

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 4236**

4 (By Mr. Speaker, (Mr. Thompson) and Delegate Armstead)
5 [By Request of the Executive]

6 (Originating in the Committee on Finance)

7 [February 21, 2012]

8
9
10 A BILL to amend and reenact §18A-2-12 of the code of West Virginia,
11 1931, as amended; and to amend said code by adding thereto a
12 new article, designated §18A-3C-1, §18A-3C-2 and §18A-3C-3,
13 all relating to establishing a new system of performance
14 evaluations of professional personnel, specifically classroom
15 teachers, principals and assistant principals; exclusions from
16 the definition of professional personnel for certain
17 evaluation purposes; instituting specific percentages for the
18 evaluation score based on student performance and peer
19 evaluations; requiring the state board of education to adopt
20 a legislative rule and report to the Legislative Oversight
21 Commission on Education Accountability; requiring the state
22 board of education to publish guidelines to assist the county
23 boards of education to design and implement a comprehensive
24 system of support for improving professional practice; and
25 requiring county boards of education to implement a
26 comprehensive system of support for improving professional

1 practice or be ineligible for certain public funding.

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

3 **ARTICLE 2. SCHOOL PERSONNEL.**

4 **§18A-2-12. Performance evaluations of school personnel;**
5 **professional personnel evaluation process.**

6 (a) The state board shall adopt a written system for the
7 evaluation of the employment performance of personnel, which system
8 shall be applied uniformly by county boards of education in the
9 evaluation of the employment performance of personnel employed by
10 the board.

11 (b) The system adopted by the state board for evaluating the
12 employment performance of professional personnel shall be in
13 accordance with the provisions of this section.

14 (c) For purposes of this section, "professional personnel",
15 "professional" or "professionals", means professional personnel as
16 defined in section one, article one of this chapter but does not
17 include classroom teachers, principals and assistant principals
18 subject to the evaluation processes established pursuant to the
19 provisions of section two, article three-c of this chapter when the
20 school at which these professional personnel are employed is
21 selected to participate in those evaluation processes as part of
22 the multi-step implementation leading to full statewide
23 implementation by school year 2013-2014.

24 (d) In developing the professional personnel performance
25 evaluation system, and amendments thereto, the state board shall

1 consult with the Center for Professional Development created in
2 article three-a of this chapter. The center shall participate
3 actively with the state board in developing written standards for
4 evaluation which clearly specify satisfactory performance and the
5 criteria to be used to determine whether the performance of each
6 professional meets such standards.

7 (e) The performance evaluation system shall contain, but ~~shall~~
8 not be limited to, the following information:

9 (1) The professional personnel positions to be evaluated,
10 whether they be teachers, substitute teachers, administrators,
11 principals or others;

12 (2) The frequency and duration of the evaluations, which shall
13 be on a regular basis and of such frequency and duration as to
14 insure the collection of a sufficient amount of data from which
15 reliable conclusions and findings may be drawn. ~~Provided, That~~ For
16 school personnel with five or more years of experience who have not
17 received an unsatisfactory rating, evaluations shall be conducted
18 no more than once every three years unless the principal determines
19 an evaluation for a particular school employee is needed more
20 frequently. ~~Provided, however, That~~ Until the school or school
21 system at which they are employed is subject to the provisions of
22 article three-c of this chapter, for classroom teachers with five
23 or more years of experience who have not received an unsatisfactory
24 rating, an evaluation shall be conducted or professional growth and
25 development plan required only when the principal determines it ~~to~~
26 ~~be~~ is necessary for a particular classroom teacher or when a

1 classroom teacher exercises the option of being evaluated at more
2 frequent intervals;

3 (3) The evaluation shall serve the following purposes:

4 (A) Serve as a basis for the improvement of the performance of
5 the personnel in their assigned duties;

6 (B) Provide an indicator of satisfactory performance for
7 individual professionals;

8 (C) Serve as documentation for a dismissal on the grounds of
9 unsatisfactory performance; and

