

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 264

By Senators Weld, Hamilton, Woelfel, Jeffries, Deeds,
Karnes, Chapman, Hunt, Oliverio, and Plymale

[Introduced January 17, 2023; referred
to the Committee on Education]

1 A BILL to amend and reenact §18-2-1 of the Code of West Virginia, 1931, as amended; and to
 2 amend and reenact §18-5-1a of said code, all relating to prohibiting persons who have
 3 been convicted of certain crimes against minors from holding positions on boards of
 4 education.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-1. Creation; composition; appointment, qualifications, terms and removal of members; offices.

1 There is a State Board of Education, to be known as the West Virginia Board of Education,
 2 which is a corporation and as such may contract and be contracted with, plead and be impleaded,
 3 sue and be sued, and have and use a common seal. The state board consists of 12 members, of
 4 whom one is the state Superintendent of Schools, ex officio; one of whom is the chancellor of the
 5 Higher Education Policy Commission, ex officio; and one of whom is the Chancellor of the West
 6 Virginia Council for Community and Technical College Education, ex officio, none of whom is
 7 entitled to vote. The other nine members are citizens of the state, appointed by the Governor, by
 8 and with the advice and consent of the Senate, for overlapping terms of nine years. Terms of office
 9 begin on November 5 of the appropriate year and end on November 4 of the appropriate year. Not
 10 more than five members are appointed from any one congressional district.

11 No more than five of the appointive members may belong to the same political party and no
 12 person is eligible for appointment to membership on the state board who is a member of any
 13 political party executive committee or holds any other public office or public employment under the
 14 federal government or under the government of this state or any of its political subdivisions, or who
 15 is an appointee or employee of the board. Members are eligible for reappointment. Any vacancy
 16 on the board shall be filled by the Governor by appointment for the unexpired term.

17 Notwithstanding the provisions of §6-6-4 of this code, a member of the state board may not
 18 be removed from office by the Governor except for official misconduct, incompetence, neglect of

19 duty, or gross immorality and then only in the manner prescribed by law for the removal by the
 20 Governor of state elective officers.

21 Before exercising any authority or performing any duties as a member of the state board,
 22 each member shall qualify as such by taking and subscribing to the oath of office prescribed by
 23 section five, article IV of the Constitution of West Virginia, the certificate whereof shall be filed with
 24 the Secretary of State. A suitable office in the state Department of Education at the State Capitol
 25 shall be provided for use by the state board.

26 Notwithstanding the provisions of §6-5-5 of this code, no person who has been convicted
 27 of an offense under the provisions of §61-8A-1 et seq., §61-8B-1 et seq., §61-8C-1 et seq., and
 28 §61-8D-1 et seq. of this code in which the victim is a minor may hold office as a member of the
 29 state board.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-1a. Eligibility of members; training requirements.

- 1 (a) A person who is a member of a county board:
- 2 (1) Shall be a citizen and resident in the county in which he or she serves on the county
- 3 board. Also, a person who is a candidate for membership on a county board or who is a member-
- 4 elect of a county board shall be a citizen and resident in the county in which he or she seeks to
- 5 serve on the county board;
- 6 (2) May not be employed by the county board on which he or she serves, including
- 7 employment as a teacher or service person;
- 8 (3) May not engage in the following political activities:
- 9 (A) Become a candidate for or hold any other public office, other than to succeed him or
- 10 herself as a member of a county board subject to the following:
- 11 (i) A candidate for a county board, who is not currently serving on a county board, may hold
- 12 another public office while a candidate if he or she resigns from the other public office prior to
- 13 taking the oath of office as a county board member.

14 (ii) The term "public office" as used in this section does not include service on any other
15 board, elected or appointed, profit or nonprofit, under the following conditions:

16 (I) The person does not receive compensation; and

17 (II) The primary scope of the board is not related to public schools.

18 (B) Become a candidate for, or serve as, an elected member of any political party executive
19 committee;

20 (C) Become a candidate for, or serve as, a delegate, alternate or proxy to a national
21 political party convention;

22 (D) Solicit or receive political contributions to support the election of, or to retire the
23 campaign debt of, any candidate for partisan office;

24 (4) May engage in any or all of the following political activities:

25 (A) Make campaign contributions to partisan or bipartisan candidates;

26 (B) Attend political fund raisers for partisan or bipartisan candidates;

27 (C) Serve as an unpaid volunteer on a partisan campaign;

28 (D) Politically endorse any candidate in a partisan or bipartisan election; or

29 (E) Attend a county, state or national political party convention.

