WEST VIRGINIA LEGISLATURE
Regular Session, 2001

ENROLLED
Committee Substitute for
SENATE BILL NO. 227

(By Senator Hunter, et al)

PASSED April 14, 2001
In Effect from Passage
AN ACT to amend and reenact section two, article four, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section five, article five-a of said chapter; to amend and reenact sections one, two, three and seven, article two, chapter eighteen-a of said code; to further amend said article by adding thereto a new section, designated section seven-a; to amend article three of said chapter by adding thereto a new section, designated section one-c; and to amend and reenact sections seven-a, seven-b, eight-b and nineteen, article four of said chapter, all relating generally to school personnel laws; first class permits for superintendents; providing for principals to chair faculty senate process for interviewing prospective professional and paraprofessional
employees; requiring superintendent to allow principal opportunity to interview and make recommendations on prospective professional and paraprofessional personnel who may be employed at the school; requiring county board votes on terminations to be on or before the first Monday of April; limiting written notification of dismissal to known or expected circumstances; providing payment for early notice of resignation or retirement at end of school year subject to legislative appropriation; addressing areas of critical need and shortage of professional educators; providing for substitutes continuously assigned to the same classroom for more than one half of a grading period which assignment remains in effect two weeks prior to the end of the grading period to remain in the assignment until the end of the grading period; exceptions; defining teacher and substitute teacher as professional educators for the purposes of the section; providing legislative findings and compelling state interest to expand use of retired teachers as substitutes; providing for county policy to permit expanded use; establishing process to permit retired teacher substitutes to accept employment for unlimited days beginning immediately upon retirement without affecting monthly retirement annuity; prohibiting retired substitute eligibility for additional pension, other benefits and seniority; revising process for employing prospective employable professional personnel; limiting notice of intended or considered transfers to known or expected circumstances; providing for statewide job bank for professional personnel terminated because of reduction in force and for positions for which counties are seeking applicants; providing for county boards to rescind reductions in force and transfers and restore released employees with certain conditions; limiting transfers within the instructional term beginning five days prior to instructional term and providing certain exceptions; requiring superintendent to report such transfers and making certain legislative findings and intent; requiring postings of openings to be written to ensure largest possible pool of qualified applicants and not require criteria not necessary for successful performance of the job or intended to favor a specific applicant; requiring
county boards to compile, update annually and make available a list of professional personnel, areas of certification and seniority; requiring retention of seniority of professional personnel on preferred recall list for purpose of seeking reemployment; providing that reduction or elimination of supplement due to certain circumstances and approved by state board does not require termination of employment contract; directing study and report by state board and secretary of education and the arts to legislative oversight commission on education accountability on policies, programs and statutes relating to the training, certification and licensing of professional educators, including analysis of certain relative to new courses required to be offered in public schools by state board policy; and directing collaboration on funding for additional education and training for reduction in force teachers to gain certification in areas of critical need and shortage.

Be it enacted by the Legislature of West Virginia:

That section two, article four, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section five, article five-a of said chapter be amended and reenacted; that sections one, two, three and seven, article two, chapter eighteen-a of said code be amended and reenacted; that said article be further amended by adding thereto a new section, designated section seven-a; that article three of said chapter be amended by adding thereto a new section, designated section one-c; and that sections seven-a, seven-b, eight-b and nineteen, article four of said chapter be amended and reenacted, all to read as follows:

CHAPTER 18. EDUCATION.

ARTICLE 4. COUNTY SUPERINTENDENT OF SCHOOLS.

§18-4-2. Qualifications; health certificate; disability; acting superintendent.

1 (a) Each superintendent shall hold a professional administrative certificate endorsed for superintendent, or a first class permit endorsed for superintendent: Provided,
That a superintendent who holds a first class permit may be appointed for only one year, and may be reappointed two times for an additional year each upon an annual evaluation by the board and a determination of satisfactory performance and reasonable progress toward completion of the requirements for a professional administrative certificate endorsed for superintendent: *Provided, however,* That any candidate for superintendent who possesses an earned doctorate from an accredited institution of higher education, has completed three successful years of teaching in public education and has the equivalent of three years of experience in management or supervision, upon employment by the county board of education, shall be granted a permanent administrative certificate and shall be a licensed county superintendent. Any person employed as assistant superintendent or educational administrator prior to the twenty-seventh day of June, one thousand nine hundred eighty-eight, and who was previously employed as superintendent is not required to hold the professional administrative certificate endorsed for superintendent.

