

H. B. 2560

(By Delegates Perry, Stowers and Romine)
[Introduced January 19, 2011; referred to the
Committee on Education.]

**Interim
Bill**

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10 A BILL to amend and reenact §18A-2-1 of the Code of West Virginia,
11 1931, as amended, to amend and reenact §18A-4-7a of said code;
12 and to amend and reenact §18A-5-8 of said code, all relating
13 to the employment of personnel in public schools; providing
14 for inclusion of school's faculty senate members on interview
15 and recommendation process when employing professional and
16 paraprofessional personnel at the school; authorizing ranking
17 of preferences and reposting; authorizing nomination of
18 prospective graduates for employment with conditions; revising
19 criteria for judging qualifications affecting hiring of
20 professional personnel; and changing date prior to
21 instructional term after which professional personnel, autism
22 mentors and certain aids, paraprofessionals and interpreters
23 may not transfer to another position in county during
24 instructional term, subject to certain conditions.

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

2 That §18A-2-1 of the Code of West Virginia, 1931, as amended,
3 be amended and reenacted; that §18A-4-7a of said code be amended
4 and reenacted; and that §18A-5-8 of said code be amended and
5 reenacted, all to read as follows:

6 **ARTICLE 2. SCHOOL PERSONNEL.**

7 **§18A-2-1. Employment in general.**

8 (a) The employment of professional personnel shall be made by
9 the board only upon nomination and recommendation of the
10 superintendent: *Provided*, That the superintendent shall provide
11 the principal at the school at which the professional educator or
12 paraprofessional employee is to be employed an opportunity to
13 interview all qualified applicants and make recommendations to the
14 county superintendent regarding their employment. The principal
15 shall include members of the school's faculty senate in the
16 interview and recommendation process. The number of classroom
17 teachers included in the process shall be at least equal to the
18 number of other members and each member shall have one equal vote.
19 At least one of the classroom teachers included in the interview
20 and recommendation process shall be in the same content area as the
21 posted position unless the position is the only one in the content
22 area at the school. The recommendations may be ranked in the order
23 of preferences for employment at the school along with stated
24 reasons. If there are more than three qualified applicants for a

1 single posted position, the rankings may be limited to the three
2 most highly recommended applicants. If no more than one qualified
3 applicant applies for a posted position, a recommendation may be
4 made that the position be reposted and the superintendent may
5 repost the position: *Provided, however,* That nothing shall
6 prohibit the timely employment of persons to perform necessary
7 duties.

8 (b) In case the board refuses to employ any or all of the
9 persons nominated, the superintendent shall nominate ~~others and~~
10 ~~submit the same~~ other qualified applicants to the board at such
11 time as the board may direct.

12 (c) All personnel ~~so~~ nominated and recommended for employment
13 and for subsequent assignment shall meet the certification,
14 licensing, training and other eligibility classifications as may be
15 required by provisions of this chapter and by state board
16 regulation: Provided, That the superintendent may nominate and
17 recommend a prospective graduate of a teacher education program on
18 the condition that the person meets these certification, licensing,
19 training and other eligibility requirements prior to the
20 commencement of his or her duties. In addition to any other
21 information required, the application for any certification or
22 licensing shall include the applicant's social security number.

23 (d) Professional personnel employed as deputy, associate or
24 assistant superintendents by the board in offices, departments or

1 divisions at locations other than a school and who are directly
2 answerable to the superintendent shall serve at the will and
3 pleasure of the superintendent and may be removed by the
4 superintendent upon approval of the board. Such professional
5 personnel shall retain seniority rights only in the area or areas
6 in which they hold valid certification or licensure.

7 **ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.**

8 **§18A-4-7a. Employment, promotion and transfer of professional**
9 **personnel; seniority.**

10 (a) A county board of education shall make decisions affecting
11 the hiring of professional personnel ~~other than classroom teachers~~
12 on the basis of the applicant with the highest qualifications.

