

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 727

By Senators Grady Roberts, and Plymale

[Introduced February 9, 2024; referred
to the Committee on Education]

1 A BILL to amend and reenact §18-5A-5 of the Code of West Virginia, 1931, as amended; and to
 2 amend and reenact §18A-4-8b of said code, all relating to revising the process for county
 3 boards of education to hire aides, early childhood classroom assistant teachers, and
 4 secretaries; allowing principal or certain other person designated in West Virginia Board of
 5 Education rule to be given opportunity to interview all qualified applicants and make
 6 recommendations regarding their employment; allowing faculty senate to interview or
 7 otherwise obtain information regarding applicants if the majority of duties will be performed
 8 at a school; adding to criterion that decisions affecting promotions and filling of the aide,
 9 early childhood classroom assistant teacher, or secretary positions are to be based on;
 10 establishing preference for early childhood classroom assistant teachers over aides as an
 11 additional criterion to be considered; specifying weight to be given to each criterion;
 12 requiring all qualified applicants to be considered together in one group; requiring
 13 appointment of applicant if the principal and faculty senate recommend the same applicant
 14 and the county superintendent concurs; and requiring state board rule to implement and
 15 interpret the provisions of §18A-4-8b of this code.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.

§18-5A-5. Public school faculty senates established; election of officers; powers and duties.

1 (a) There is established at every public school in this state a faculty senate which is
 2 comprised of all permanent, full-time professional educators employed at the school who shall all
 3 be voting members. "Professional educators", as used in this section, means "professional
 4 educators" as defined in chapter eighteen-a of this code. A quorum of more than one half of the
 5 voting members of the faculty shall be present at any meeting of the faculty senate at which official
 6 business is conducted. Prior to the beginning of the instructional term each year, but within the
 7 employment term, the principal shall convene a meeting of the faculty senate to elect a chair, vice

8 chair and secretary and discuss matters relevant to the beginning of the school year. The vice
9 chair shall preside at meetings when the chair is absent. Meetings of the faculty senate shall be
10 held during the times provided in accordance with subdivision (12), subsection (b) of this section
11 as determined by the faculty senate. Emergency meetings may be held during noninstructional
12 time at the call of the chair or a majority of the voting members by petition submitted to the chair
13 and vice chair. An agenda of matters to be considered at a scheduled meeting of the faculty senate
14 shall be available to the members at least two employment days prior to the meeting. For
15 emergency meetings the agenda shall be available as soon as possible prior to the meeting. The
16 chair of the faculty senate may appoint such committees as may be desirable to study and submit
17 recommendations to the full faculty senate, but the acts of the faculty senate shall be voted upon
18 by the full body.

19 (b) In addition to any other powers and duties conferred by law, or authorized by policies
20 adopted by the state or county board or bylaws which may be adopted by the faculty senate not
21 inconsistent with law, the powers and duties listed in this subsection are specifically reserved for
22 the faculty senate. The intent of these provisions is neither to restrict nor to require the activities of
23 every faculty senate to the enumerated items except as otherwise stated. Each faculty senate
24 shall organize its activities as it considers most effective and efficient based on school size,
25 departmental structure and other relevant factors.

26 (1) Each faculty senate shall control funds allocated to the school from legislative
27 appropriations pursuant to section nine, article nine-a of this chapter. From those funds, each
28 classroom teacher and librarian shall be allotted \$300 for expenditure during the instructional year
29 for academic materials, supplies or equipment which, in the judgment of the teacher or librarian,
30 will assist him or her in providing instruction in his or her assigned academic subjects or shall be
31 returned to the faculty senate: *Provided*, That nothing contained herein prohibits the funds from
32 being used for programs and materials that, in the opinion of the teacher, enhance student
33 behavior, increase academic achievement, improve self-esteem and address the problems of

34 students at risk. The remainder of funds shall be expended for academic materials, supplies or
35 equipment in accordance with a budget approved by the faculty senate. Notwithstanding any other
36 provisions of the law to the contrary, funds not expended in one school year are available for
37 expenditure in the next school year: *Provided, however,* That the amount of county funds
38 budgeted in a fiscal year may not be reduced throughout the year as a result of the faculty
39 appropriations in the same fiscal year for such materials, supplies and equipment. Accounts shall
40 be maintained of the allocations and expenditures of such funds for the purpose of financial audit.
41 Academic materials, supplies or equipment shall be interpreted broadly, but does not include
42 materials, supplies or equipment which will be used in or connected with interscholastic athletic
43 events.