(b) Before entering upon the discharge of his or her duties the superintendent shall file with the president of the board a health certificate from a reputable physician, on a form prescribed by the state department of education, certifying that he or she is physically fit for the duties of his or her office and that he or she has no infectious or contagious disease; and if the superintendent, due to accident or illness, becomes incapacitated to an extent that could lead to a prolonged absence, the board, upon unanimous vote, may enter an order declaring the incapacity and it shall appoint an acting superintendent until such time as a majority of the members of the board determine that the incapacity no longer exists. However, an acting superintendent shall not serve as such for more than one year or later than the expiration date of the superintendent’s term, whichever is less, without being reappointed by the board of education.
(c) Upon finding that the course work needed by a superintendent who holds a first class permit endorsed for superintendent is not available or is not scheduled in a manner at state institutions of higher education which will enable him or her to complete the normal requirements for a professional administrative certificate endorsed for superintendent within the three-year period allowed for appointment and reappointment under the permit, the state board shall adopt a rule in accordance with article three-b, chapter twenty-nine-a of this code to enable completion of the requirements, or comparable alternative requirements, for a professional administrative certificate endorsed for superintendent.

ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.

§18-5A-5. Public school faculty senates established; election of officers; powers and duties.

(a) There is established at every public school in this state a faculty senate which shall be comprised of all permanent, full-time professional educators employed at the school who shall all be voting members. Professional educators as used in this section means professional educators as defined in chapter eighteen-a of this code. A quorum of more than one half of the voting members of the faculty shall be present at any meeting of the faculty senate at which official business is conducted. Prior to the beginning of the instructional term each year, but within the employment term, the principal shall convene a meeting of the faculty senate to elect a chair, vice chair and secretary and discuss matters relevant to the beginning of the school year. The vice chair shall preside at meetings when the chair is absent. Meetings of the faculty senate shall be held on a regular basis as determined by a schedule approved by the faculty senate and amended from time to time if needed. Emergency meetings may be held at the call of the chair or a majority of the voting members by petition submitted to the chair and vice chair. An agenda of matters to be considered at a scheduled
meeting of the faculty senate shall be available to the members at least two employment days prior to the meeting and in the case of emergency meetings, as soon as possible prior to the meeting. The chair of the faculty senate may appoint such committees as may be desirable to study and submit recommendations to the full faculty senate, but the acts of the faculty senate shall be voted upon by the full body.

(b) In addition to any other powers and duties conferred by law, or authorized by policies adopted by the state or county board of education or bylaws which may be adopted by the faculty senate not inconsistent with law, the powers and duties listed in this subsection are specifically reserved for the faculty senate. The intent of these provisions is neither to restrict nor to require the activities of every faculty senate to the enumerated items except as otherwise stated. Each faculty senate shall organize its activities as it deems most effective and efficient based on school size, departmental structure and other relevant factors.

(1) Each faculty senate shall control funds allocated to the school from legislative appropriations pursuant to section nine, article nine-a of this chapter. From such funds, each classroom teacher and librarian shall be allotted fifty dollars for expenditure during the instructional year for academic materials, supplies or equipment which, in the judgment of the teacher or librarian, will assist him or her in providing instruction in his or her assigned academic subjects or shall be returned to the faculty senate: Provided, That nothing contained herein shall prohibit such funds from being used for programs and materials that, in the opinion of the teacher, enhance student behavior, increase academic achievement, improve self-esteem and address the problems of students at-risk. The remainder of funds shall be expended for academic materials, supplies or equipment in accordance with a budget approved by the faculty senate. Notwithstanding
any other provisions of the law to the contrary, funds not expended in one school year shall be available for expenditure in the next school year: Provided, however, That the amount of county funds budgeted in a fiscal year shall not be reduced throughout the year as a result of the faculty appropriations in the same fiscal year for such materials, supplies and equipment. Accounts shall be maintained of the allocations and expenditures of such funds for the purpose of financial audit. Academic materials, supplies or equipment shall be interpreted broadly, but shall not include materials, supplies or equipment which will be used in or connected with interscholastic athletic events.

(2) A faculty senate may establish a process for faculty members to interview new prospective professional educators and paraprofessional employees at the school and submit recommendations regarding employment to the principal, who may also make independent recommendations, for submission to the county superintendent: Provided, That such process shall be chaired by the school principal and must permit the timely employment of persons to perform necessary duties.

(3) A faculty senate may nominate teachers for recognition as outstanding teachers under state and local teacher recognition programs and other personnel at the school, including parents, for recognition under other appropriate recognition programs and may establish such programs for operation at the school.

(4) A faculty senate may submit recommendations to the principal regarding the assignment scheduling of secretaries, clerks, aides and paraprofessionals at the school.

(5) A faculty senate may submit recommendations to the principal regarding establishment of the master curriculum schedule for the next ensuing school year.

(6) A faculty senate may establish a process for the review and comment on sabbatical leave requests submit-
(7) Each faculty senate shall elect three faculty representatives to the local school improvement council established pursuant to section two of this article.

(8) Each faculty senate may nominate a member for election to the county staff development council pursuant to section eight, article three, chapter eighteen-a of this code.

(9) Each faculty senate shall have an opportunity to make recommendations on the selection of faculty to serve as mentors for beginning teachers under beginning teacher internship programs at the school.

(10) A faculty senate may solicit, accept and expend any grants, gifts, bequests, donations and any other funds made available to the faculty senate: Provided, That the faculty senate shall select a member who shall have the duty of maintaining a record of all funds received and expended by the faculty senate, which record shall be kept in the school office and shall be subject to normal auditing procedures.

