

**H. B. 4394**

(By Delegates M. Poling, Perry, Barrett,  
Lawrence, Campbell, Williams, Moye,  
Walker, Fragale, Tomblin and Young)

[Introduced February 3, 2014; referred to the  
Committee on Education.]

A BILL to amend and reenact §18A-2-2, §18A-2-3 and §18A-2-7a of the  
Code of West Virginia, 1931, as amended; to amend and reenact  
§18A-3-1 of said code; and to amend and reenact §18A-4-7a, all  
relating to the filling of professional personnel positions in  
the public schools; adjusting dates for certain notices to  
accommodate flexibility in the beginning date of the  
instructional term; changing deadline for classroom teacher to  
give written notice of retirement and be paid bonus; defining  
critical need and shortage for substitute teachers; creating  
deadline for retirement before employment as substitute;  
requiring posting of positions on statewide job bank; removing  
funding for positions not posted as required; changing  
expiration date for provisions authorizing extended employment  
of retirees as substitutes; expanding purposes of statewide  
job bank; requiring uniform application and process for  
positions posted on job bank; requiring information on loan

1 forgiveness on job bank; defining critical need and shortage  
2 area position; requiring continuous posting on job bank;  
3 requiring certain other positions to be posted as critical  
4 need and shortage positions; correcting references to outdated  
5 provisions; requiring issuance of additional content area  
6 certifications upon submission of certain test scores;  
7 clarifying certain provisions in teacher in residence program  
8 agreement; requiring principal and teachers to consider  
9 certain qualification in making recommendation for employment  
10 of classroom teacher; removing requirement for concurrence of  
11 superintendent; limiting resignation and employment in another  
12 county in professional positions after twentieth prior to  
13 instructional term subject to certain exception; requiring  
14 position postings on county website and statewide job bank and  
15 requiring information on loan forgiveness programs applicable  
16 to position; and making technical improvements.

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

18 That §18A-2-2, §18A-2-3 and §18A-2-7a of the Code of West  
19 Virginia, 1931, as amended, be amended and reenacted; that §18A-3-1  
20 of said code be amended and reenacted; and that §18A-4-7a of said  
21 code be amended and reenacted, all to read as follows:

22 **ARTICLE 2. SCHOOL PERSONNEL.**

23 **§18A-2-2. Employment of teachers; contracts; continuing contract**  
24 **status; how terminated; dismissal for lack of need;**

1           **released time; failure of teacher to perform**  
2           **contract or violation thereof; written notice bonus**  
3           **for teachers and professional personnel.**

4           (a) Before entering upon their duties, all teachers shall  
5 execute a contract with their county boards, which shall state the  
6 salary to be paid and shall be in the form prescribed by the state  
7 superintendent. Each contract shall be signed by the teacher and  
8 by the president and secretary of the county board and shall be  
9 filed, together with the certificate of the teacher, by the  
10 secretary of the office of the county board: *Provided*, That when  
11 necessary to facilitate the employment of employable professional  
12 personnel and prospective and recent graduates of teacher education  
13 programs who have not yet attained certification, the contract may  
14 be signed upon the condition that the certificate is issued to the  
15 employee prior to the beginning of the employment term in which the  
16 employee enters upon his or her duties.

17           (b) Each teacher's contract, under this section, shall be  
18 designated as a probationary or continuing contract. A  
19 probationary teacher's contract shall be for a term of not less  
20 than one nor more than three years, one of which shall be for  
21 completion of a beginning teacher internship pursuant to the  
22 provisions of section two-b, article three of this chapter, if  
23 applicable. If, after three years of such employment, the teacher

1 who holds a professional certificate, based on at least a  
2 bachelor's degree, has met the qualifications for a bachelor's  
3 degree and the county board enter into a new contract of  
4 employment, it shall be a continuing contract, subject to the  
5 following:

6 (1) Any teacher holding a valid certificate with less than a  
7 bachelor's degree who is employed in a county beyond the three-year  
8 probationary period shall upon qualifying for the professional  
9 certificate based upon a bachelor's degree, if reemployed, be  
10 granted continuing contract status; and

11 (2) A teacher holding continuing contract status with one  
12 county shall be granted continuing contract status with any other  
13 county upon completion of one year of acceptable employment if the  
14 employment is during the next succeeding school year or immediately  
15 following an approved leave of absence extending no more than one  
16 year.

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

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

22 (A) By a majority vote of the full membership of the county  
23 board on or before March 1 of the then current year, after written  
24 notice, served upon the teacher, return receipt requested, stating

1 cause or causes and an opportunity to be heard at a meeting of the  
2 board prior to the board's action on the termination issue; or

3 (B) By written resignation of the teacher on or before March  
4 1 to initiate termination of a continuing contract;

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

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

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

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

16 (6) A continuing contract does not operate to prevent a  
17 teacher's dismissal based upon the lack of need for the teacher's  
18 services pursuant to the provisions of law relating to the  
19 allocation to teachers and pupil-teacher ratios. The written  
20 notification of teachers being considered for dismissal for lack of  
21 need shall be limited to only those teachers whose consideration  
22 for dismissal is based upon known or expected circumstances which  
23 will require dismissal for lack of need. An employee who was not  
24 provided notice and an opportunity for a hearing pursuant to this

1 subsection may not be included on the list. In case of dismissal  
2 for lack of need, a dismissed teacher shall be placed upon a  
3 preferred list in the order of their length of service with that  
4 board. No teacher may be employed by the board until each  
5 qualified teacher upon the preferred list, in order, has been  
6 offered the opportunity for reemployment in a position for which he  
7 or she is qualified, not including a teacher who has accepted a  
8 teaching position elsewhere. The reemployment shall be upon a  
9 teacher's preexisting continuing contract and has the same effect  
10 as though the contract had been suspended during the time the  
11 teacher was not employed.

