

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **Senate Bill 58**

**FISCAL  
NOTE**

BY SENATOR YOST

[Introduced January 13, 2016;

Referred to the Committee on Education; and then to  
the Committee on the Judiciary.]

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

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

1 That 18A-4-8b of the Code of West Virginia, 1931, as amended, be amended and  
 2 reenacted to read as follows:

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

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

1 (a) A county board shall make decisions affecting promotions and the filling of any service  
 2 personnel positions of employment or jobs occurring throughout the school year that are to be  
 3 performed by service personnel as provided in section eight of this article, on the basis of seniority,  
 4 qualifications and evaluation of past service.

5 (b) Qualifications means the applicant holds a classification title in his or her category of  
 6 employment as provided in this section and is given first opportunity for promotion and filling  
 7 vacancies. Other employees then shall be considered and shall qualify by meeting the definition  
 8 of the job title that relates to the promotion or vacancy, as defined in section eight of this article.

9 If requested by the employee, the county board shall show valid cause why a service person with  
 10 the most seniority is not 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 classification title within the  
 13 classification category of the vacancy;

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

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

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

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

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

25 (7) New service personnel.

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

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

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

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

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

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

41 (C) Paraprofessional, autism mentor, early classroom assistant teacher and braille or sign

42 support specialist class titles are included in the same classification category as aides; and

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

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

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

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

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

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

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

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

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

65 (g) County boards shall post and date notices of all job vacancies of existing or newly

66 created positions in conspicuous places for all school service personnel to observe for at least  
67 five working days.

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

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

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

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

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

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

90 each previous classification.

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

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

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

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

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

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

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

112 (4) If there are insufficient vacant positions to permit reemployment of all more senior  
113 employees on the preferred recall list within the classification category of the service person who

114 was subject to reduction in force, the position of the released service person shall be posted and  
115 filled in accordance with this section.

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

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

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

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

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

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

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

137 (3) The service person may not be discouraged nor prohibited from returning to his or her

138 regular position on a light duty basis:

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

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

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

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

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

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

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

158 (2) The county board is liable to any party prevailing against the board for any court  
159 reporter 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 a heading or the present law and underscoring indicates new language that would be added.