

1 **ENROLLED**

2 **H. B. 4583**

3
4 (By Delegates M. Poling, Shaver, Caputo, Moye,
5 Perry, Michael, Sumner and Duke)

6 [Passed March 5, 2012; in effect from passage.]
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10 AN ACT to amend and reenact §18A-2-2, §18A-2-6, §18A-2-7 and §18A-
11 2-8a of the Code of West Virginia, 1931, as amended; and to
12 amend and reenact §18A-4-7a of said code, all relating to
13 school personnel; changing certain deadlines pertaining to
14 termination of a continuing contract, resignation, retirement,
15 transfer and rehiring of probationary employees; changing the
16 number of days prior to the beginning of the instructional
17 term for limiting the transfer of certain employees; and
18 restricting application of certain provisions pertaining to
19 limiting the transfer of certain employees.

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

21 That §18A-2-2, §18A-2-6, §18A-2-7 and §18A-2-8a of the code of West
22 Virginia, 1931, as amended, be amended and reenacted; and that
23 §18A-4-7a of said code be amended and reenacted, all to read as
24 follows:

1 **ARTICLE 2. SCHOOL PERSONNEL.**

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

7 (a) Before entering upon their duties, all teachers shall
8 execute a contract with their county boards, which shall state the
9 salary to be paid and shall be in the form prescribed by the state
10 superintendent. Each contract shall be signed by the teacher and
11 by the president and secretary of the county board and shall be
12 filed, together with the certificate of the teacher, by the
13 secretary of the office of the county board: *Provided*, That when
14 necessary to facilitate the employment of employable professional
15 personnel and prospective and recent graduates of teacher education
16 programs who have not yet attained certification, the contract may
17 be signed upon the condition that the certificate is issued to the
18 employee prior to the beginning of the employment term in which the
19 employee enters upon his or her duties.

20 (b) Each teacher's contract, under this section, shall be
21 designated as a probationary or continuing contract. A
22 probationary teacher's contract shall be for a term of not less
23 than one nor more than three years, one of which shall be for

1 completion of a beginning teacher internship pursuant to the
2 provisions of section two-b, article three of this chapter, if
3 applicable. If, after three years of such employment, the teacher
4 who holds a professional certificate, based on at least a
5 bachelor's degree, has met the qualifications for a bachelor's
6 degree and the county board enter into a new contract of
7 employment, it shall be a continuing contract, subject to the
8 following:

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

14 (2) A teacher holding continuing contract status with one
15 county shall be granted continuing contract status with any other
16 county upon completion of one year of acceptable employment if the
17 employment is during the next succeeding school year or immediately
18 following an approved leave of absence extending no more than one
19 year.

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

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

1 (A) By a majority vote of the full membership of the county
2 board on or before March 1 of the then current year, after written
3 notice, served upon the teacher, return receipt requested, stating
4 cause or causes and an opportunity to be heard at a meeting of the
5 board prior to the board's action on the termination issue; or

6 (B) By written resignation of the teacher on or before March
7 1 to initiate termination of a continuing contract;

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

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

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

15 (5) A continuing contract for any teacher holding a
16 certificate valid for more than one year and in full force and
17 effect during the school year 1984-1985 shall remain in full force
18 and effect;

19 (6) A continuing contract does not operate to prevent a
20 teacher's dismissal based upon the lack of need for the teacher's
21 services pursuant to the provisions of law relating to the
22 allocation to teachers and pupil-teacher ratios. The written
23 notification of teachers being considered for dismissal for lack of
24 need shall be limited to only those teachers whose consideration

1 for dismissal is based upon known or expected circumstances which
2 will require dismissal for lack of need. An employee who was not
3 provided notice and an opportunity for a hearing pursuant to this
4 subsection may not be included on the list. In case of dismissal
5 for lack of need, a dismissed teacher shall be placed upon a
6 preferred list in the order of their length of service with that
7 board. No teacher may be employed by the board until each
8 qualified teacher upon the preferred list, in order, has been
9 offered the opportunity for reemployment in a position for which he
10 or she is qualified, not including a teacher who has accepted a
11 teaching position elsewhere. The reemployment shall be upon a
12 teacher's preexisting continuing contract and has the same effect
13 as though the contract had been suspended during the time the
14 teacher was not employed.

