

**WEST VIRGINIA LEGISLATURE**  
SECOND REGULAR SESSION, 2012



**ENROLLED**

**House Bill No. 4655**

(By Delegates M. Poling and Paxton)



Passed March 10, 2012

To Take Effect From Passage

# ENROLLED

## H. B. 4655

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(BY DELEGATES M. POLING AND PAXTON)

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[Passed March 10, 2012; to take effect from passage.]

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

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

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

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

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

- 1       (a) The State Board shall develop and make available
- 2       competency tests for all of the classification titles defined in
- 3       section eight of this article and listed in section eight-a of this
- 4       article for service personnel. Each classification title defined
- 5       and listed is considered a separate classification category of
- 6       employment for service personnel and has a separate

7 competency test, except for those class titles having Roman  
8 numeral designations, which are considered a single  
9 classification of employment and have a single competency  
10 test.

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

14 (2) The executive secretary class title is included in the  
15 same classification category as secretaries and has the same  
16 competency test.

17 (3) The classification titles of chief mechanic, mechanic  
18 and assistant mechanic are included in one classification title  
19 and have the same competency test.

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

28 (c) The competency test consists of an objective written  
29 or performance test, or both. Applicants may take the written  
30 test orally if requested. Oral tests are recorded mechanically  
31 and kept on file. The oral test is administered by persons  
32 who do not know the applicant personally.

33 (1) The performance test for all classifications and  
34 categories other than bus operator is administered by an  
35 employee of the county board or an employee of a  
36 multicounty vocational school that serves the county at a  
37 location designated by the superintendent and approved by

38 the board. The location may be a vocational school that  
39 serves the county.

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

43 (3) The subject matter of each competency test is  
44 commensurate with the requirements of the definitions of the  
45 classification titles as provided in section eight of this article.  
46 The subject matter of each competency test is designed in  
47 such a manner that achieving a passing grade does not require  
48 knowledge and skill in excess of the requirements of the  
49 definitions of the classification titles. Achieving a passing  
50 score conclusively demonstrates the qualification of an  
51 applicant for a classification title.

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

57 (d) An applicant who fails to achieve a passing score is  
58 given other opportunities to pass the competency test when  
59 applying for another vacancy within the classification  
60 category.

61 (e) Competency tests are administered to applicants in a  
62 uniform manner under uniform testing conditions. County  
63 boards are responsible for scheduling competency tests,  
64 notifying applicants of the date and time of the one day of  
65 training prior to taking the test, and the date and time of the  
66 test. County boards may not use a competency test other than  
67 the test authorized by this section.

68 (f) When scheduling of the competency test conflicts with  
69 the work schedule of a school employee who has applied for  
70 a vacancy, the employee is excused from work to take the  
71 competency test without loss of pay.

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

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

79 (i) Notwithstanding any provisions in this code to the  
80 contrary, once an employee holds or has held a classification  
81 title in a category of employment, that employee is  
82 considered qualified for the classification title even though  
83 that employee no longer holds that classification.

84 (j) The requirements of this section do not alter the  
85 definitions of class titles as provided in section eight of this  
86 article or the procedure and requirements of section eight-b  
87 of this article.

88 (k) Notwithstanding any other provision of this code to  
89 the contrary and notwithstanding any rules of the School  
90 Board concerning school bus operator certification, the  
91 certification test for school bus operators shall be required as  
92 follows, and school bus operators may not be required to take  
93 the certification test more frequently:

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

97       (2) For school bus operators with regular employee status  
98 and continuing contract status, the certification test shall be  
99 administered triennially; and

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

104       (4) *School bus operator certificate.* —

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

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

113       (i) Intemperance, untruthfulness, cruelty or immorality;

114       (ii) Conviction of or guilty plea or plea of no contest to a  
115 felony charge;

116       (iii) Conviction of or guilty plea or plea of no contest to  
117 any charge involving sexual misconduct with a minor or a  
118 student;

119       (iv) Just and sufficient cause for revocation as specified  
120 by State Board rule; and

121       (v) Using fraudulent, unapproved or insufficient credit to  
122 obtain the certificates.

123 (vi) Of the causes for certificate revocation listed in this  
124 paragraph (B), the following causes constitute grounds for  
125 revocation only if there is a rational nexus between the  
126 conduct of the bus operator and the performance of the job:

127 (I) Intemperance, untruthfulness, cruelty or immorality;

128 (II) Just and sufficient cause for revocation as specified  
129 by State Board rule; and

130 (III) Using fraudulent, unapproved or insufficient credit  
131 to obtain the certificate.

132 (C) The certificate of a bus operator may not be revoked  
133 for either of the following unless it can be proven by clear  
134 and convincing evidence that the bus operator has committed  
135 one of the offenses listed in this subsection and his or her  
136 actions render him or her unfit to operate a school bus:

137 (i) Any matter for which the bus operator was disciplined,  
138 less than dismissal, by the employing county board; or

139 (ii) Any matter for which the bus operator is meeting or  
140 has met an improvement plan determined by the county  
141 board.

142 (D) The State Superintendent shall designate a review  
143 panel to conduct hearings on certificate revocations or denials  
144 and make recommendations for action by the State  
145 Superintendent. The State Board, after consultation with  
146 employee organizations representing school service  
147 personnel, shall promulgate a rule to establish the review  
148 panel membership and composition, method of appointment,  
149 governing principles and meeting schedule.

150 (E) It is the duty of any county superintendent who  
151 knows of any acts on the part of a bus operator for which a

152 certificate may be revoked in accordance with this section to  
153 report the same, together with all the facts and evidence, to  
154 the State Superintendent for such action as in the State  
155 Superintendent's judgment may be proper.

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

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





The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

\_\_\_\_\_  
*Chairman, House Committee*

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*Chairman, Senate Committee*

Originating in the House.

To take effect from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

\_\_\_\_\_  
*President of the Senate*

The within \_\_\_\_\_ this the \_\_\_\_\_  
day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
*Governor*