

COMMITTEE SUBSTITUTE

FOR

**H. B. 4236**

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(BY MR. SPEAKER, MR. THOMPSON, AND DELEGATE ARMSTEAD)  
[BY REQUEST OF THE EXECUTIVE]

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(Originating in the Committee on Finance)  
[February 21, 2012]

A BILL to amend and reenact §18A-2-12 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §18A-3C-1, §18A-3C-2 and §18A-3C-3, all relating to establishing a new system of performance evaluations of professional personnel, specifically classroom teachers, principals and assistant principals; exclusions from the definition of professional personnel for certain evaluation purposes; instituting specific percentages for the evaluation score based on student performance and peer evaluations; requiring the state board of education to adopt a

legislative rule and report to the Legislative Oversight Commission on Education Accountability; requiring the state board of education to publish guidelines to assist the county boards of education to design and implement a comprehensive system of support for improving professional practice; and requiring county boards of education to implement a comprehensive system of support for improving professional practice or be ineligible for certain public funding.

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

**ARTICLE 2. SCHOOL PERSONNEL.**

**§18A-2-12. Performance evaluations of school personnel; professional personnel evaluation process.**

1 (a) The state board shall adopt a written system for the  
2 evaluation of the employment performance of personnel,  
3 which system shall be applied uniformly by county boards of  
4 education in the evaluation of the employment performance  
5 of personnel employed by the board.

6 (b) The system adopted by the state board for evaluating  
7 the employment performance of professional personnel shall  
8 be in accordance with the provisions of this section.

9 (c) For purposes of this section, “professional personnel”,  
10 “professional” or “professionals”, means professional  
11 personnel as defined in section one, article one of this chapter  
12 but does not include classroom teachers, principals and  
13 assistant principals subject to the evaluation processes  
14 established pursuant to the provisions of section two, article  
15 three-c of this chapter when the school at which these  
16 professional personnel are employed is selected to participate  
17 in those evaluation processes as part of the multi-step  
18 implementation leading to full statewide implementation by  
19 school year 2013-2014.

20 (d) In developing the professional personnel performance  
21 evaluation system, and amendments thereto, the state board  
22 shall consult with the Center for Professional Development  
23 created in article three-a of this chapter. The center shall  
24 participate actively with the state board in developing written  
25 standards for evaluation which clearly specify satisfactory  
26 performance and the criteria to be used to determine whether  
27 the performance of each professional meets such standards.

28 (e) The performance evaluation system shall contain, but  
29 ~~shall~~ not be limited to, the following information:

30 (1) The professional personnel positions to be evaluated,  
31 whether they be teachers, substitute teachers, administrators,  
32 principals or others;

33 (2) The frequency and duration of the evaluations, which  
34 shall be on a regular basis and of such frequency and  
35 duration as to insure the collection of a sufficient amount of  
36 data from which reliable conclusions and findings may be  
37 drawn. ~~Provided, That~~ For school personnel with five or  
38 more years of experience who have not received an  
39 unsatisfactory rating, evaluations shall be conducted no more  
40 than once every three years unless the principal determines  
41 an evaluation for a particular school employee is needed  
42 more frequently. ~~Provided, however, That~~ Until the school  
43 or school system at which they are employed is subject to the  
44 provisions of article three-c of this chapter, for classroom  
45 teachers with five or more years of experience who have not  
46 received an unsatisfactory rating, an evaluation shall be

47 conducted or professional growth and development plan  
48 required only when the principal determines it ~~to be~~ is  
49 necessary for a particular classroom teacher or when a  
50 classroom teacher exercises the option of being evaluated at  
51 more frequent intervals;

52 (3) The evaluation shall serve the following purposes:

53 (A) Serve as a basis for the improvement of the  
54 performance of the personnel in their assigned duties;

55 (B) Provide an indicator of satisfactory performance for  
56 individual professionals;

57 (C) Serve as documentation for a dismissal on the  
58 grounds of unsatisfactory performance; and

59 (D) Serve as a basis for programs to increase the  
60 professional growth and development of professional  
61 personnel;