44 (2) A faculty senate may establish a process for members to interview or otherwise obtain
45 information regarding applicants for classroom teaching, aide, early childhood classroom
46 assistant teacher, and secretary vacancies that will enable the faculty senate to submit
47 recommendations regarding employment to the principal. To facilitate the establishment of a
48 process that is timely, effective, consistent among schools and counties, and designed to avoid
49 litigation or grievance, the state board shall promulgate a rule pursuant to article three-b, chapter
50 twenty-nine-a of this code to implement the provisions of this subdivision. The rule may include the
51 following:

52 (A) A process or alternative processes that a faculty senate may adopt;

53 (B) If determined necessary, a requirement and procedure for training for principals and
54 faculty senate members or their designees who may participate in interviews and provisions that
55 may provide for the compensation based on the appropriate daily rate of a classroom teacher who
56 directly participates in the training for periods beyond his or her individual contract;

57 (C) Timelines that will assure the timely completion of the recommendation or the forfeiture
58 of the right to make a recommendation upon the failure to complete a recommendation within a
59 reasonable time;

60 (D) The authorization of the faculty senate to delegate the process for making a
61 recommendation to a committee of no less than three members of the faculty senate; and

62 (E) Such other provisions as the state board determines are necessary or beneficial for the
63 process to be established by the faculty senate.

64 (3) A faculty senate may nominate teachers for recognition as outstanding teachers under
65 state and local teacher recognition programs and other personnel at the school, including parents,
66 for recognition under other appropriate recognition programs and may establish such programs for
67 operation at the school.

68 (4) A faculty senate may submit recommendations to the principal regarding the
69 assignment scheduling of secretaries, clerks, aides and paraprofessionals at the school.

70 (5) A faculty senate may submit recommendations to the principal regarding establishment
71 of the master curriculum schedule for the next ensuing school year.

72 (6) A faculty senate may establish a process for the review and comment on sabbatical
73 leave requests submitted by employees at the school pursuant to section eleven, article two of this
74 chapter.

75 (7) Each faculty senate shall elect three faculty representatives to the local school
76 improvement council established pursuant to section two of this article.

77 (8) Each faculty senate may nominate a member for election to the county staff
78 development council pursuant to section eight, article three, chapter eighteen-a of this code.

79 (9) Each faculty senate shall have an opportunity to make recommendations on the
80 selection of faculty to serve as mentors for beginning teachers under beginning teacher internship
81 programs at the school.

82 (10) A faculty senate may solicit, accept and expend any grants, gifts, bequests, donations
83 and any other funds made available to the faculty senate: *Provided*, That the faculty senate shall
84 select a member who has the duty of maintaining a record of all funds received and expended by

85 the faculty senate, which record shall be kept in the school office and is subject to normal auditing
86 procedures.

87 (11) Any faculty senate may review the evaluation procedure as conducted in their school
88 to ascertain whether the evaluations were conducted in accordance with the written system
89 required pursuant to section twelve, article two, chapter eighteen-a of this code or pursuant to
90 section two, article three-c, chapter eighteen-a of this code, as applicable, and the general intent of
91 this Legislature regarding meaningful performance evaluations of school personnel. If a majority of
92 members of the faculty senate determine that such evaluations were not so conducted, they shall
93 submit a report in writing to the State Board of Education: *Provided*, That nothing herein creates
94 any new right of access to or review of any individual's evaluations.

95 (12) A local board shall provide to each faculty senate at least six two-hour blocks of time
96 for faculty senate meetings with at least one two-hour block of time scheduled in the first month of
97 the employment term, one two-hour block of time scheduled in the last month of the employment
98 term and at least one two-hour block of time scheduled in each of the months of October,
99 December, February and April. A faculty senate may meet for an unlimited block of time during
100 noninstructional days to discuss and plan strategies to improve student instruction and to conduct
101 other faculty senate business. A faculty senate meeting scheduled on a noninstructional day shall
102 be considered as part of the purpose for which the noninstructional day is scheduled. This time
103 may be used and determined at the local school level and includes, but is not limited to, faculty
104 senate meetings.

