

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

### **House Bill 3090**

BY DELEGATE HANSHAW (MR. SPEAKER)

(BY REQUEST)

[Introduced February 12, 2019; Referred  
to the Committee on Education.]

1 A BILL to amend and reenact §18A-4-7a of the Code of West Virginia, 1931, as amended, relating  
 2 to employment, promotion and transfer of professional personnel by county boards of  
 3 education; requiring a random selection system when two or more employees with the  
 4 same certification establish an identical seniority date; and specifying requirements of  
 5 system.

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

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

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

1 (a) A county board of education shall make decisions affecting the filling of vacancies in  
 2 professional positions of employment on the basis of the applicant with the highest qualifications:  
 3 *Provided*, That the county superintendent shall be hired under separate criteria pursuant to §18-  
 4 4-2 of this code.

5 (b) In judging qualifications for the filling of vacancies of professional positions of  
 6 employment, consideration shall be given to each of the following:

7 (1) Appropriate certification, licensure or both;

8 (2) Amount of experience relevant to the position or, in the case of a classroom teaching  
 9 position, the amount of teaching experience in the required certification area;

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

12 (4) Academic achievement;

13 (5) In the case of a principal or classroom teaching position, certification by the National  
 14 Board for Professional Teaching Standards;

15 (6) Specialized training relevant to performing the duties of the job;

16 (7) Past performance evaluations conducted pursuant to §18A-2-12 and §18A-3C-2 of this  
 17 code or, in the case of a classroom teacher, past evaluations of the applicants performance in the  
 18 teaching profession;

19 (8) Seniority;

20 (9) Other measures or indicators upon which the relative qualifications of the applicant  
21 may fairly be judged;

22 (10) In the case of a classroom teaching position, the recommendation of the principal of  
23 the school at which the applicant will be performing a majority of his or her duties; and

24 (11) In the case of a classroom teaching position, the recommendation, if any, resulting  
25 from the process established pursuant to the provisions of §18-5A-5 of this code by the faculty  
26 senate of the school at which the employee will be performing a majority of his or her duties.

27 (c) When filling of a vacancy pursuant to this section, a county board is entitled to  
28 determine the appropriate weight to apply to each of the criterion when assessing an applicants  
29 qualifications: *Provided*, That if one or more permanently employed instructional personnel apply  
30 for a classroom teaching position and meet the standards set forth in the job posting, each  
31 criterion under §18A-4-7a(b) of this code shall be given equal weight except that the criterion in  
32 §18A-4-7a(b)(10) and §18A-4-7a(b)(11) of this code shall each be double weighted.

33 (d) For a classroom teaching position, if the principal and faculty senate recommend the  
34 same applicant pursuant to §18A-4-7a(b)(10) and §18A-4-7a(b)(11) of this code, and the  
35 superintendent concurs with those recommendations, then the other provisions of §18A-4-7a(b)  
36 and §18A-4-7a(c) of this code do not apply and the county board shall appoint that applicant  
37 notwithstanding any other provision of this code to the contrary.

38 (e) The state board shall promulgate a rule, including an emergency rule if necessary, in  
39 accordance with the provisions of §29A-3B-1 *et seq.* of this code to implement and interpret the  
40 provisions of this section. The rule may provide for a classroom teacher who directly participates  
41 in making recommendations pursuant to this section to be compensated at the appropriate daily  
42 rate during periods of participation beyond his or her individual contract.

43 (f) The recommendations of the principal and faculty senate made pursuant to §18A-4-  
44 7a(b)(10) and §18A-4-7a(b)(11) of this code shall be based on a determination as to which

45 applicant is the most highly qualified for the position: *Provided*, That nothing in this subsection  
46 may require principals or faculty senates to assign any amount of weight to any factor in making  
47 a recommendation.

48 (g) With the exception of guidance counselors, the seniority of classroom teachers, as  
49 defined in §18A-1-1 of this code, shall be determined on the basis of the length of time the  
50 employee has been employed as a regular full-time certified and/or licensed professional educator  
51 by the county board of education and shall be granted in all areas that the employee is certified,  
52 licensed or both.