15 (d) In the assignment of position or duties of a teacher under
16 a continuing contract, the board may provide for released time of
17 a teacher for any special professional or governmental assignment
18 without jeopardizing the contractual rights of the teacher or any
19 other rights, privileges or benefits under the provisions of this
20 chapter. Released time shall be provided for any professional
21 educator while serving as a member of the Legislature during any
22 duly constituted session of that body and its interim and statutory
23 committees and commissions without jeopardizing his or her
24 contractual rights or any other rights, privileges, benefits or

1 accrual of experience for placement on the state minimum salary
2 schedule in the following school year under the provisions of this
3 chapter, board policy and law.

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

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

23 (g) (1) A classroom teacher who gives written notice to the
24 county board on or before January 15 of the school year of his or

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

14 (2) The position of a classroom teacher providing written
15 notice of retirement pursuant to this subsection may be considered
16 vacant and the county board may immediately post the position as an
17 opening to be filled at the conclusion of the school year. If a
18 teacher has been hired to fill the position of a retiring classroom
19 teacher prior to the start of the next school year, the retiring
20 classroom teacher is disqualified from continuing his or her
21 employment in that position. However, the retiring classroom
22 teacher may be permitted to continue his or her employment in that
23 position and forfeit the early retirement notification payment if,
24 after giving notice of retirement in accordance with this

1 subsection, he or she becomes subject to a significant unforeseen
2 financial hardship, including a hardship caused by the death or
3 illness of an immediate family member or loss of employment of a
4 spouse. Other significant unforeseen financial hardships shall be
5 determined by the county superintendent on a case-by-case basis.
6 This subsection does not prohibit a county school board from
7 eliminating the position of a retiring classroom teacher.

8 **§18A-2-6. Continuing contract status for service personnel;**
9 **termination.**

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

1 affected employee has the right of a hearing before the board, if
2 requested, before final action is taken by the board upon the
3 termination of such employment.

4 Those employees who have completed three years of acceptable
5 employment as of the effective date of this legislation shall be
6 granted continuing contract status.

7 **§18A-2-7. Assignment, transfer, promotion, demotion, suspension**
8 **and recommendation of dismissal of school personnel**
9 **by superintendent; preliminary notice of transfer;**
10 **hearing on the transfer; proof required.**

11 (a) The superintendent, subject only to approval of the board,
12 may assign, transfer, promote, demote or suspend school personnel
13 and recommend their dismissal pursuant to provisions of this
14 chapter. However, an employee shall be notified in writing by the
15 superintendent on or before March 1 if he or she is being
16 considered for transfer or to be transferred. Only those employees
17 whose consideration for transfer or intended transfer is based upon
18 known or expected circumstances which will require the transfer of
19 employees shall be considered for transfer or intended for transfer
20 and the notification shall be limited to only those employees. Any
21 teacher or employee who desires to protest the proposed transfer
22 may request in writing a statement of the reasons for the proposed
23 transfer. The statement of reasons shall be delivered to the

1 teacher or employee within ten days of the receipt of the request.
2 Within ten days of the receipt of the statement of the reasons, the
3 teacher or employee may make written demand upon the superintendent
4 for a hearing on the proposed transfer before the county board of
5 education. The hearing on the proposed transfer shall be held on
6 or before April 15. At the hearing, the reasons for the proposed
7 transfer must be shown.

8 (b) The superintendent at a meeting of the board on or before
9 April 15 shall furnish in writing to the board a list of teachers
10 and other employees to be considered for transfer and subsequent
11 assignment for the next ensuing school year. An employee who was
12 not provided notice and an opportunity for a hearing pursuant to
13 subsection (a) of this section may not be included on the list.
14 All other teachers and employees not so listed shall be considered
15 as reassigned to the positions or jobs held at the time of this
16 meeting. The list of those recommended for transfer shall be
17 included in the minute record of the meeting and all those so
18 listed shall be notified in writing, which notice shall be
19 delivered in writing, by certified mail, return receipt requested,
20 to the persons' last known addresses within ten days following the
21 board meeting, of their having been so recommended for transfer and
22 subsequent assignment and the reasons therefor.

23 (c) The superintendent's authority to suspend school personnel
24 shall be temporary only pending a hearing upon charges filed by the

1 superintendent with the board of education and the period of
2 suspension may not exceed thirty days unless extended by order of
3 the board.

4 (d) The provisions of this section respecting hearing upon
5 notice of transfer is not applicable in emergency situations where
6 the school building becomes damaged or destroyed through an
7 unforeseeable act and which act necessitates a transfer of the
8 school personnel because of the aforementioned condition of the
9 building.