10 (D) Serve as a basis for programs to increase the professional
11 growth and development of professional personnel;

12 (4) The standards for satisfactory performance for
13 professional personnel and the criteria to be used to determine
14 whether the performance of each professional meets such standards
15 and other criteria for evaluation for each professional position
16 evaluated. ~~Effective July 1, 2003 and thereafter,~~ Professional
17 personnel, as appropriate, shall demonstrate competency in the
18 knowledge and implementation of the technology standards adopted by
19 the state board. If a professional fails to demonstrate competency
20 in the knowledge and implementation of these standards, he or she
21 will be subject to an improvement plan to correct the deficiencies;
22 and

23 (5) Provisions for a written improvement plan, which shall be
24 specific as to what improvements, if any, are needed in the
25 performance of the professional and shall clearly set forth
26 recommendations for improvements, including recommendations for

1 additional education and training during the professional's
2 recertification process.

3 (f) A professional whose performance is considered to be
4 unsatisfactory shall be given notice of deficiencies. A
5 remediation plan to correct deficiencies shall be developed by the
6 employing county board of education and the professional. The
7 professional shall be given a reasonable period of time for
8 remediation of the deficiencies and shall receive a statement of
9 the resources and assistance available for the purposes of
10 correcting the deficiencies.

11 (g) No person may evaluate professional personnel for the
12 purposes of this section unless the person has an administrative
13 certificate issued by the state superintendent and has successfully
14 completed education and training in evaluation skills through the
15 center for professional development, or equivalent education
16 training approved by the state board, which will enable the person
17 to make fair, professional, and credible evaluations of the
18 personnel whom the person is responsible for evaluating. After
19 July 1, 1994, no person may be issued an administrative certificate
20 or have an administrative certificate renewed unless the state
21 board determines that the person has successfully completed
22 education and training in evaluation skills through the center for
23 professional development or equivalent education and training
24 approved by the state board.

25 (h) Any professional whose performance evaluation includes a
26 written improvement plan shall be given an opportunity to improve

1 his or her performance through the implementation of the plan. If
2 the next performance evaluation shows that the professional is now
3 performing satisfactorily, no further action may be taken
4 concerning the original performance evaluation. If the evaluation
5 shows that the professional is still not performing satisfactorily,
6 the evaluator either shall make additional recommendations for
7 improvement or may recommend the dismissal of the professional in
8 accordance with the provisions of section eight of this article.

9 (i) Lesson plans are intended to serve as a daily guide for
10 teachers and substitutes for the orderly presentation of the
11 curriculum. Lesson plans may not be used as a substitute for
12 observations by an administrator in the performance evaluation
13 process. A classroom teacher, as defined in section one, article
14 one of this chapter, may not be required to post his or her lesson
15 plans on the Internet or otherwise make them available to students
16 and parents or to include in his or her lesson plans any of the
17 following:

18 (1) Teach and reteach strategies;

19 (2) Write to learn activities;

20 (3) Cultural diversity;

21 (4) Color coding; or

22 (5) Any other similar items which are not required to serve as
23 a guide to the teacher or substitute for daily instruction; and

24 (j) The Legislature finds that classroom teachers must be free
25 of unnecessary paper work so that they can focus their time on

1 instruction. Therefore, classroom teachers may not be required to
2 keep records or logs of routine contacts with parents or guardians.

3 (k) Nothing in this section may be construed to prohibit
4 classroom teachers from voluntarily posting material on the
5 Internet. Nothing in article three-c of this chapter may be
6 construed to negate the provisions of subsections (i) and (j) of
7 this section.