(11) On or after the first day of January, one thousand nine hundred ninety-two, any faculty senate may review the evaluation procedure as conducted in their school to ascertain whether such evaluations were conducted in accordance with the written system required pursuant to section twelve, article two, chapter eighteen-a of this code and the general intent of this Legislature regarding meaningful performance evaluations of school personnel.

If a majority of members of the faculty senate determine that such evaluations were not so conducted, they shall submit a report in writing to the state board of education: Provided, That nothing herein shall create any new right of access to or review of any individual's evaluations.

(12) Each faculty senate shall be provided by its local board of education at least a two-hour per month block of
noninstructional time within the school day: Provided, That any such designated day shall constitute a full instructional day. This time may be utilized and determined at the local school level and shall include, but not be limited to, faculty senate meetings.

(13) Each faculty senate shall develop a strategic plan to manage the integration of special needs students into the regular classroom at their respective schools and submit said strategic plan to the superintendent of the county board of education by the thirtieth day of June, one thousand nine hundred ninety-five, and periodically thereafter pursuant to guidelines developed by the state department of education. Each faculty senate shall encourage the participation of local school improvement councils, parents and the community at large in the development of the strategic plan for each school.

Each strategic plan developed by the faculty senate shall include at least: (A) A mission statement; (B) goals; (C) needs; (D) objectives and activities to implement plans relating to each goal; (E) work in progress to implement the strategic plan; (F) guidelines for the placement of additional staff into integrated classrooms to meet the needs of exceptional needs students without diminishing the services rendered to the other students in integrated classrooms; (G) guidelines for implementation of collaborative planning and instruction; and (H) training for all regular classroom teachers who serve students with exceptional needs in integrated classrooms.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-1. Employment in general.

The employment of professional personnel shall be made by the board only upon nomination and recommendation of the superintendent: Provided, That the superintendent shall provide the principal at the school at which the
professional educator or paraprofessional employee is to be employed an opportunity to interview all qualified applicants and make recommendations to the county superintendent regarding their employment: Provided, however, That nothing shall prohibit the timely employment of persons to perform necessary duties. In case the board refuses to employ any or all of the persons nominated, the superintendent shall nominate others and submit the same to the board at such time as the board may direct. All personnel so nominated and recommended for employment and for subsequent assignment shall meet the certification, licensing, training and other eligibility classifications as may be required by provisions of this chapter and by state board regulation. In addition to any other information required, the application for any certification or licensing shall include the applicant’s social security number. Professional personnel employed as deputy, associate or assistant superintendents by the board in offices, departments or divisions at locations other than a school and who are directly answerable to the superintendent shall serve at the will and pleasure of the superintendent and may be removed by the superintendent upon approval of the board. Such professional personnel shall retain seniority rights only in the area or areas in which they hold valid certification or licensure.

§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.

(a) Before entering upon their duties, all teachers shall execute a contract with their boards of education, which contract shall state the salary to be paid and shall be in the form prescribed by the state superintendent of schools. Every such contract shall be signed by the teacher and by the president and secretary of the board of education and when so signed shall be filed, together with the certificate of the teacher, by the secretary of the office of the board.
(b) A teacher's contract, under this section, shall be for a term of not less than one nor more than three years, one of which shall be for completion of a beginning teacher internship pursuant to the provisions of section two-b, article three of this chapter, if applicable; and if, after three years of such employment, the teacher who holds a professional certificate, based on at least a bachelor's degree, has met the qualifications for the same and the board of education enter into a new contract of employment, it shall be a continuing contract: Provided, That any teacher holding a valid certificate with less than a bachelor's degree who is employed in a county beyond the said three-year probationary period shall upon qualifying for said professional certificate based upon a bachelor's degree, if reemployed, be granted continuing contract status: Provided, however, That a teacher holding continuing contract status with one county shall be granted continuing contract status with any other county upon completion of one year of acceptable employment if such employment is during the next succeeding school year or immediately following an approved leave of absence extending no more than one year.

(c) The continuing contract of any teacher shall remain in full force and effect except as modified by mutual consent of the school board and the teacher, unless and until terminated: (1) By a majority vote of the full membership of the board on or before the first Monday of April of the then current year, after written notice, served upon the teacher, return receipt requested, stating cause or causes and an opportunity to be heard at a meeting of the board prior to the board's action thereon; or (2) by written resignation of the teacher before that date, to initiate termination of a continuing contract. Such termination shall take effect at the close of the school year in which the contract is so terminated: Provided, That the contract may be terminated at any time by mutual consent of the school board and the teacher and that this section shall not affect the powers of the school board to suspend or dismiss a
principal or teacher pursuant to section eight of this article: Provided, however, That a continuing contract for any teacher holding a certificate valid for more than one year and in full force and effect during the school year one thousand nine hundred eighty-four and one thousand nine hundred eighty-five shall remain in full force and effect: Provided further, That a continuing contract shall not operate to prevent a teacher's dismissal based upon the lack of need for the teacher's services pursuant to the provisions of law relating to the allocation to teachers and pupil-teacher ratios. The written notification of teachers being considered for dismissal for lack of need shall be limited to only those teachers whose consideration for dismissal is based upon known or expected circumstances which will require dismissal for lack of need. An employee who was not provided notice and an opportunity for a hearing pursuant to subsection (a) of this section may not be included on the list. In case of such dismissal, the teachers so dismissed shall be placed upon a preferred list in the order of their length of service with that board, and no teacher shall be employed by the board until each qualified teacher upon the preferred list, in order, shall have been offered the opportunity for reemployment in a position for which they are qualified: And provided further, That he or she has not accepted a teaching position elsewhere. Such reemployment shall be upon a teacher's preexisting continuing contract and shall have the same effect as though the contract had been suspended during the time the teacher was not employed.

