

**S E C O N D**  
**E N G R O S S M E N T**  
**H. B. 4655**

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(BY DELEGATES M. POLING AND PAXTON)

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(Originating in the House Committee on Education)  
[February 24, 2012]

A Bill to amend and reenact §18A-4-8e of the Code of West Virginia, 1931, as amended, relating to school service personnel certification; establishing criteria for certain certificate issuance, denial and revocation; establishing certification review panel; requiring reporting of certain acts; providing for certificate recall and correction under certain circumstance; and requiring State Board rule.

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

That §18A-4-8e of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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

**§18A-4-8e. Competency testing for service personnel; and recertification testing for bus operators.**

- 1           (a) The State Board of ~~Education~~ shall develop and make
- 2   available competency tests for all of the classification titles

3 defined in section eight of this article and listed in section  
4 eight-a of this article for service personnel. Each  
5 classification title defined and listed is considered a separate  
6 classification category of employment for service personnel  
7 and has a separate competency test, except for those class  
8 titles having Roman numeral designations, which are  
9 considered a single classification of employment and have a  
10 single competency test.

11 (1) The cafeteria manager class title is included in the  
12 same classification category as cooks and has the same  
13 competency test.

14 (2) The executive secretary class title is included in the  
15 same classification category as secretaries and has the same  
16 competency test.

17 (3) The classification titles of chief mechanic, mechanic  
18 and assistant mechanic are included in one classification title  
19 and have the same competency test.

20 (b) The purpose of these tests is to provide county boards  
21 a uniform means of determining whether school service  
22 personnel who do not hold a classification title in a particular  
23 category of employment meet the definition of the  
24 classification title in another category of employment as

25 defined in section eight of this article. Competency tests may  
26 not be used to evaluate employees who hold the classification  
27 title in the category of their employment.

28 (c) The competency test consists of an objective written  
29 or performance test, or both. Applicants may take the written  
30 test orally if requested. Oral tests are recorded mechanically  
31 and kept on file. The oral test is administered by persons  
32 who do not know the applicant personally.

33 (1) The performance test for all classifications and  
34 categories other than bus operator is administered by an  
35 employee of the county board or an employee of a  
36 multicounty vocational school that serves the county at a  
37 location designated by the superintendent and approved by  
38 the board. The location may be a vocational school that  
39 serves the county.

40 (2) A standard passing score is established by the state  
41 Department of Education for each test and is used by county  
42 boards.

43 (3) The subject matter of each competency test is  
44 commensurate with the requirements of the definitions of the  
45 classification titles as provided in section eight of this article.  
46 The subject matter of each competency test is designed in

47 such a manner that achieving a passing grade does not require  
48 knowledge and skill in excess of the requirements of the  
49 definitions of the classification titles. Achieving a passing  
50 score conclusively demonstrates the qualification of an  
51 applicant for a classification title.

52 (4) Once an employee passes the competency test of a  
53 classification title, the applicant is fully qualified to fill  
54 vacancies in that classification category of employment as  
55 provided in section eight-b of this article and may not be  
56 required to take the competency test again.

57 (d) An applicant who fails to achieve a passing score is  
58 given other opportunities to pass the competency test when  
59 ~~making application~~ applying for another vacancy within the  
60 classification category.

61 (e) Competency tests are administered to applicants in a  
62 uniform manner under uniform testing conditions. County  
63 boards are responsible for scheduling competency tests,  
64 notifying applicants of the date and time of the one day of  
65 training prior to taking the test, and the date and time of the  
66 test. County boards may not use a competency test other than  
67 the test authorized by this section.

68 (f) When scheduling of the competency test conflicts with  
69 the work schedule of a school employee who has applied for  
70 a vacancy, the employee is excused from work to take the  
71 competency test without loss of pay.

72 (g) A minimum of one day of appropriate in-service  
73 training is provided to employees to assist them in preparing  
74 to take the competency tests.

75 (h) Competency tests are used to determine the  
76 qualification of new applicants seeking initial employment in  
77 a particular classification title as either a regular or substitute  
78 employee.

