

Senate Bill No. 277

(By Senator Yost)

[Introduced January 8, 2014; 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,
on the basis of seniority, qualifications and evaluation of past

1 service.

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

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

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

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

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

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

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

4 (7) New service personnel.

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

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

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

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

21 (A) The cafeteria manager class title is included in the same
22 classification category as cooks;

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

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

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

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

9 (4) Assignment of a custodian to work shifts in a school or
10 work site is based on seniority within the custodian classification
11 category.

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

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

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

20 (2) Notwithstanding any other provisions of this chapter to
21 the contrary, decisions affecting service personnel with respect to
22 extra-duty assignments are made in the following manner:

23 (A) A service person with the greatest length of service time
24 in a particular category of employment is given priority in

1 accepting extra duty assignments, followed by other fellow
2 employees on a rotating basis according to the length of their
3 service time until all employees have had an opportunity to perform
4 similar assignments. The cycle then is repeated.

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

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

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

16 (2) Notice of a job vacancy shall include the job description,
17 the period of employment, the work site, the starting and ending
18 time of the daily shift, the amount of pay and any benefits and
19 other information that is helpful to prospective applicants to
20 understand the particulars of the job. The notice of a job vacancy
21 in the aide classification categories shall include the program or
22 primary assignment of the position. Job postings for vacancies
23 made pursuant to this section shall be written to ensure that the
24 largest possible pool of qualified applicants may apply. Job

1 postings may not require criteria which are not necessary for the
2 successful performance of the job and may not be written with the
3 intent to favor a specific applicant.

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

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

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

14 (I) The seniority of a service person is determined on the
15 basis of the length of time the employee has been employed by the
16 county board within a particular job classification. For the
17 purpose of establishing seniority for a preferred recall list as
18 provided in this section, a service person who has been employed in
19 one or more classifications retains the seniority accrued in each
20 previous classification.

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

24 (1) The employee with the least amount of seniority within

1 that classification or grades of classification is properly
2 released and employed in a different grade of that classification
3 if there is a job vacancy;

4 (2) If there is no job vacancy for employment within that
5 classification or grades of classification, the service person is
6 employed in any other job classification which he or she previously
7 held with the county board if there is a vacancy and retains any
8 seniority accrued in the job classification or grade of
9 classification.

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

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

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

22 (3) The county board may not rescind the reduction in force of
23 an employee until all service personnel with more seniority in the
24 classification category on the preferred recall list have been

1 offered the opportunity for recall to regular employment as
2 provided in this section.

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

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

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

17 (n) A service person placed upon the preferred recall list
18 shall be recalled to any position openings by the county board
19 within the classification(s) where he or she had previously been
20 employed, to any lateral position for which the service person is
21 qualified or to a lateral area for which a service person has
22 certification and/or licensure.

23 (o) A service person on the preferred recall list does not
24 forfeit the right to recall by the county board if compelling

1 reasons require him or her to refuse an offer of reemployment by
2 the county board.

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

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

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

15 (3) The service person may not be discouraged nor prohibited
16 from returning to his or her regular position on a light duty
17 basis;

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

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

22 ~~(p)~~ (q) The county board shall notify all service personnel on
23 the preferred recall list of all position openings that exist from
24 time to time. The notice shall be sent by certified mail to the

1 last known address of the service person. Each service person
2 shall notify the county board of any change of address.

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

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

13 ~~(s)~~ (t) A county board failing to comply with the provisions
14 of this article may be compelled to do so by mandamus and is liable
15 to any party prevailing against the board for court costs and the
16 prevailing party's reasonable attorney fee, as determined and
17 established by the court.

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

22 (2) The county board is liable to any party prevailing against
23 the board for any court reporter costs including copies of
24 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.