30 (b) A member or member-elect of a county board, or a person desiring to become a
31 member of a county board, may make a written request to the West Virginia Ethics Commission for
32 an advisory opinion to determine if another elected or appointed position held or sought by the
33 person is an office or public office which would bar service on a county board pursuant to
34 subsection (a) of this section.

35 (1) Within thirty days of receipt of the request, the Ethics Commission shall issue a written
36 advisory opinion in response to the request and also shall publish the opinion in a manner which,
37 to the fullest extent possible, does not reveal the identity of the person making the request.

38 (2) A county board member who relies in good faith upon an advisory opinion issued by the
39 West Virginia Ethics Commission to the effect that holding a particular office or public office is not a

40 bar from membership on a county board and against whom proceedings are subsequently brought
41 for removal from the county board on the basis of holding that office or offices is entitled to
42 reimbursement by the county board for reasonable attorney's fees and court costs incurred by the
43 member in defending against these proceedings, regardless of the outcome of the proceedings.

44 (3) A vote cast by the member at a meeting of the county board may not be invalidated due
45 to a subsequent finding that holding the particular office or public office is a bar to membership on
46 the county board.

47 (4) Good faith reliance on a written advisory opinion of the West Virginia Ethics
48 Commission that a particular office or public office is not a bar to membership on a county board is
49 an absolute defense to any civil suit or criminal prosecution arising from any proper action taken
50 within the scope of membership on the county board, becoming a member-elect of the county
51 board or seeking election to the county board.

52 (c) To be eligible for election or appointment as a member of a county board, a person shall
53 possess at least a high school diploma or a general educational development (GED) diploma. This
54 provision does not apply to members or members-elect who have taken office prior to May 5,
55 1992, and who serve continuously from that date forward.

56 (d) A person elected to a county board after July 1, 1990, may not assume the duties of
57 county board member unless he or she has first attended and completed a course of orientation
58 relating to boardsmanship and governance effectiveness which shall be given between the date of
59 election and the beginning of the member's term of office under the following conditions:

60 (1) A portion or portions of subsequent training such as that offered in orientation may be
61 provided to members after they have commenced their term of office;

62 (2) Attendance at the session of orientation given between the date of election and the
63 beginning of the member's term of office permits the member-elect to assume the duties of county
64 board member, as specified in this section;

65 (3) Members appointed to the county board shall attend and complete the next orientation

66 course offered following their appointment; and

67 (4) The provisions of this subsection relating to orientation do not apply to members who
68 have taken office prior to July 1, 1988, and who serve continuously from that date forward.

69 (e) Annually, each member of a county board shall receive seven clock hours of training in
70 areas relating to boardsmanship, governance effectiveness, and school performance issues
71 including, but not limited to, pertinent state and federal statutes such as the "Process for Improving
72 Education" set forth in section five, article two-e of this chapter and the "No Child Left Behind Act"
73 and their respective administrative rules.

74 (1) The orientation and training shall be approved by the state board and conducted by the
75 West Virginia School Board Association or other organization or organizations approved by the
76 state board:

77 (A) The state board may exclude time spent in training on school performance issues from
78 the requisite seven hours herein required; and

79 (B) If the state board elects to exclude time spent in training on school performance issues
80 from the requisite seven hours, the state board shall limit the training to a feasible and practicable
81 amount of time.

82 (2) Failure to attend and complete the approved course of orientation and training relating
83 to boardsmanship and governance effectiveness without good cause as determined by the state
84 board by duly promulgated legislative rules constitutes neglect of duty under section seven, article
85 six, chapter six of this code.

86 (f) In the final year of any four-year term of office, a member shall satisfy the annual training
87 requirement before January 1. Failure to comply with the training requirements of this section
88 without good cause as defined by the state board by duly promulgated legislative rules constitutes
89 neglect of duty under §6-6-7 of this code.

90 (g) The state board shall appoint a committee named the "county board member training
91 standards review committee" whose members shall meet at least annually. Subject to state board

92 approval, the committee shall determine which particular trainings and training organizations shall
93 be approved and whether county board members have satisfied the annual training requirement.
94 Members of the committee serve without compensation, but may be reimbursed by their agencies
95 or employers for all reasonable and necessary expenses actually incurred in the performance of
96 their duties under this subsection.

97 (h) Notwithstanding the provisions of §6-5-5 of this code, no person who has been
98 convicted of an offense under the §61-8A-1 et seq., §61-8B-1 et seq., §61-8C-1 et seq., and §61-
99 8D-1 et seq. of this code in which the victim is a minor may hold office as a member of a county
100 board.

NOTE: The purpose of this bill is to prohibit persons who have been convicted of certain crimes against minors from holding positions on boards of education.

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