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

1           (e) Any teacher who fails to fulfill his or her contract with  
2 the board, unless prevented from doing so by personal illness or  
3 other just cause or unless released from his or her contract by the  
4 board, or who violates any lawful provision of the contract, is  
5 disqualified to teach in any other public school in the state for  
6 a period of the next ensuing school year and the State Department  
7 of Education or board may hold all papers and credentials of the  
8 teacher on file for a period of one year for the violation:  
9 *Provided*, That marriage of a teacher is not considered a failure to  
10 fulfill, or violation of, the contract.

11           (f) Any classroom teacher, as defined in section one, article  
12 one of this chapter, who desires to resign employment with a county  
13 board or request a leave of absence, the resignation or leave of  
14 absence to become effective on or before July 15, of the same year  
15 and after completion of the employment term, may do so at any time  
16 during the school year, but at least forty-five days before the  
17 beginning of the Fall instructional term, by written notification  
18 of the resignation or leave of absence and any notification  
19 received by a county board shall automatically extend the teacher's  
20 public employee insurance coverage until August 31 of the same  
21 year.

22           (g) (1) A classroom teacher who gives written notice to the  
23 county board on or before ~~January 15~~ February 21 of the school year  
24 of his or her retirement from employment with the board at the

1 conclusion of the school year shall be paid \$500 from the Early  
2 Notification of Retirement line item established for the Department  
3 of Education for this purpose, subject to appropriation by the  
4 Legislature. If the appropriations to the Department of Education  
5 for this purpose are insufficient to compensate all applicable  
6 teachers, the Department of Education shall request a supplemental  
7 appropriation in an amount sufficient to compensate all such  
8 teachers. Additionally, if funds are still insufficient to  
9 compensate all applicable teachers, the priority of payment is for  
10 teachers who give written notice the earliest. This payment shall  
11 not be counted as part of the final average salary for the purpose  
12 of calculating retirement.

13 (2) The position of a classroom teacher providing written  
14 notice of retirement pursuant to this subsection may be considered  
15 vacant and the county board may immediately post the position as an  
16 opening to be filled at the conclusion of the school year. If a  
17 teacher has been hired to fill the position of a retiring classroom  
18 teacher prior to the start of the next school year, the retiring  
19 classroom teacher is disqualified from continuing his or her  
20 employment in that position. However, the retiring classroom  
21 teacher may be permitted to continue his or her employment in that  
22 position and forfeit the early retirement notification payment if,  
23 after giving notice of retirement in accordance with this  
24 subsection, he or she becomes subject to a significant unforeseen



1 financial hardship, including a hardship caused by the death or  
2 illness of an immediate family member or loss of employment of a  
3 spouse. Other significant unforeseen financial hardships shall be  
4 determined by the county superintendent on a case-by-case basis.  
5 This subsection does not prohibit a county school board from  
6 eliminating the position of a retiring classroom teacher.

7 **§18A-2-3. Employment of substitute teachers and retired teachers**  
8 **as substitutes in areas of critical need and shortage;**  
9 **employment of prospective employable professional**  
10 **personnel.**

11 (a) The county superintendent, subject to approval of the  
12 county board, may employ and assign substitute teachers to any of  
13 the following duties: (1) To fill the temporary absence of any  
14 teacher or an unexpired school term made vacant by resignation,  
15 death, suspension or dismissal; (2) to fill a teaching position of  
16 a regular teacher on leave of absence; and (3) to perform the  
17 instructional services of any teacher who is authorized by law to  
18 be absent from class without loss of pay, providing the absence is  
19 approved by the board of education in accordance with the law. The  
20 substitute shall be a duly certified teacher.

21 (b) Notwithstanding any other provision of this code to the  
22 contrary, a substitute teacher who has been assigned as a classroom  
23 teacher in the same classroom continuously for more than one half

1 of a grading period and whose assignment remains in effect two  
2 weeks prior to the end of the grading period, shall remain in the  
3 assignment until the grading period has ended, unless the principal  
4 of the school certifies that the regularly employed teacher has  
5 communicated with and assisted the substitute with the preparation  
6 of lesson plans and monitoring student progress or has been  
7 approved to return to work by his or her physician. For the  
8 purposes of this section, teacher and substitute teacher, in the  
9 singular or plural, mean professional educator as defined in  
10 section one, article one of this chapter.

11 (c) (1) The Legislature hereby finds and declares that due to  
12 a shortage of qualified substitute teachers, a compelling state  
13 interest exists in expanding the use of retired teachers to provide  
14 service as substitute teachers in areas of critical need and  
15 shortage. The Legislature further finds that diverse circumstances  
16 exist among the counties for the expanded use of retired teachers  
17 as substitutes. For the purposes of this subsection, "area of  
18 critical need and shortage for substitute teachers" means an area  
19 of certification and training in which the number of available  
20 substitute teachers in the county who hold certification and  
21 training in that area and who are not retired is insufficient to  
22 meet the projected need for substitute teachers.

