

Senate Bill No. 46

(By Senator Yost)

[Introduced January 14, 2015; referred to the Committee on Education; and then to the
Committee on the Judiciary.]

**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,

1 qualifications and evaluation of past service.

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

9 (1) Regularly employed service personnel who hold a classification title within the
10 classification category of the vacancy;

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

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

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

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

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

1 (7) New service personnel.

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

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

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

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

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

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

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

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

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

21 (4) Assignment of a custodian to work shifts in a school or work site is based on seniority

1 within the custodian classification category.

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

4 (f) *Extra-duty assignments.* —

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

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

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

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

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

21 (1) Posting locations include any website maintained by or available for the use of the county

1 board.

2 (2) Notice of a job vacancy shall include the job description, the period of employment, the
3 work site, the starting and ending time of the daily shift, the amount of pay and any benefits and
4 other information that is helpful to prospective applicants to understand the particulars of the job.
5 The notice of a job vacancy in the aide classification categories shall include the program or primary
6 assignment of the position. Job postings for vacancies made pursuant to this section shall be written
7 to ensure that the largest possible pool of qualified applicants may apply. Job postings may not
8 require criteria which are not necessary for the successful performance of the job and may not be
9 written with the intent to favor a specific applicant.

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

13 (4) The county board shall notify any person who has applied for a job posted pursuant to this
14 section of the status of his or 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 work force of service personnel
17 shall be made on the basis of seniority, as provided in this section.

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

1 classification.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 ~~(r)~~ (s) A service person released from employment for lack of need as provided in sections
19 six and eight-a, article two of this 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 regular employee.

21 ~~(s)~~ (t) A county board failing to comply with the provisions of this article may be compelled

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

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

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