of experience for placement on the state minimum salary
5 schedule in the following school year under the provisions of this
6 chapter, board policy and law.

7 (e) Any teacher who fails to fulfill his or her contract with
8 the board, unless prevented from doing so by personal illness or
9 other just cause or unless released from his or her contract by the
10 board, or who violates any lawful provision of the contract, is
11 disqualified to teach in any other public school in the state for
12 a period of the next ensuing school year and the state Department
13 of Education or board may hold all papers and credentials of the
14 teacher on file for a period of one year for the violation:
15 *Provided*, That marriage of a teacher is not considered a failure to
16 fulfill, or violation of, the contract.

17 (f) Any classroom teacher, as defined in section one, article
18 one of this chapter, who desires to resign employment with a county
19 board or request a leave of absence, the resignation or leave of
20 absence to become effective on or before July 15 of the same year
21 and after completion of the employment term, may do so at any time
22 during the school year by written notification of the resignation
23 or leave of absence and any notification received by a county board
24 shall automatically extend the teacher's public employee insurance
25 coverage until August 31 of the same year.

26 (g) (1) A classroom teacher who gives written notice to the
27 county board on or before December 1 of the school year of his or
28 her retirement from employment with the board at the conclusion of

1 the school year shall be paid \$500 from the Early Notification of
2 Retirement line item established for the Department of Education for
3 this purpose, subject to appropriation by the Legislature. If the
4 appropriations to the Department of Education for this purpose are
5 insufficient to compensate all applicable teachers, the Department
6 of Education shall request a supplemental appropriation in an amount
7 sufficient to compensate all ~~such~~ those teachers giving the written
8 notice. Additionally, if funds are still insufficient to compensate
9 all applicable teachers, the priority of payment is for teachers who
10 give written notice the earliest. This payment shall not be counted
11 as part of the final average salary for the purpose of calculating
12 retirement.

13 (2) The position of a classroom teacher providing written
14 notice of retirement pursuant to this subsection may be considered
15 vacant and the county board may immediately post the position as an
16 opening to be filled at the conclusion of the school year. If a
17 teacher has been hired to fill the position of a retiring classroom
18 teacher prior to the start of the next school year, the retiring
19 classroom teacher is disqualified from continuing his or her
20 employment in that position. However, the retiring classroom
21 teacher may be permitted to continue his or her employment in that
22 position and forfeit the early retirement notification payment if,
23 after giving notice of retirement in accordance with this
24 subsection, he or she becomes subject to a significant unforeseen
25 financial hardship, including a hardship caused by the death or
26 illness of an immediate family member or loss of employment of a
27 spouse. Other significant unforeseen financial hardships shall be
28 determined by the county superintendent on a case-by-case basis.

1 This subsection does not prohibit a county school board from
2 eliminating the position of a retiring classroom teacher.

3 **§18A-2-6. Continuing contract status for service personnel;**
4 **termination.**

5 (a) After three years of acceptable employment, each service
6 ~~personnel employee~~ person who enters into a new contract of
7 employment with the board shall be granted continuing contract
8 status: *Provided*, That a service ~~personnel employee~~ person holding
9 continuing contract status with one county shall be granted
10 continuing contract status with any other county upon completion of
11 one year of acceptable employment if ~~such~~ the employment is during
12 the next succeeding school year or immediately following an approved
13 leave of absence extending no more than one year. The continuing
14 contract of ~~any such~~ the employee shall remain in full force and
15 effect except as modified by mutual consent of the school board and
16 the employee, unless and until terminated with written notice,
17 stating cause or causes, to the employee, by a majority vote of the
18 full membership of the board before ~~February~~ May 1 of the then
19 current year, or by written resignation of the employee on or before
20 that date. The affected employee has the right of a hearing before
21 the board, if requested, before final action is taken by the board
22 upon the termination of ~~such~~ his or her employment.

23 (b) Those employees who have completed three years of
24 acceptable employment as of the effective date of this legislation
25 shall be granted continuing contract status.