62 (4) The standards for satisfactory performance for  
63 professional personnel and the criteria to be used to  
64 determine whether the performance of each professional  
65 meets such standards and other criteria for evaluation for

66 each professional position evaluated. ~~Effective July 1, 2003~~  
67 ~~and thereafter~~, Professional personnel, as appropriate, shall  
68 demonstrate competency in the knowledge and  
69 implementation of the technology standards adopted by the  
70 state board. If a professional fails to demonstrate  
71 competency in the knowledge and implementation of these  
72 standards, he or she will be subject to an improvement plan  
73 to correct the deficiencies; and

74 (5) Provisions for a written improvement plan, which  
75 shall be specific as to what improvements, if any, are needed  
76 in the performance of the professional and shall clearly set  
77 forth recommendations for improvements, including  
78 recommendations for additional education and training  
79 during the professional's recertification process.

80 (f) A professional whose performance is considered to be  
81 unsatisfactory shall be given notice of deficiencies. A  
82 remediation plan to correct deficiencies shall be developed  
83 by the employing county board of education and the  
84 professional. The professional shall be given a reasonable

85 period of time for remediation of the deficiencies and shall  
86 receive a statement of the resources and assistance available  
87 for the purposes of correcting the deficiencies.

88 (g) No person may evaluate professional personnel for  
89 the purposes of this section unless the person has an  
90 administrative certificate issued by the state superintendent  
91 and has successfully completed education and training in  
92 evaluation skills through the center for professional  
93 development, or equivalent education training approved by  
94 the state board, which will enable the person to make fair,  
95 professional, and credible evaluations of the personnel whom  
96 the person is responsible for evaluating. After July 1, 1994,  
97 no person may be issued an administrative certificate or have  
98 an administrative certificate renewed unless the state board  
99 determines that the person has successfully completed  
100 education and training in evaluation skills through the center  
101 for professional development or equivalent education and  
102 training approved by the state board.

103 (h) Any professional whose performance evaluation  
104 includes a written improvement plan shall be given an  
105 opportunity to improve his or her performance through the  
106 implementation of the plan. If the next performance  
107 evaluation shows that the professional is now performing  
108 satisfactorily, no further action may be taken concerning the  
109 original performance evaluation. If the evaluation shows that  
110 the professional is still not performing satisfactorily, the  
111 evaluator either shall make additional recommendations for  
112 improvement or may recommend the dismissal of the  
113 professional in accordance with the provisions of section  
114 eight of this article.

115 (i) Lesson plans are intended to serve as a daily guide for  
116 teachers and substitutes for the orderly presentation of the  
117 curriculum. Lesson plans may not be used as a substitute for  
118 observations by an administrator in the performance  
119 evaluation process. A classroom teacher, as defined in  
120 section one, article one of this chapter, may not be required  
121 to post his or her lesson plans on the Internet or otherwise

122 make them available to students and parents or to include in

123 his or her lesson plans any of the following:

124 (1) Teach and reteach strategies;

125 (2) Write to learn activities;

126 (3) Cultural diversity;

127 (4) Color coding; or

128 (5) Any other similar items which are not required to

129 serve as a guide to the teacher or substitute for daily

130 instruction; and

131 (j) The Legislature finds that classroom teachers must be

132 free of unnecessary paper work so that they can focus their

133 time on instruction. Therefore, classroom teachers may not

134 be required to keep records or logs of routine contacts with

135 parents or guardians.

136 (k) Nothing in this section may be construed to prohibit

137 classroom teachers from voluntarily posting material on the

138 Internet. Nothing in article three-c of this chapter may be

139 construed to negate the provisions of subsections (i) and (j)

140 of this section.