105 (13) Each faculty senate shall develop a strategic plan to manage the integration of special
106 needs students into the regular classroom at their respective schools and submit the strategic plan
107 to the superintendent of the county board periodically pursuant to guidelines developed by the
108 State Department of Education. Each faculty senate shall encourage the participation of local
109 school improvement councils, parents and the community at large in developing the strategic plan
110 for each school.

111 Each strategic plan developed by the faculty senate shall include at least: (A) A mission
 112 statement; (B) goals; (C) needs; (D) objectives and activities to implement plans relating to each
 113 goal; (E) work in progress to implement the strategic plan; (F) guidelines for placing additional staff
 114 into integrated classrooms to meet the needs of exceptional needs students without diminishing
 115 the services rendered to the other students in integrated classrooms; (G) guidelines for
 116 implementation of collaborative planning and instruction; and (H) training for all regular classroom
 117 teachers who serve students with exceptional needs in integrated classrooms.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.
§18A-4-8b. Seniority rights for school service personnel.

1 (a) A county board shall make decisions affecting promotions and the filling of any service
 2 personnel positions of employment or jobs occurring throughout the school year that are to be
 3 performed by service personnel as provided in section eight of this article, on the basis of seniority,
 4 qualifications, and evaluation of past service, subject to subsection (c) of this section.

5 (b) Qualifications means the applicant holds a classification title in his or her category of
 6 employment as provided in this section and is given first opportunity for promotion and filling
 7 vacancies. Other employees then shall be considered and shall qualify by meeting the definition of
 8 the job title that relates to the promotion or vacancy, as defined in section eight of this article. If
 9 requested by the employee, the county board shall show valid cause why a service person with the
 10 most seniority is not promoted or employed in the position for which he or she applies. ~~Qualified~~
 11 Subject to subsection (c) of this section, applicants shall be considered in the following order:

12 (1) Regularly employed service personnel who hold a classification title within the
 13 classification category of the vacancy;

14 (2) Service personnel who have held a classification title within the classification category
 15 of the vacancy whose employment has been discontinued in accordance with this section;

16 (3) Regularly employed service personnel who do not hold a classification title within the
 17 classification category of vacancy;

18 (4) Service personnel who have not held a classification title within the classification
19 category of the vacancy and whose employment has been discontinued in accordance with this
20 section;

21 (5) Substitute service personnel who hold a classification title within the classification
22 category of the vacancy;

23 (6) Substitute service personnel who do not hold a classification title within the
24 classification category of the vacancy; and

25 (7) New service personnel.

26 (c) Notwithstanding any other provision of this code to the contrary, in the case of any aide
27 position, early childhood classroom assistant teacher position, or any secretary position:

28 (1) A county board shall give the principal at the school at which the majority of duties
29 would be performed by applicants an opportunity to interview all qualified applicants and make
30 recommendations to the county superintendent regarding their employment. The state board rule
31 required by subdivision (7) of this subsection shall designate the person to interview the applicants
32 if the principal is unable to submit hiring recommendations or the majority of duties will be
33 performed at a building without a principal;

34 (2) If the majority of the duties for the position will be performed at a school, a county board
35 shall also give the faculty senate at the school at which the employee will be performing a majority
36 of his or her duties an opportunity to interview or otherwise obtain information regarding applicants
37 for the vacancies;

38 (3) Decisions affecting promotions and filling of the aide, early childhood classroom
39 assistant teacher, or secretary positions of employment or jobs occurring throughout the school
40 year that are to be performed by any aide, early childhood classroom assistant teacher, or
41 secretary as provided in §18A-4-8 of this code shall be made on the basis of seniority,
42 qualifications, evaluation of past service, the recommendation of the principal or other person as
43 designated by the state board rule pursuant to subdivision (1) of this subsection, and the

44 recommendation, if any, resulting from the process established pursuant to §18-5A-5 of this code
45 by the faculty senate of the school at which the employee will be performing a majority of his or her
46 duties. In the case of an aide and early childhood assistant teacher position, decisions affecting
47 promotions and filling of those positions of employment or jobs occurring throughout the school
48 year that are to be performed by any aide or early childhood assistant teacher as provided in
49 §18A-4-8 of this code shall also include a preference for early childhood classroom assistant
50 teachers over aides as an additional criterion to be considered;

