

Senate Bill No. 149

(By Senators Yost and Fitzsimmons)

[Introduced February 14, 2013; referred to the Committee on
Education; and then to the Committee on Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §18A-4-8b of the Code of West Virginia,
1931, as amended, relating to county boards of education;
temporary reassignment of injured or ill service personnel
under specified conditions; compensation and benefits;
vacancies and job postings; and expiration of reassignments.

Be it enacted by the Legislature of West Virginia:

That §18A-4-8b 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-4-8b. Seniority rights for school service personnel.

(a) A county board shall make decisions affecting promotions
and the filling of any service personnel positions of employment or
jobs occurring throughout the school year that are to be performed
by service personnel as provided in section eight of this article,

1 on the basis of seniority, qualifications and evaluation of past
2 service.

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

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

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

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

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

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

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

6 (7) New service personnel.

7 (c) The county board may not prohibit a service person from
8 retaining or continuing his or her employment in any positions or
9 jobs held prior to the effective date of this section and
10 thereafter.

11 (d) A promotion means any change in employment that the
12 service person considers to improve his or her working circumstance
13 within the classification category of employment.

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

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

23 (A) The cafeteria manager class title is included in the same

1 classification category as cooks;

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

4 (C) Paraprofessional, autism mentor and braille or sign
5 language specialist class titles are included in the same
6 classification category as aides; and

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

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

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

15 (e) For purposes of determining seniority under this section
16 a service person's seniority begins on the date that he or she
17 enters into the assigned duties.

18 (f) *Extra-duty assignments.* --

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

23 (2) Notwithstanding any other provisions of this chapter to

1 the contrary, decisions affecting service personnel with respect to
2 extra-duty assignments are made in the following manner:

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

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

14 (g) County boards shall post and date notices of all job
15 vacancies of existing or newly created positions in conspicuous
16 places for all school service personnel to observe for at least
17 five working days.

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

20 (2) Notice of a job vacancy shall include the job description,
21 the period of employment, the work site, the starting and ending
22 time of the daily shift, the amount of pay and any benefits and
23 other information that is helpful to prospective applicants to

1 understand the particulars of the job. The notice of a job vacancy
2 in the aide classification categories shall include the program or
3 primary assignment of the position. Job postings for vacancies
4 made pursuant to this section shall be written to ensure that the
5 largest possible pool of qualified applicants may apply. Job
6 postings may not require criteria which are not necessary for the
7 successful performance of the job and may not be written with the
8 intent to favor a specific applicant.

9 (3) After the five-day minimum posting period, all vacancies
10 shall be filled within twenty working days from the posting date
11 notice of any job vacancies of existing or newly created positions.

12 (4) The county board shall notify any person who has applied
13 for a job posted pursuant to this section of the status of his or
14 her application as soon as possible after the county board makes a
15 hiring decision regarding the posted position.

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

19 (i) The seniority of a service person is determined on the
20 basis of the length of time the employee has been employed by the
21 county board within a particular job classification. For the
22 purpose of establishing seniority for a preferred recall list as
23 provided in this section, a service person who has been employed in

1 one or more classifications retains the seniority accrued in each
2 previous classification.

3 (j) If a county board is required to reduce the number of
4 service personnel within a particular job classification, the
5 following conditions apply:

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

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

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

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

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

5 (3) The county board may not rescind the reduction in force of
6 an employee until all service personnel with more seniority in the
7 classification category on the preferred recall list have been
8 offered the opportunity for recall to regular employment as
9 provided in this section.

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

16 (1) If two or more service persons accumulate identical
17 seniority, the priority is determined by a random selection system
18 established by the employees and approved by the county board.

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

1 (n) A service person placed upon the preferred recall list
2 shall be recalled to any position openings by the county board
3 within the classification(s) where he or she had previously been
4 employed, to any lateral position for which the service person is
5 qualified or to a lateral area for which a service person has
6 certification and/or licensure.

7 (o) A service person on the preferred recall list does not
8 forfeit the right to recall by the county board if compelling
9 reasons require him or her to refuse an offer of reemployment by
10 the county board.

11 (p) Temporary reassignment due to injury or illness. --
12 Notwithstanding any provision of this code to the contrary, a
13 county board may permit a service person who holds a continuing
14 contract in a specific job classification and who is physically
15 unable to perform the job's duties to return to work and to perform
16 duties in another classification under the following conditions:

17 (1) The temporary reassignment is the result of a work-related
18 injury or illness confirmed by the employee's physician of choice;

19 (2) The service person receives the same compensation and
20 benefits as he or she would have received pursuant to his or her
21 continuing contract of employment in the classification of the
22 employee's regular position;

23 (3) The service person may not be discouraged nor prohibited

1 from returning to his or her regular position on a light duty
2 basis;

3 (4) A temporary reassignment as described by this subsection
4 does not create a vacancy requiring posting and filling pursuant to
5 this section; and

6 (5) A temporary reassignment is limited to one calendar year.

7 ~~(p)~~ (q) The county board shall notify all service personnel on
8 the preferred recall list of all position openings that exist from
9 time to time. The notice shall be sent by certified mail to the
10 last known address of the service person. Each service person
11 shall notify the county board of any change of address.

12 ~~(q)~~ (r) No position openings may be filled by the county
13 board, whether temporary or permanent, until all service personnel
14 on the preferred recall list have been properly notified of
15 existing vacancies and have been given an opportunity to accept
16 reemployment.

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

22 ~~(s)~~ (t) A county board failing to comply with the provisions
23 of this article may be compelled to do so by mandamus and is liable

1 to any party prevailing against the board for court costs and the
2 prevailing party's reasonable attorney fee, as determined and
3 established by the court.

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

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

NOTE: The purpose of this bill is to allow classified workers who are physically unable to perform their job duties on temporary or permanent basis to work in another classification at the discretion of the county board of education and continue to receive the compensation of the previous employment position for up to one calendar year.

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