**ARTICLE 3C. IMPROVING TEACHING AND LEARNING.**

**§18A-3C-1. Purposes.**

1       (a) The purpose of this article is to create a  
2       comprehensive infrastructure that routinely supports a  
3       continuous process for improving teaching and learning. Its  
4       focus is on developing strong teaching and school leadership,  
5       without which effective learning does not occur. The general  
6       components of this infrastructure include the following:

7       (1) High-quality teacher preparation, induction and  
8       evaluation;

9       (2) Universal support for emerging teachers including  
10       comprehensive new teacher induction and support for student  
11       teachers, teachers teaching in assignments for which they  
12       have less than a full professional credential and teacher  
13       candidates pursuing certification through an alternative route;

14       (3) Evaluation of the performance of teachers and leaders  
15       in demonstrating high quality professional practice,  
16       leadership and collaboration and the resulting growth in  
17       student learning;

18 (4) Focused improvement in teaching and learning  
19 through the use of evaluation data to inform the delivery of  
20 professional development and additional supports to improve  
21 teaching based on the evaluation results and to inform the  
22 need for improvements in teacher preparation programs; and

23 (5) The creation of a leadership culture that seeks and  
24 builds powerful alliances among all stakeholders focused on  
25 continuous growth in student learning.

26 (b) For purposes of this article “professional personnel”  
27 includes classroom teachers, assistant principals and  
28 principals as defined in section one, article one chapter  
29 eighteen-a of this code.

**§18A-3C-2. Performance evaluations of professional personnel.**

1 (a) The intent of the Legislature is to allow for a  
2 multi-step statewide implementation of performance  
3 evaluations for professional personnel pursuant to this section  
4 consistent with sound educational practices and resources  
5 available resulting in full state-wide implementation by no  
6 later than the school year 2013-2014. Beginning with the

7 schools included in the evaluation processes for professional  
8 personnel piloted by the Department of Education during the  
9 2011-2012 school year, additional schools or school systems  
10 shall be subject to the provisions of this article in accordance  
11 with a plan established by the state board to achieve full  
12 statewide implementation by no later than the school year  
13 2013-2014. For schools and school systems subject to the  
14 provisions of this article, the provisions of this article shall  
15 govern when they are in conflict with other provisions of this  
16 chapter and chapter eighteen of this code. Specifically, the  
17 provisions of this article govern for the performance  
18 evaluation of classroom teachers, principals and assistant  
19 principals employed in these schools and school systems. To  
20 the extent that this article conflicts with the provisions of  
21 section twelve, article two of this chapter relating to  
22 professional personnel performance evaluations, this article  
23 shall govern. The state board shall submit a report on its plan  
24 for the phased implementation of this article to the  
25 Legislative Oversight Commission on Education

26 Accountability at the Commission's July interim meeting in  
27 each year of the phased implementation. The report shall  
28 include the positions to be evaluated, the evaluation process  
29 and a list of the schools and school systems subject to the  
30 provisions of this article. To assist the Legislative Oversight  
31 Commission on Education Accountability in monitoring the  
32 implementation of this article, the state board shall report to  
33 the Commission upon its request throughout the  
34 implementation process, including but not limited to, reports  
35 on the results of surveys of teachers and principals on the  
36 implementation and use of the new evaluation system, the  
37 adequacy of the professional development given to  
38 employees on the purposes, instruments and procedures of  
39 the evaluation process, the time consumed by the evaluation  
40 process and the various tasks required for employees of  
41 different levels of experience, the aggregate results of the  
42 evaluations and any recommendations for changes in the  
43 process or other aspects of the duties of affected employees

44 to improve the focus on the core mission of schools of  
45 teaching and learning.

46 (b) Before July 1, 2013, the state board shall adopt a  
47 legislative rule in accordance with article three-b, chapter  
48 twenty-nine-a of this code, for evaluating the performance of  
49 each professional personnel each year. The state board shall  
50 submit a draft of the proposed rule to the Legislative  
51 Oversight Commission on Education Accountability by  
52 February 15, 2013, and a final proposed rule prior to  
53 adoption. The rule shall provide for performance evaluations  
54 of professional personnel to be conducted in accordance with  
55 this section in each school and school system beginning with  
56 the 2013-14 school year.

