

H. B. 2963

(By Delegates Marshall, Barill, Fleischauer,
Caputo, Stephens, Manchin, Iaquina, Moore,
Marcum, White and Skinner)

[Introduced March 19, 2013; referred to the
Committee on Education then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §18A-2-2 of the Code of West Virginia,
1931, as amended, relating to providing educators released
time to serve on county commissions.

Be it enacted by the Legislature of West Virginia:

That §18A-2-2 of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 2. SCHOOL PERSONNEL.

**§18A-2-2. Employment of teachers; contracts; continuing contract
status; how terminated; dismissal for lack of need;
released time; failure of teacher to perform contract
or violation thereof; written notice bonus for
teachers and professional personnel.**

(a) Before entering upon their duties, all teachers shall
execute a contract with their county boards, which shall state the
salary to be paid and shall be in the form prescribed by the State
Superintendent. Each contract shall be signed by the teacher and

1 by the president and secretary of the county board and shall be
2 filed, together with the certificate of the teacher, by the
3 secretary of the office of the county board: *Provided*, That when
4 necessary to facilitate the employment of employable professional
5 personnel and prospective and recent graduates of teacher education
6 programs who have not yet attained certification, the contract may
7 be signed upon the condition that the certificate is issued to the
8 employee prior to the beginning of the employment term in which the
9 employee enters upon his or her duties.

10 (b) Each teacher's contract, under this section, shall be
11 designated as a probationary or continuing contract. A
12 probationary teacher's contract shall be for a term of not less
13 than one nor more than three years, one of which shall be for
14 completion of a beginning teacher internship pursuant to the
15 provisions of section two-b, article three of this chapter, if
16 applicable. If, after three years of ~~such~~ employment, the teacher
17 who holds a professional certificate, based on at least a
18 bachelor's degree, has met the qualifications for a bachelor's
19 degree and the county board enter into a new contract of
20 employment, it shall be a continuing contract, subject to the
21 following:

22 (1) Any teacher holding a valid certificate with less than a
23 bachelor's degree who is employed in a county beyond the three-year
24 probationary period shall upon qualifying for the professional

1 certificate based upon a bachelor's degree, if reemployed, be
2 granted continuing contract status; and

3 (2) A teacher holding continuing contract status with one
4 county shall be granted continuing contract status with any other
5 county upon completion of one year of acceptable employment if the
6 employment is during the next succeeding school year or immediately
7 following an approved leave of absence extending no more than one
8 year.

9 (c) The continuing contract of any teacher shall remain in
10 full force and effect except as modified by mutual consent of the
11 school board and the teacher, unless and until terminated, subject
12 to the following:

13 (1) A continuing contract may not be terminated except:

14 (A) By a majority vote of the full membership of the county
15 board on or before March 1 of the then current year, after written
16 notice, served upon the teacher, return receipt requested, stating
17 cause or causes and an opportunity to be heard at a meeting of the
18 board prior to the board's action on the termination issue; or

19 (B) By written resignation of the teacher on or before March
20 1 to initiate termination of a continuing contract;

21 (2) The termination shall take effect at the close of the
22 school year in which the contract is terminated;

23 (3) The contract may be terminated at any time by mutual
24 consent of the school board and the teacher;

1 (4) This section does not affect the powers of the school
2 board to suspend or dismiss a principal or teacher pursuant to
3 section eight of this article;

4 (5) A continuing contract for any teacher holding a
5 certificate valid for more than one year and in full force and
6 effect during the school year 1984-1985 shall remain in full force
7 and effect;

8 (6) A continuing contract does not operate to prevent a
9 teacher's dismissal based upon the lack of need for the teacher's
10 services pursuant to the provisions of law relating to the
11 allocation to teachers and pupil-teacher ratios. The written
12 notification of teachers being considered for dismissal for lack of
13 need shall be limited to only those teachers whose consideration
14 for dismissal is based upon known or expected circumstances which
15 will require dismissal for lack of need. An employee who was not
16 provided notice and an opportunity for a hearing pursuant to this
17 subsection may not be included on the list. In case of dismissal
18 for lack of need, a dismissed teacher shall be placed upon a
19 preferred list in the order of their length of service with that
20 board. No teacher may be employed by the board until each
21 qualified teacher upon the preferred list, in order, has been
22 offered the opportunity for reemployment in a position for which he
23 or she is qualified, not including a teacher who has accepted a
24 teaching position elsewhere. The reemployment shall be upon a

1 teacher's preexisting continuing contract and has the same effect
2 as though the contract had been suspended during the time the
3 teacher was not employed.