(d) In the assignment of position or duties of a teacher under said continuing contract, the board shall have authority to provide for released time of a teacher for any special professional or governmental assignment without jeopardizing the contractual rights of such teacher or any other rights, privileges or benefits under the provisions of this chapter.

(e) Any teacher who fails to fulfill his contract with the board, unless prevented from so doing by personal illness
or other just cause or unless released from such contract
by the board, or who violates any lawful provision thereof,
shall be disqualified to teach in any other public school in
the state for a period of the next ensuing school year and
the state department of education or board may hold all
papers and credentials of such teacher on file for a period
of one year for such violation: Provided, That marriage of
a teacher shall not be considered a failure to fulfill, or
violation of, the contract.

(f) Any classroom teacher, as defined in section one,
article one of this chapter, who desires to resign employ-
ment with a board of education or request a leave of
absence, such resignation or leave of absence to become
effective on or before the fifteenth day of July of the same
year and after completion of the employment term, may do
so at any time during the school year by written notifica-
tion thereof and any such notification received by a board
of education shall automatically extend such teacher's
public employee insurance coverage until the thirty-first
day of August of the same year.

(g) Any classroom teacher who gives written notice to
the county board of education on or before the first day of
February of the school year of their resignation or retire-
ment from employment with the board at the conclusion of
the school year shall be paid five hundred dollars from the
"Early Notification of Retirement" line item established
for the department of education for this purpose, subject
to appropriation by the Legislature. If the appropriations
to the department of education for this purpose are
insufficient to compensate all applicable teachers, the
department of education shall request a supplemental
appropriation in an amount sufficient to compensate all
such teachers. Additionally, if funds are still insufficient
to compensate all applicable teachers, the priority of
payment is for teachers who give written notice the
earliest. This payment shall not be counted as part of the
final average salary for the purpose of calculating retire-
ment.
§18A-2-3. Employment of substitute teachers and retired teachers as substitutes in areas of critical need and shortage; employment of prospective employable professional personnel.

(a) The county superintendent, subject to approval of the county board, may employ and assign substitute teachers to any of the following duties: (a) To fill the temporary absence of any teacher or an unexpired school term made vacant by resignation, death, suspension or dismissal; (b) to fill a teaching position of a regular teacher on leave of absence; and (c) to perform the instructional services of any teacher who is authorized by law to be absent from class without loss of pay, providing the absence is approved by the board of education in accordance with the law. The substitute shall be a duly certified teacher.

(b) Notwithstanding any other provision of this code to the contrary, a substitute teacher who has been assigned as a classroom teacher in the same classroom continuously for more than one-half of a grading period and whose assignment remains in effect two weeks prior to the end of the grading period, shall remain in the assignment until the grading period has ended, unless the principal of the school certifies that the regularly employed teacher has communicated with and assisted the substitute with the preparation of lesson plans and monitoring student progress or has been approved to return to work by his or her physician. For the purposes of this section, teacher and substitute teacher, in the singular or plural, mean professional educator as defined in section one, article one, of this chapter.

(c) (1) The Legislature hereby finds and declares that due to a shortage of qualified substitute teachers, a compelling state interest exists in expanding the use of retired teachers to provide service as substitute teachers. The Legislature further finds that diverse circumstances exist among the counties for the expanded use of retired teachers as substitutes.
(2) A person receiving retirement benefits under the provisions of article seven-a of this chapter or who is entitled to retirement benefits during the fiscal year in which that person retired may accept employment as a substitute teacher for an unlimited number of days each fiscal year without affecting the monthly retirement benefit to which the retirant is otherwise entitled if the following conditions are satisfied:

(A) The county board adopts a policy recommended by the superintendent to address areas of critical need and shortage;

(B) The policy provides for the employment of retired teachers as substitute teachers during the school year on an expanded basis as provided in this subsection;

(C) The policy is effective for one school year only and is subject to annual renewal by the county board;

(D) The state board approves the policy and the use of retired teachers as substitute teachers on an expanded basis as provided in this subsection; and

(E) Prior to employment of such substitute teacher beyond the post-retirement employment limitations established by the consolidated public retirement board, the superintendent of the affected county submits to the consolidated public retirement board, in a form approved by the retirement board, an affidavit signed by the superintendent stating the name of the county, the fact that the county has adopted a policy to employ retired teachers as substitutes to address areas of critical need and shortage and the name or names of the person or persons to be employed pursuant to the policy.