8 **ARTICLE 3C. IMPROVING TEACHING AND LEARNING.**

9 **§18A-3C-1. Purposes.**

10 (a) The purpose of this article is to create a comprehensive
11 infrastructure that routinely supports a continuous process for
12 improving teaching and learning. Its focus is on developing strong
13 teaching and school leadership, without which effective learning
14 does not occur. The general components of this infrastructure
15 include the following:

16 (1) High-quality teacher preparation, induction and
17 evaluation;

18 (2) Universal support for emerging teachers including
19 comprehensive new teacher induction and support for student
20 teachers, teachers teaching in assignments for which they have less
21 than a full professional credential and teacher candidates pursuing
22 certification through an alternative route;

23 (3) Evaluation of the performance of teachers and leaders in
24 demonstrating high quality professional practice, leadership and
25 collaboration and the resulting growth in student learning;

1 (4) Focused improvement in teaching and learning through the
2 use of evaluation data to inform the delivery of professional
3 development and additional supports to improve teaching based on
4 the evaluation results and to inform the need for improvements in
5 teacher preparation programs; and

6 (5) The creation of a leadership culture that seeks and builds
7 powerful alliances among all stakeholders focused on continuous
8 growth in student learning.

9 (b) For purposes of this article "professional personnel"
10 includes classroom teachers, assistant principals and principals as
11 defined in section one, article one chapter eighteen-a of this
12 code.

13 **§18A-3C-2. Performance evaluations of professional personnel.**

14 (a) The intent of the Legislature is to allow for a multi-step
15 statewide implementation of performance evaluations for
16 professional personnel pursuant to this section consistent with
17 sound educational practices and resources available resulting in
18 full state-wide implementation by no later than the school year
19 2013-2014. Beginning with the schools included in the evaluation
20 processes for professional personnel piloted by the Department of
21 Education during the 2011-2012 school year, additional schools or
22 school systems shall be subject to the provisions of this article
23 in accordance with a plan established by the state board to achieve
24 full statewide implementation by no later than the school year
25 2013-2014. For schools and school systems subject to the
26 provisions of this article, the provisions of this article shall

1 govern when they are in conflict with other provisions of this
2 chapter and chapter eighteen of this code. Specifically, the
3 provisions of this article govern for the performance evaluation of
4 classroom teachers, principals and assistant principals employed in
5 these schools and school systems. To the extent that this article
6 conflicts with the provisions of section twelve, article two of
7 this chapter relating to professional personnel performance
8 evaluations, this article shall govern. The state board shall
9 submit a report on its plan for the phased implementation of this
10 article to the Legislative Oversight Commission on Education
11 Accountability at the Commission's July interim meeting in each
12 year of the phased implementation. The report shall include the
13 positions to be evaluated, the evaluation process and a list of the
14 schools and school systems subject to the provisions of this
15 article. To assist the Legislative Oversight Commission on
16 Education Accountability in monitoring the implementation of this
17 article, the state board shall report to the Commission upon its
18 request throughout the implementation process, including but not
19 limited to, reports on the results of surveys of teachers and
20 principals on the implementation and use of the new evaluation
21 system, the adequacy of the professional development given to
22 employees on the purposes, instruments and procedures of the
23 evaluation process, the time consumed by the evaluation process and
24 the various tasks required for employees of different levels of
25 experience, the aggregate results of the evaluations and any
26 recommendations for changes in the process or other aspects of the

1 duties of affected employees to improve the focus on the core
2 mission of schools of teaching and learning.

3 (b) Before July 1, 2013, the state board shall adopt a
4 legislative rule in accordance with article three-b, chapter
5 twenty-nine-a of this code, for evaluating the performance of each
6 professional personnel each year. The state board shall submit a
7 draft of the proposed rule to the Legislative Oversight Commission
8 on Education Accountability by February 15, 2013, and a final
9 proposed rule prior to adoption. The rule shall provide for
10 performance evaluations of professional personnel to be conducted
11 in accordance with this section in each school and school system
12 beginning with the 2013-14 school year.

