

H. B. 2118

(By Delegate Perry)

[Introduced January 12, 2011; referred to the
Committee on Education then Finance.]

A BILL to amend and reenact §18-5-4 and §18-5-5 of the Code of West Virginia, 1931, as amended, all relating to county boards of education generally; providing for disclosure of personal and pecuniary interests and recusal from voting; prohibiting individual board members from acting on behalf of the board in an individual capacity unless authorized by statute; and penalty for violations.

Be it enacted by the Legislature of West Virginia:

That §18-5-4 and §18-5-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-4. Meetings; employment and assignment of teachers; budget hearing; compensation of members; affiliation with state and national associations.

1 (a) The county board shall meet on the first Monday in July,
2 and upon the dates provided by law for the laying of levies, and at
3 any other times the county board fixes upon its records. Subject
4 to adequate public notice, nothing in this section prohibits the
5 county board from conducting regular meetings in facilities within
6 the county other than the county board office. At any meeting as
7 authorized in this section and in compliance with the provisions of
8 chapter eighteen-a of this code, the county board may employ
9 qualified teachers, or those who will qualify by the time they
10 enter upon their duties, necessary to fill existing or anticipated
11 vacancies for the current or next ensuing school year. Meetings of
12 the county board shall be held in compliance with the provisions of
13 chapter eighteen-a of this code for purposes relating to the
14 assignment, transfer, termination and dismissal of teachers and
15 other school employees.

16 (b) Special meetings may be called by the president or any
17 three members, but no business may be transacted other than that
18 designated in the call.

19 (c) In addition, a public hearing shall be held concerning the
20 preliminary operating budget for the next fiscal year not fewer
21 than ten days after the budget has been made available to the
22 public for inspection and within a reasonable time prior to the
23 submission of the budget to the state board for approval.
24 Reasonable time shall be granted at the hearing to any person who

1 wishes to speak regarding any part of the budget. Notice of the
2 hearing shall be published as a Class I legal advertisement in
3 compliance with the provisions of article three, chapter fifty-nine
4 of this code.

5 (d) A majority of the members of the county board constitutes
6 the quorum necessary for the transaction of official business.

7 (e) When a question is put to a vote of the board, any member
8 having a direct personal or pecuniary interest therein shall
9 announce this fact and request to be excused from voting. The
10 member may be excused from voting if in the opinion of the
11 presiding chair the disqualifying interest affects the member
12 directly and not as one of a class.

13 ~~(e)~~ (f) Board members may receive compensation at a rate not
14 to exceed \$160 per meeting attended, but they may not receive pay
15 for more than fifty meetings in any one fiscal year. Board members
16 who serve on an administrative council of a multicounty vocational
17 center also may receive compensation for attending up to twelve
18 meetings of the council at the same rate as for meetings of the
19 county board. Meetings of the council are not counted as board
20 meetings for purposes of determining the limit on compensable board
21 meetings.

22 ~~(f)~~ (g) Members also shall be paid, upon the presentation of
23 an itemized sworn statement, for all necessary traveling expenses,
24 including all authorized meetings, incurred on official business,

1 at the order of the county board.

2 ~~(g)~~ (h) When, by a majority vote of its members, a county
 3 board considers it a matter of public interest, the county board
 4 may join the West Virginia School Board Association and the
 5 National School Board Association and may pay the dues prescribed
 6 by the associations and approved by action of the respective county
 7 boards. Membership dues and actual traveling expenses incurred by
 8 board members for attending meetings of the West Virginia School
 9 Board Association may be paid by their respective county boards out
 10 of funds available to meet actual expenses of the members, but no
 11 allowance may be made except upon sworn itemized statements.

12 **§18-5-5. Corporate character and general powers of board;**

13 **exception of school property from legal process**
 14 **and taxes; personal liability for unauthorized**
 15 **actions and obligations made by individual**
 16 **members.**

17 (a) The county board of education ~~shall be~~ is a corporation by
 18 the name of "The Board of Education of the county of, "
 19 and ~~as such~~ may sue and be sued, plead and be impleaded, contract
 20 and be contracted with. It shall succeed and be subrogated to all
 21 the rights of former magisterial and independent district boards
 22 and may institute and maintain any and all actions, suits and
 23 proceedings now pending or which might have been brought and

1 prosecuted in the name of any former board for the recovery of any
2 money or property, or damage to any property due to or vested in
3 the former board, and shall also be liable in its corporate
4 capacity for all claims legally existing against the board of which
5 it is a successor. The board shall, according to law, hold and
6 dispose of any real estate or personal property belonging to the
7 former corporation or its predecessors, or that may hereafter come
8 into its possession.

9 (b) The board according to law and the intent of the
10 instrument conferring title, shall receive, hold and dispose of any
11 gift, grant or bequest.

12 (c) All public school property used for school purposes ~~shall~~
13 ~~be~~ is exempt from execution or other process, and free from lien or
14 distress for taxes or municipal, county or state levies.

15 (d) Except where expressly authorized by law, a member of a
16 county board of education acting in an individual capacity separate
17 from the setting of a county board of education convened for the
18 transaction of business may not make obligations on behalf of the
19 board, commit the board's funds, utilize the board's property,
20 employees or services without prior knowledge and consent of the
21 board, administer the school system, hire board employees,
22 supervise or evaluate the board's employees or students, disregard
23 the policies of the board or rules of its schools or attempt to
24 exercise any other authority relating to the county schools or

1 school board outside the scope of authority expressly provided by
2 statute.

3 (e) The violation by a member of the board of any provision of
4 subsection (d) of this section may constitute malfeasance in office
5 warranting the removal of the member from office pursuant to
6 section seven, article six, chapter six of this code.

NOTE: The purpose of this bill is to recusal of board members during certain votes and prohibit individual county board of education members from acting on behalf of the board in an individual capacity unless authorized by law. The bill also assesses personal liability for violations.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.