23 (2) A person receiving retirement benefits under the  
24 provisions of article seven-a, chapter eighteen of this code or who

1 is entitled to retirement benefits during the fiscal year in which  
2 that person retired may accept employment as a substitute teacher  
3 for an unlimited number of days each fiscal year without affecting  
4 the monthly retirement benefit to which the retirant is otherwise  
5 entitled if the following conditions are satisfied:

6 (A) The county board adopts a policy recommended by the  
7 superintendent to address areas of critical need and shortage for  
8 substitute teachers;

9 (B) The policy sets forth the areas of critical need and  
10 shortage for substitute teachers in the county in accordance with  
11 the definition of area of critical need and shortage for substitute  
12 teachers set forth in subdivision (1) of this subsection;

13 (C) The policy provides for the employment of retired teachers  
14 as substitute teachers during the school year on an expanded basis  
15 in areas of critical need and shortage for substitute teachers as  
16 provided in this subsection;

17 (D) The policy provides that a retired teacher may be employed  
18 as a substitute teacher in an area of critical need and shortage  
19 for substitute teachers on an expanded basis as provided in this  
20 subsection only when no other teacher who holds certification and  
21 training in the area and who is not retired is available and  
22 accepts the substitute assignment;

23 (E) The retired teacher's retirement became effective at least  
24 forty days before the first instructional term during which he or

1 she is employed as a substitute;

2 (F) The positions are posted on the statewide job bank in  
3 accordance with section seven-a of this article;

4 ~~(E)~~ (G) The policy is effective for one school year only and  
5 is subject to annual renewal by the county board;

6 ~~(F)~~ (H) The state board approves the policy and the use of  
7 retired teachers as substitute teachers on an expanded basis in  
8 areas of critical need and shortage for substitute teachers as  
9 provided in this subsection; and

10 ~~(G)~~ (I) Prior to employment of a substitute teacher beyond the  
11 post-retirement employment limitations established by the  
12 Consolidated Public Retirement Board, the superintendent of the  
13 affected county submits to the Consolidated Public Retirement Board  
14 and the state board, in a form approved by the retirement board, an  
15 affidavit signed by the superintendent stating the name of the  
16 county, the fact that the county has adopted a policy to employ  
17 retired teachers as substitutes to address areas of critical need  
18 and shortage, the name or names of the person or persons to be  
19 employed pursuant to the policy, the critical need and shortage  
20 area position filled by each person, the date that the person gave  
21 notice to the county board of the person's intent to retire, and  
22 the effective date of the person's retirement.

23 (3) Any person who retires and begins work as a substitute  
24 teacher within the same employment term shall lose those retirement

1 benefits attributed to the annuity reserve, effective from the  
2 first day of employment as a retiree substitute in that employment  
3 term and ending with the month following the date the retiree  
4 ceases to perform service as a substitute.

5 (4) Retired teachers employed to perform expanded substitute  
6 service pursuant to this subsection are considered day-to-day,  
7 temporary, part-time employees. The substitutes are not eligible  
8 for additional pension or other benefits paid to regularly employed  
9 employees and shall not accrue seniority.

10 (5) When a retired teacher is employed as a substitute to fill  
11 a vacant position, the county board shall continue to post the  
12 vacant position, including posting on the statewide job bank as  
13 provided in section seven-a of this article, until it is filled  
14 with a ~~regularly employed teacher.~~ fully certified or permitted  
15 applicant who is not retired. Each position not posted as required  
16 in this section shall be subtracted from the number of professional  
17 educators computed for state aid funding in accordance with section  
18 twelve, article nine-a, chapter eighteen of this code for the  
19 second month of the next school term.

20 (6) Until this subsection is expired pursuant to subdivision  
21 (7) of this subsection, the state board, annually, shall report to  
22 the Joint Committee on Government and Finance prior to February 1  
23 of each year. Additionally, a copy shall be provided to the  
24 Legislative Oversight Commission on Education Accountability. The

1 report shall contain information indicating the effectiveness of  
2 the provisions of this subsection on expanding the use of retired  
3 substitute teachers to address areas of critical need and shortage  
4 including, but not limited to, the number of retired teachers, by  
5 critical need and shortage area position filled and by county,  
6 employed beyond the post-retirement employment limit established by  
7 the Consolidated Public Retirement Board, the date that each person  
8 gave notice to the county board of the person's intent to retire,  
9 and the effective date of the person's retirement.

10 (7) The provisions of this subsection shall expire on ~~June 30,~~  
11 ~~2014~~ June 30, 2017.

12 (d) (1) Notwithstanding any other provision of this code to  
13 the contrary, each year a county superintendent may employ  
14 prospective employable professional personnel on a reserve list at  
15 the county level subject to the following conditions:

16 (A) The county board adopts a policy to address areas of  
17 critical need and shortage as identified by the state board. The  
18 policy shall include authorization to employ prospective employable  
19 professional personnel;

20 (B) The county board posts a notice of the areas of critical  
21 need and shortage in the county in a conspicuous place in each  
22 school for at least ten working days; and

23 (C) There are not any potentially qualified applicants  
24 available and willing to fill the position.

1           (2) Prospective employable professional personnel may only be  
2 employed from candidates at a job fair who have or will graduate  
3 from college in the current school year or whose employment  
4 contract with a county board has or will be terminated due to a  
5 reduction in force in the current fiscal year.

6           (3) Prospective employable professional personnel employed are  
7 limited to three full-time prospective employable professional  
8 personnel per one hundred professional personnel employed in a  
9 county or twenty-five full-time prospective employable professional  
10 personnel in a county, whichever is less.

11           (4) Prospective employable professional personnel shall be  
12 granted benefits at a cost to the county board and as a condition  
13 of the employment contract as approved by the county board.

14           (5) Regular employment status for prospective employable  
15 professional personnel may be obtained only in accordance with the  
16 provisions of section seven-a, article four of this chapter.