13 (c) (1) The process adopted by the state board for evaluating
14 the performance of classroom teachers shall incorporate at least
15 the following:

16 (A) Alignment with the West Virginia professional teaching
17 standards adopted by the state board that establish the foundation
18 for educator preparation, teacher assessment and professional
19 development throughout the state;

20 (B) Employment of the professional teaching standards to
21 provide explicit and extensive measures of the work of teaching and
22 what teachers must know and be able to do and provide evaluative
23 measures of educator performance;

24 (C) The use of two pieces of evidence at two points in time
25 over the instructional term to demonstrate student learning as an
26 indicator of educator performance; and

1 (D) The use of school's school-wide student learning growth
2 as measured by the state-wide summative assessment as an evaluative
3 measure of all educators employed in the school.

4 (2) Eighty percent of the evaluation shall be based on an
5 appraisal of the classroom teacher's ability to perform the
6 critical standard elements of the professional teaching standards.
7 The appraisal shall include conferences with the evaluator
8 reinforced through observation. Fifteen percent of the evaluation
9 shall be based on evidence of the learning of the students assigned
10 to the educator and five percent of the evaluation shall be based
11 on student learning growth measured by the school-wide score on the
12 state summative assessment.

13 (d) (1) The process adopted by the state board for evaluating
14 the performance of principals and assistant principals shall
15 include, but not be limited to, the following:

16 (A) Alignment with the West Virginia professional leadership
17 standards adopted by the state board establishing the
18 responsibility of effective principals for the collective success
19 of their school including the learning, growth and achievement of
20 students, staff and self;

21 (B) Employment of the professional leadership standards to
22 provide explicit and extensive measures of the work of school
23 leadership focused on the continuous improvement of teaching and
24 learning;

25 (C) The use of data, evidence and artifacts to confirm the
26 principal's or the assistant principal's performance on achieving

1 the goals established by the principal and superintendent based on
2 the identified needs of the principal and the school including, but
3 not limited to, the school's score on the state summative
4 assessment; and

5 (D) The use of stakeholder surveys of students, parents,
6 teachers and service personnel regarding the overall effectiveness
7 of the principal or the assistant principal on elements of the
8 school leader standards.

9 (2) Eighty percent of the evaluation shall be based on an
10 appraisal of the principal's or the assistant principal's ability
11 to perform the critical standard elements of the professional
12 leadership standards and achieve the goals established for the
13 principal and the school. Fifteen percent of the evaluation shall
14 be based on evidence of the learning of the students assigned to
15 the school and five percent of the evaluation shall be based on
16 student learning growth measured by the school-wide score on the
17 state summative assessment.

18 (e) Evaluations of the performance of professional personnel
19 shall serve the following purposes:

20 (1) Serve as a basis for the improvement of the performance of
21 the professional personnel in their assigned duties;

22 (2) Serve as the basis for providing professional development
23 specifically targeted on the area or areas identified through the
24 evaluation process as needing improvement. If possible, this
25 targeted professional development should be delivered at the

1 school-site using collaborative processes, mentoring or coaching or
2 other approaches that maximize use of the instructional setting;

3 (3) Serve as the basis for establishing priorities for the
4 provision of county-level professional development when aggregate
5 evaluation data from the county's schools indicates an area or
6 areas of needed improvement;

7 (4) Serve as a basis for informing the teacher preparation
8 programs in this state of an area or areas of needed improvement in
9 the programs, or informing a specific program of needed
10 improvement, when state-level aggregate evaluation data indicates
11 that beginning teachers who have graduated from the program have
12 specific weaknesses;

13 (5) Provide an indicator of the level of performance of the
14 professional personnel;

15 (6) Serve as a basis for programs to increase the professional
16 growth and development of professional personnel; and

17 (7) Serve as documentation for a dismissal on the grounds of
18 unsatisfactory performance.

19 (f) The rule adopted by the state board shall include
20 standards for performance of professional personnel and the
21 criteria to be used to determine whether their performance meets
22 the standards. The rule also shall include guidance on best
23 practices for providing time within the school day for teachers
24 subject to performance evaluations under this section to
25 participate in the collaborative, mentoring or coaching and

1 planning processes necessary for execution of the performance
2 evaluation process and achieving advanced levels of performance.