(3) Any person who retires and begins work as a substitute teacher within the same employment term shall lose those retirement benefits attributed to the annuity reserve, effective from the first day of employment as a retiree substitute in such employment term and ending with the
69 month following the date the retiree ceases to perform
70 service as a substitute.

71 (4) With respect to the expanded substitute service
72 provided in this subsection, retired teachers employed as
73 such substitutes are considered day-to-day, temporary,
74 part-time employees. The substitutes are not eligible for
75 additional pension or other benefits paid to regularly
76 employed employees and shall not accrue seniority.

77 (5) Until this subsection is expired pursuant to subdivi-
78 sion (6) of this subsection, the state board, annually, shall
79 report to the joint committee on government and finance
80 prior to the first day of February of each year. Addition-
81 ally, a copy shall be provided to the legislative oversight
82 commission on education accountability. The report shall
83 contain information indicating the effectiveness of the
84 provisions of this subsection on expanding the use of
85 retired substitute teachers to address areas of critical need
86 and shortage.

87 (6) The provisions of this subsection shall expire on the
88 thirtieth day of June, two thousand three.

89 (d) (1) Notwithstanding any other provision of code to
90 the contrary, each year a county superintendent may
91 employ prospective employable professional personnel on
92 a reserve list at the county level subject to the following
93 conditions:

94 (A) The county board adopts a policy to address areas of
95 critical need and shortage as identified by the state board.
96 The policy shall include authorization to employ prospec-
97 tive employable professional personnel;

98 (B) The county board posts a notice of the areas of
99 critical need and shortage in the county in a conspicuous
100 place in each school for at least ten working days; and

101 (C) There are not any potentially qualified applicants
102 available and willing to fill the position.
(2) Prospective employable professional personnel may only be employed from candidates at a job fair who have or will graduate from college in the current school year or whose employment contract with a county board has or will be terminated due to a reduction in force in the current fiscal year.

(3) Prospective employable professional personnel employed are limited to three full-time prospective employable professional personnel per one hundred professional personnel employed in a county or twenty-five full-time prospective employable professional personnel in a county, whichever is less.

(4) Prospective employable professional personnel shall be granted benefits at a cost to the county board and as a condition of the employment contract as approved by the county board.

(5) Regular employment status for prospective employable professional personnel may be obtained only in accordance with the provisions of section seven-a, article four of this chapter.

(e) The state board annually shall review the status of employing personnel under the provisions of subsection (d) of this section and annually shall report to the legislative oversight commission on education accountability on or before the first day of November of each year. The report shall include, but not be limited to, the following:

(A) The counties that participated in the program;

(B) The number of personnel hired;

(C) The teaching fields in which personnel were hired;

(D) The venue from which personnel were employed;

(E) The place of residency of the individual hired; and

(F) The state board's recommendations on the prospective employable professional personnel program.
§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.

(a) The superintendent, subject only to approval of the board, shall have authority to assign, transfer, promote, demote or suspend school personnel and to recommend their dismissal pursuant to provisions of this chapter. However, an employee shall be notified in writing by the superintendent on or before the first Monday in April if he is being considered for transfer or to be transferred. Only those employees whose consideration for transfer or intended transfer is based upon known or expected circumstances which will require the transfer of employees shall be considered for transfer or intended for transfer and the notification shall be limited to only those employees. Any teacher or employee who desires to protest such proposed transfer may request in writing a statement of the reasons for the proposed transfer. Such statement of reasons shall be delivered to the teacher or employee within ten days of the receipt of the request. Within ten days of the receipt of the statement of the reasons, the teacher or employee may make written demand upon the superintendent for a hearing on the proposed transfer before the county board of education. The hearing on the proposed transfer shall be held on or before the first Monday in May. At the hearing, the reasons for the proposed transfer must be shown.

(b) The superintendent at a meeting of the board on or before the first Monday in May shall furnish in writing to the board a list of teachers and other employees to be considered for transfer and subsequent assignment for the next ensuing school year. An employee who was not provided notice and an opportunity for a hearing pursuant to subsection (a) of this section may not be included on the list. All other teachers and employees not so listed shall be
considered as reassigned to the positions or jobs held at
the time of this meeting. The list of those recommended
for transfer shall be included in the minute record of such
meeting and all those so listed shall be notified in writing,
which notice shall be delivered in writing, by certified
mail, return receipt requested, to such persons’ last known
addresses within ten days following said board meeting, of
their having been so recommended for transfer and
subsequent assignment and the reasons therefor.

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

(d) The provisions of this section respecting hearing
upon notice of transfer shall not be applicable in emer-
gency situations where the school building becomes
damaged or destroyed through an unforeseeable act and
which act necessitates a transfer of such school personnel
because of the aforementioned condition of the building.

