

1 **SECOND**

2 **ENGROSSMENT**

3 **H. B. 4655**

4
5 (By Delegates M. Poling and Paxton)

6
7 (Originating in the House Committee on Education.)

8 [February 24, 2012]

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12 A Bill to amend and reenact §18A-4-8e of the Code of West Virginia,
13 1931, as amended, relating to school service personnel
14 certification; establishing criteria for certain certificate
15 issuance, denial and revocation; establishing certification
16 review panel; requiring reporting of certain acts; providing
17 for certificate recall and correction under certain
18 circumstance; and requiring State Board rule.

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

20 That §18A-4-8e of the Code of West Virginia, 1931, as amended,
21 be amended and reenacted to read as follows:

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

23 **§18A-4-8e. Competency testing for service personnel; and**
24 **recertification testing for bus operators.**

25 (a) The State Board ~~of Education~~ shall develop and make
26 available competency tests for all of the classification titles

1 defined in section eight of this article and listed in section
2 eight-a of this article for service personnel. Each classification
3 title defined and listed is considered a separate classification
4 category of employment for service personnel and has a separate
5 competency test, except for those class titles having Roman numeral
6 designations, which are considered a single classification of
7 employment and have a single competency test.

8 (1) The cafeteria manager class title is included in the same
9 classification category as cooks and has the same competency test.

10 (2) The executive secretary class title is included in the
11 same classification category as secretaries and has the same
12 competency test.

13 (3) The classification titles of chief mechanic, mechanic and
14 assistant mechanic are included in one classification title and
15 have the same competency test.

16 (b) The purpose of these tests is to provide county boards a
17 uniform means of determining whether school service personnel who
18 do not hold a classification title in a particular category of
19 employment meet the definition of the classification title in
20 another category of employment as defined in section eight of this
21 article. Competency tests may not be used to evaluate employees
22 who hold the classification title in the category of their
23 employment.

24 (c) The competency test consists of an objective written or
25 performance test, or both. Applicants may take the written test
26 orally if requested. Oral tests are recorded mechanically and kept

1 on file. The oral test is administered by persons who do not know
2 the applicant personally.

3 (1) The performance test for all classifications and
4 categories other than bus operator is administered by an employee
5 of the county board or an employee of a multicounty vocational
6 school that serves the county at a location designated by the
7 superintendent and approved by the board. The location may be a
8 vocational school that serves the county.

9 (2) A standard passing score is established by the state
10 Department of Education for each test and is used by county boards.

11 (3) The subject matter of each competency test is commensurate
12 with the requirements of the definitions of the classification
13 titles as provided in section eight of this article. The subject
14 matter of each competency test is designed in such a manner that
15 achieving a passing grade does not require knowledge and skill in
16 excess of the requirements of the definitions of the classification
17 titles. Achieving a passing score conclusively demonstrates the
18 qualification of an applicant for a classification title.

19 (4) Once an employee passes the competency test of a
20 classification title, the applicant is fully qualified to fill
21 vacancies in that classification category of employment as provided
22 in section eight-b of this article and may not be required to take
23 the competency test again.

24 (d) An applicant who fails to achieve a passing score is given
25 other opportunities to pass the competency test when ~~making~~
26 ~~application~~ applying for another vacancy within the classification

1 category.

2 (e) Competency tests are administered to applicants in a
3 uniform manner under uniform testing conditions. County boards are
4 responsible for scheduling competency tests, notifying applicants
5 of the date and time of the one day of training prior to taking the
6 test, and the date and time of the test. County boards may not use
7 a competency test other than the test authorized by this section.

8 (f) When scheduling of the competency test conflicts with the
9 work schedule of a school employee who has applied for a vacancy,
10 the employee is excused from work to take the competency test
11 without loss of pay.

12 (g) A minimum of one day of appropriate in-service training is
13 provided to employees to assist them in preparing to take the
14 competency tests.

15 (h) Competency tests are used to determine the qualification
16 of new applicants seeking initial employment in a particular
17 classification title as either a regular or substitute employee.