17           (e) The state board annually shall review the status of  
18 employing personnel under the provisions of subsection (d) of this  
19 section and annually shall report to the Legislative Oversight  
20 Commission on Education Accountability on or before November 1 of  
21 each year. The report shall include, but not be limited to, the  
22 following:

23           (A) The counties that participated in the program;

24           (B) The number of personnel hired;

1 (C) The teaching fields in which personnel were hired;

2 (D) The venue from which personnel were employed;

3 (E) The place of residency of the individual hired; and

4 (F) The state board's recommendations on the prospective  
5 employable professional personnel program.

6 **§18A-2-7a. Statewide job bank.**

7 (a) The state board shall establish and maintain a statewide  
8 job bank to assist the recruitment and reemployment of experienced  
9 professional personnel whose employment with county boards has been  
10 terminated because of a reduction in force. The state board shall  
11 collaborate with the higher education policy commission to ensure  
12 that students in the teacher preparation programs in the state are  
13 informed of the statewide job bank and that the program student  
14 placement offices use it to assist students in locating potential  
15 employment in the state.

16 (b) The job bank shall consist of ~~two~~ three parts for each  
17 county:

18 (1) A list of the names, qualifications and contact  
19 information of all professional personnel who have been terminated  
20 because of a reduction in force, except personnel who have  
21 requested in writing that they not be listed in the job bank; ~~and~~

22 (2) A list of professional ~~positions~~ position postings for  
23 which the county is seeking applicants and a uniform application  
24 and process for positions in any county; and



1       (3) Information on state and federal loan forgiveness programs  
2 for which teachers are eligible when employed at specific schools  
3 in the county or in certain areas of critical need and shortage.

4       (c) The job bank shall be accessible electronically to each  
5 county and to individuals on a read only basis, except that each  
6 county shall have the capability of editing information for the  
7 county and shall be responsible for maintaining current information  
8 on the county lists.

9       (d) A critical need and shortage area position, not including  
10 a substitute position, is a professional personnel position that  
11 has been posted on the statewide job bank for at least ninety  
12 consecutive days and no fully certified or permitted applicant has  
13 applied. A critical need and shortage area position shall be  
14 posted continuously on the statewide job bank until filled with a  
15 fully certified or permitted applicant. Continuous posting  
16 includes posting during periods of reductions in force in other  
17 positions. The posting of a position as a critical need and  
18 shortage position also includes:

19       (1) A position in an area of certification that has been  
20 filled for one or more instructional terms by a teacher with an  
21 out-of-field authorization to teach in that area of certification  
22 which position shall be continually posted on the statewide job  
23 bank after the first year until filled by a fully certified or  
24 permitted applicant;



1 chapter eighteen-b of this code.

2       The education of professional educators in the state includes  
3 all programs leading to certification to teach or serve in the  
4 public schools. The programs include the following:

5       (1) Programs in all institutions of higher education,  
6 including student teaching and teacher-in-residence programs as  
7 provided in this section;

8       (2) Beginning teacher ~~internship and~~ induction, mentoring and  
9 professional support programs;

10       (3) Granting West Virginia certification to persons who  
11 received their preparation to teach outside the boundaries of this  
12 state, except as provided in subsection (b) of this section;

13       (4) Alternative preparation programs in this state leading to  
14 certification, including programs established pursuant to the  
15 provisions of section one-a of this article and programs which are  
16 in effect on the effective date of this section; and

17       (5) Continuing professional education, professional  
18 development and in-service training programs for professional  
19 educators employed in the public schools in the state.

20       (b) After consultation with the Secretary of Education and the  
21 Arts and the Chancellor for Higher Education, the state board shall  
22 adopt standards for the education of professional educators in the  
23 state and for awarding certificates valid in the public schools of  
24 this state. The standards include, but are not limited to the

1 following:

2 (1) A provision for the study of multicultural education. As  
3 used in this section, multicultural education means the study of  
4 the pluralistic nature of American society including its values,  
5 institutions, organizations, groups, status positions and social  
6 roles;

7 (2) A provision for the study of classroom management  
8 techniques, including methods of effective management of disruptive  
9 behavior including societal factors and their impact on student  
10 behavior; ~~and~~

11 (3) A teacher from another state shall be awarded a teaching  
12 certificate for a comparable grade level and subject area valid in  
13 the public schools of this state, subject to section ten of this  
14 article, if he or she has met the following requirements:

15 (A) Holds a valid teaching certificate or a certificate of  
16 eligibility issued by another state;

17 (B) Has graduated from an educator preparation program at a  
18 regionally accredited institution of higher education;

19 (C) Possesses the minimum of a bachelor's degree; and

20 (D) Meets all of the requirements of the state for full  
21 certification except employment; and

22 (4) A teacher with a valid West Virginia teaching certificate  
23 shall be awarded certification to teach in an additional area of  
24 certification upon submission of a score on the appropriate content

1 area test required of other teachers for certification in that area  
2 regardless of whether additional course work was taken in that  
3 area.

4 (c) The state board may enter into an agreement with county  
5 boards for the use of the public schools in order to give  
6 prospective teachers the teaching experience needed to demonstrate  
7 competence as a prerequisite to certification to teach in the West  
8 Virginia public schools.