57 (c)(1) The process adopted by the state board for  
58 evaluating the performance of classroom teachers shall  
59 incorporate at least the following:

60 (A) Alignment with the West Virginia professional  
61 teaching standards adopted by the state board that establish

62 the foundation for educator preparation, teacher assessment  
63 and professional development throughout the state;

64 (B) Employment of the professional teaching standards  
65 to provide explicit and extensive measures of the work of  
66 teaching and what teachers must know and be able to do and  
67 provide evaluative measures of educator performance;

68 (C) The use of two pieces of evidence at two points in  
69 time over the instructional term to demonstrate student  
70 learning as an indicator of educator performance; and

71 (D) The use of school's school-wide student learning  
72 growth as measured by the state-wide summative assessment  
73 as an evaluative measure of all educators employed in the  
74 school.

75 (2) Eighty percent of the evaluation shall be based on an  
76 appraisal of the classroom teacher's ability to perform the  
77 critical standard elements of the professional teaching  
78 standards. The appraisal shall include conferences with the  
79 evaluator reinforced through observation. Fifteen percent of  
80 the evaluation shall be based on evidence of the learning of

81 the students assigned to the educator and five percent of the  
82 evaluation shall be based on student learning growth  
83 measured by the school-wide score on the state summative  
84 assessment.

85 (d)(1) The process adopted by the state board for  
86 evaluating the performance of principals and assistant  
87 principals shall include, but not be limited to, the following:

88 (A) Alignment with the West Virginia professional  
89 leadership standards adopted by the state board establishing  
90 the responsibility of effective principals for the collective  
91 success of their school including the learning, growth and  
92 achievement of students, staff and self;

93 (B) Employment of the professional leadership standards  
94 to provide explicit and extensive measures of the work of  
95 school leadership focused on the continuous improvement of  
96 teaching and learning;

97 (C) The use of data, evidence and artifacts to confirm the  
98 principal's or the assistant principal's performance on  
99 achieving the goals established by the principal and

100 superintendent based on the identified needs of the principal  
101 and the school including, but not limited to, the school's  
102 score on the state summative assessment; and

103 (D) The use of stakeholder surveys of students, parents,  
104 teachers and service personnel regarding the overall  
105 effectiveness of the principal or the assistant principal on  
106 elements of the school leader standards.

107 (2) Eighty percent of the evaluation shall be based on an  
108 appraisal of the principal's or the assistant principal's ability  
109 to perform the critical standard elements of the professional  
110 leadership standards and achieve the goals established for the  
111 principal and the school. Fifteen percent of the evaluation  
112 shall be based on evidence of the learning of the students  
113 assigned to the school and five percent of the evaluation shall  
114 be based on student learning growth measured by the  
115 school-wide score on the state summative assessment.

116 (e) Evaluations of the performance of professional  
117 personnel shall serve the following purposes:

118 (1) Serve as a basis for the improvement of the  
119 performance of the professional personnel in their assigned  
120 duties;

121 (2) Serve as the basis for providing professional  
122 development specifically targeted on the area or areas  
123 identified through the evaluation process as needing  
124 improvement. If possible, this targeted professional  
125 development should be delivered at the school-site using  
126 collaborative processes, mentoring or coaching or other  
127 approaches that maximize use of the instructional setting;

128 (3) Serve as the basis for establishing priorities for the  
129 provision of county-level professional development when  
130 aggregate evaluation data from the county's schools indicates  
131 an area or areas of needed improvement;

132 (4) Serve as a basis for informing the teacher preparation  
133 programs in this state of an area or areas of needed  
134 improvement in the programs, or informing a specific  
135 program of needed improvement, when state-level aggregate

136 evaluation data indicates that beginning teachers who have  
137 graduated from the program have specific weaknesses;

138 (5) Provide an indicator of the level of performance of the  
139 professional personnel;

140 (6) Serve as a basis for programs to increase the  
141 professional growth and development of professional  
142 personnel; and

143 (7) Serve as documentation for a dismissal on the  
144 grounds of unsatisfactory performance.

145 (f) The rule adopted by the state board shall include  
146 standards for performance of professional personnel and the  
147 criteria to be used to determine whether their performance  
148 meets the standards. The rule also shall include guidance on  
149 best practices for providing time within the school day for  
150 teachers subject to performance evaluations under this  
151 section to participate in the collaborative, mentoring or  
152 coaching and planning processes necessary for execution of  
153 the performance evaluation process and achieving advanced  
154 levels of performance.