10 **§18A-2-8a. Notice to probationary personnel of rehiring or**
11 **nonrehiring; hearing.**

12 The superintendent at a meeting of the board on or before
13 April 15 of each year shall provide in writing to the board a list
14 of all probationary teachers that he or she recommends to be
15 rehired for the next ensuing school year. The board shall act upon
16 the superintendent's recommendations at that meeting in accordance
17 with section one of this article. The board at this same meeting
18 shall also act upon the retention of other probationary employees
19 as provided in sections two and five of this article. Any such
20 probationary teacher or other probationary employee who is not
21 rehired by the board at that meeting shall be notified in writing,
22 by certified mail, return receipt requested, to such persons' last
23 known addresses within ten days following said board meeting, of
24 their not having been rehired or not having been recommended for

1 rehiring.

2 Any probationary teacher who receives notice that he or she
3 has not been recommended for rehiring or other probationary
4 employee who has not been reemployed may within ten days after
5 receiving the written notice request a statement of the reasons for
6 not having been rehired and may request a hearing before the board.
7 The hearing shall be held at the next regularly scheduled board of
8 education meeting or a special meeting of the board called within
9 thirty days of the request for hearing. At the hearing, the
10 reasons for the nonrehiring must be shown.

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

12 **§18A-4-7a. Employment, promotion and transfer of professional**
13 **personnel; seniority.**

14 (a) A county board of education shall make decisions affecting
15 the hiring of professional personnel other than classroom teachers
16 on the basis of the applicant with the highest qualifications.

17 (b) The county board shall make decisions affecting the hiring
18 of new classroom teachers on the basis of the applicant with the
19 highest qualifications.

20 (c) In judging qualifications for hiring employees pursuant to
21 subsections (a) and (b) of this section, consideration shall be
22 given to each of the following:

23 (1) Appropriate certification, licensure or both;

24 (2) Amount of experience relevant to the position; or, in the

1 case of a classroom teaching position, the amount of teaching
2 experience in the subject area;

3 (3) The amount of course work, degree level or both in the
4 relevant field and degree level generally;

5 (4) Academic achievement;

6 (5) Relevant specialized training;

7 (6) Past performance evaluations conducted pursuant to section
8 twelve, article two of this chapter; and

9 (7) Other measures or indicators upon which the relative
10 qualifications of the applicant may fairly be judged.

11 (d) If one or more permanently employed instructional
12 personnel apply for a classroom teaching position and meet the
13 standards set forth in the job posting, the county board of
14 education shall make a decision affecting the filling of the
15 position on the basis of the following criteria:

16 (1) Appropriate certification, licensure or both;

17 (2) Total amount of teaching experience;

18 (3) The existence of teaching experience in the required
19 certification area;

20 (4) Degree level in the required certification area;

21 (5) Specialized training directly related to the performance
22 of the job as stated in the job description;

23 (6) Receiving an overall rating of satisfactory in the
24 previous two evaluations conducted pursuant to section twelve,

1 article two of this chapter; and

2 (7) Seniority.

3 (e) In filling positions pursuant to subsection (d) of this
4 section, consideration shall be given to each criterion with each
5 criterion being given equal weight. If the applicant with the most
6 seniority is not selected for the position, upon the request of the
7 applicant a written statement of reasons shall be given to the
8 applicant with suggestions for improving the applicant's
9 qualifications.

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

17 (g) Upon completion of one hundred thirty-three days of
18 employment in any one school year, substitute teachers, except
19 retired teachers and other retired professional educators employed
20 as substitutes, shall accrue seniority exclusively for the purpose
21 of applying for employment as a permanent, full-time professional
22 employee. One hundred thirty-three days or more of said employment
23 shall be prorated and shall vest as a fraction of the school year
24 worked by the permanent, full-time teacher.

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

13 (I) Employment for a full employment term shall equal one year
14 of seniority, but no employee may accrue more than one year of
15 seniority during any given fiscal year. Employment for less than
16 the full employment term shall be prorated. A random selection
17 system established by the employees and approved by the board shall
18 be used to determine the priority if two or more employees
19 accumulate identical seniority: *Provided*, That when two or more
20 principals have accumulated identical seniority, decisions on
21 reductions in force shall be based on qualifications.