51 (4) Each of the criterion under subdivision (3) of this subsection shall be given equal weight
52 except that the recommendation of the principal or other persons designated by the state board
53 rule pursuant to subdivision (1) of this subsection and the recommendation of the faculty senate, if
54 any, shall be double weighted;

55 (5) The order of consideration of qualified applicants set forth in subsection (b) of this
56 section shall not apply when filling aide, early childhood classroom assistant teacher, or secretary
57 positions and all qualified applicants shall be considered together in one group;

58 (6) If the principal and faculty senate recommend the same applicant pursuant to this
59 subsection, and the county superintendent concurs with those recommendations, then the county
60 board shall appoint that applicant notwithstanding any other provision of this code to the contrary;

61 (7) The state board shall promulgate a rule in accordance with the provisions of §29A-3B-1
62 et seq. of this code to implement and interpret the provisions of this section. The rule may provide
63 for a classroom teacher who directly participates in making recommendations pursuant to this
64 section to be compensated at the appropriate daily rate during periods of participation beyond his
65 or her individual contract.

66 (e) (d) The county board may not prohibit a service person from retaining or continuing his
67 or her employment in any positions or jobs held prior to the effective date of this section and
68 thereafter.

69 (d) (e) A promotion means any change in employment that the service person considers to

70 improve his or her working circumstance within the classification category of employment.

71 (1) A promotion includes a transfer to another classification category or place of
72 employment if the position is not filled by an employee who holds a title within that classification
73 category of employment.

74 (2) Each class title listed in section eight of this article is considered a separate
75 classification category of employment for service personnel, except for those class titles having
76 Roman numeral designations, which are considered a single classification of employment:

77 (A) The cafeteria manager class title is included in the same classification category as
78 cooks;

79 (B) The executive secretary class title is included in the same classification category as
80 secretaries;

81 (C) Paraprofessional, autism mentor, early classroom assistant teacher and braille or sign
82 support specialist class titles are included in the same classification category as aides; and

83 (D) The mechanic assistant and chief mechanic class titles are included in the same
84 classification category as mechanics.

85 (3) The assignment of an aide to a particular position within a school is based on seniority
86 within the aide classification category if the aide is qualified for the position.

87 (4) Assignment of a custodian to work shifts in a school or work site is based on seniority
88 within the custodian classification category.

89 ~~(e)~~ (f) For purposes of determining seniority under this section a service persons seniority
90 begins on the date that he or she enters into the assigned duties.

91 ~~(f)~~ (g) *Extra-duty assignments.* --

92 (1) For the purpose of this section, "extra-duty assignment" means an irregular job that
93 occurs periodically or occasionally such as, but not limited to, field trips, athletic events, proms,
94 banquets and band festival trips.

95 (2) Notwithstanding any other provisions of this chapter to the contrary, decisions affecting

96 service personnel with respect to extra-duty assignments are made in the following manner:

97 (A) A service person with the greatest length of service time in a particular category of
98 employment is given priority in accepting extra duty assignments, followed by other fellow
99 employees on a rotating basis according to the length of their service time until all employees have
100 had an opportunity to perform similar assignments. The cycle then is repeated.

101 (B) An alternative procedure for making extra-duty assignments within a particular
102 classification category of employment may be used if the alternative procedure is approved both
103 by the county board and by an affirmative vote of two-thirds of the employees within that
104 classification category of employment.

105 ~~(g)~~ (h) County boards shall post and date notices of all job vacancies of existing or newly
106 created positions in conspicuous places for all school service personnel to observe for at least five
107 working days.

108 (1) Posting locations include any website maintained by or available for the use of the
109 county board.

110 (2) Notice of a job vacancy shall include the job description, the period of employment, the
111 work site, the starting and ending time of the daily shift, the amount of pay and any benefits and
112 other information that is helpful to prospective applicants to understand the particulars of the job.
113 The notice of a job vacancy in the aide classification categories shall include the program or
114 primary assignment of the position. Job postings for vacancies made pursuant to this section shall
115 be written to ensure that the largest possible pool of qualified applicants may apply. Job postings
116 may not require criteria which are not necessary for the successful performance of the job and
117 may not be written with the intent to favor a specific applicant.

118 (3) All vacancies in existing or newly created positions shall be filled within twenty working
119 days from the closing date of the job posting for the position.