155 (g) The rule adopted by the state board shall include  
156 provisions for written improvement plans when necessary to  
157 improve the performance of the professional personnel. The  
158 written improvement plan shall be specific as to what  
159 improvements are needed in the performance of the professional  
160 personnel and shall clearly set forth recommendations for  
161 improvements including recommendations for additional  
162 education and training of professionals subject to recertification.  
163 Professional personnel whose performance evaluation includes  
164 a written improvement plan shall be given an opportunity to  
165 improve his or her performance through the implementation of  
166 the plan.

167 (h) Professional personnel whose performance is  
168 considered to be unsatisfactory shall be given written notice  
169 of his of her deficiencies. A written improvement plan to  
170 correct these deficiencies shall be developed by the  
171 employing county board of education and the employee. The  
172 professional personnel shall be given a reasonable period of  
173 time, not exceeding twelve months, to accomplish the

174 requirements of the improvement plan and shall receive a  
175 written statement of the resources and assistance available for  
176 the purposes of correcting the deficiencies. If the next  
177 performance evaluation shows that the professional is now  
178 performing satisfactorily, no further action may be taken  
179 concerning the original performance evaluation. If the  
180 evaluation shows that the professional is still not performing  
181 satisfactorily, the evaluator either shall make additional  
182 written recommendations for improvement or may  
183 recommend the dismissal of the professional personnel in  
184 accordance with the provisions of section eight, article two  
185 of this chapter.

186 (i) No person may evaluate professional personnel for the  
187 purposes of this section unless the person has an  
188 administrative certificate issued by the state superintendent  
189 and has successfully completed education and training in  
190 evaluation skills through the center for professional  
191 development, or equivalent education training approved by  
192 the state board, which will enable the person to make fair,

193 professional, and credible evaluations of the personnel whom  
194 the person is responsible for evaluating.

195 (j) Prior to implementation of the evaluation process  
196 pursuant to this section at a school, each affected employee  
197 shall be given training to ensure that the employees have a  
198 full understanding of the purposes, instruments and  
199 procedures used in evaluating their performance. Thereafter,  
200 this training shall be held annually at the beginning of the  
201 employment term.

**§18A-3C-3. Comprehensive system for teacher induction and professional growth.**

1 (a) The intent of the Legislature is to allow for a  
2 multistep statewide implementation of a comprehensive  
3 system of support for building professional practice of  
4 beginning teachers, specifically those on the initial and  
5 intermediate progressions, consistent with sound educational  
6 practices and resources available. In this regard, it is the  
7 intent of the Legislature that the transition of schools and  
8 school systems to a comprehensive system of support that

9 includes support for improved professional performance  
10 targeted on deficiencies identified through the evaluation  
11 process will be implemented concurrent with the first year  
12 that a school or system receives final evaluation results from  
13 the performance evaluation process pursuant to section two  
14 of this article. Further, because of significant variability  
15 among the counties, not only in the size of their teaching  
16 force, distribution of facilities and available resources, but  
17 also because of their varying needs, the Legislature intends  
18 for the implementation of this section to be accomplished in  
19 a manner that provides adequate flexibility to the counties to  
20 design and implement a comprehensive system of support for  
21 improving professional performance that best achieves the  
22 goals of this section within the county. Finally, because of  
23 the critical importance of ensuring that all teachers perform  
24 at the accomplished level or higher in the delivery of  
25 instruction that at least meets the West Virginia professional  
26 teaching standards and because achieving this objective at a  
27 minimum entails providing assistance to address the needs as

28 indicated by the data informed results of annual performance  
29 evaluations, including the self-assessed needs of the teachers  
30 themselves, the Legislature expects the highest priority for  
31 county, regional and state professional development will be  
32 on meeting these needs and that the transition to a  
33 comprehensive system of support for improving professional  
34 practice will reflect substantial redirection of existing  
35 professional development resources toward this highest  
36 priority.

