

Senate Bill No. 377

(By Senators Barnes and Miller)

[Introduced January 23, 2012; referred to the Committee on
Education.]

10 A BILL to amend and reenact §18A-4-7a of the Code of West Virginia,
11 1931, as amended, relating to employment, promotion and
12 transfer of professional personnel; and denying transfer
13 within thirty days prior to the instructional term.

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

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

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

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

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

23 (b) The county board shall make decisions affecting the hiring

1 of new classroom teachers on the basis of the applicant with the
2 highest qualifications.

3 (c) In judging qualifications for hiring employees pursuant to
4 subsections (a) and (b) of this section, consideration shall be
5 given to each of the following:

6 (1) Appropriate certification, licensure or both;

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

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

12 (4) Academic achievement;

13 (5) Relevant specialized training;

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

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

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

23 (1) Appropriate certification, licensure or both;

24 (2) Total amount of teaching experience;

1 (3) The existence of teaching experience in the required
2 certification area;

3 (4) Degree level in the required certification area;

4 (5) Specialized training directly related to the performance
5 of the job as stated in the job description;

6 (6) Receiving an overall rating of satisfactory in the
7 previous two evaluations conducted pursuant to section twelve,
8 article two of this chapter; and

9 (7) Seniority.

10 (e) In filling positions pursuant to subsection (d) of this
11 section, consideration shall be given to each criterion with each
12 criterion being given equal weight. If the applicant with the most
13 seniority is not selected for the position, upon the request of the
14 applicant a written statement of reasons shall be given to the
15 applicant with suggestions for improving the applicant's
16 qualifications.

17 (f) With the exception of guidance counselors, the seniority
18 of classroom teachers, as defined in section one, article one of
19 this chapter shall be determined on the basis of the length of time
20 the employee has been employed as a regular full-time certified
21 and/or licensed professional educator by the county board of
22 education and shall be granted in all areas that the employee is
23 certified, licensed or both.

24 (g) Upon completion of one hundred thirty-three days of

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

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

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

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

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

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

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

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

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

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

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

1 the state board within thirty days of adoption or any modification,
2 and the state board shall compile a report and submit the report to
3 the Legislative Oversight Commission on Education Accountability by
4 December 31, 1993, and by that date in any succeeding year in which
5 any county board submits a modification of its policy relating to
6 lateral positions. In adopting the policy, the board shall give
7 consideration to the rank of each position in terms of title;
8 nature of responsibilities; salary level; certification, licensure
9 or both; and days in the period of employment.

10 (1) After the ~~fifth~~ thirtieth day prior to the beginning of
11 the instructional term, no person employed and assigned to a
12 professional position may transfer to another professional position
13 in the county during that instructional term unless the person
14 holding that position does not have valid certification. The
15 provisions of this subsection are subject to the following:

16 (1) The person may apply for any posted, vacant positions with
17 the successful applicant assuming the position at the beginning of
18 the next instructional term;

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

22 (3) The county board, upon recommendation of the
23 superintendent may fill a position before the next instructional
24 term when it is determined to be in the best interest of the

1 students: *Provided*, That the county superintendent shall notify
2 the state board of each transfer of a person employed in a
3 professional position to another professional position after the
4 fifth day prior to the beginning of the instructional term. The
5 Legislature finds that it is not in the best interest of the
6 students particularly in the elementary grades to have multiple
7 teachers for any one grade level or course during the instructional
8 term. It is the intent of the Legislature that the filling of
9 positions through transfers of personnel from one professional
10 position to another after the fifth day prior to the beginning of
11 the instructional term should be kept to a minimum.

12 (m) All professional personnel whose seniority with the county
13 board is insufficient to allow their retention by the county board
14 during a reduction in work force shall be placed upon a preferred
15 recall list. As to any professional position opening within the
16 area where they had previously been employed or to any lateral area
17 for which they have certification, licensure or both, the employee
18 shall be recalled on the basis of seniority if no regular,
19 full-time professional personnel, or those returning from leaves of
20 absence with greater seniority, are qualified, apply for and accept
21 the position.

22 (n) Before position openings that are known or expected to
23 extend for twenty consecutive employment days or longer for
24 professional personnel may be filled by the board, the board shall

1 be required to notify all qualified professional personnel on the
2 preferred list and give them an opportunity to apply, but failure
3 to apply shall not cause the employee to forfeit any right to
4 recall. The notice shall be sent by certified mail to the last
5 known address of the employee, and it shall be the duty of each
6 professional personnel to notify the board of continued
7 availability annually, of any change in address or of any change in
8 certification, licensure or both.

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

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

13 (A) The notices shall be posted in conspicuous working places
14 for all professional personnel to observe for at least five working
15 days;

16 (B) The notice shall be posted within twenty working days of
17 the position openings and shall include the job description;

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

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

24 (E) Job postings may not require criteria which are not

1 necessary for the successful performance of the job and may not be
2 written with the intent to favor a specific applicant;

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

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

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

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

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

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

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

7 (2) When a specified grade level needs to be reduced and the
8 least senior employee in the school is not in that grade level, the
9 least senior classroom teacher in the grade level that needs to be
10 reduced shall be reassigned to the position made vacant by the
11 transfer of the least senior classroom teacher in the school
12 without that position being posted: *Provided*, That the employee is
13 certified, licensed or both and agrees to the reassignment.

14 (r) Any board failing to comply with the provisions of this
15 article may be compelled to do so by mandamus and shall be liable
16 to any party prevailing against the board for court costs and
17 reasonable attorney fees as determined and established by the
18 court. Further, employees denied promotion or employment in
19 violation of this section shall be awarded the job, pay and any
20 applicable benefits retroactive to the date of the violation and
21 payable entirely from local funds. Further, the board shall be
22 liable to any party prevailing against the board for any court
23 reporter costs including copies of transcripts.

24 (s) The county board shall compile, update annually on July 1,

1 and make available by electronic or other means to all employees a
2 list of all professional personnel employed by the county, their
3 areas of certification and their seniority.

NOTE: The purpose of this bill is to decrease the potential transfer period prior to an instructional term by requiring any transfer request thirty days prior to the start of the term.

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