

SB 1006  
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**WEST VIRGINIA LEGISLATURE** OFFICE OF WEST VIRGINIA SECRETARY OF STATE

**SEVENTY-NINTH LEGISLATURE**

**FIRST EXTRAORDINARY SESSION, 2009**



**ENROLLED**

**Senate Bill No. 1006**

(BY SENATORS TOMBLIN (MR. PRESIDENT)  
AND CARUTH, BY REQUEST OF THE EXECUTIVE)

[Passed June 2, 2009; to take effect July 1, 2009.]

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AN ACT to amend and reenact §18-5-4 of the Code of West Virginia, 1931, as amended; to amend and reenact §18A-1-1 of said code; and to amend and reenact §18A-2-2, §18A-2-6, §18A-2-7 and §18A-2-8a of said code, all relating to the hiring, termination, transfer and reassignment of teachers and school personnel; revising definition of "long-term substitute"; revising certain dates upon which action must be taken with respect to the hiring, termination, resignation or transfer of teachers and school personnel; clarifying probationary professional employee contract; providing conditional contract of prospective and recent graduates and prospective employable professional personnel; revising dates regarding the early notification of retirement; providing for nonrevocation of early notification; and providing an economic hardship exception.

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

That §18-5-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §18A-1-1 of said code be amended and reenacted; and that §18A-2-2, §18A-2-6, §18A-2-7 and §18A-2-8a of said code be amended and reenacted, all to read as follows:

**CHAPTER 18. EDUCATION.**

**ARTICLE 5. COUNTY BOARD OF EDUCATION.**

**§18-5-4. Meetings; employment and assignment of teachers; budget hearing; compensation of members; affiliation with state and national associations.**

1 (a) The county board shall meet on the first Monday in  
2 July, and upon the dates provided by law for the laying of  
3 levies, and at any other times the county board fixes upon  
4 its records. Subject to adequate public notice, nothing in  
5 this section prohibits the county board from conducting  
6 regular meetings in facilities within the county other than  
7 the county board office. At any meeting as authorized in  
8 this section and in compliance with the provisions of  
9 chapter eighteen-a of this code, the county board may  
10 employ qualified teachers, or those who will qualify by the  
11 time they enter upon their duties, necessary to fill existing  
12 or anticipated vacancies for the current or next ensuing  
13 school year. Meetings of the county board shall be held in  
14 compliance with the provisions of chapter eighteen-a of  
15 this code for purposes relating to the assignment, transfer,  
16 termination and dismissal of teachers and other school  
17 employees.

18 (b) Special meetings may be called by the president or  
19 any three members, but no business may be transacted  
20 other than that designated in the call.

21 (c) In addition, a public hearing shall be held concerning  
22 the preliminary operating budget for the next fiscal year  
23 not fewer than ten days after the budget has been made

24 available to the public for inspection and within a reason-  
25 able time prior to the submission of the budget to the state  
26 board for approval. Reasonable time shall be granted at  
27 the hearing to any person who wishes to speak regarding  
28 any part of the budget. Notice of the hearing shall be  
29 published as a Class I legal advertisement in compliance  
30 with the provisions of article three, chapter fifty-nine of  
31 this code.

32 (d) A majority of the members of the county board  
33 constitutes the quorum necessary for the transaction of  
34 official business.

35 (e) Board members may receive compensation at a rate  
36 not to exceed \$160 per meeting attended, but they may not  
37 receive pay for more than fifty meetings in any one fiscal  
38 year. Board members who serve on an administrative  
39 council of a multicounty vocational center also may  
40 receive compensation for attending up to twelve meetings  
41 of the council at the same rate as for meetings of the  
42 county board. Meetings of the council are not counted as  
43 board meetings for purposes of determining the limit on  
44 compensable board meetings.

45 (f) Members also shall be paid, upon the presentation of  
46 an itemized sworn statement, for all necessary traveling  
47 expenses, including all authorized meetings, incurred on  
48 official business, at the order of the county board.

49 (g) When, by a majority vote of its members, a county  
50 board considers it a matter of public interest, the county  
51 board may join the West Virginia School Board Associa-  
52 tion and the National School Board Association and may  
53 pay the dues prescribed by the associations and approved  
54 by action of the respective county boards. Membership  
55 dues and actual traveling expenses incurred by board  
56 members for attending meetings of the West Virginia  
57 School Board Association may be paid by their respective  
58 county boards out of funds available to meet actual

59 expenses of the members, but no allowance may be made  
60 except upon sworn itemized statements.

