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H. B. 2786

(By Delegates Pasdon, Statler, Kurcaba, Duke, Cooper, Sobonya,
Espinosa, D. Evans and Upson)

[Introduced February 17, 2015; referred to the
Committee on Education.]

A BILL to amend and reenact §18A-2-7 of the Code of West Virginia, 1931, as amended, relating to prohibiting transfers of employed and assigned service persons to other positions after twenty days prior to and during the instructional term; exceptions.

Be it enacted by the Legislature of West Virginia:

That §18A-2-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. SCHOOL PERSONNEL.

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

(a) The superintendent, subject only to approval of the board, may assign, transfer, promote, demote or suspend school personnel and recommend their dismissal pursuant to provisions of this chapter. However, an employee shall be notified in writing by the superintendent on or before March 1 if he or she is being considered for transfer or to be transferred. Only those employees whose

1 consideration for transfer or intended transfer is based upon known or expected circumstances which
2 will require the transfer of employees shall be considered for transfer or intended for transfer and the
3 notification shall be limited to only those employees. Any teacher or employee who desires to
4 protest the proposed transfer may request in writing a statement of the reasons for the proposed
5 transfer. The statement of reasons shall be delivered to the teacher or employee within ten days of
6 the receipt of the request. Within ten days of the receipt of the statement of the reasons, the teacher
7 or employee may make written demand upon the superintendent for a hearing on the proposed
8 transfer before the county board. The hearing on the proposed transfer shall be held on or before
9 April 15. At the hearing, the reasons for the proposed transfer must be shown.

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

20 (c) The superintendent's authority to suspend school personnel shall be temporary only
21 pending a hearing upon charges filed by the superintendent with the county board and the period of
22 suspension may not exceed thirty days unless extended by order of the board.

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

5 (e) Notwithstanding this section or any provision of this code, when actual student enrollment
6 in a grade level or program, unforeseen before March 1, of the preceding school year, permits the
7 assignment of fewer teachers or service personnel to or within a school under any pupil-teacher ratio,
8 class size or caseload standard established in section eighteen-a, article five, chapter eighteen of this
9 code or any policy of the state board, the superintendent, with board approval, may reassign the
10 surplus personnel to another school or to another grade level or program within the school if needed
11 there to comply with any such pupil-teacher ratio, class size or caseload standard.

12 (1) Before any reassignment may occur pursuant to this subsection, notice shall be provided
13 to the employee and the employee shall be provided an opportunity to appear before the county board
14 to state the reasons for his or her objections, if any, prior to the board voting on the reassignment.

15 (2) Except as otherwise provided in subdivision (1) of this subsection, the reassignment may
16 be made without following the notice and hearing provisions of this section, and at any time during
17 the school year when the conditions of this subsection are met: *Provided*, That the reassignment
18 may not occur after the last day of the second school month.

19 (3) A professional employee reassigned under this subsection shall be the least senior of the
20 surplus professional personnel who holds certification or licensure to perform the duties at the other
21 school or at the grade level or program within the school.

22 (4) A service employee reassigned under this subsection shall be the least senior of the

1 surplus personnel who holds the same classification or multiclassification needed to perform the
2 duties at the other school or at the grade level or program within the same school.

3 (5) No school employee's annual contract term, compensation or benefits shall be changed
4 as a result of a reassignment under this subsection.

5 (f) Except as provided in this section, and notwithstanding section eight, article five of this
6 chapter, after the twentieth day prior to the beginning of the instructional term, a service person
7 employed and assigned to a position in the county may not transfer during the instructional term to
8 another position in the county, subject to the following:

9 (1) A service person who does not have valid certification for the position in which employed
10 and assigned may transfer to another position for which he or she does hold valid certification and
11 that becomes vacant;

12 (2) A service person who has been on an approved leave of absence may fill a vacant position
13 for which he or she holds valid certification upon return from the approved leave of absence;

14 (3) A service person may apply for any posted, vacant position with the successful applicant
15 assuming the position at the beginning of the next instructional term;

16 (4) The county board, upon recommendation of the superintendent that it is in the best
17 interest of the students, may fill a position before the beginning of the next instructional term with
18 an employed and assigned service person who applies for the position;

19 (5) When a transfer occurs after the twentieth day prior to the beginning of the instructional
20 term and before the next instructional term in a position that is an aide, autism mentor,
21 paraprofessional or interpreter position, the county superintendent shall notify the state board; and

22 (6) The provisions of this subsection do not apply to the filling of a position vacated because

- 1 of resignation or retirement that became effective on or before the twentieth day prior to the
- 2 beginning of the instructional term, but not posted until after that date.

NOTE: The purpose of this bill is to prohibit transfers of employed and assigned service personnel after the twentieth day prior to the beginning of and during the instructional with certain exceptions. These provisions mirror those for professional personnel.

Strike-throughs indicate existing language that would be removed, and underscoring indicates new language that would be added.