9 (d) An agreement established pursuant to subsection (c) of  
10 this section shall recognize student teaching as a joint  
11 responsibility of the educator preparation institution and the  
12 cooperating public schools. The agreement shall include the  
13 following items:

14 (1) The minimum qualifications for the employment of public  
15 school teachers selected as supervising teachers, including the  
16 requirement that field-based and clinical experiences be supervised  
17 by a teacher fully certified in the state in which that teacher is  
18 supervising;

19 (2) The remuneration to be paid to public school teachers by  
20 the state board, in addition to their contractual salaries, for  
21 supervising student teachers;

22 (3) Minimum standards to guarantee the adequacy of the  
23 facilities and program of the public school selected for student  
24 teaching;

1           (4) Assurance that the student teacher, under the direction  
2 and supervision of the supervising teacher, shall exercise the  
3 authority of a substitute teacher; and

4           (5) A provision requiring any higher education institution  
5 with an educator preparation program to document that the student  
6 teacher's field-based and clinical experiences include  
7 participation and instruction with multicultural, at-risk and  
8 exceptional children at each programmatic level for which the  
9 student teacher seeks certification;

10          (6) A provision authorizing a school or school district that  
11 has implemented a comprehensive beginning teacher induction  
12 program, to enter into an agreement that provides for the training  
13 and supervision of student teachers consistent with the educational  
14 objectives of this subsection by using an alternate structure  
15 implemented for the support, supervision and mentoring of beginning  
16 teachers. The agreement is in lieu of any specific provisions of  
17 this subsection and is subject to the approval of the state board.

18          (e) *Teacher-in-residence programs.* --

19          (1) In lieu of the provisions of subsections (c) and (d) of  
20 this section and subject to approval of the state board, an  
21 institution of higher education with a program for the education of  
22 professional educators in the state approved by the state board may  
23 enter into an agreement with county boards for the use of  
24 teacher-in-residence programs in the public schools.

1           (2) A "teacher-in-residence program" means an intensively  
2 supervised and mentored residency program for prospective teachers  
3 during their senior year that refines their professional practice  
4 skills and helps them gain the teaching experience needed to  
5 demonstrate competence as a prerequisite to certification to teach  
6 in the West Virginia public schools.

7           (3) The authorization for the higher education institution and  
8 the county board to implement a teacher-in-residence program is  
9 subject to state board approval. The provisions of the agreement  
10 include, but are not limited to, the following items:

11           (A) A requirement that the prospective teacher in a  
12 teacher-in-residence program shall have completed the content area  
13 preparation courses and shall have passed the appropriate basic  
14 skills and subject matter test or tests required by the state board  
15 for teachers to become certified in the area for which licensure is  
16 sought;

17           (B) A requirement that the teacher-in-residence serve only in  
18 a teaching position in the county which has been posted and for  
19 which no other teacher fully certified for the position has been  
20 employed;

21           (C) Specifics regarding the program of instruction for the  
22 teacher-in-residence setting forth the responsibilities for  
23 supervision and mentoring by the higher education institution's  
24 educator preparation program, the school principal, and peer

1 teachers and mentors, including providing additional time for the  
2 peer teachers and mentors to perform these duties, and the  
3 responsibilities for the formal instruction or professional  
4 development necessary for the teacher-in-residence to perfect his  
5 or her professional practice skills. The program also may include  
6 other instructional items as considered appropriate.

7 (D) A requirement that the teacher-in-residence hold a  
8 teacher-in-residence permit qualifying the individual to teach in  
9 his or her assigned position as the teacher of record;

10 (E) A requirement that the salary and benefit costs for the  
11 position to which the teacher-in-residence is assigned shall be  
12 used only for program support and to pay a stipend to the  
13 teacher-in-residence as specified in the agreement, subject to the  
14 following:

15 (i) The teacher-in-residence is a student enrolled in the  
16 teacher preparation program of the institution of higher education  
17 and is not a regularly employed employee of the county board;

18 (ii) The teacher-in-residence is included on the certified  
19 list of employees of the county eligible for state aid funding the  
20 same as an employee of the county at the appropriate level based on  
21 their permit and level of experience;

22 (iii) All state-aid-funding due to the county board for the  
23 teacher-in-residence shall be used only in accordance with the  
24 agreement with the institution of higher education for support of



1 the program as provided in the agreement, including costs  
2 associated with instruction and supervision as set forth in  
3 paragraph (C) of this subdivision;

4 (iv) The teacher-in-residence is provided the same liability  
5 insurance coverage as other employees; and

6 (v) All state aid funding due to the county for the teacher-  
7 in-residence and not required for support of the program shall be  
8 paid as a stipend to the teacher-in-residence: *Provided*, That the  
9 stipend paid to the teacher-in-residence shall be no less than  
10 sixty-five percent of all state aid funding due the county for the  
11 teacher-in-residence.

12 (4) Other provisions that may be required by the state board.

13 (f) In lieu of the student teaching experience in a public  
14 school setting required by this section, an institution of higher  
15 education may provide an alternate student teaching experience in  
16 a nonpublic school setting if the institution of higher education  
17 meets the following criteria:

18 (1) Complies with the provisions of this section;

19 (2) Has a state board approved educator preparation program;

20 and

21 (3) Enters into an agreement pursuant to subdivisions (g) and  
22 (h) of this section.

23 (g) At the discretion of the higher education institution, an  
24 agreement for an alternate student teaching experience between an

1 institution of higher education and a nonpublic school shall  
2 require one of the following:

3 (1) The student teacher shall complete at least one half of  
4 the clinical experience in a public school; or

5 (2) The educator preparation program shall include a  
6 requirement that any student performing student teaching in a  
7 nonpublic school shall complete the following:

8 (A) At least two hundred clock hours of field-based training  
9 in a public school; and

10 (B) A course, which is a component of the institution's state  
11 board approved educator preparation program, that provides  
12 information to prospective teachers equivalent to the teaching  
13 experience needed to demonstrate competence as a prerequisite to  
14 certification to teach in the public schools in West Virginia. The  
15 course also shall include instruction on at least the following  
16 elements:

17 (i) State board policy and provisions of this code governing  
18 public education;

19 (ii) Requirements for federal and state accountability,  
20 including the mandatory reporting of child abuse;

21 (iii) Federal and state mandated curriculum and assessment  
22 requirements, including multicultural education, safe schools and  
23 student code of conduct;

24 (iv) Federal and state regulations for the instruction of

1 exceptional students as defined by the Individuals with  
2 Disabilities Education Act, 20 U.S.C. §1400 *et seq.*; and

3 (v) Varied approaches for effective instruction for students  
4 who are at-risk.