## CHAPTER 18A. SCHOOL PERSONNEL.

### ARTICLE 1. GENERAL PROVISIONS.

#### §18A-1-1. Definitions.

1 The definitions contained in section one, article one,  
2 chapter eighteen of this code apply to this chapter. In  
3 addition, the following words used in this chapter and in  
4 any proceedings pursuant to this chapter have the mean-  
5 ings ascribed to them unless the context clearly indicates  
6 a different meaning:

7 (a) "School personnel" means all personnel employed by  
8 a county board whether employed on a regular full-time  
9 basis, an hourly basis or otherwise. "School personnel" is  
10 comprised of two categories: Professional personnel and  
11 service personnel;

12 (b) "Professional person" or "professional personnel"  
13 means those persons or employees who meet the certifica-  
14 tion requirements of the state, licensing requirements of  
15 the state, or both, and includes a professional educator  
16 and other professional employee;

17 (c) "Professional educator" has the same meaning as  
18 "teacher" as defined in section one, article one, chapter  
19 eighteen of this code. Professional educators are classified  
20 as follows:

21 (1) "Classroom teacher" means a professional educator  
22 who has a direct instructional or counseling relationship  
23 with students and who spends the majority of his or her  
24 time in this capacity;

25 (2) "Principal" means a professional educator who  
26 functions as an agent of the county board and has respon-  
27 sibility for the supervision, management and control of a

28 school or schools within the guidelines established by the  
29 county board. The principal's major area of responsibility  
30 is the general supervision of all the schools and all school  
31 activities involving students, teachers and other school  
32 personnel;

33 (3) "Supervisor" means a professional educator who is  
34 responsible for working primarily in the field with profes-  
35 sional and other personnel in instructional and other  
36 school improvement. This category includes other appro-  
37 priate titles or positions with duties that fit within this  
38 definition; and

39 (4) "Central office administrator" means a superinten-  
40 dent, associate superintendent, assistant superintendent  
41 and other professional educators who are charged with  
42 administering and supervising the whole or some assigned  
43 part of the total program of the countywide school system.  
44 This category includes other appropriate titles or positions  
45 with duties that fit within this definition;

46 (d) "Other professional employee" means a person from  
47 another profession who is properly licensed and who is  
48 employed to serve the public schools. This definition  
49 includes a registered professional nurse, licensed by the  
50 West Virginia Board of Examiners for Registered Profes-  
51 sional Nurses, who is employed by a county board and has  
52 completed either a two-year (sixty-four semester hours) or  
53 a three-year (ninety-six semester hours) nursing program;

54 (e) "Service person" or "service personnel", whether  
55 singular or plural, means a nonteaching school employee  
56 who is not included in the meaning of "teacher" as defined  
57 in section one, article one, chapter eighteen of this code  
58 and who serves the school or schools as a whole, in a  
59 nonprofessional capacity, including such areas as secre-  
60 tarial, custodial, maintenance, transportation, school  
61 lunch and aides. Any reference to "service employee" or  
62 "service employees" in this chapter or chapter eighteen of

63 this code means service person or service personnel as  
64 defined in this section;

65 (f) "Principals Academy" or "academy" means the  
66 academy created pursuant to section two-b, article three-a  
67 of this chapter;

68 (g) "Center for Professional Development" means the  
69 center created pursuant to section one, article three-a of  
70 this chapter;

71 (h) "Job-sharing arrangement" means a formal, written  
72 agreement voluntarily entered into by a county board with  
73 two or more of its employees who wish to divide between  
74 them the duties and responsibilities of one authorized  
75 full-time position;

76 (i) "Prospective employable professional person",  
77 whether singular or plural, means a certified professional  
78 educator who:

79 (1) Has been recruited on a reserve list of a county board;

80 (2) Has been recruited at a job fair or as a result of  
81 contact made at a job fair;

82 (3) Has not obtained regular employee status through the  
83 job posting process provided in section seven-a, article  
84 four of this chapter; and

85 (4) Has obtained a baccalaureate degree from an accred-  
86 ited institution of higher education within the past year;

87 (j) "Dangerous student" means a student who is substan-  
88 tially likely to cause serious bodily injury to himself,  
89 herself or another individual within that student's educa-  
90 tional environment, which may include any alternative  
91 education environment, as evidenced by a pattern or series  
92 of violent behavior exhibited by the student, and docu-  
93 mented in writing by the school, with the documentation

94 provided to the student and parent or guardian at the time  
95 of any offense;

96 (k) "Alternative education" means an authorized  
97 departure from the regular school program designed to  
98 provide educational and social development for students  
99 whose disruptive behavior places them at risk of not  
100 succeeding in the traditional school structures and in adult  
101 life without positive interventions; and

102 (l) "Long-term substitute" means a substitute employee  
103 who fills a vacant position:

104 That the county superintendent expects to extend for at  
105 least thirty consecutive days, and is either:

106 (A) Listed in the job posting as a long-term substitute  
107 position of over thirty days; or

108 (B) Listed in a job posting as a regular, full-time position  
109 and:

110 (i) Is not filled by a regular, full-time employee; and

111 (ii) Is filled by a substitute employee.