3 (g) The rule adopted by the state board shall include
4 provisions for written improvement plans when necessary to improve
5 the performance of the professional personnel. The written
6 improvement plan shall be specific as to what improvements are
7 needed in the performance of the professional personnel and shall
8 clearly set forth recommendations for improvements including
9 recommendations for additional education and training of
10 professionals subject to recertification. Professional personnel
11 whose performance evaluation includes a written improvement plan
12 shall be given an opportunity to improve his or her performance
13 through the implementation of the plan.

14 (h) Professional personnel whose performance is considered to
15 be unsatisfactory shall be given written notice of his or her
16 deficiencies. A written improvement plan to correct these
17 deficiencies shall be developed by the employing county board of
18 education and the employee. The professional personnel shall be
19 given a reasonable period of time, not exceeding twelve months, to
20 accomplish the requirements of the improvement plan and shall
21 receive a written statement of the resources and assistance
22 available for the purposes of correcting the deficiencies. If the
23 next performance evaluation shows that the professional is now
24 performing satisfactorily, no further action may be taken
25 concerning the original performance evaluation. If the evaluation
26 shows that the professional is still not performing satisfactorily,

1 the evaluator either shall make additional written recommendations
2 for improvement or may recommend the dismissal of the professional
3 personnel in accordance with the provisions of section eight,
4 article two of this chapter.

5 (i) No person may evaluate professional personnel for the
6 purposes of this section unless the person has an administrative
7 certificate issued by the state superintendent and has successfully
8 completed education and training in evaluation skills through the
9 center for professional development, or equivalent education
10 training approved by the state board, which will enable the person
11 to make fair, professional, and credible evaluations of the
12 personnel whom the person is responsible for evaluating.

13 (j) Prior to implementation of the evaluation process pursuant
14 to this section at a school, each affected employee shall be given
15 training to ensure that the employees have a full understanding of
16 the purposes, instruments and procedures used in evaluating their
17 performance. Thereafter, this training shall be held annually at
18 the beginning of the employment term.

19 **§18A-3C-3. Comprehensive system for teacher induction and**
20 **professional growth.**

21 (a) The intent of the Legislature is to allow for a multistep
22 statewide implementation of a comprehensive system of support for
23 building professional practice of beginning teachers, specifically
24 those on the initial and intermediate progressions, consistent with
25 sound educational practices and resources available. In this
26 regard, it is the intent of the Legislature that the transition of

1 schools and school systems to a comprehensive system of support
2 that includes support for improved professional performance
3 targeted on deficiencies identified through the evaluation process
4 will be implemented concurrent with the first year that a school or
5 system receives final evaluation results from the performance
6 evaluation process pursuant to section two of this article.
7 Further, because of significant variability among the counties, not
8 only in the size of their teaching force, distribution of
9 facilities and available resources, but also because of their
10 varying needs, the Legislature intends for the implementation of
11 this section to be accomplished in a manner that provides adequate
12 flexibility to the counties to design and implement a comprehensive
13 system of support for improving professional performance that best
14 achieves the goals of this section within the county. Finally,
15 because of the critical importance of ensuring that all teachers
16 perform at the accomplished level or higher in the delivery of
17 instruction that at least meets the West Virginia professional
18 teaching standards and because achieving this objective at a
19 minimum entails providing assistance to address the needs as
20 indicated by the data informed results of annual performance
21 evaluations, including the self-assessed needs of the teachers
22 themselves, the Legislature expects the highest priority for
23 county, regional and state professional development will be on
24 meeting these needs and that the transition to a comprehensive
25 system of support for improving professional practice will reflect

1 substantial redirection of existing professional development
2 resources toward this highest priority.

