

1 **H. B. 4270**

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3 (By Delegate L. Phillips, (By Request))
4 [Introduced January 23, 2012; referred to the
5 Committee on Education.]
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10 A BILL to amend and reenact §18A-4-7a of the Code of West Virginia,
11 1931, as amended, relating to school personnel; and providing
12 that a member of the service personnel in the system may be
13 hired as a coach when there is no qualified teacher in the
14 system for the position of coach.

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

16 That §18A-4-7a of the Code of West Virginia, 1931, as amended,
17 be amended and reenacted to read as follows:

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

19 **§18A-4-7a. Employment, promotion and transfer of professional**
20 **personnel; seniority.**

21 (a) A county board of education shall make decisions affecting
22 the hiring of professional personnel other than classroom teachers
23 on the basis of the applicant with the highest qualifications.

1 (b) The county board shall make decisions affecting the hiring
2 of new classroom teachers on the basis of the applicant with the
3 highest qualifications.

4 (c) In judging qualifications for hiring employees pursuant to
5 subsections (a) and (b) of this section, consideration shall be
6 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
9 case of a classroom teaching position, the amount of teaching
10 experience in the subject area;

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

13 (4) Academic achievement;

14 (5) Relevant specialized training;

15 (6) Past performance evaluations conducted pursuant to section
16 twelve, article two of this chapter; and

17 (7) Other measures or indicators upon which the relative
18 qualifications of the applicant may fairly be judged.

19 (d) If one or more permanently employed instructional
20 personnel apply for a classroom teaching position and meet the
21 standards set forth in the job posting, the county board of
22 education shall make a decision affecting the filling of the
23 position on the basis of the following criteria:

24 (1) Appropriate certification, licensure or both;

- 1 (2) Total amount of teaching experience;
- 2 (3) The existence of teaching experience in the required
3 certification area;
- 4 (4) Degree level in the required certification area;
- 5 (5) Specialized training directly related to the performance
6 of the job as stated in the job description;
- 7 (6) Receiving an overall rating of satisfactory in the
8 previous two evaluations conducted pursuant to section twelve,
9 article two of this chapter; and
- 10 (7) Seniority.
- 11 (e) In filling positions pursuant to subsection (d) of this
12 section, consideration shall be given to each criterion with each
13 criterion being given equal weight. If the applicant with the most
14 seniority is not selected for the position, upon the request of the
15 applicant a written statement of reasons shall be given to the
16 applicant with suggestions for improving the applicant's
17 qualifications.
- 18 (f) With the exception of guidance counselors, the seniority
19 of classroom teachers, as defined in section one, article one of
20 this chapter shall be determined on the basis of the length of time
21 the employee has been employed as a regular full-time certified
22 and/or licensed professional educator by the county board of
23 education and shall be granted in all areas that the employee is
24 certified, licensed or both.

1 (g) Upon completion of one hundred thirty-three days of
2 employment in any one school year, substitute teachers, except
3 retired teachers and other retired professional educators employed
4 as substitutes, shall accrue seniority exclusively for the purpose
5 of applying for employment as a permanent, full-time professional
6 employee. One hundred thirty-three days or more of said employment
7 shall be prorated and shall vest as a fraction of the school year
8 worked by the permanent, full-time teacher.

9 (h) Guidance counselors and all other professional employees,
10 as defined in section one, article one of this chapter, except
11 classroom teachers, shall gain seniority in their nonteaching area
12 of professional employment on the basis of the length of time the
13 employee has been employed by the county board of education in that
14 area: *Provided*, That if an employee is certified as a classroom
15 teacher, the employee accrues classroom teaching seniority for the
16 time that employee is employed in another professional area. For
17 the purposes of accruing seniority under this paragraph, employment
18 as principal, supervisor or central office administrator, as
19 defined in section one, article one of this chapter, shall be
20 considered one area of employment.

21 (i) Employment for a full employment term shall equal one year
22 of seniority, but no employee may accrue more than one year of
23 seniority during any given fiscal year. Employment for less than
24 the full employment term shall be prorated. A random selection

1 system established by the employees and approved by the board shall
2 be used to determine the priority if two or more employees
3 accumulate identical seniority: *Provided*, That when two or more
4 principals have accumulated identical seniority, decisions on
5 reductions in force shall be based on qualifications.

6 (j) Whenever a county board is required to reduce the number
7 of professional personnel in its employment, the employee with the
8 least amount of seniority shall be properly notified and released
9 from employment pursuant to the provisions of section two, article
10 two of this chapter. The provisions of this subsection are subject
11 to the following:

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

16 (2) An employee subject to release shall be employed in any
17 other professional position where the employee is certified and was
18 previously employed or to any lateral area for which the employee
19 is certified, licensed or both, if the employee's seniority is
20 greater than the seniority of any other employee in that area of
21 certification, licensure or both;

22 (3) If an employee subject to release holds certification,
23 licensure or both in more than one lateral area and if the
24 employee's seniority is greater than the seniority of any other

1 employee in one or more of those areas of certification, licensure
2 or both, the employee subject to release shall be employed in the
3 professional position held by the employee with the least seniority
4 in any of those areas of certification, licensure or both; and

5 (4) If, prior to August 1, of the year a reduction in force is
6 approved, the reason for any particular reduction in force no
7 longer exists as determined by the county board in its sole and
8 exclusive judgment, the board shall rescind the reduction in force
9 or transfer and shall notify the released employee in writing of
10 his or her right to be restored to his or her position of
11 employment. Within five days of being so notified, the released
12 employee shall notify the board, in writing, of his or her intent
13 to resume his or her position of employment or the right to be
14 restored shall terminate. Notwithstanding any other provision of
15 this subdivision, if there is another employee on the preferred
16 recall list with proper certification and higher seniority, that
17 person shall be placed in the position restored as a result of the
18 reduction in force being rescinded.