§18A-2-7a. Statewide job bank.

The state board shall establish and maintain a statewide
job bank to assist the recruitment and reemployment of
experienced professional personnel whose employment
with county boards has been terminated because of a
reduction in force. The job bank shall consist of two parts
for each county: (1) A list of the names, qualifications and
contact information of all professional personnel who have
been terminated because of a reduction in force, except
personnel who have requested in writing that they not be
listed in the job bank; and (2) a list of professional posi-
tions for which the county is seeking applicants. The job
bank shall be accessible electronically to each county and
to individuals on a read only basis, except that each
county shall have the capability of editing information for
the county and shall be responsible for maintaining current information on the county lists.

ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.

§18A-3-1c. Study of training, certification and licensing; report to legislative oversight commission on education accountability at December 2001 interim meetings; collaboration on sources of funding for education and training for reduction in force teacher to gain additional certification in areas of critical need and shortage.

(a) The legislature finds that the training, certification and licensing of professional educators is not well coordinated with the employment laws of the state particularly with respect to the middle school grade levels. The Legislature further finds that the statutes place responsibility for the training, certification and licensing of professional educators with the state board of education after consultation with the secretary of education and the arts. Therefore, the Legislature hereby directs the state board and the secretary of education and the arts to undertake a study of the policies, programs and statutes relating to the training, certification and licensing of professional educators and to report their findings, conclusions and recommendations along with any necessary legislation for improving the coordination of the programs, policies and statutes with the needs of the public schools of this state to the legislative oversight commission on education accountability at its December, two thousand one, interim meeting. The study and recommendations shall also include an analysis of the cost and availability of certified teachers, along with recommended solutions, for any new courses required by state board policy to be offered in the public schools.

(b) The legislature finds that there is a need to address areas of critical need and shortage for professional educa-
tors and that an expeditious approach for doing so is
through the upgrading of the education and training of
fully certified teachers who because of declining enroll-
ment can no longer be employed in their area of certifica-
tion and licensure. Therefore, the state superintendent,
the vice chancellor for administration, the chancellor of
the higher education policy commission shall collaborate
with the governor's workforce development office on other
potential sources of funds to assist professional educators
whose contract of employment with a county board of
education were not renewed due to a reduction in force to
gain additional certification in areas of critical need and
shortage.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-7a. Employment, promotion and transfer of profes-
sional personnel; seniority.

(a) A county board of education shall make decisions
affecting the hiring of professional personnel other than
classroom teachers on the basis of the applicant with the
highest qualifications.

(b) The county board shall make decisions affecting the
hiring of new classroom teachers on the basis of the
applicant with the highest qualifications.

(c) In judging qualifications for hiring employees
pursuant to subsections (a) and (b) of this section, consid-
eration shall be given to each of the following:

(1) Appropriate certification and/or licensure;

(2) Amount of experience relevant to the position; or, in
the case of a classroom teaching position, the amount of
teaching experience in the subject area;

(3) The amount of course work and/or degree level in the
relevant field and degree level generally;

(4) Academic achievement;
(5) Relevant specialized training;
(6) Past performance evaluations conducted pursuant to section twelve, article two of this chapter; and
(7) Other measures or indicators upon which the relative qualifications of the applicant may fairly be judged.

(d) If one or more permanently employed instructional personnel apply for a classroom teaching position and meet the standards set forth in the job posting, the county board of education shall make decisions affecting the filling of such positions on the basis of the following criteria:

(1) Appropriate certification and/or licensure;
(2) Total amount of teaching experience;
(3) The existence of teaching experience in the required certification area;
(4) Degree level in the required certification area;
(5) Specialized training directly related to the performance of the job as stated in the job description;
(6) Receiving an overall rating of satisfactory in evaluations over the previous two years; and
(7) Seniority.

(e) In filling positions pursuant to subsection (d) of this section, consideration shall be given to each criterion with each criterion being given equal weight. If the applicant with the most seniority is not selected for the position, upon the request of the applicant a written statement of reasons shall be given to the applicant with suggestions for improving the applicant’s qualifications.

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

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

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

(i) Employment for a full employment term shall equal one year of seniority, but no employee may accrue more than one year of seniority during any given fiscal year. Employment for less than the full employment term shall be prorated. A random selection system established by the employees and approved by the board shall be used to determine the priority if two or more employees accumulate identical seniority: Provided, That when two or more
principals have accumulated identical seniority, decisions on reductions in force shall be based on qualifications.