37 (b) On or before July 1, 2012, the state board shall  
38 publish guidelines on the design and implementation of a  
39 comprehensive system of support for improving professional  
40 practice. The purpose of the guidelines is to assist the county  
41 board with the design and implementation of a system that  
42 best achieves the goals of this section within the county. The  
43 guidelines may include examples of best practices and  
44 resources available to county boards to assist them with the  
45 design and implementation of a comprehensive system.

46 (c) Effective for the school year beginning July 1, 2013,  
47 and thereafter, a county board is not eligible to receive state  
48 funding appropriated for the purposes of this section or any  
49 other provision of law related to beginning teacher  
50 internships and mentor teachers unless it has adopted a plan  
51 for implementation of a comprehensive system of support for  
52 improving professional practice, the plan has been verified by  
53 the state board as meeting the requirements of this section  
54 and the county is implementing the plan. The plan shall  
55 address the following:

56 (1) The manner in which the county will provide the  
57 strong school-based support and supervision that will assist  
58 beginning teachers develop instructional and management  
59 strategies, procedural and policy expertise, and other  
60 professional practices they need to be successful in the  
61 classroom and perform at the accomplished level. Nothing  
62 in this subdivision prohibits a school or school system that  
63 was granted an exception or waiver from section two-c,  
64 article three of this chapter prior to the effective date of this

65 section from continuing implementation of the program in  
66 accordance with the exception or waiver;

67 (2) The manner in which the county will provide strong  
68 school-based support and assistance necessary in cooperation  
69 with teacher preparation programs in this state to make  
70 student teaching a productive learning experience;

71 (3) The manner in which the county will use the data  
72 from the educator performance evaluation system to serve as  
73 the basis for providing professional development specifically  
74 targeted on the area or areas identified through the evaluation  
75 process as needing improvement. If possible, this targeted  
76 professional development should be delivered at the  
77 school-site using collaborative processes, mentoring or  
78 coaching or other approaches that maximize use of the  
79 instructional setting;

80 (4) The manner in which the county will use the data  
81 from the educator performance evaluation system to serve as  
82 the basis for establishing priorities for the provision of  
83 county-level professional development when aggregate

84 evaluation data from the county's schools indicates an area  
85 or areas of needed improvement;

86 (5) If a county utilizes master teachers, mentors,  
87 academic coaches or any other approaches utilizing  
88 individual employees to provide support, supervision or other  
89 professional development or training to other employees for  
90 the purpose of improving their professional practice, the  
91 manner in which the county will select each of these  
92 individual employees based on demonstrated superior  
93 performance and competence as well as the manner in which  
94 the county will coordinate support for these employees:  
95 *Provided, That the employment of persons for these positions*  
96 shall adhere to the posting and other provisions of section  
97 seven-a, article four of this chapter utilizing subsection (c) of  
98 said section seven-a to judge the qualifications of the  
99 applicants;

100 (6) The manner in which the county will utilize local  
101 resources available including, but not limited to, funds for

102 professional development and academic coaches, to focus on  
103 the priority professional development goals of this section;

104 (7) The manner in which the county will adjust its  
105 scheduling, use of substitutes, collaborative planning time,  
106 calendar or other measures as may be necessary to provide  
107 sufficient time for professional personnel to accomplish the  
108 goals of this section as set forth in the county's plan; and

109 (8) The manner in which the county will monitor and  
110 evaluate the effectiveness of implementation and outcomes  
111 of the county system of support for improving professional  
112 practice.

113 (d) Effective the school year beginning July 1, 2013, and  
114 thereafter, appropriations for beginning teacher mentors and  
115 any new appropriation which may be made for the purposes  
116 of this section shall be expended by county boards only to  
117 accomplish the activities as set forth in their county plan  
118 pursuant to this section. Effective the school year beginning  
119 July 1, 2013, and thereafter, no specific level of  
120 compensation is guaranteed for any employee service or

121 employment as a mentor and such service or employment is  
122 not subject to the provisions of this code governing extra  
123 duty contracts except as provided in subdivision (5),  
124 subsection (c) of this section.

125 (e) The Legislative Oversight Commission on Education  
126 Accountability shall review the progress of the implementation  
127 of this article and may make any recommendations it deems  
128 necessary to the Legislature during the 2013 regular legislative  
129 session.