5 (h) In addition to the requirements set forth in subsection  
6 (g) of this section, an agreement for an alternate student teaching  
7 experience between an institution of higher education and a  
8 nonpublic school shall include the following:

9 (1) A requirement that the higher education institution with  
10 an educator preparation program shall document that the student  
11 teacher's field-based and clinical experiences include  
12 participation and instruction with multicultural, at-risk and  
13 exceptional children at each programmatic level for which the  
14 student teacher seeks certification; and

15 (2) The minimum qualifications for the employment of school  
16 teachers selected as supervising teachers, including the  
17 requirement that field-based and clinical experiences be supervised  
18 by a teacher fully certified in the state in which that teacher is  
19 supervising.

20 (i) The state superintendent may issue certificates as  
21 provided in section two-a of this article to graduates of educator  
22 preparation programs and alternative educator preparation programs  
23 approved by the state board. The certificates are issued in  
24 accordance with this section and rules adopted by the state board

1 after consultation with the Secretary of Education and the Arts and  
2 the Chancellor for Higher Education.

3 (1) A certificate to teach may be granted only to a person who  
4 meets the following criteria:

5 (A) Is a citizen of the United States, except as provided in  
6 subdivision (2) of this subsection;

7 (B) Is of good moral character;

8 (C) Is physically, mentally and emotionally qualified to  
9 perform the duties of a teacher; and

10 (D) Is at least eighteen years of age on or before October 1,  
11 of the year in which his or her certificate is issued.

12 (2) A permit to teach in the public schools of this state may  
13 be granted to a person who is an exchange teacher from a foreign  
14 country or an alien person who meets the requirements to teach.

15 (j) In consultation with the Secretary of Education and the  
16 Arts and the Chancellor for Higher Education, institutions of  
17 higher education approved for educator preparation may cooperate  
18 with each other, with the center for professional development and  
19 with one or more county boards to organize and operate centers to  
20 provide selected phases of the educator preparation program. The  
21 phases include, but are not limited to the following:

22 (1) Student teaching and teacher-in-residence programs;

23 (2) Beginning teacher ~~internship and~~ induction, mentoring and  
24 professional support programs;

1 (3) Instruction in methodology; and

2 (4) Seminar programs for college students, teachers with  
3 provisional certification, professional support team members and  
4 supervising teachers.

5 By mutual agreement, the institutions of higher education, the  
6 center for professional development and county boards may budget  
7 and expend funds to operate the centers through payments to the  
8 appropriate fiscal office of the participating institutions, the  
9 center for professional development and the county boards.

10 (k) The provisions of this section do not require  
11 discontinuation of an existing student teacher training center or  
12 school which meets the standards of the state board.

13 (l) All institutions of higher education approved for educator  
14 preparation in the 1962-63 school year continue to hold that  
15 distinction so long as they meet the minimum standards for educator  
16 preparation. Nothing in this section infringes upon the rights  
17 granted to any institution by charter given according to law  
18 previous to the adoption of this code.

19 (m) *Definitions.* -- For the purposes of this section, the  
20 following words have the meanings ascribed to them unless the  
21 context clearly indicates a different meaning:

22 (1) "Nonpublic school" means a private school, parochial  
23 school, church school, school operated by a religious order or  
24 other nonpublic school that elects to meet the following

1 conditions:

2 (A) Comply with the provisions of article twenty-eight,  
3 chapter eighteen of this code;

4 (B) Participate on a voluntary basis in a state operated or  
5 state sponsored program provided to this type school pursuant to  
6 this section; and

7 (C) Comply with the provisions of this section;

8 (2) "At-risk" means a student who has the potential for  
9 academic failure, including, but not limited to, the risk of  
10 dropping out of school, involvement in delinquent activity or  
11 poverty as indicated by free or reduced lunch status; and

12 (3) "Exceptional child" or "exceptional children" has the  
13 meaning ascribed to these terms pursuant to section one, article  
14 twenty, chapter eighteen of this code, but, as used in this  
15 section, the terms do not include gifted students.

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

17 **§18A-4-7a. Employment, promotion and transfer of professional**  
18 **personnel; seniority.**

19 (a) A county board of education shall make decisions affecting  
20 the filling of vacancies in professional positions of employment on  
21 the basis of the applicant with the highest qualifications:  
22 *Provided*, That the county superintendent shall be hired under  
23 separate criteria pursuant to section two, article four, chapter

1 eighteen of this code.