26 **§18A-2-7. Assignment, transfer, promotion, demotion, suspension**
27 **and recommendation of dismissal of school personnel**
28 **by superintendent; preliminary notice of transfer;**

1 **hearing on the transfer; proof required.**

2 (a) The superintendent, subject only to approval of the board,
3 may assign, transfer, promote, demote or suspend school personnel
4 and recommend their dismissal pursuant to provisions of this
5 chapter. However, an employee shall be notified in writing by the
6 superintendent on or before ~~February~~ April 1 if he or she is being
7 considered for transfer or to be transferred. Only those employees
8 whose consideration for transfer or intended transfer is based upon
9 known or expected circumstances which will require the transfer of
10 employees shall be considered for transfer or intended for transfer
11 and the notification shall be limited to only those employees. Any
12 teacher or employee who desires to protest the proposed transfer may
13 request in writing a statement of the reasons for the proposed
14 transfer. The statement of reasons shall be delivered to the
15 teacher or employee within ten days of the receipt of the request.
16 Within ten days of the receipt of the statement of the reasons, the
17 teacher or employee may make written demand upon the superintendent
18 for a hearing on the proposed transfer before the county board. ~~of~~
19 ~~education~~ The hearing on the proposed transfer shall be held on or
20 before ~~March~~ May 15. At the hearing, the reasons for the proposed
21 transfer must be shown.

22 (b) The superintendent at a meeting of the board on or before
23 ~~March~~ May 15 shall furnish in writing to the board a list of
24 teachers and other employees to be considered for transfer and
25 subsequent assignment for the next ensuing school year. An employee
26 who was not provided notice and an opportunity for a hearing
27 pursuant to subsection (a) of this section may not be included on
28 the list. All other teachers and employees not so listed shall be

1 considered as reassigned to the positions or jobs held at the time
2 of this meeting. The list of those recommended for transfer shall
3 be included in the minute record of the meeting and all those so
4 listed shall be notified in writing, which notice shall be delivered
5 in writing, by certified mail, return receipt requested, to the
6 persons' last known addresses within ten days following the board
7 meeting, of their having been so recommended for transfer and
8 subsequent assignment and the reasons therefor.

9 (c) The superintendent's authority to suspend school personnel
10 shall be temporary only pending a hearing upon charges filed by the
11 superintendent with the board of Education and the period of
12 suspension may not exceed thirty days unless extended by order of
13 the board.

14 (d) The provisions of this section respecting hearing upon
15 notice of transfer is not applicable in emergency situations where
16 the school building becomes damaged or destroyed through an
17 unforeseeable act and which act necessitates a transfer of the
18 school personnel because of the aforementioned condition of the
19 building.

20 **§18A-2-8a. Notice to probationary personnel of rehiring or**
21 **nonrehiring; hearing.**

22 (a) The superintendent at a meeting of the board on or before
23 ~~March 15~~ May 30 of each year shall provide in writing to the board
24 a list of all probationary teachers that he or she recommends to be
25 rehired for the next ensuing school year. The board shall act upon
26 the superintendent's recommendations at that meeting in accordance
27 with section one of this article. The board at this same meeting
28 also shall ~~also~~ act upon the retention of other probationary

1 employees as provided in sections two and five of this article. Any
2 ~~such~~ probationary teacher or other probationary employee who is not
3 rehired by the board at that meeting shall be notified in writing,
4 by certified mail, return receipt requested, to ~~such~~ the persons'
5 last known addresses within ten days following ~~said~~ the board
6 meeting, of their not having been rehired or not having been
7 recommended for rehiring.

8 (b) Any probationary teacher who receives notice that he or she
9 has not been recommended for rehiring or other probationary employee
10 who has not been reemployed may within ten days after receiving the
11 written notice request a statement of the reasons for not having
12 been rehired and may request a hearing before the board. The
13 hearing shall be held at the next regularly scheduled county board
14 ~~of education~~ meeting or a special meeting of the board called within
15 thirty days of the request for hearing. At the hearing, the reasons
16 for the nonrehiring must be shown.