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

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

(2) An employee subject to release shall be employed in any other professional position where such employee is certified and was previously employed or to any lateral area for which such employee is certified and/or licensed, if such employee’s seniority is greater than the seniority of any other employee in that area of certification and/or licensure;

(3) If an employee subject to release holds certification and/or licensure in more than one lateral area and if such employee’s seniority is greater than the seniority of any other employee in one or more of those areas of certification and/or licensure, the employee subject to release shall be employed in the professional position held by the employee with the least seniority in any of those areas of certification and/or licensure; and

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

(k) For the purpose of this article, all positions which meet the definition of classroom teacher as defined in section one, article one of this chapter shall be lateral positions. For all other professional positions the county board of education shall adopt a policy by the thirty-first day of October, one thousand nine hundred ninety-three, and may modify said policy thereafter as necessary, which defines which positions shall be lateral positions. The board shall submit a copy of its policy to the state board within thirty days of adoption or any modification and the state board shall compile a report and submit same to the legislative oversight commission on education accountability by the thirty-first day of December, one thousand nine hundred ninety-three, and by such date in any succeeding year in which any county board submits a modification of its policy relating to lateral positions. In adopting such a policy, the board shall give consideration to the rank of each position in terms of title, nature of responsibilities, salary level, certification and/or licensure and days in the period of employment.

(l) After the fifth day prior to the beginning of the instructional term, no person employed and assigned to a professional position may transfer to another professional position in the county during that instructional term unless the person holding that position does not have valid certification. The provisions of this subsection are subject to the following:
(1) The person may apply for any posted, vacant positions with the successful applicant assuming the position at the beginning of the next instructional term;

(2) Professional personnel who have been on an approved leave of absence may fill these vacancies upon their return from the approved leave of absence; and

(3) The county board, upon recommendation of the superintendent may fill a position before the next instructional term when it is determined to be in the best interest of the students: Provided, That the county superintendent shall notify the state board of each transfer of a person employed in a professional position to another professional position after the fifth day prior to the beginning of the instructional term. The Legislature finds that it is not in the best interest of the students particularly in the elementary grades to have multiple teachers for any one grade level or course during the instructional term. It is the intent of the Legislature that the filling of positions through transfers of personnel from one professional position to another after the fifth day prior to the beginning of the instructional term should be kept to a minimum.

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

(n) Before position openings that are known or expected to extend for twenty consecutive employment days or longer for professional personnel may be filled by the
board, the board shall be required to notify all qualified professional personnel on the preferred list and give them an opportunity to apply, but failure to apply shall not cause the employee to forfeit any right to recall. The notice shall be sent by certified mail to the last known address of the employee, and it shall be the duty of each professional personnel to notify the board of continued availability annually, of any change in address or of any change in certification and/or licensure.

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

(1) Boards shall be required to post and date notices which shall be subject to the following:

(A) The notices shall be posted in conspicuous working places for all professional personnel to observe for at least five working days;

(B) The notice shall be posted within twenty working days of the position openings and shall include the job description;

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

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

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

(2) No vacancy shall be filled until after the five-day minimum posting period;

(3) If one or more applicants meets the qualifications listed in the job posting, the successful applicant to fill the

225 vacancy shall be selected by the board within thirty
226 working days of the end of the posting period;
227 (4) A position held by a certified and/or licensed teacher
228 who has been issued a permit for full-time employment
229 and is working toward certification in the permit area
230 shall not be subject to posting if the certificate is awarded
231 within five years; and
232 (5) Nothing provided herein shall prevent the county
233 board of education from eliminating a position due to lack
234 of need.
235 (p) Notwithstanding any other provision of the code to
236 the contrary, where the total number of classroom teach-
237 ing positions in an elementary school does not increase
238 from one school year to the next, but there exists in that
239 school a need to realign the number of teachers in one or
240 more grade levels, kindergarten through six, teachers at
241 the school may be reassigned to grade levels for which
242 they are certified without that position being posted:
243 Provided, That the employee and the county board of
244 education mutually agree to the reassignment.
245 (q) Reductions in classroom teaching positions in
246 elementary schools shall be processed as follows:
247 (1) When the total number of classroom teaching
248 positions in an elementary school needs to be reduced, the
249 reduction shall be made on the basis of seniority with the
250 least senior classroom teacher being recommended for
251 transfer; and
252 (2) When a specified grade level needs to be reduced and
253 the least senior employee in the school is not in that grade
254 level, the least senior classroom teacher in the grade level
255 that needs to be reduced shall be reassigned to the position
256 made vacant by the transfer of the least senior classroom
257 teacher in the school without that position being posted:
258 Provided, That the employee is certified and/or licensed
259 and agrees to the reassignment.
(r) Any board failing to comply with the provisions of this article may be compelled to do so by mandamus and shall be liable to any party prevailing against the board for court costs and reasonable attorney fees as determined and established by the court. Further, employees denied promotion or employment in violation of this section shall be awarded the job, pay and any applicable benefits retroactive to the date of the violation and payable entirely from local funds. Further, the board shall be liable to any party prevailing against the board for any court reporter costs including copies of transcripts.

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

§18A-4-7b. Calculation of seniority for professional personnel.

1 Notwithstanding any other provision of this code to the contrary, seniority for professional personnel as defined in section one, article one, chapter eighteen-a of this code shall be calculated pursuant to the provisions of section seven-a of this article as well as the following: Provided,

2 That any recalculation of seniority of a professional personnel employee that may be required in order to remain consistent with the provisions contained herein shall be calculated retroactively, but shall not be utilized for the purposes of reversing any decision that has been made or grievance that has been filed prior to the effective date of this section:

(a) A professional employee shall begin to accrue seniority upon commencement of the employee’s duties.