13 ~~(b) The county board shall make decisions affecting the hiring~~
14 ~~of new classroom teachers on the basis of the applicant with the~~
15 ~~highest qualifications.~~

16 ~~(c)~~ (b) In judging qualifications for hiring employees,
17 ~~pursuant to subsections (a) and (b) of this section,~~ consideration
18 shall be given to each of the following criteria which, in judging
19 the qualifications of classroom teachers, shall be given equal
20 weight:

21 (1) Appropriate certification, licensure or both. In the case
22 of a classroom teaching position, applicants who hold a
23 certification permit for the position, or who are eligible for an
24 alternative program certification, or who are prospective graduates

1 of teacher education programs who have not yet obtained full
2 certification may only be considered if no fully certified
3 applicant applies;

4 (2) Amount of experience relevant to the position; or, in the
5 case of a classroom teaching position, the amount of teaching
6 experience in the ~~subject~~ content area and at the programmatic
7 level. Programmatic level means the elementary, middle school,
8 junior high school or high school levels, and does not mean
9 specific grades within those levels;

10 (3) The amount of course work ~~degree level or both in the~~
11 ~~relevant field~~ and degree level generally relevant to the position;

12 (4) Academic and professional achievement. In the case of
13 classroom teachers, "academic achievement" means achievement in
14 course work relevant to the position, including degrees in the
15 content area, and certification by the National Board for
16 Professional Teaching Standards; and "professional achievement"
17 means a special recognition of a teacher specifically recognized by
18 the West Virginia Commission for Professional Teaching Standards as
19 being awarded on the basis of quality teaching and no others;

20 (5) ~~Relevant~~ Specialized training relevant to the position.
21 In the case of classroom teachers, "specialized training relevant
22 to the position" includes the level of expertise gained through
23 formal or informal experiences in: (i) Utilizing the technology
24 available in the position; (ii) employing specific instructional

1 strategies expected to be implemented in the position; and (iii)
2 performing any other responsibilities required in the position as
3 specifically stated in the job posting;

4 (6) ~~Past~~ Performance evaluations conducted within the past
5 five years pursuant to section twelve, article two of this chapter,
6 or, in the case of beginning teachers, section two-b, article three
7 of this chapter;

8 (7) In the case of classroom teachers, the interview
9 recommendations of the principal, and faculty senate if applicable,
10 of the school at which the teacher will be employed;

11 (8) In the case of classroom teachers, seniority; and

12 ~~(7)~~ (9) Except in the case of classroom teachers, other
13 measures or indicators upon which the relative qualifications of
14 the applicant to perform the required duties as stated job posting
15 may fairly be judged.

16 ~~(d) If one or more permanently employed instructional~~
17 ~~personnel apply for a classroom teaching position and meet the~~
18 ~~standards set forth in the job posting, the county board of~~
19 ~~education shall make a decision affecting the filling of the~~
20 ~~position on the basis of the following criteria:~~

21 ~~(1) Appropriate certification, licensure or both;~~

22 ~~(2) Total amount of teaching experience;~~

23 ~~(3) The existence of teaching experience in the required~~
24 ~~certification area;~~

- 1 ~~(4) Degree level in the required certification area;~~
- 2 ~~(5) Specialized training directly related to the performance~~
3 ~~of the job as stated in the job description;~~
- 4 ~~(6) Receiving an overall rating of satisfactory in the~~
5 ~~previous two evaluations conducted pursuant to section twelve,~~
6 ~~article two of this chapter; and~~
- 7 ~~(7) Seniority.~~

8 ~~(e)~~ (c) In filling classroom teacher positions pursuant to
9 ~~subsection (d) of this section, consideration shall be given to~~
10 ~~each criterion with each criterion being given equal weight. if~~
11 the applicant with the most seniority is not selected for the
12 position, upon the request of the applicant a written statement of
13 reasons shall be given to the applicant with suggestions for
14 improving the applicant's qualifications.

15 ~~(f)~~ (d) With the exception of guidance counselors, the
16 seniority of classroom teachers, as defined in section one, article
17 one of this chapter shall be determined on the basis of the length
18 of time the employee has been employed as a regular full-time
19 certified and/or licensed professional educator by the county board
20 of education and shall be granted in all areas that the employee is
21 certified, licensed or both.

