

1 **H. B. 2398**

2
3 (By Delegate Perry)

4 [Introduced February 13, 2013; referred to the
5 Committee on Education then Finance.]

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10 A BILL to amend and reenact §18-5-4 and §18-5-5 of the Code of West
11 Virginia, 1931, as amended, all relating to county boards of
12 education generally; providing for disclosure of personal and
13 pecuniary interests and recusal from voting; prohibiting
14 individual board members from acting on behalf of the board in
15 an individual capacity unless authorized by statute; and
16 providing that a violation by a member of a board member may
17 constitute malfeasance warranting the removal of the member
18 from office.

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

20 That §18-5-4 and §18-5-5 of the Code of West Virginia, 1931,
21 as amended, be amended and reenacted, all to read as follows:

22 **ARTICLE 5. COUNTY BOARD OF EDUCATION.**

23 **§18-5-4. Meetings; employment and assignment of teachers; budget**

1 **hearing; compensation of members; affiliation with**
2 **state and national associations.**

3 (a) The county board shall meet upon the dates provided by
4 law, and at any other times the county board fixes upon its
5 records. Subject to adequate public notice, nothing in this
6 section prohibits the county board from conducting regular meetings
7 in facilities within the county other than the county board office.
8 At any meeting as authorized in this section and in compliance with
9 the provisions of chapter eighteen-a of this code, the county board
10 may employ qualified teachers, or those who will qualify by the
11 time they enter upon their duties, necessary to fill existing or
12 anticipated vacancies for the current or next ensuing school year.
13 Meetings of the county board shall be held in compliance with the
14 provisions of chapter eighteen-a of this code for purposes relating
15 to the assignment, transfer, termination and dismissal of teachers
16 and other school employees.

17 (b) Special meetings may be called by the president or any
18 three members, but no business may be transacted other than that
19 designated in the call.

20 (c) In addition, a public hearing shall be held concerning the
21 preliminary operating budget for the next fiscal year not fewer
22 than ten days after the budget has been made available to the
23 public for inspection and within a reasonable time prior to the
24 submission of the budget to the state board for approval.

1 Reasonable time shall be granted at the hearing to any person who
2 wishes to speak regarding any part of the budget. Notice of the
3 hearing shall be published as a Class I legal advertisement in
4 compliance with the provisions of article three, chapter fifty-nine
5 of this code.

6 (d) A majority of the members of the county board is the
7 quorum necessary for the transaction of official business.

8 (e) When a question is put to a vote of the board, any member
9 having a direct personal or pecuniary interest therein shall
10 announce this fact and request to be excused from voting. The
11 member may be excused from voting if in the opinion of the
12 presiding chair the disqualifying interest affects the member
13 directly and not as one of a class.

14 ~~(e)~~ (f) Board members may receive compensation at a rate not
15 to exceed \$160 per meeting attended, but they may not receive pay
16 for more than fifty meetings in any one fiscal year. Board members
17 who serve on an administrative council of a multicounty vocational
18 center also may receive compensation for attending up to twelve
19 meetings of the council at the same rate as for meetings of the
20 county board. Meetings of the council are not counted as board
21 meetings for purposes of determining the limit on compensable board
22 meetings.

23 ~~(f)~~ (g) Members also shall be paid, upon the presentation of
24 an itemized sworn statement, for all necessary traveling expenses,

1 including all authorized meetings, incurred on official business,
2 at the order of the county board.

3 ~~(g)~~ (h) When, by a majority vote of its members, a county
4 board considers it a matter of public interest, the county board
5 may join the West Virginia School Board Association and the
6 National School Board Association and may pay the dues prescribed
7 by the associations and approved by action of the respective county
8 boards. Membership dues and actual traveling expenses incurred by
9 board members for attending meetings of the West Virginia School
10 Board Association may be paid by their respective county boards out
11 of funds available to meet actual expenses of the members, but no
12 allowance may be made except upon sworn itemized statements.

13 **§18-5-5. Corporate character and general powers of board; exemption**
14 **of school property from legal process and taxes.**

15 (a) The county board of education ~~shall be~~ is a corporation by
16 the name of "The Board of Education of the county of, "
17 and ~~as such~~ may sue and be sued, plead and be impleaded, contract
18 and be contracted with. It shall succeed and be subrogated to all
19 the rights of former magisterial and independent district boards
20 and may institute and maintain any and all actions, suits and
21 proceedings now pending or which might have been brought and
22 prosecuted in the name of any former board for the recovery of any
23 money or property, or damage to any property due to or vested in
24 the former board, and shall also be liable in its corporate

1 capacity for all claims legally existing against the board of which
2 it is a successor. The board shall, according to law, hold and
3 dispose of any real estate or personal property belonging to the
4 former corporation or its predecessors, or that may hereafter come
5 into its possession.

6 (b) The board according to law and the intent of the
7 instrument conferring title, shall receive, hold and dispose of any
8 gift, grant or bequest.

9 (c) All public school property used for school purposes shall
10 be exempt from execution or other process, and free from lien or
11 distress for taxes or municipal, county or state levies.

12 (d) Except where expressly authorized by law, a member of a
13 county board of education acting in an individual capacity separate
14 from the setting of a county board of education convened for the
15 transaction of business may not make obligations on behalf of the
16 board, commit the board's funds, utilize the board's property,
17 employees or services without prior knowledge and consent of the
18 board. Nor shall he or she administer the school system, hire
19 board employees, supervise or evaluate the board's employees or
20 students, disregard the policies of the board or rules of its
21 schools or attempt to exercise any other authority relating to the
22 county schools or school board outside the scope of authority
23 expressly provided by statute.

24 (e) The violation by a member of the board of subsection (d)

1 of this section constitutes malfeasance in office warranting the
2 removal of the member from office pursuant to section seven,
3 article six, chapter six of this code.

NOTE: The purpose of this bill is to require any member of a county board of education having a direct personal or pecuniary interest in a matter before the board to announce the fact and request to be excused from voting. The bill prohibits individual board members from acting on behalf of the board in an individual capacity unless authorized by statute. The bill provides that a violation by a board member may constitute malfeasance warranting the removal of the member from office.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.