2       (b) In judging qualifications for the filling of vacancies of  
3 professional positions of employment, consideration shall be given  
4 to each of the following:

5       (1) Appropriate certification, licensure or both;

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

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

11       (4) Academic achievement;

12       (5) In the case of a classroom teaching position or the  
13 position of principal, certification by the National Board for  
14 Professional Teaching Standards;

15       (6) Specialized training relevant to the performance of the  
16 duties of the job;

17       (7) Past performance evaluations conducted pursuant to section  
18 twelve, article two of this chapter and section two, article  
19 three-c of this chapter or, in the case of a classroom teacher,  
20 past evaluations of the applicant's performance in the teaching  
21 profession;

22       (8) Seniority;

23       (9) Other measures or indicators upon which the relative  
24 qualifications of the applicant may fairly be judged;

1           (10) In the case of a classroom teaching position, the  
2 recommendation of the principal of the school at which the  
3 applicant will be performing a majority of his or her duties. The  
4 recommendation shall be based upon the principal's consideration of  
5 the applicant's qualifications as set forth in subdivisions (1)  
6 through (9) of this subsection; and

7           (11) In the case of a classroom teaching position, the  
8 recommendation, if any, resulting from the process established  
9 pursuant to the provisions of section five, article five-a, chapter  
10 eighteen of this code by the faculty senate of the school at which  
11 the employee will be performing a majority of his or her duties.  
12 The recommendation shall be based upon the consideration of the  
13 applicant's qualifications as set forth in subdivisions (1) through  
14 (9) of this subsection.

15           (c) In considering the filling of a vacancy pursuant to this  
16 section, a county board is entitled to determine the appropriate  
17 weight to apply to each of the criterion when assessing an  
18 applicant's qualifications: *Provided,* That if one or more  
19 permanently employed instructional personnel apply for a classroom  
20 teaching position and meet the standards set forth in the job  
21 posting, each criterion under subsection (b) of this section shall  
22 be given equal weight except that the criterion in subdivisions  
23 (10) and (11) shall each be double weighted.

24           (d) For a classroom teaching position, if the recommendations



1 resulting from the operations of subdivisions (10) and (11),  
2 subsection (b) of this section are for the same applicant, ~~and the~~  
3 ~~superintendent concurs with that recommendation, then the other~~  
4 ~~provisions of subsections (b) and (c) of this section do not apply~~  
5 and the superintendent shall recommend and the county board shall  
6 appoint that applicant notwithstanding any other provision of this  
7 code to the contrary.

8 (e) The state board shall promulgate a rule, including an  
9 emergency rule if necessary, in accordance with the provisions of  
10 article three-b, chapter twenty-nine-a of this code to implement  
11 and interpret the provisions of this section, including provisions  
12 that may provide for the compensation based on the appropriate  
13 daily rate of a classroom teacher who directly participates in  
14 making recommendations pursuant to this section for periods beyond  
15 his or her individual contract.

16 (f) Recommendations made pursuant to subdivisions (10) and  
17 (11), subsection (b) of this section shall be made based on a  
18 determination as to which of the applicants is the highest  
19 qualified for the position: *Provided*, That nothing in this  
20 subsection shall require principals or faculty senates to assign  
21 any amount of weight to any factor in making a recommendation.

22 (g) With the exception of guidance counselors, the seniority  
23 of classroom teachers, as defined in section one, article one of  
24 this chapter, shall be determined on the basis of the length of

1 time the employee has been employed as a regular full-time  
2 certified and/or licensed professional educator by the county board  
3 of education and shall be granted in all areas that the employee is  
4 certified, licensed or both.

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

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

1           (j) Employment for a full employment term shall equal one year  
2 of seniority, but no employee may accrue more than one year of  
3 seniority during any given fiscal year. Employment for less than  
4 the full employment term shall be prorated. A random selection  
5 system established by the employees and approved by the board shall  
6 be used to determine the priority if two or more employees  
7 accumulate identical seniority: *Provided*, That when two or more  
8 principals have accumulated identical seniority, decisions on  
9 reductions in force shall be based on qualifications.

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

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

20           (2) Notwithstanding any provision of this code to the  
21 contrary, all employees subject to release shall be considered  
22 applicants for any vacancy in an established, existing or newly  
23 created position that, on or before February 15, is known to exist  
24 for the ensuing school year, and for which they are qualified, and,

1 upon recommendation of the superintendent, the board shall appoint  
2 the successful applicant from among them before posting such  
3 vacancies for application by other persons;

4 (3) An employee subject to release shall be employed in any  
5 other professional position where the employee is certified and was  
6 previously employed or to any lateral area for which the employee  
7 is certified, licensed or both, if the employee's seniority is  
8 greater than the seniority of any other employee in that area of  
9 certification, licensure or both;

10 (4) If an employee subject to release holds certification,  
11 licensure or both in more than one lateral area and if the  
12 employee's seniority is greater than the seniority of any other  
13 employee in one or more of those areas of certification, licensure  
14 or both, the employee subject to release shall be employed in the  
15 professional position held by the employee with the least seniority  
16 in any of those areas of certification, licensure or both; and

17 (5) If, ~~prior to August 1 of the year a reduction in force is~~  
18 ~~approved,~~ not less than twenty days prior to the beginning of the  
19 next instructional term following an approved reduction in force,  
20 the reason for any particular reduction in force no longer exists  
21 as determined by the county board in its sole and exclusive  
22 judgment, the board shall rescind the reduction in force or  
23 transfer and shall notify the released employee in writing of his  
24 or her right to be restored to his or her position of employment.

1 Within five days of being so notified, the released employee shall  
2 notify the board, in writing, of his or her intent to resume his or  
3 her position of employment or the right to be restored shall  
4 terminate. Notwithstanding any other provision of this  
5 subdivision, if there is another employee on the preferred recall  
6 list with proper certification and higher seniority, that person  
7 shall be placed in the position restored as a result of the  
8 reduction in force being rescinded.