22 ~~(g)~~ (e) Upon completion of one hundred thirty-three days of
23 employment in any one school year, substitute teachers, except
24 retired teachers and other retired professional educators employed

1 as substitutes, shall accrue seniority exclusively for the purpose
2 of applying for employment as a permanent, full-time professional
3 employee. One hundred thirty-three days or more of said employment
4 shall be prorated and shall vest as a fraction of the school year
5 worked by the permanent, full-time teacher.

6 ~~(h)~~ (f) Guidance counselors and all other professional
7 employees, as defined in section one, article one of this chapter,
8 except classroom teachers, shall gain seniority in their
9 nonteaching area of professional employment on the basis of the
10 length of time the employee has been employed by the county board
11 of education in that area: *Provided*, That if an employee is
12 certified as a classroom teacher, the employee accrues classroom
13 teaching seniority for the time that employee is employed in
14 another professional area. For the purposes of accruing seniority
15 under this paragraph, employment as principal, supervisor or
16 central office administrator, as defined in section one, article
17 one of this chapter, shall be considered one area of employment.

18 ~~(i)~~ (g) Employment for a full employment term shall equal one
19 year of seniority, but no employee may accrue more than one year of
20 seniority during any given fiscal year. Employment for less than
21 the full employment term shall be prorated. A random selection
22 system established by the employees and approved by the board shall
23 be used to determine the priority if two or more employees
24 accumulate identical seniority: *Provided*, That when two or more

1 principals have accumulated identical seniority, decisions on
2 reductions in force shall be based on qualifications.

3 ~~(j)~~ (h) Whenever a county board is required to reduce the
4 number of professional personnel in its employment, the employee
5 with the least amount of seniority shall be properly notified and
6 released from employment pursuant to the provisions of section two,
7 article two of this chapter. The provisions of this subsection are
8 subject to the following:

9 (1) All persons employed in a certification area to be reduced
10 who are employed under a temporary permit shall be properly
11 notified and released before a fully certified employee in such a
12 position is subject to release;

13 (2) An employee subject to release shall be employed in any
14 other professional position where the employee is certified and was
15 previously employed or to any lateral area for which the employee
16 is certified, licensed or both, if the employee's seniority is
17 greater than the seniority of any other employee in that area of
18 certification, licensure or both;

19 (3) If an employee subject to release holds certification,
20 licensure or both in more than one lateral area and if the
21 employee's seniority is greater than the seniority of any other
22 employee in one or more of those areas of certification, licensure
23 or both, the employee subject to release shall be employed in the
24 professional position held by the employee with the least seniority

1 in any of those areas of certification, licensure or both; and

2 (4) If, prior to August 1, of the year a reduction in force is
3 approved, the reason for any particular reduction in force no
4 longer exists as determined by the county board in its sole and
5 exclusive judgment, the board shall rescind the reduction in force
6 or transfer and shall notify the released employee in writing of
7 his or her right to be restored to his or her position of
8 employment. Within five days of being so notified, the released
9 employee shall notify the board, in writing, of his or her intent
10 to resume his or her position of employment or the right to be
11 restored shall terminate. Notwithstanding any other provision of
12 this subdivision, if there is another employee on the preferred
13 recall list with proper certification and higher seniority, that
14 person shall be placed in the position restored as a result of the
15 reduction in force being rescinded.

16 ~~(k)~~ (i) For the purpose of this article, all positions which
17 meet the definition of classroom teacher as defined in section one,
18 article one of this chapter shall be lateral positions. For all
19 other professional positions, the county board of education shall
20 adopt a policy by October 31, 1993, and may modify the policy
21 thereafter as necessary, which defines which positions shall be
22 lateral positions. The board shall submit a copy of its policy to
23 the state board within thirty days of adoption or any modification,
24 and the state board shall compile a report and submit the report to

1 the Legislative Oversight commission on education accountability by
2 December 31, 1993, and by that date in any succeeding year in which
3 any county board submits a modification of its policy relating to
4 lateral positions. In adopting the policy, the board shall give
5 consideration to the rank of each position in terms of title;
6 nature of responsibilities; salary level; certification, licensure
7 or both; and days in the period of employment.