112 For the purposes of section two, article sixteen, chapter  
113 five of this code, long-term substitute does not include a  
114 retired employee hired to fill the vacant position.

## ARTICLE 2. SCHOOL PERSONNEL.

**§18A-2-2. Employment of teachers; contracts; continuing contract status; how terminated; dismissal for lack of need; released time; failure of teacher to perform contract or violation thereof; written notice bonus for teachers and professional personnel.**

1 (a) Before entering upon their duties, all teachers shall  
2 execute a contract with their county boards, which shall



3 state the salary to be paid and shall be in the form pre-  
4 scribed by the state superintendent. Each contract shall  
5 be signed by the teacher and by the president and secre-  
6 tary of the county board and shall be filed, together with  
7 the certificate of the teacher, by the secretary of the office  
8 of the county board: *Provided*, That when necessary to  
9 facilitate the employment of employable professional  
10 personnel and prospective and recent graduates of teacher  
11 education programs who have not yet attained certifica-  
12 tion, the contract may be signed upon the condition that  
13 the certificate is issued to the employee prior to the  
14 beginning of the employment term in which the employee  
15 enters upon his or her duties.

16 (b) Each teacher's contract, under this section, shall be  
17 designated as a probationary or continuing contract. A  
18 probationary teacher's contract shall be for a term of not  
19 less than one nor more than three years, one of which shall  
20 be for completion of a beginning teacher internship  
21 pursuant to the provisions of section two-b, article three  
22 of this chapter, if applicable. If, after three years of such  
23 employment, the teacher who holds a professional certifi-  
24 cate, based on at least a bachelor's degree, has met the  
25 qualifications for a bachelor's degree and the county board  
26 enter into a new contract of employment, it shall be a  
27 continuing contract, subject to the following:

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

34 (2) A teacher holding continuing contract status with one  
35 county shall be granted continuing contract status with  
36 any other county upon completion of one year of accept-  
37 able employment if the employment is during the next

38 succeeding school year or immediately following an  
39 approved leave of absence extending no more than one  
40 year.

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

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

46 (A) By a majority vote of the full membership of the  
47 county board on or before February 1 of the then current  
48 year, after written notice, served upon the teacher, return  
49 receipt requested, stating cause or causes and an opportu-  
50 nity to be heard at a meeting of the board prior to the  
51 board's action on the termination issue; or

52 (B) By written resignation of the teacher on or before  
53 February 1 to initiate termination of a continuing con-  
54 tract;

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

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

59 (4) This section does not affect the powers of the school  
60 board to suspend or dismiss a principal or teacher pursu-  
61 ant to section eight of this article;

62 (5) A continuing contract for any teacher holding a  
63 certificate valid for more than one year and in full force  
64 and effect during the school year 1984-1985 shall remain  
65 in full force and effect;

66 (6) A continuing contract does not operate to prevent a  
67 teacher's dismissal based upon the lack of need for the  
68 teacher's services pursuant to the provisions of law  
69 relating to the allocation to teachers and pupil-teacher

70 ratios. The written notification of teachers being consid-  
71 ered for dismissal for lack of need shall be limited to only  
72 those teachers whose consideration for dismissal is based  
73 upon known or expected circumstances which will require  
74 dismissal for lack of need. An employee who was not  
75 provided notice and an opportunity for a hearing pursuant  
76 to this subsection may not be included on the list. In case  
77 of dismissal for lack of need, a dismissed teacher shall be  
78 placed upon a preferred list in the order of their length of  
79 service with that board. No teacher may be employed by  
80 the board until each qualified teacher upon the preferred  
81 list, in order, has been offered the opportunity for  
82 reemployment in a position for which he or she is quali-  
83 fied, not including a teacher who has accepted a teaching  
84 position elsewhere. The reemployment shall be upon a  
85 teacher's preexisting continuing contract and has the same  
86 effect as though the contract had been suspended during  
87 the time the teacher was not employed.

