

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2569

BY DELEGATES MARCUM

[Introduced February 20, 2017; Referred
to the Committee on Education.]

1 A BILL to amend and reenact §18A-4-7a of the Code of West Virginia, 1931, as amended, relating
 2 to employment, promotion and transfer of professional personnel by county boards of
 3 education and requiring all decisions on reductions in force to be based on qualifications
 4 as determined by the county board.

Be it enacted by the Legislature of West Virginia:

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

1 (a) A county board of education shall make decisions affecting the filling of vacancies in
 2 professional positions of employment on the basis of the applicant with the highest qualifications:
 3 *Provided*, That the county superintendent shall be hired under separate criteria pursuant to
 4 section two, article four, chapter eighteen of this code.

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

- 7 (1) Appropriate certification, licensure or both;
- 8 (2) Amount of experience relevant to the position or, in the case of a classroom teaching
 9 position, the amount of teaching experience in the required certification area;
- 10 (3) The amount of course work, degree level or both in the relevant field and degree level
 11 generally;
- 12 (4) Academic achievement;
- 13 (5) In the case of a principal or classroom teaching position, certification by the National
 14 Board for Professional Teaching Standards;
- 15 (6) Specialized training relevant to performing the duties of the job;
- 16 (7) Past performance evaluations conducted pursuant to section twelve, article two of this
 17 chapter and section two, article three-c of this chapter or, in the case of a classroom teacher, past

18 evaluations of the applicant's performance in the teaching profession;

19 (8) Seniority;

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

22 (10) In the case of a classroom teaching position, the recommendation of the principal of
23 the school at which the applicant will be performing a majority of his or her duties; and

24 (11) In the case of a classroom teaching position, the recommendation, if any, resulting
25 from the process established pursuant to the provisions of section five, article five-a, chapter
26 eighteen of this code by the faculty senate of the school at which the employee will be performing
27 a majority of his or her duties.

28 (c) When filling of a vacancy pursuant to this section, a county board is entitled to
29 determine the appropriate weight to apply to each of the criterion when assessing an applicants
30 qualifications: *Provided*, That if one or more permanently employed instructional personnel apply
31 for a classroom teaching position and meet the standards set forth in the job posting, each
32 criterion under subsection (b) of this section shall be given equal weight except that the criterion
33 in subdivisions (10) and (11) shall each be double weighted.

34 (d) For a classroom teaching position, if the principal and faculty senate recommend the
35 same applicant pursuant to subdivisions (10) and (11), subsection (b) of this section, and the
36 superintendent concurs with those recommendations, then the other provisions of subsections
37 (b) and (c) of this section do not apply and the county board shall appoint that applicant
38 notwithstanding any other provision of this code to the contrary.

39 (e) The state board shall promulgate a rule, including an emergency rule if necessary, in
40 accordance with the provisions of article three-b, chapter twenty-nine-a of this code to implement
41 and interpret the provisions of this section. The rule may provide for t a classroom teacher who
42 directly participates in making recommendations pursuant to this section to be compensated at
43 the appropriate daily rate during periods of participation beyond his or her individual contract.

44 (f) The recommendations of the principal and faculty senate made pursuant to
45 subdivisions (10) and (11), subsection (b) of this section shall be based on a determination as to
46 which applicant is the most highly qualified for the position: *Provided*, That nothing in this
47 subsection may require principals or faculty senates to assign any amount of weight to any factor
48 in making a recommendation.

49 (g) With the exception of guidance counselors, the seniority of classroom teachers, as
50 defined in section one, article one of this chapter, shall be determined on the basis of the length
51 of time the employee has been employed as a regular full-time certified and/or licensed
52 professional educator by the county board of education and shall be granted in all areas that the
53 employee is certified, licensed or both.

54 (h) Upon completion of one hundred thirty-three days of employment in any one school
55 year, substitute teachers, except retired teachers and other retired professional educators
56 employed as substitutes, shall accrue seniority exclusively for the purpose of applying for
57 employment as a permanent, full-time professional employee. One hundred thirty-three days or
58 more of said employment shall be prorated and shall vest as a fraction of the school year worked
59 by the permanent, full-time teacher.

60 (i) Guidance counselors and all other professional employees, as defined in section one,
61 article one of this chapter, except classroom teachers, shall gain seniority in their nonteaching
62 area of professional employment on the basis of the length of time the employee has been
63 employed by the county board of education in that area: *Provided*, That if an employee is certified
64 as a classroom teacher, the employee accrues classroom teaching seniority for the time that
65 employee is employed in another professional area. For the purposes of accruing seniority under
66 this paragraph, employment as principal, supervisor or central office administrator, as defined in
67 section one, article one of this chapter, shall be considered one area of employment.

68 (j) Employment for a full employment term equals one year of seniority, but an employee
69 may not accrue more than one year of seniority during any given fiscal year. Employment for less

70 than the full employment term shall be prorated. ~~A random selection system established by the~~
71 ~~employees and approved by the county board shall be used to determine the priority if two or~~
72 ~~more employees accumulate identical seniority. *Provided, That when two or more principals have*~~
73 ~~accumulated identical seniority~~ All decisions on reductions in force shall be based on
74 qualifications as determined by the county board.