8 ~~(i)~~ (j) After the ~~fifth day~~ July 15, prior to the beginning of
9 the instructional term, ~~no~~ a person employed and assigned to a
10 professional position may not transfer to another professional
11 position in the county during that instructional term unless the
12 person holding that position does not have valid certification.
13 The provisions of this subsection are subject to the following:

14 (1) The person may apply for any posted, vacant positions with
15 the successful applicant assuming the position at the beginning of
16 the next instructional term;

17 (2) Professional personnel who have been on an approved leave
18 of absence may fill these vacancies upon their return from the
19 approved leave of absence; ~~and~~

20 (3) The county board, upon recommendation of the
21 superintendent may fill a position before the next instructional
22 term when it is determined to be in the best interest of the
23 students: *Provided*, That the county superintendent shall notify
24 the state board of each transfer of a person employed in a

1 professional position to another professional position after the
2 ~~fifth day~~ July 15, prior to the beginning of the instructional
3 term; and

4 (4) The provisions of this subsection do not apply to the
5 filling of a position vacated by virtue of a resignation or
6 retirement on or before July 15, prior to the beginning of the
7 instructional term.

8 The Legislature finds that it is not in the best interest of
9 the students particularly in the elementary grades to have multiple
10 teachers for any one grade level or course during the instructional
11 term. It is the intent of the Legislature that the filling of
12 positions through transfers of personnel from one professional
13 position to another after the ~~fifth day~~ July 15, prior to the
14 beginning of the instructional term should be kept to a minimum.

15 ~~(m)~~ (k) All professional personnel whose seniority with the
16 county board is insufficient to allow their retention by the county
17 board during a reduction in work force shall be placed upon a
18 preferred recall list. As to any professional position opening
19 within the area where they had previously been employed or to any
20 lateral area for which they have certification, licensure or both,
21 the employee shall be recalled on the basis of seniority if no
22 regular, full-time professional personnel, or those returning from
23 leaves of absence with greater seniority, are qualified, apply for
24 and accept the position.

1 ~~(n)~~ (l) Before position openings that are known or expected to
2 extend for twenty consecutive employment days or longer for
3 professional personnel may be filled by the board, the board shall
4 be required to notify all qualified professional personnel on the
5 preferred list and give them an opportunity to apply, but failure
6 to apply shall not cause the employee to forfeit any right to
7 recall. The notice shall be sent by certified mail to the last
8 known address of the employee, and it shall be the duty of each
9 professional personnel to notify the board of continued
10 availability annually, of any change in address or of any change in
11 certification, licensure or both.

12 ~~(o)~~ (m) Openings in established, existing or newly created
13 positions shall be processed as follows:

14 (1) Boards shall be required to post and date notices which
15 shall be subject to the following:

16 (A) The notices shall be posted in conspicuous working places
17 for all professional personnel to observe for at least five working
18 days;

19 (B) The notice shall be posted within twenty working days of
20 the position openings and shall include the job description;

21 (C) Any special criteria or skills that are required by the
22 position shall be specifically stated in the job description and
23 directly related to the performance of the job;

24 (D) Postings for vacancies made pursuant to this section shall

1 be written so as to ensure that the largest possible pool of
2 qualified applicants may apply; and

3 (E) Job postings may not require criteria which are not
4 necessary for the successful performance of the job and may not be
5 written with the intent to favor a specific applicant;

6 (2) No vacancy shall be filled until after the five-day
7 minimum posting period;

8 (3) If one or more applicants meets the qualifications listed
9 in the job posting, the successful applicant to fill the vacancy
10 shall be selected by the board within thirty working days of the
11 end of the posting period;

12 (4) A position held by a teacher who is certified, licensed or
13 both, who has been issued a permit for full-time employment and is
14 working toward certification in the permit area shall not be
15 subject to posting if the certificate is awarded within five years;
16 and

17 (5) Nothing provided herein shall prevent the county board of
18 education from eliminating a position due to lack of need.