22 (j) Whenever a county board is required to reduce the number
23 of professional personnel in its employment, the employee with the
24 least amount of seniority shall be properly notified and released

1 from employment pursuant to the provisions of section two, article
2 two of this chapter. The provisions of this subsection are subject
3 to the following:

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

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

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

21 (4) If, prior to August 1, of the year a reduction in force is
22 approved, the reason for any particular reduction in force no
23 longer exists as determined by the county board in its sole and
24 exclusive judgment, the board shall rescind the reduction in force

1 or transfer and shall notify the released employee in writing of
2 his or her right to be restored to his or her position of
3 employment. Within five days of being so notified, the released
4 employee shall notify the board, in writing, of his or her intent
5 to resume his or her position of employment or the right to be
6 restored shall terminate. Notwithstanding any other provision of
7 this subdivision, if there is another employee on the preferred
8 recall list with proper certification and higher seniority, that
9 person shall be placed in the position restored as a result of the
10 reduction in force being rescinded.

11 (k) For the purpose of this article, all positions which meet
12 the definition of "classroom teacher" as defined in section one,
13 article one of this chapter shall be lateral positions. For all
14 other professional positions, the county board of education shall
15 adopt a policy by October 31, 1993, and may modify the policy
16 thereafter as necessary, which defines which positions shall be
17 lateral positions. The board shall submit a copy of its policy to
18 the state board within thirty days of adoption or any modification,
19 and the state board shall compile a report and submit the report to
20 the Legislative Oversight Commission on Education Accountability by
21 December 31, 1993, and by that date in any succeeding year in which
22 any county board submits a modification of its policy relating to
23 lateral positions. In adopting the policy, the board shall give
24 consideration to the rank of each position in terms of title;

1 nature of responsibilities; salary level; certification, licensure
2 or both; and days in the period of employment.

3 (1) After the twentieth day prior to the beginning of the
4 instructional term, no person employed and assigned to a
5 professional position may transfer to another professional position
6 in the county during that instructional term unless the person
7 holding that position does not have valid certification. The
8 provisions of this subsection are subject to the following:

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

12 (2) Professional personnel who have been on an approved leave
13 of absence may fill these vacancies upon their return from the
14 approved leave of absence;

15 (3) The county board, upon recommendation of the
16 superintendent may fill a position before the next instructional
17 term when it is determined to be in the best interest of the
18 students. The county superintendent shall notify the state board
19 of each transfer of a person employed in a professional position to
20 another professional position after the twentieth day prior to the
21 beginning of the instructional term;

22 (4) The provisions of this subsection do not apply to the
23 filling of a position vacated because of resignation or retirement
24 that became effective on or before the twentieth day prior to the

1 beginning of the instructional term, but not posted until after
2 that date; and

3 (5) The Legislature finds that it is not in the best interest
4 of the students particularly in the elementary grades to have
5 multiple teachers for any one grade level or course during the
6 instructional term. It is the intent of the Legislature that the
7 filling of positions through transfers of personnel from one
8 professional position to another after the twentieth day prior to
9 the beginning of the instructional term should be kept to a
10 minimum.

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

21 (n) Before position openings that are known or expected to
22 extend for twenty consecutive employment days or longer for
23 professional personnel may be filled by the board, the board shall
24 be required to notify all qualified professional personnel on the

1 preferred list and give them an opportunity to apply, but failure
2 to apply shall not cause the employee to forfeit any right to
3 recall. The notice shall be sent by certified mail to the last
4 known address of the employee, and it shall be the duty of each
5 professional personnel to notify the board of continued
6 availability annually, of any change in address or of any change in
7 certification, licensure or both.

8 (o) Openings in established, existing or newly created
9 positions shall be processed as follows:

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

12 (A) The notices shall be posted in conspicuous working places
13 for all professional personnel to observe for at least five working
14 days;

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

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

20 (D) Postings for vacancies made pursuant to this section shall
21 be written so as to ensure that the largest possible pool of
22 qualified applicants may apply; and

23 (E) Job postings may not require criteria which are not
24 necessary for the successful performance of the job and may not be

1 written with the intent to favor a specific applicant;

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

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

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

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

15 (p) Notwithstanding any other provision of the code to the
16 contrary, where the total number of classroom teaching positions in
17 an elementary school does not increase from one school year to the
18 next, but there exists in that school a need to realign the number
19 of teachers in one or more grade levels, kindergarten through six,
20 teachers at the school may be reassigned to grade levels for which
21 they are certified without that position being posted: *Provided,*
22 That the employee and the county board of education mutually agree
23 to the reassignment.

24 (q) Reductions in classroom teaching positions in elementary

1 schools shall be processed as follows:

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

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

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

23 (s) The county board shall compile, update annually on July 1
24 and make available by electronic or other means to all employees a

1 list of all professional personnel employed by the county, their
2 areas of certification and their seniority.