79 (i) Notwithstanding any provisions in this code to the  
80 contrary, once an employee holds or has held a classification  
81 title in a category of employment, that employee is  
82 considered qualified for the classification title even though  
83 that employee no longer holds that classification.

84 (j) The requirements of this section do not alter the  
85 definitions of class titles as provided in section eight of this  
86 article or the procedure and requirements of section eight-b  
87 of this article.

88 (k) Notwithstanding any other provision of this code to  
89 the contrary and notwithstanding any rules of the School

90 Board concerning school bus operator certification, ~~in effect~~  
91 ~~on the effective date of this section~~ the certification test for  
92 school bus operators shall be required as follows, and school  
93 bus operators ~~shall~~ may not be required to take the  
94 certification test more frequently:

95 (1) For substitute school bus operators and for school bus  
96 operators with regular employee status but on a probationary  
97 contract, the certification test shall be administered annually;

98 (2) For school bus operators with regular employee status  
99 and continuing contract status, the certification test shall be  
100 administered triennially; and

101 (3) For substitute school bus operators who are retired  
102 from a county board and who at the time of retirement had  
103 ten years of experience as a regular full-time bus operator, the  
104 certification test shall be administered triennially.

105 (4) School bus operator certificate. —

106 (A) A school bus operator certificate may be issued to a  
107 person who has attained the age of twenty-one, completed the  
108 required training set forth in State Board rule, and met the  
109 physical requirements and other criteria to operate a school  
110 bus set forth in State Board rule.

111       (B) The State Superintendent may, after ten days notice  
112       and upon proper evidence, revoke the certificate of any bus  
113       operator for any of the following causes:

114       (i) Intemperance, untruthfulness, cruelty or immorality;

115       (ii) Conviction of or guilty plea or plea of no contest to a  
116       felony charge;

117       (iii) Conviction of or guilty plea or plea of no contest to  
118       any charge involving sexual misconduct with a minor or a  
119       student;

120       (iv) Just and sufficient cause for revocation as specified  
121       by State Board rule; and

122       (v) Using fraudulent, unapproved or insufficient credit to  
123       obtain the certificates.

124       (vi) Of the causes for certificate revocation listed in this  
125       paragraph (B), the following causes constitute grounds for  
126       revocation only if there is a rational nexus between the  
127       conduct of the bus operator and the performance of the job:

128       (I) Intemperance, untruthfulness, cruelty or immorality;

129       (II) Just and sufficient cause for revocation as specified  
130       by State Board rule; and

131       (III) Using fraudulent, unapproved or insufficient credit  
132       to obtain the certificate.

133        (C) The certificate of a bus operator may not be revoked  
134        for either of the following unless it can be proven by clear  
135        and convincing evidence that the bus operator has committed  
136        one of the offenses listed in this subsection and his or her  
137        actions render him or her unfit to operate a school bus:

138        (i) Any matter for which the bus operator was disciplined,  
139        less than dismissal, by the employing county board; or

140        (ii) Any matter for which the bus operator is meeting or  
141        has met an improvement plan determined by the county  
142        board.

143        (D) The State Superintendent may designate a review  
144        panel to conduct hearings on certificate revocations or denials  
145        and make recommendations for action by the State  
146        Superintendent. The State Board, after consultation with  
147        employee organizations representing school service  
148        personnel, shall promulgate a rule to establish the review  
149        panel membership and composition, method of appointment,  
150        governing principles and meeting schedule.

151        (E) It is the duty of any county superintendent who  
152        knows of any acts on the part of a bus operator for which a  
153        certificate may be revoked in accordance with this section to  
154        report the same, together with all the facts and evidence, to

155 the State Superintendent for such action as in the State  
156 Superintendent's judgment may be proper.

157 (F) If a certificate has been granted through an error,  
158 oversight or misinformation, the State Superintendent may  
159 recall the certificate and make such corrections as will  
160 conform to the requirements of law and State Board rules.

161 (5) The State Board shall promulgate in accordance with  
162 article three-b, chapter twenty-nine-a of this code, revised  
163 rules in compliance with this subsection.