88 (d) In the assignment of position or duties of a teacher  
89 under a continuing contract, the board may provide for  
90 released time of a teacher for any special professional or  
91 governmental assignment without jeopardizing the  
92 contractual rights of the teacher or any other rights,  
93 privileges or benefits under the provisions of this chapter.  
94 Released time shall be provided for any professional  
95 educator while serving as a member of the Legislature  
96 during any duly constituted session of that body and its  
97 interim and statutory committees and commissions  
98 without jeopardizing his or her contractual rights or any  
99 other rights, privileges, benefits or accrual of experience  
100 for placement on the state minimum salary schedule in the  
101 following school year under the provisions of this chapter,  
102 board policy and law.

103 (e) Any teacher who fails to fulfill his or her contract  
104 with the board, unless prevented from doing so by per-  
105 sonal illness or other just cause or unless released from his

106 or her contract by the board, or who violates any lawful  
107 provision of the contract, is disqualified to teach in any  
108 other public school in the state for a period of the next  
109 ensuing school year and the State Department of Educa-  
110 tion or board may hold all papers and credentials of the  
111 teacher on file for a period of one year for the violation:  
112 *Provided*, That marriage of a teacher is not considered a  
113 failure to fulfill, or violation of, the contract.

114 (f) Any classroom teacher, as defined in section one,  
115 article one of this chapter, who desires to resign employ-  
116 ment with a county board or request a leave of absence,  
117 the resignation or leave of absence to become effective on  
118 or before July 15 of the same year and after completion of  
119 the employment term, may do so at any time during the  
120 school year by written notification of the resignation or  
121 leave of absence and any notification received by a county  
122 board shall automatically extend the teacher's public  
123 employee insurance coverage until August 31 of the same  
124 year.

125 (g) (1) A classroom teacher who gives written notice to  
126 the county board on or before December 1 of the school  
127 year of his or her retirement from employment with the  
128 board at the conclusion of the school year shall be paid  
129 \$500 from the Early Notification of Retirement line item  
130 established for the Department of Education for this  
131 purpose, subject to appropriation by the Legislature. If  
132 the appropriations to the Department of Education for  
133 this purpose are insufficient to compensate all applicable  
134 teachers, the Department of Education shall request a  
135 supplemental appropriation in an amount sufficient to  
136 compensate all such teachers. Additionally, if funds are  
137 still insufficient to compensate all applicable teachers, the  
138 priority of payment is for teachers who give written notice  
139 the earliest. This payment shall not be counted as part of  
140 the final average salary for the purpose of calculating  
141 retirement.

142 (2) The position of a classroom teacher providing written  
143 notice of retirement pursuant to this subsection may be  
144 considered vacant and the county board may immediately  
145 post the position as an opening to be filled at the conclu-  
146 sion of the school year. If a teacher has been hired to fill  
147 the position of a retiring classroom teacher prior to the  
148 start of the next school year, the retiring classroom teacher  
149 is disqualified from continuing his or her employment in  
150 that position. However, the retiring classroom teacher  
151 may be permitted to continue his or her employment in  
152 that position and forfeit the early retirement notification  
153 payment if, after giving notice of retirement in accordance  
154 with this subsection, he or she becomes subject to a  
155 significant unforeseen financial hardship, including a  
156 hardship caused by the death or illness of an immediate  
157 family member or loss of employment of a spouse. Other  
158 significant unforeseen financial hardships shall be deter-  
159 mined by the county superintendent on a case-by-case  
160 basis. This subsection does not prohibit a county school  
161 board from eliminating the position of a retiring classroom  
162 teacher.

**§18A-2-6. Continuing contract status for service personnel;  
termination.**

1 After three years of acceptable employment, each service  
2 personnel employee who enters into a new contract of  
3 employment with the board shall be granted continuing  
4 contract status: *Provided*, That a service personnel em-  
5 ployee holding continuing contract status with one county  
6 shall be granted continuing contract status with any other  
7 county upon completion of one year of acceptable employ-  
8 ment if such employment is during the next succeeding  
9 school year or immediately following an approved leave of  
10 absence extending no more than one year. The continuing  
11 contract of any such employee shall remain in full force  
12 and effect except as modified by mutual consent of the  
13 school board and the employee, unless and until termi-

14 nated with written notice, stating cause or causes, to the  
15 employee, by a majority vote of the full membership of the  
16 board before February 1 of the then current year, or by  
17 written resignation of the employee on or before that date.  
18 The affected employee has the right of a hearing before the  
19 board, if requested, before final action is taken by the  
20 board upon the termination of such employment.

21 Those employees who have completed three years of  
22 acceptable employment as of the effective date of this  
23 legislation shall be granted continuing contract status.