19 ~~(p)~~ (n) Notwithstanding any other provision of the code to the
20 contrary, where the total number of classroom teaching positions in
21 an elementary school does not increase from one school year to the
22 next, but there exists in that school a need to realign the number
23 of teachers in one or more grade levels, kindergarten through six,
24 teachers at the school may be reassigned to grade levels for which

1 they are certified without that position being posted: *Provided,*
2 That the employee and the county board of education mutually agree
3 to the reassignment.

4 ~~(g)~~ (o) Reductions in classroom teaching positions in
5 elementary schools shall be processed as follows:

6 (1) When the total number of classroom teaching positions in
7 an elementary school needs to be reduced, the reduction shall be
8 made on the basis of seniority with the least senior classroom
9 teacher being recommended for transfer; and

10 (2) When a specified grade level needs to be reduced and the
11 least senior employee in the school is not in that grade level, the
12 least senior classroom teacher in the grade level that needs to be
13 reduced shall be reassigned to the position made vacant by the
14 transfer of the least senior classroom teacher in the school
15 without that position being posted: *Provided,* That the employee is
16 certified, licensed or both and agrees to the reassignment.

17 ~~(r)~~ (p) Any board failing to comply with the provisions of
18 this article may be compelled to do so by mandamus and shall be
19 liable to any party prevailing against the board for court costs
20 and reasonable attorney fees as determined and established by the
21 court. Further, employees denied promotion or employment in
22 violation of this section shall be awarded the job, pay and any
23 applicable benefits retroactive to the date of the violation and
24 payable entirely from local funds. Further, the board shall be

1 liable to any party prevailing against the board for any court
2 reporter costs including copies of transcripts.

3 ~~(s)~~ (q) The county board shall compile, update annually on
4 July 1, and make available by electronic or other means to all
5 employees a list of all professional personnel employed by the
6 county, their areas of certification and their seniority.

7 **ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.**

8 **§18A-5-8. Authority of certain aides to exercise control over**
9 **students; compensation; transfers.**

10 (a) Within the limitations provided in this section, any aide
11 who agrees to do so shall stand in the place of the parent or
12 guardian and shall exercise such authority and control over
13 students as is required of a teacher as provided in section one of
14 this article. The principal shall designate aides in the school
15 who agree to exercise that authority on the basis of seniority as
16 an aide and shall enumerate the instances in which the authority
17 shall be exercised by an aide when requested by the principal,
18 assistant principal or professional employee to whom the aide is
19 assigned.

20 (b) The authority provided for in subsection (a) of this
21 section does not extend to suspending or expelling any student,
22 participating in the administration of corporal punishment or
23 performing instructional duties as a teacher or substitute teacher.
24 However, the authority extends to supervising students undergoing

1 in-school suspension if the instructional duties required by the
2 supervision are limited solely to handing out class work and
3 collecting class work. The authority to supervise students
4 undergoing in-school suspension does not include actual
5 instruction.

6 (c) An aide designated by the principal under subsection (a)
7 of this section shall receive a salary not less than one pay grade
8 above the highest pay grade held by the service person under
9 section eight-a, article four of this chapter and any county salary
10 schedule in excess of the minimum requirements of this article.

11 (d) An aide may not be required by the operation of this
12 section to perform noninstructional duties for an amount of time
13 which exceeds that required under the aide's contract of employment
14 or that required of other aides in the same school unless the
15 assignment of the duties is mutually agreed upon by the aide and
16 the county superintendent, or the superintendent's designated
17 representative, subject to county board approval.

18 (1) The terms and conditions of the agreement shall be in
19 writing, signed by both parties, and may include additional
20 benefits.

21 (2) The agreement shall be uniform as to aides assigned
22 similar duties for similar amounts of time within the same school.

23 (3) Aides have the option of agreeing to supervise students
24 and of renewing related assignments annually. If an aide elects

1 not to renew the previous agreement to supervise students, the
2 minimum salary of the aide shall revert to the pay grade specified
3 in section eight-a, article four of this chapter for the
4 classification title held by the aide and any county salary
5 schedule in excess of the minimum requirements of this article.

6 (e) For the purposes of this section, aide means any aide
7 class title as defined in section eight, article four of this
8 chapter regardless of numeric classification.