18 (I) Notwithstanding any provisions in this code to the
19 contrary, once an employee holds or has held a classification title
20 in a category of employment, that employee is considered qualified
21 for the classification title even though that employee no longer
22 holds that classification.

23 (j) The requirements of this section do not alter the
24 definitions of class titles as provided in section eight of this
25 article or the procedure and requirements of section eight-b of
26 this article.

1 (k) Notwithstanding any other provision of this code to the
2 contrary and notwithstanding any rules of the School Board
3 concerning school bus operator certification, ~~in effect on the~~
4 ~~effective date of this section~~ the certification test for school
5 bus operators shall be required as follows, and school bus
6 operators ~~shall~~ may not be required to take the certification test
7 more frequently:

8 (1) For substitute school bus operators and for school bus
9 operators with regular employee status but on a probationary
10 contract, the certification test shall be administered annually;

11 (2) For school bus operators with regular employee status and
12 continuing contract status, the certification test shall be
13 administered triennially; and

14 (3) For substitute school bus operators who are retired from
15 a county board and who at the time of retirement had ten years of
16 experience as a regular full-time bus operator, the certification
17 test shall be administered triennially.

18 (4) School bus operator certificate. --

19 (A) A school bus operator certificate may be issued to a
20 person who has attained the age of twenty-one, completed the
21 required training set forth in State Board rule, and met the
22 physical requirements and other criteria to operate a school bus
23 set forth in State Board rule.

24 (B) The State Superintendent may, after ten days' notice and
25 upon proper evidence, revoke the certificate of any bus operator
26 for any of the following causes:

1 (i) Intemperance, untruthfulness, cruelty or immorality;
2 (ii) Conviction of or guilty plea or plea of no contest to a
3 felony charge;
4 (iii) Conviction of or guilty plea or plea of no contest to
5 any charge involving sexual misconduct with a minor or a student;
6 (iv) Just and sufficient cause for revocation as specified by
7 State Board rule; and
8 (v) Using fraudulent, unapproved or insufficient credit to
9 obtain the certificates.
10 (vi) Of the causes for certificate revocation listed in this
11 paragraph (B), the following causes constitute grounds for
12 revocation only if there is a rational nexus between the conduct of
13 the bus operator and the performance of the job:
14 (I) Intemperance, untruthfulness, cruelty or immorality;
15 (II) Just and sufficient cause for revocation as specified by
16 State Board rule; and
17 (III) Using fraudulent, unapproved or insufficient credit to
18 obtain the certificate.
19 (C) The certificate of a bus operator may not be revoked for
20 either of the following unless it can be proven by clear and
21 convincing evidence that the bus operator has committed one of the
22 offenses listed in this subsection and his or her actions render
23 him or her unfit to operate a school bus:
24 (i) Any matter for which the bus operator was disciplined,
25 less than dismissal, by the employing county board; or
26 (ii) Any matter for which the bus operator is meeting or has

1 met an improvement plan determined by the county board.

2 (D) The State Superintendent may designate a review panel to
3 conduct hearings on certificate revocations or denials and make
4 recommendations for action by the State Superintendent. The State
5 Board, after consultation with employee organizations representing
6 school service personnel, shall promulgate a rule to establish the
7 review panel membership and composition, method of appointment,
8 governing principles and meeting schedule.

9 (E) It is the duty of any county superintendent who knows of
10 any acts on the part of a bus operator for which a certificate may
11 be revoked in accordance with this section to report the same,
12 together with all the facts and evidence, to the State
13 Superintendent for such action as in the State Superintendent's
14 judgment may be proper.

15 (F) If a certificate has been granted through an error,
16 oversight or misinformation, the State Superintendent may recall
17 the certificate and make such corrections as will conform to the
18 requirements of law and State Board rules.

19 (5) The State Board shall promulgate in accordance with
20 article three-b, chapter twenty-nine-a of this code, revised rules
21 in compliance with this subsection.