9 (1) For the purpose of this article, all positions which meet  
10 the definition of "classroom teacher" as defined in section one,  
11 article one of this chapter shall be lateral positions. For all  
12 other professional positions, the county board of education shall  
13 adopt a policy, ~~by October 31, 1993,~~ and may modify the policy  
14 thereafter as necessary, which defines which positions shall be  
15 lateral positions. The county board shall submit a copy of its  
16 policy to the state board within thirty days of adoption or any  
17 modification, and the state board shall compile a report and submit  
18 the report to the Legislative Oversight Commission on Education  
19 Accountability by December 31, ~~1993,~~ and ~~by that date~~ in any  
20 ~~succeeding~~ year in which any county board submits a modification of  
21 its policy relating to lateral positions. In adopting the policy,  
22 the board shall give consideration to the rank of each position in  
23 terms of title; nature of responsibilities; salary level;  
24 certification, licensure or both; and days in the period of

1 employment.

2 (m) After the twentieth day prior to the beginning of the  
3 instructional term, no person employed and assigned to a  
4 professional position may transfer to another professional position  
5 in the county during that instructional term unless the person  
6 holding that position does not have valid certification, nor may a  
7 person employed and assigned to a professional position resign and  
8 be employed by another county board after the twentieth day prior  
9 to the beginning of the instructional term. The provisions of this  
10 subsection are subject to the following:

11 (1) The person may apply for any posted, vacant positions with  
12 the successful applicant assuming the position at the beginning of  
13 the ~~next~~ second half of the instructional term as determined in the  
14 county of employment or initial employment;

15 (2) Professional personnel who have been on an approved leave  
16 of absence may fill these vacancies in their county of employment  
17 upon their return from the approved leave of absence;

18 (3) The county board, upon recommendation of the  
19 superintendent, may authorize a transfer to fill a another position  
20 in the county before the ~~next~~ second half of the instructional  
21 term, or with the mutual consent of the person may release him or  
22 her to commence employment in another county, when it is determined  
23 to be in the best interest of the students. The county  
24 superintendent shall notify the state board of each transfer and

1 each release of a person employed in a professional position to  
2 another professional position or county after the twentieth day  
3 prior to the beginning of the instructional term;

4 (4) The provisions of this subsection do not apply to the  
5 filling transfer of a person to another professional position in  
6 the county vacated because of resignation or retirement that became  
7 effective on or before the twentieth day prior to the beginning of  
8 the instructional term, but not posted until after that date; and

9 (5) The Legislature finds that it is not in the best interest  
10 of the students particularly in the elementary grades to have  
11 multiple teachers for any one grade level or course during the  
12 instructional term. It is the intent of the Legislature that the  
13 filling of positions through transfers of personnel from one  
14 professional position to another after the twentieth day prior to  
15 the beginning of the instructional term should be kept to a  
16 minimum.

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

1 absence with greater seniority, are qualified, apply for and accept  
2 the position.

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

14 (p) Openings in established, existing or newly created  
15 positions shall be processed as follows:

16 (1) Boards shall ~~be required to~~ post and date notices of each  
17 opening at least once. At their discretion, boards may post an  
18 opening for a position other than classroom teacher more than once  
19 in order to attract more qualified applicants. At their  
20 discretion, boards may post an opening for a classroom teacher one  
21 additional time after the first posting in order to attract more  
22 qualified applicants only if fewer than three individuals apply  
23 during the first posting subject to the following:

24 (A) Each notice shall be posted in conspicuous working places, l



1 on the county website and on the statewide job bank for all  
2 professional personnel to observe for at least five working days.  
3 Each notice of a vacancy in an area of critical need and shortage  
4 shall be posted on the statewide job bank in accordance with  
5 section seven-a, article two of this chapter;

6 (B) ~~At least one~~ Each notice shall be posted at least once  
7 within twenty working days of the position openings and shall  
8 include the job description and any information on state and  
9 federal loan forgiveness programs applicable to the position;

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

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

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

19 (2) No vacancy shall be filled until after the five-day  
20 minimum posting period of the most recent posted notice of the  
21 vacancy;

22 (3) If one or more applicants under all the postings for a  
23 vacancy meets the qualifications listed in the job posting, the  
24 successful applicant to fill the vacancy shall be selected by the

1 board within thirty working days of the end of the first posting  
2 period;

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

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

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

19       (r) Reductions in classroom teaching positions in elementary  
20 schools shall be processed as follows:

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

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

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

18           (t) The county board shall compile, update annually on July 1  
19 and make available by electronic or other means to all employees a  
20 list of all professional personnel employed by the county, their  
21 areas of certification and their seniority.

22           (u) Notwithstanding any other provision of this code to the  
23 contrary, upon recommendation of the principal and approval by the  
24 classroom teacher and county board, a classroom teacher assigned to

1 the school may at any time be assigned to a new or existing  
2 classroom teacher position at the school without the position being  
3 posted.

4 (v) The amendments to this section during the 2013 regular  
5 session of the Legislature shall be effective for school years  
6 beginning on or after July 1, 2013, and the provisions of this  
7 section immediately prior to those amendments remain in effect  
8 until July 1, 2013.

NOTE: The purpose of this bill is to improve the process for employing highly qualified professional personnel in the public schools. Among the changes made in the bill are several to ensure that positions filled by retirees and not fully qualified teachers are posted statewide and easily available to new graduates and reduction in force teachers who are seeking employment; allowing capable teachers to more easily obtain certification in additional content areas; ensuring teachers and principals consider applicant qualifications for employment; and limiting the movement of professional personnel to other counties when they are already assigned to a position and the instructional is about to or has begun.

Strike-throughs indicate existing language that would be removed, and underscoring indicates new language that would be added.