120 (4) The county board shall notify the successful applicant as soon as possible after the
121 county board makes a hiring decision regarding the posted position.

122 ~~(h)~~ (i) All decisions by county boards concerning reduction in work force of service
123 personnel shall be made on the basis of seniority, as provided in this section.

124 ~~(i)~~ (j) The seniority of a service person is determined on the basis of the length of time the
125 employee has been employed by the county board within a particular job classification. For the
126 purpose of establishing seniority for a preferred recall list as provided in this section, a service
127 person who has been employed in one or more classifications retains the seniority accrued in each
128 previous classification.

129 ~~(j)~~ (k) If a county board is required to reduce the number of service personnel within a
130 particular job classification, the following conditions apply:

131 (1) The employee with the least amount of seniority within that classification or grades of
132 classification is properly released and employed in a different grade of that classification if there is
133 a job vacancy;

134 (2) If there is no job vacancy for employment within that classification or grades of
135 classification, the service person is employed in any other job classification which he or she
136 previously held with the county board if there is a vacancy and retains any seniority accrued in the
137 job classification or grade of classification.

138 ~~(k)~~ (l) After a reduction in force or transfer is approved, but prior to August 1, a county board
139 in its sole and exclusive judgment may determine that the reason for any particular reduction in
140 force or transfer no longer exists.

141 (1) If the board makes this determination, it shall rescind the reduction in force or transfer
142 and notify the affected employee in writing of the right to be restored to his or her former position of
143 employment.

144 (2) The affected employee shall notify the county board of his or her intent to return to the
145 former position of employment within five days of being notified or lose the right to be restored to
146 the former position.

147 (3) The county board may not rescind the reduction in force of an employee until all service

148 personnel with more seniority in the classification category on the preferred recall list have been
149 offered the opportunity for recall to regular employment as provided in this section.

150 (4) If there are insufficient vacant positions to permit reemployment of all more senior
151 employees on the preferred recall list within the classification category of the service person who
152 was subject to reduction in force, the position of the released service person shall be posted and
153 filled in accordance with this section.

154 ~~(t)~~ (m) If two or more service persons accumulate identical seniority, the priority is
155 determined by a random selection system established by the employees and approved by the
156 county board.

157 ~~(m)~~ (n) All service personnel whose seniority with the county board is insufficient to allow
158 their retention by the county board during a reduction in work force are placed upon a preferred
159 recall list and shall be recalled to employment by the county board on the basis of seniority.

160 ~~(n)~~ (o) A service person placed upon the preferred recall list shall be recalled to any
161 position openings by the county board within the classification(s) where he or she had previously
162 been employed, to any lateral position for which the service person is qualified or to a lateral area
163 for which a service person has certification and/or licensure.

164 ~~(o)~~ (p) A service person on the preferred recall list does not forfeit the right to recall by the
165 county board if compelling reasons require him or her to refuse an offer of reemployment by the
166 county board.

167 ~~(p)~~ (q) The county board shall notify all service personnel on the preferred recall list of all
168 position openings that exist from time to time. The notification shall be sent annually, with written
169 receipt notification documented by the superintendent, and shall list instructions to access job
170 postings on any website maintained by or available for the use of the county board.

171 ~~(q)~~ (r) A position opening may be filled by the county board, whether temporary or
172 permanent, until all service personnel on the preferred recall list have been properly notified of
173 existing vacancies and have been given an opportunity to accept reemployment.

174 ~~(f)~~ (s) A service person released from employment for lack of need as provided in sections
175 six and eight-a, article two of this chapter is accorded preferred recall status on July 1 of the
176 succeeding school year if he or she has not been reemployed as a regular employee.

177 ~~(s)~~ (t) A county board failing to comply with the provisions of this article may be compelled
178 to do so by mandamus and is liable to any party prevailing against the board for court costs and the
179 prevailing party's reasonable attorney fee, as determined and established by the court.

180 (1) A service person denied promotion or employment in violation of this section shall be
181 awarded the job, pay and any applicable benefits retroactively to the date of the violation and shall
182 be paid entirely from local funds.

183 (2) The county board is liable to any party prevailing against the board for any court
184 reporter costs including copies of transcripts.

NOTE: The purpose of this bill is to revise the process for county boards of education to hire aides, early childhood classroom assistant teachers, and secretaries.

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