**§18A-2-7. Assignment, transfer, promotion, demotion, suspension and recommendation of dismissal of school personnel by superintendent; preliminary notice of transfer; hearing on the transfer; proof required.**

1 (a) The superintendent, subject only to approval of the  
2 board, may assign, transfer, promote, demote or suspend  
3 school personnel and recommend their dismissal pursuant  
4 to provisions of this chapter. However, an employee shall  
5 be notified in writing by the superintendent on or before  
6 February 1 if he or she is being considered for transfer or  
7 to be transferred. Only those employees whose consider-  
8 ation for transfer or intended transfer is based upon  
9 known or expected circumstances which will require the  
10 transfer of employees shall be considered for transfer or  
11 intended for transfer and the notification shall be limited  
12 to only those employees. Any teacher or employee who  
13 desires to protest the proposed transfer may request in  
14 writing a statement of the reasons for the proposed  
15 transfer. The statement of reasons shall be delivered to  
16 the teacher or employee within ten days of the receipt of  
17 the request. Within ten days of the receipt of the state-  
18 ment of the reasons, the teacher or employee may make  
19 written demand upon the superintendent for a hearing on  
20 the proposed transfer before the county board of educa-

21 tion. The hearing on the proposed transfer shall be held on  
22 or before March 15. At the hearing, the reasons for the  
23 proposed transfer must be shown.

24 (b) The superintendent at a meeting of the board on or  
25 before March 15 shall furnish in writing to the board a list  
26 of teachers and other employees to be considered for  
27 transfer and subsequent assignment for the next ensuing  
28 school year. An employee who was not provided notice  
29 and an opportunity for a hearing pursuant to subsection  
30 (a) of this section may not be included on the list. All  
31 other teachers and employees not so listed shall be consid-  
32 ered as reassigned to the positions or jobs held at the time  
33 of this meeting. The list of those recommended for  
34 transfer shall be included in the minute record of the  
35 meeting and all those so listed shall be notified in writing,  
36 which notice shall be delivered in writing, by certified  
37 mail, return receipt requested, to the persons' last known  
38 addresses within ten days following the board meeting, of  
39 their having been so recommended for transfer and  
40 subsequent assignment and the reasons therefor.

41 (c) The superintendent's authority to suspend school  
42 personnel shall be temporary only pending a hearing upon  
43 charges filed by the superintendent with the board of  
44 education and the period of suspension may not exceed  
45 thirty days unless extended by order of the board.

46 (d) The provisions of this section respecting hearing  
47 upon notice of transfer is not applicable in emergency  
48 situations where the school building becomes damaged or  
49 destroyed through an unforeseeable act and which act  
50 necessitates a transfer of the school personnel because of  
51 the aforementioned condition of the building.

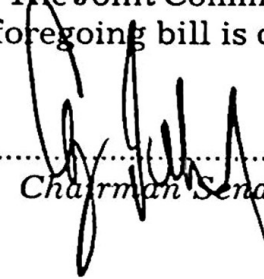
**§18A-2-8a. Notice to probationary personnel of rehiring or  
nonrehiring; hearing.**

1 The superintendent at a meeting of the board on or  
2 before March 15 of each year shall provide in writing to  
3 the board a list of all probationary teachers that he or she  
4 recommends to be rehired for the next ensuing school year.  
5 The board shall act upon the superintendent's recommen-  
6 dations at that meeting in accordance with section one of  
7 this article. The board at this same meeting shall also act  
8 upon the retention of other probationary employees as  
9 provided in sections two and five of this article. Any such  
10 probationary teacher or other probationary employee who  
11 is not rehired by the board at that meeting shall be  
12 notified in writing, by certified mail, return receipt  
13 requested, to such persons' last known addresses within  
14 ten days following said board meeting, of their not having  
15 been rehired or not having been recommended for rehiring.  
16 ing.

17 Any probationary teacher who receives notice that he or  
18 she has not been recommended for rehiring or other  
19 probationary employee who has not been reemployed may  
20 within ten days after receiving the written notice request  
21 a statement of the reasons for not having been rehired and  
22 may request a hearing before the board. The hearing shall  
23 be held at the next regularly scheduled board of education  
24 meeting or a special meeting of the board called within  
25 thirty days of the request for hearing. At the hearing, the  
26 reasons for the nonrehiring must be shown.



The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
.....  
Chairman Senate Committee

  
.....  
Chairman House Committee

Originated in the Senate.

To take effect July 1, 2009.

  
.....  
Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within..... is approved..... this the 17<sup>th</sup>.....  
Day of..... June....., 2009.

  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

JUN 16 2009

Time 9:00 am