

H. B. 2221

(By Delegate Wells)

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

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-39, relating to providing nonsupervisory employees of the West Virginia State Board of Education with the same protections against summary dismissal as are applicable to employees of county boards of education through continuing contracts and dismissal for cause.

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 section, designated §18-2-39, to read as follows:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-39. Employment of nonsupervisory employees; definitions; contracts; continuing contract status; how terminated for cause; dismissal for lack of need; and release time.

(a) The following definitions apply for purposes of this

1 section only:

2 (1) "Board" means the West Virginia Board of Education.

3 (2) "Comparable employment" means employment in a regular
4 full-time position which has substantially similar salary, benefits
5 and required skill level as the position previously held by the
6 employee with the board.

7 (3) "Employee" means any regular full-time employee of the
8 West Virginia Board of Education assigned to any facility who is
9 not a supervisor as defined in this section.

10 (4) "Employer" means the West Virginia Board of Education.

11 (5) "Supervisor" means any regular full-time employee having
12 authority, in the interest of the employer, to hire, transfer,
13 suspend, lay off, recall, promote, discharge, assign, reward, or
14 discipline other employees, or responsibility to direct them, or to
15 adjust their grievances, or effectively to recommend such action,
16 if in connection with the foregoing the exercise of such authority
17 is not of a merely routine or clerical nature.

18 (b) Before entering upon their duties, all employees shall
19 execute a contract with the board stating the salary to be paid and
20 be in the form prescribed by the state superintendent. Each
21 contract shall be signed by the employee and by the president of
22 the board and be filed by the state superintendent.

23 (c) An employee's contract, under this section, shall be for
24 a term of not less than one nor more than three years. If, after
25 three years of employment, the employee and the board enter into a
26 new contract of employment, it shall be a continuing contract.

1 (d) The continuing contract of any employee shall remain in
2 full force and effect except as modified by mutual consent of the
3 board and the employee, unless and until terminated, subject to the
4 following:

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

6 (A) By a majority vote of the full membership of the board on
7 or before the first Monday of April of the then current year, after
8 written notice, served upon the employee, return receipt requested,
9 stating cause or causes and an opportunity to be heard at a meeting
10 of the board prior to the board's action on the termination issue;
11 or

12 (B) By written resignation of the employee before that date,
13 to initiate termination of a continuing contract;

14 (2) The termination shall take effect at the close of the
15 fiscal year in which the contract is terminated;

16 (3) The contract may be terminated at any time by mutual
17 consent of the board and the employee;

18 (4) This section does not affect the powers of the school
19 board to suspend or dismiss an employee pursuant to subsections
20 (f), (g) and (h) of this section;

21 (5) A continuing contract does not operate to prevent an
22 employee's dismissal based upon the lack of need for the employee's
23 services. In case of dismissal for lack of need, a dismissed
24 employee shall be placed upon a preferred list in the order of
25 their length of service with that board. No employee may be
26 employed by the board until each qualified employee upon the

1 preferred list, in order, has been offered the opportunity for
2 reemployment in a position for which he or she is qualified, not
3 including an employee who has accepted comparable employment
4 elsewhere. The reemployment shall be upon the employee's
5 preexisting continuing contract and has the same effect as though
6 the contract had been suspended during the time the employee was
7 not employed.

8 (e) In the assignment of position or duties of an employee
9 under a continuing contract, the board may provide for released
10 time of an employee for any special professional or governmental
11 assignment without jeopardizing the contractual rights of the
12 employee or any other rights, privileges or benefits under the
13 provisions of this chapter.

14 (f) Notwithstanding any other provisions of law, the board may
15 suspend or dismiss any person in its employment at any time for:
16 Immorality, incompetency, cruelty, insubordination, intemperance,
17 willful neglect of duty, unsatisfactory performance, the conviction
18 of a felony or a guilty plea or a plea of nolo contendere to a
19 felony charge.

20 (g) A charge of unsatisfactory performance may not be made
21 except as the result of an employee performance evaluation pursuant
22 to policy adopted by the board for evaluation of employees
23 consistent with the principles and procedures set out in section
24 twelve of this article. The charges shall be stated in writing
25 served upon the employee within two days of presentation of the
26 charges to the board.

1 (h) The affected employee shall be given an opportunity,
2 within five days of receiving the written notice, to request, in
3 writing, a level three hearing and appeals pursuant to the
4 provisions of article two, chapter six-c, except that dismissal for
5 the conviction of a felony or guilty plea or plea of nolo
6 contendere to a felony charge is not by itself a grounds for a
7 grievance proceeding. An employee charged with the commission of
8 a felony may be reassigned to duties which do not involve direct
9 interaction with pupils pending final disposition of the charges.

NOTE: The purpose of this bill is to provide nonsupervisory employees of the West Virginia State Board of Education with the same protections against summary dismissal as are applicable to employees of county boards of education through continuing contracts and dismissal for cause.

This section is new; therefore, it has been completely underscored.