19 (k) For the purpose of this article, all positions which meet
20 the definition of classroom teacher as defined in section one,
21 article one of this chapter shall be lateral positions. For all
22 other professional positions, the county board of education shall
23 adopt a policy by October 31, 1993, and may modify the policy
24 thereafter as necessary, which defines which positions shall be

1 lateral positions. The board shall submit a copy of its policy to
2 the state board within thirty days of adoption or any modification,
3 and the state board shall compile a report and submit the report to
4 the Legislative Oversight Commission on education accountability by
5 December 31, 1993, and by that date in any succeeding year in which
6 any county board submits a modification of its policy relating to
7 lateral positions. In adopting the policy, the board shall give
8 consideration to the rank of each position in terms of title;
9 nature of responsibilities; salary level; certification, licensure
10 or both; and days in the period of employment: Provided, That if
11 the position to be filled is that of a coach, notwithstanding any
12 other provision of law or policy to the contrary, and if there is
13 no qualified teacher in the system for the position of coach, but
14 there is currently a qualified person with a coaching certification
15 in the service personnel, the board may not go outside the school
16 system, but shall hire as a coach the person in the service
17 personnel.

18 (1) After the fifth day prior to the beginning of the
19 instructional term, no person employed and assigned to a
20 professional position may transfer to another professional position
21 in the county during that instructional term unless the person
22 holding that position does not have valid certification. The
23 provisions of this subsection are subject to the following:

24 (1) The person may apply for any posted, vacant positions with

1 the successful applicant assuming the position at the beginning of
2 the next instructional term;

3 (2) Professional personnel who have been on an approved leave
4 of absence may fill these vacancies upon their return from the
5 approved leave of absence; and

6 (3) The county board, upon recommendation of the
7 superintendent may fill a position before the next instructional
8 term when it is determined to be in the best interest of the
9 students: *Provided*, That the county superintendent shall notify
10 the state board of each transfer of a person employed in a
11 professional position to another professional position after the
12 fifth day prior to the beginning of the instructional term. The
13 Legislature finds that it is not in the best interest of the
14 students particularly in the elementary grades to have multiple
15 teachers for any one grade level or course during the instructional
16 term. It is the intent of the Legislature that the filling of
17 positions through transfers of personnel from one professional
18 position to another after the fifth day prior to the beginning of
19 the instructional term should be kept to a minimum.

20 (m) All professional personnel whose seniority with the county
21 board is insufficient to allow their retention by the county board
22 during a reduction in work force shall be placed upon a preferred
23 recall list. As to any professional position opening within the
24 area where they had previously been employed or to any lateral area

1 for which they have certification, licensure or both, the employee
2 shall be recalled on the basis of seniority if no regular, full-
3 time professional personnel, or those returning from leaves of
4 absence with greater seniority, are qualified, apply for and accept
5 the position.

6 (n) Before position openings that are known or expected to
7 extend for twenty consecutive employment days or longer for
8 professional personnel may be filled by the board, the board shall
9 be required to notify all qualified professional personnel on the
10 preferred list and give them an opportunity to apply, but failure
11 to apply shall not cause the employee to forfeit any right to
12 recall. The notice shall be sent by certified mail to the last
13 known address of the employee, and it shall be the duty of each
14 professional personnel to notify the board of continued
15 availability annually, of any change in address or of any change in
16 certification, licensure or both.

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

19 (1) Boards shall be required to post and date notices which
20 shall be subject to the following:

21 (A) The notices shall be posted in conspicuous working places
22 for all professional personnel to observe for at least five working
23 days;

24 (B) The notice shall be posted within twenty working days of

1 the position openings and shall include the job description;

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

5 (D) Postings for vacancies made pursuant to this section shall
6 be written so as to ensure that the largest possible pool of
7 qualified applicants may apply; and

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

11 (2) No vacancy shall be filled until after the five-day
12 minimum posting period;

13 (3) If one or more applicants meets the qualifications listed
14 in the job posting, the successful applicant to fill the vacancy
15 shall be selected by the board within thirty working days of the
16 end of the posting period;

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

22 (5) Nothing provided herein shall prevent the county board of
23 education from eliminating a position due to lack of need.

24 (p) Notwithstanding any other provision of the code to the

1 contrary, where the total number of classroom teaching positions in
2 an elementary school does not increase from one school year to the
3 next, but there exists in that school a need to realign the number
4 of teachers in one or more grade levels, kindergarten through six,
5 teachers at the school may be reassigned to grade levels for which
6 they are certified without that position being posted: *Provided,*
7 That the employee and the county board of education mutually agree
8 to the reassignment.

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

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

15 (2) When a specified grade level needs to be reduced and the
16 least senior employee in the school is not in that grade level, the
17 least senior classroom teacher in the grade level that needs to be
18 reduced shall be reassigned to the position made vacant by the
19 transfer of the least senior classroom teacher in the school
20 without that position being posted: *Provided,* That the employee is
21 certified, licensed or both and agrees to the reassignment.

22 (r) Any board failing to comply with the provisions of this
23 article may be compelled to do so by mandamus and shall be liable
24 to any party prevailing against the board for court costs and

1 reasonable attorney fees as determined and established by the
2 court. Further, employees denied promotion or employment in
3 violation of this section shall be awarded the job, pay and any
4 applicable benefits retroactive to the date of the violation and
5 payable entirely from local funds. Further, the board shall be
6 liable to any party prevailing against the board for any court
7 reporter costs including copies of transcripts.

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

NOTE: The purpose of this bill is to provide that a member of
the service personnel in the system may be hired as a coach when
there is no qualified teacher in the system for the position of
coach.

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