9 (f) Subject to the limitations set forth in subsection (g) of
10 this section, an aide may transfer to another position of
11 employment one time only during any one half of a school term,
12 unless otherwise mutually agreed upon by the aide and the county
13 superintendent, or the superintendent's designee, subject to county
14 board approval. During the first year of employment as an aide, an
15 aide may not transfer to another position of employment during the
16 first one-half school term of employment unless mutually agreed
17 upon by the aide and county superintendent, subject to county board
18 approval.

19 ~~(g) Autism mentors and aides providing services to children~~
20 ~~diagnosed as autistic or with autism spectrum disorder; and~~
21 ~~paraprofessionals, interpreters and aides providing one-on-one~~
22 ~~services to students with exceptionalities as required by the~~
23 ~~students' individualized education programs (IEP).~~

24 ~~(1) Legislative findings and intent.~~

1 ~~(A) The Legislature finds that it is not in the best interest~~
2 ~~of a student with autism or a student with an exceptionality whose~~
3 ~~IEP requires one-on-one services to have multiple teachers,~~
4 ~~mentors, aides, paraprofessionals, interpreters or any combination~~
5 ~~thereof during the instructional term; and~~

6 ~~(B) It is the intent of the Legislature that filling positions~~
7 ~~through transfers of personnel from one position to another after~~
8 ~~the fifth day prior to the beginning of the instructional term be~~
9 ~~kept to a minimum for autism mentors and aides who work with~~
10 ~~students with autism and for paraprofessionals, interpreters and~~
11 ~~aides who work with students with exceptionalities whose IEPs~~
12 ~~require one-on-one services.~~

13 ~~(2) Transfer limitations and conditions.~~

14 ~~(A) Notwithstanding the provisions of subsection (f) of this~~
15 ~~section, after the fifth day July 15, prior to the beginning of~~
16 ~~the instructional term, a service person employed and assigned as~~
17 ~~an autism mentor or aide who works with students with autism, or as~~
18 ~~a paraprofessional, interpreter or aide who works with a student~~
19 ~~with an exceptionality whose IEP requires one-on-one services a~~
20 ~~service person may not transfer to another position in the county~~
21 ~~during that instructional term, unless he or she does not have~~
22 ~~valid certification, if the service person is employed and assigned~~
23 ~~as an autism mentor or aide who works with students with autism, or~~
24 ~~as a paraprofessional, interpreter or aide who works with a student~~

1 ~~with an exceptionality whose IEP requires one-on-one services.~~

2 ~~(B) The provisions of this subsection are~~ subject to the
3 following conditions:

4 (i) The aide, autism mentor, paraprofessional or interpreter
5 may apply for any posted, vacant position with the successful
6 applicant assuming the position at the beginning of the next
7 instructional term;

8 (ii) The county board, upon recommendation of the
9 superintendent, may fill a position before the beginning of the
10 next instructional term when it is determined to be in the best
11 interest of the students; and

12 (iii) The county superintendent shall notify the state board
13 when a service person who is subject to the provisions of this
14 subsection is transferred to another position after the ~~fifth day~~
15 July 15, prior to the beginning of the instructional term;

16 (h) Regular service personnel employed in a category of
17 employment other than aide who seek employment as an aide shall
18 hold a high school diploma or shall have received a general
19 educational development certificate and shall have the opportunity
20 to receive appropriate training pursuant to subsection (j), section
21 thirteen, article five, chapter eighteen of this code and section
22 two, article twenty of said chapter.

NOTE: The purpose of this bill is to: (a) Include the school's faculty senate members on the interview and recommendation

process for employing professional and paraprofessional personnel at the school; (b) authorize the superintendent to nomination of prospective graduates for employment with conditions; (c) revise the criteria for judging qualifications affecting hiring of professional personnel and consolidate them into a single list; and (d) provide an earlier date prior to the instructional term after which professional personnel, autism mentors and certain aids, paraprofessionals and interpreters may not transfer to another position in county, subject to certain conditions.

Strike-throughs indicate existing language that would be removed, and underscoring indicates new language that would be added.

This bill was recommended for introduction and passage during the Regular Session of the Legislature by the Joint Standing Committee on Education.