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

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

82 (2) Notwithstanding any provision of this code to the contrary, for any vacancy in an
83 established, existing or newly created position that, on or before March 1, is known to exist for
84 the ensuing school year, upon recommendation of the superintendent, the board shall appoint the
85 successful applicant from among all qualified applicants. All employees subject to release shall
86 be considered applicants for the positions for which they are qualified and shall be considered
87 before posting such vacancies for application by nonemployees;

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

92 (4) If an employee subject to release holds certification, licensure or both in more than one
93 lateral area and if the employee's seniority is greater than the seniority of any other employee in
94 one or more of those areas of certification, licensure or both, the employee subject to release
95 shall be employed in the professional position held by the employee with the least seniority in any

96 of those areas of certification, licensure or both; and

97 (5) If, prior to August 1 of the year, a reduction in force is approved, the reason for any
98 particular reduction in force no longer exists as determined by the county board in its sole and
99 exclusive judgment, the board shall rescind the reduction in force or transfer and shall notify the
100 released employee in writing of his or her right to be restored to his or her position of employment.
101 Within five days of being so notified, the released employee shall notify the board, in writing, of
102 his or her intent to resume his or her position of employment or the right to be restored shall
103 terminate. Notwithstanding any other provision of this subdivision, if there is another employee on
104 the preferred recall list with proper certification and higher seniority, that person shall be placed
105 in the position restored as a result of the reduction in force being rescinded.

106 (l) For the purpose of this article, all positions which meet the definition of “classroom
107 teacher” as defined in section one, article one of this chapter shall be lateral positions. For all
108 other professional positions, the county board of education shall adopt a policy by October 31,
109 1993, and may modify the policy thereafter as necessary, which defines which positions shall be
110 lateral positions. In adopting the policy, the board shall give consideration to the rank of each
111 position in terms of title; nature of responsibilities; salary level; certification, licensure or both; and
112 days in the period of employment.

113 (m) All professional personnel whose seniority with the county board is insufficient to allow
114 their retention by the county board during a reduction in work force shall be placed upon a
115 preferred recall list. As to any professional position opening within the area where they had
116 previously been employed or to any lateral area for which they have certification, licensure or
117 both, the employee shall be recalled on the basis of seniority if no regular, full-time professional
118 personnel, or those returning from leaves of absence with greater seniority, are qualified, apply
119 for and accept the position.

120 (n) Before position openings that are known or expected to extend for twenty consecutive
121 employment days or longer for professional personnel may be filled by the board, the board shall

122 be required to notify all qualified professional personnel on the preferred list and give them an
123 opportunity to apply, but failure to apply shall not cause the employee to forfeit any right to recall.
124 The notice shall be sent by certified mail to the last known address of the employee, and it shall
125 be the duty of each professional personnel to notify the board of continued availability annually,
126 of any change in address or of any change in certification, licensure or both.

127 (o) Openings in established, existing or newly created positions shall be processed as
128 follows:

129 (1) Boards shall be required to post and date notices of each opening at least once. At
130 their discretion, boards may post an opening for a position other than classroom teacher more
131 than once in order to attract more qualified applicants. At their discretion, boards may post an
132 opening for a classroom teacher one additional time after the first posting in order to attract more
133 qualified applicants only if fewer than three individuals apply during the first posting subject to the
134 following:

135 (A) Each notice shall be posted in conspicuous working places for all professional
136 personnel to observe for at least five working days;

137 (B) At least one notice shall be posted within twenty working days of the position openings
138 and shall include the job description;

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

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

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

145 (2) No vacancy may be filled until after the five-day minimum posting period of the most
146 recent posted notice of the vacancy;

147 (3) If one or more applicants under all the postings for a vacancy meets the qualifications

148 listed in the job posting, the successful applicant to fill the vacancy shall be selected by the board
149 within thirty working days of the end of the first posting period;

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

153 (5) Nothing provided herein may prevent the county board of education from eliminating a
154 position due to lack of need.

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

161 (q) Reductions in classroom teaching positions in elementary schools shall be processed
162 as follows:

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

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

171 (r) Any board failing to comply with the provisions of this article may be compelled to do
172 so by mandamus and shall be liable to any party prevailing against the board for court costs and
173 reasonable attorney fees as determined and established by the court. Further, employees denied

174 promotion or employment in violation of this section shall be awarded the job, pay and any
175 applicable benefits retroactive to the date of the violation and payable entirely from local funds.
176 Further, the board shall be liable to any party prevailing against the board for any court reporter
177 costs including copies of transcripts.

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

181 (t) Notwithstanding any other provision of this code to the contrary, upon recommendation
182 of the principal and approval by the classroom teacher and county board, a classroom teacher
183 assigned to the school may at any time be assigned to a new or existing classroom teacher
184 position at the school without the position being posted.

NOTE: The purpose of this bill is to remove the provision that requires a random selection system to be used to determine the priority of employees if two or more have identical seniority when a county board of education is making decisions concerning reductions in force. It requires the decisions to be based on qualifications as determined by the county boards.

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