53 (h) Upon completion of 133 days of employment in any one school year, substitute  
54 teachers, except retired teachers and other retired professional educators employed as  
55 substitutes, shall accrue seniority exclusively for the purpose of applying for employment as a  
56 permanent, full-time professional employee. One hundred thirty-three days or more of said  
57 employment shall be prorated and shall vest as a fraction of the school year worked by the  
58 permanent, full-time teacher.

59 (i) Guidance counselors and all other professional employees, as defined in §18A-1-1 of  
60 this code, except classroom teachers, shall gain seniority in their nonteaching area of professional  
61 employment on the basis of the length of time the employee has been employed by the county  
62 board of education in that area: *Provided*, That if an employee is certified as a classroom teacher,  
63 the employee accrues classroom teaching seniority for the time that employee is employed in  
64 another professional area. For the purposes of accruing seniority under this paragraph,  
65 employment as principal, supervisor or central office administrator, as defined in §18A-1-1 of this  
66 code, shall be considered one area of employment.

67 (j) Employment for a full employment term equals one year of seniority, but an employee  
68 may not accrue more than one year of seniority during any given fiscal year. Employment for less  
69 than the full employment term shall be prorated. A random selection system established by the  
70 employees and approved by the county board shall be used to determine the priority if two or

71 more employees accumulate identical seniority. If two or more employees with the same  
72 certification establish an identical seniority date as a result of initial employment as a regular  
73 teacher on or after July 1, 2019, the priority between these employees shall be determined by a  
74 random selection system established by the employees and approved by the county board. A  
75 board shall conduct the random selection within 30 days of the time the employees with the same  
76 certification establish an identical seniority date. All employees with an identical seniority date and  
77 the same certification shall participate in the random selection. As long as the affected employees  
78 hold the identical seniority date within a certification, the initial random selection conducted by the  
79 board shall be permanent for the duration of the employment of the employees by the board:  
80 *Provided*, That when two or more principals have accumulated identical seniority, decisions on  
81 reductions in force shall be based on qualifications.

82 (k) Whenever a county board is required to reduce the number of professional personnel  
83 in its employment, the employee with the least amount of seniority shall be properly notified and  
84 released from employment pursuant to the provisions of §18A-2-2 of this code. The provisions of  
85 this subsection are subject to the following:

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

89 (2) Notwithstanding any provision of this code to the contrary, for any vacancy in an  
90 established, existing or newly created position that, on or before March 1, is known to exist for  
91 the ensuing school year, upon recommendation of the superintendent, the board shall appoint the  
92 successful applicant from among all qualified applicants. All employees subject to release shall  
93 be considered applicants for the positions for which they are qualified and shall be considered  
94 before posting such vacancies for application by nonemployees;

95 (3) An employee subject to release shall be employed in any other professional position  
96 where the employee is certified and was previously employed or to any lateral area for which the

97 employee is certified, licensed or both, if the employees seniority is greater than the seniority of  
98 any other employee in that area of certification, licensure or both;

99 (4) If an employee subject to release holds certification, licensure or both in more than one  
100 lateral area and if the employees seniority is greater than the seniority of any other employee in  
101 one or more of those areas of certification, licensure or both, the employee subject to release  
102 shall be employed in the professional position held by the employee with the least seniority in any  
103 of those areas of certification, licensure or both; and

104 (5) If, prior to August 1 of the year, a reduction in force is approved, the reason for any  
105 particular reduction in force no longer exists as determined by the county board in its sole and  
106 exclusive judgment, the board shall rescind the reduction in force or transfer and shall notify the  
107 released employee in writing of his or her right to be restored to his or her position of employment.  
108 Within five days of being so notified, the released employee shall notify the board, in writing, of  
109 his or her intent to resume his or her position of employment or the right to be restored shall  
110 terminate. Notwithstanding any other provision of this subdivision, if there is another employee on  
111 the preferred recall list with proper certification and higher seniority, that person shall be placed  
112 in the position restored as a result of the reduction in force being rescinded.