3 (b) On or before July 1, 2012, the state board shall publish
4 guidelines on the design and implementation of a comprehensive
5 system of support for improving professional practice. The purpose
6 of the guidelines is to assist the county board with the design and
7 implementation of a system that best achieves the goals of this
8 section within the county. The guidelines may include examples of
9 best practices and resources available to county boards to assist
10 them with the design and implementation of a comprehensive system.

11 (c) Effective for the school year beginning July 1, 2013, and
12 thereafter, a county board is not eligible to receive state funding
13 appropriated for the purposes of this section or any other
14 provision of law related to beginning teacher internships and
15 mentor teachers unless it has adopted a plan for implementation of
16 a comprehensive system of support for improving professional
17 practice, the plan has been verified by the state board as meeting
18 the requirements of this section and the county is implementing the
19 plan. The plan shall address the following:

20 (1) The manner in which the county will provide the strong
21 school-based support and supervision that will assist beginning
22 teachers develop instructional and management strategies,
23 procedural and policy expertise, and other professional practices
24 they need to be successful in the classroom and perform at the
25 accomplished level. Nothing in this subdivision prohibits a school
26 or school system that was granted an exception or waiver from

1 section two-c, article three of this chapter prior to the effective
2 date of this section from continuing implementation of the program
3 in accordance with the exception or waiver;

4 (2) The manner in which the county will provide strong
5 school-based support and assistance necessary in cooperation with
6 teacher preparation programs in this state to make student teaching
7 a productive learning experience;

8 (3) The manner in which the county will use the data from the
9 educator performance evaluation system to serve as the basis for
10 providing professional development specifically targeted on the
11 area or areas identified through the evaluation process as needing
12 improvement. If possible, this targeted professional development
13 should be delivered at the school-site using collaborative
14 processes, mentoring or coaching or other approaches that maximize
15 use of the instructional setting;

16 (4) The manner in which the county will use the data from the
17 educator performance evaluation system to serve as the basis for
18 establishing priorities for the provision of county-level
19 professional development when aggregate evaluation data from the
20 county's schools indicates an area or areas of needed improvement;

21 (5) If a county utilizes master teachers, mentors, academic
22 coaches or any other approaches utilizing individual employees to
23 provide support, supervision or other professional development or
24 training to other employees for the purpose of improving their
25 professional practice, the manner in which the county will select
26 each of these individual employees based on demonstrated superior

1 performance and competence as well as the manner in which the
2 county will coordinate support for these employees: *Provided, That*
3 the employment of persons for these positions shall adhere to the
4 posting and other provisions of section seven-a, article four of
5 this chapter utilizing subsection (c) of said section seven-a to
6 judge the qualifications of the applicants;

7 (6) The manner in which the county will utilize local
8 resources available including, but not limited to, funds for
9 professional development and academic coaches, to focus on the
10 priority professional development goals of this section;

11 (7) The manner in which the county will adjust its scheduling,
12 use of substitutes, collaborative planning time, calendar or other
13 measures as may be necessary to provide sufficient time for
14 professional personnel to accomplish the goals of this section as
15 set forth in the county's plan; and

16 (8) The manner in which the county will monitor and evaluate
17 the effectiveness of implementation and outcomes of the county
18 system of support for improving professional practice.

19 (d) Effective the school year beginning July 1, 2013, and
20 thereafter, appropriations for beginning teacher mentors and any
21 new appropriation which may be made for the purposes of this
22 section shall be expended by county boards only to accomplish the
23 activities as set forth in their county plan pursuant to this
24 section. Effective the school year beginning July 1, 2013, and
25 thereafter, no specific level of compensation is guaranteed for any
26 employee service or employment as a mentor and such service or

1 employment is not subject to the provisions of this code governing
2 extra duty contracts except as provided in subdivision (5),
3 subsection (c) of this section.

4 (e) The Legislative Oversight Commission on Education
5 Accountability shall review the progress of the implementation of
6 this article and may make any recommendations it deems necessary to
7 the Legislature during the 2013 regular legislative session.