4 (d) In the assignment of position or duties of a teacher under
5 a continuing contract, the board may provide for released time of
6 a teacher for any special professional or governmental assignment
7 without jeopardizing the contractual rights of the teacher or any
8 other rights, privileges or benefits under the provisions of this
9 chapter. Released time shall be provided for any professional
10 educator while serving as a member of a county commission or as a
11 member of the Legislature during any duly constituted session of
12 that body and its interim and statutory committees and commissions
13 without jeopardizing his or her contractual rights or any other
14 rights, privileges, benefits or accrual of experience for placement
15 on the state minimum salary schedule in the following school year
16 under the provisions of this chapter, board policy and law.

17 (e) Any teacher who fails to fulfill his or her contract with
18 the board, unless prevented from doing so by personal illness or
19 other just cause or unless released from his or her contract by the
20 board, or who violates any lawful provision of the contract, is
21 disqualified to teach in any other public school in the state for
22 a period of the next ensuing school year and the State Department
23 of Education or board may hold all papers and credentials of the
24 teacher on file for a period of one year for the violation:

1 *Provided*, That marriage of a teacher is not considered a failure to
2 fulfill, or violation of, the contract.

3 (f) Any classroom teacher, as defined in section one, article
4 one of this chapter, who desires to resign employment with a county
5 board or request a leave of absence, the resignation or leave of
6 absence to become effective on or before July 15 of the same year
7 and after completion of the employment term, may do so at any time
8 during the school year by written notification of the resignation
9 or leave of absence and any notification received by a county board
10 shall automatically extend the teacher's public employee insurance
11 coverage until August 31 of the same year.

12 (g) (1) A classroom teacher who gives written notice to the
13 county board on or before January 15 of the school year of his or
14 her retirement from employment with the board at the conclusion of
15 the school year shall be paid \$500 from the Early Notification of
16 Retirement line item established for the department of education
17 for this purpose, subject to appropriation by the Legislature. If
18 the appropriations to the department of education for this purpose
19 are insufficient to compensate all applicable teachers, the
20 department of education shall request a supplemental appropriation
21 in an amount sufficient to compensate all such teachers.
22 Additionally, if funds are still insufficient to compensate all
23 applicable teachers, the priority of payment is for teachers who
24 give written notice the earliest. This payment shall not be

1 counted as part of the final average salary for the purpose of
2 calculating retirement.

3 (2) The position of a classroom teacher providing written
4 notice of retirement pursuant to this subsection may be considered
5 vacant and the county board may immediately post the position as an
6 opening to be filled at the conclusion of the school year. If a
7 teacher has been hired to fill the position of a retiring classroom
8 teacher prior to the start of the next school year, the retiring
9 classroom teacher is disqualified from continuing his or her
10 employment in that position. However, the retiring classroom
11 teacher may be permitted to continue his or her employment in that
12 position and forfeit the early retirement notification payment if,
13 after giving notice of retirement in accordance with this
14 subsection, he or she becomes subject to a significant unforeseen
15 financial hardship, including a hardship caused by the death or
16 illness of an immediate family member or loss of employment of a
17 spouse. Other significant unforeseen financial hardships shall be
18 determined by the county superintendent on a case-by-case basis.
19 This subsection does not prohibit a county school board from
20 eliminating the position of a retiring classroom teacher.

NOTE: The purpose of this bill is to require school boards to permit professional educators to serve on county commissions and attend meetings during school hours, if necessary, without jeopardizing contract rights.

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