113 (l) For the purpose of this article, all positions which meet the definition of "classroom  
114 teacher" as defined in §18A-1-1 of this code shall be lateral positions. For all other professional  
115 positions, the county board of education shall adopt a policy by October 31, 1993, and may modify  
116 the policy thereafter as necessary, which defines which positions shall be lateral positions. In  
117 adopting the policy, the board shall give consideration to the rank of each position in terms of title;  
118 nature of responsibilities; salary level; certification, licensure or both; and days in the period of  
119 employment.

120 (m) All professional personnel whose seniority with the county board is insufficient to allow  
121 their retention by the county board during a reduction in work force shall be placed upon a  
122 preferred recall list. As to any professional position opening within the area where they had

123 previously been employed or to any lateral area for which they have certification, licensure or  
124 both, the employee shall be recalled on the basis of seniority if no regular, full-time professional  
125 personnel, or those returning from leaves of absence with greater seniority, are qualified, apply  
126 for and accept the position.

127 (n) Before position openings that are known or expected to extend for 20 consecutive  
128 employment days or longer for professional personnel may be filled by the board, the board shall  
129 be required to notify all qualified professional personnel on the preferred list and give them an  
130 opportunity to apply, but failure to apply shall not cause the employee to forfeit any right to recall.  
131 The notice shall be sent by certified mail to the last known address of the employee, and it shall  
132 be the duty of each professional personnel to notify the board of continued availability annually,  
133 of any change in address or of any change in certification, licensure or both.

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

136 (1) Boards shall be required to post and date notices of each opening at least once. At  
137 their discretion, boards may post an opening for a position other than classroom teacher more  
138 than once in order to attract more qualified applicants. At their discretion, boards may post an  
139 opening for a classroom teacher one additional time after the first posting in order to attract more  
140 qualified applicants only if fewer than three individuals apply during the first posting subject to the  
141 following:

142 (A) Each notice shall be posted in conspicuous working places for all professional  
143 personnel to observe for at least five working days;

144 (B) At least one notice shall be posted within 20 working days of the position openings  
145 and shall include the job description;

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

148 (D) Postings for vacancies made pursuant to this section shall be written so as to ensure

149 that the largest possible pool of qualified applicants may apply; and

150 (E) Job postings may not require criteria which are not necessary for the successful  
151 performance of the job and may not be written with the intent to favor a specific applicant;

152 (2) No vacancy may be filled until after the five-day minimum posting period of the most  
153 recent posted notice of the vacancy;

154 (3) If one or more applicants under all the postings for a vacancy meets the qualifications  
155 listed in the job posting, the successful applicant to fill the vacancy shall be selected by the board  
156 within 30 working days of the end of the first posting period;

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

160 (5) Nothing provided herein may prevent the county board of education from eliminating a  
161 position due to lack of need.

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

168 (q) Reductions in classroom teaching positions in elementary schools shall be processed  
169 as follows:

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

173 (2) When a specified grade level needs to be reduced and the least senior employee in  
174 the school is not in that grade level, the least senior classroom teacher in the grade level that



175 needs to be reduced shall be reassigned to the position made vacant by the transfer of the least  
176 senior classroom teacher in the school without that position being posted: *Provided*, That the  
177 employee is certified, licensed or both and agrees to the reassignment.

178 (r) Any board failing to comply with the provisions of this article may be compelled to do  
179 so by mandamus and shall be liable to any party prevailing against the board for court costs and  
180 reasonable attorney fees as determined and established by the court. Further, employees denied  
181 promotion or employment in violation of this section shall be awarded the job, pay and any  
182 applicable benefits retroactive to the date of the violation and payable entirely from local funds.  
183 Further, the board shall be liable to any party prevailing against the board for any court reporter  
184 costs including copies of transcripts.

185 (s) The county board shall compile, update annually on July 1 and make available by  
186 electronic or other means to all employees a list of all professional personnel employed by the  
187 county, their areas of certification and their seniority.

188 (t) Notwithstanding any other provision of this code to the contrary, upon recommendation  
189 of the principal and approval by the classroom teacher and county board, a classroom teacher  
190 assigned to the school may at any time be assigned to a new or existing classroom teacher  
191 position at the school without the position being posted.

NOTE: The purpose of this bill is to require county boards of education, with regard to employment, promotion and transfer of professional personnel, to have a random selection system when two or more employees with the same certification establish an identical seniority date.

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