(b) An employee shall receive seniority credit for each day the employee is professionally employed regardless of whether the employee receives pay on that day: Provided,
the employee is suspended without pay pursuant to section eight, article two of this chapter: Provided, however, That an employee who is on an approved leave of absence shall accrue seniority during the period of time that the employee is on the approved leave of absence.

(c) Any professional employee whose employment with a county board of education is terminated either voluntarily or through a reduction-in-force shall, upon reemployment with the same board of education in a regular full-time position, receive credit for all seniority previously accumulated with the board of education at the date the employee’s employment was terminated.

(d) Any professional employee whose employment has been terminated through reduction in force and whose name is on the preferred recall list shall retain all accumulated seniority for the purpose of seeking reemployment with the county from which he or she was terminated and nothing in this section may be construed to the contrary.

(e) Any professional employee employed for a full employment term but in a part-time position shall receive seniority credit for each day of employment prorated to the proportion of a full employment day the employee is required to work: Provided, That nothing herein allows a regular full-time employee to be credited with less than a full day of seniority credit for each day the employee is employed by the board: Provided, however, That this calculation of seniority for part-time professional personnel is prospective and does not reduce any seniority credit accumulated by any employee prior to the effective date of this section: Provided further, That for the purposes of this section a part-time employee shall be defined as an employee who is employed less than three and one-half hours per day.

§18A-4-8b. Seniority rights for school service personnel.
(a) A county board shall make decisions affecting promotions and the filling of any service personnel positions of employment or jobs occurring throughout the school year that are to be performed by service personnel as provided in section eight of this article, on the basis of seniority, qualifications and evaluation of past service.

(b) Qualifications shall mean that the applicant holds a classification title in his category of employment as provided in this section and must be given first opportunity for promotion and filling vacancies. Other employees then must be considered and shall qualify by meeting the definition of the job title as defined in section eight of this article, that relates to the promotion or vacancy. If requested by the employee, the board must show valid cause why an employee with the most seniority is not promoted or employed in the position for which he or she applies. Applicants shall be considered in the following order:

1. Regularly employed service personnel;
2. Service personnel whose employment has been discontinued in accordance with this section;
3. Professional personnel who held temporary service personnel jobs or positions prior to the ninth day of June, one thousand nine hundred eighty-two, and who apply only for such temporary jobs or positions;
4. Substitute service personnel; and
5. New service personnel.

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

(d) A promotion shall be defined as any change in his employment that the employee deems to improve his working circumstance within his classification category of
employment and shall include a transfer to another classification category or place of employment if the position is not filled by an employee who holds a title within that classification category of employment. Each class title listed in section eight of this article shall be considered a separate classification category of employment for service personnel, except for those class titles having Roman numeral designations, which shall be considered a single classification of employment. The cafeteria manager class title shall be included in the same classification category as cooks. The executive secretary class title shall be included in the same classification category as secretaries. Paraprofessional, autism mentor and braille or sign language specialist class titles shall be included in the same classification category as aides.

(e) For purposes of determining seniority under this section an employee's seniority begins on the date that he or she enters into his assigned duties.

(f) Notwithstanding any other provisions of this chapter to the contrary, decisions affecting service personnel with respect to extra-duty assignments shall be made in the following manner: An employee with the greatest length of service time in a particular category of employment shall be given priority in accepting extra duty assignments, followed by other fellow employees on a rotating basis according to the length of their service time until all such employees have had an opportunity to perform similar assignments. The cycle then shall be repeated: Provided, That an alternative procedure for making extra-duty assignments within a particular classification category of employment may be utilized if the alternative procedure is approved both by the county board and by an affirmative vote of two thirds of the employees within that classification category of employment. For the purpose of this section, “extra-duty assignments” are defined as irregular jobs that occur periodically or occasionally such
as, but not limited to, field trips, athletic events, proms, banquets and band festival trips.

(g) Boards shall be required to post and date notices of all job vacancies of established existing or newly created positions in conspicuous working places for all school service employees to observe for at least five working days. The notice of the job vacancies shall include the job description, the period of employment, the amount of pay and any benefits and other information that is helpful to the employees to understand the particulars of the job. After the five-day minimum posting period all vacancies shall be filled within twenty working days from the posting date notice of any job vacancies of established existing or newly created positions. Job postings for vacancies made pursuant to this section shall be written so as to ensure that the largest possible pool of qualified applicants may apply. Job postings may not require criteria which are not necessary for the successful performance of the job and may not be written with the intent to favor a specific applicant.

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

(i) The seniority of any service personnel shall be determined on the basis of the length of time the employee has been employed by the county board within a particular job classification. For the purpose of establishing seniority for a preferred recall list as provided in this section, when an employee has been employed in one or more classifications, the seniority accrued in each previous classification shall be retained by the employee.

(j) If a county board is required to reduce the number of employees within a particular job classification, the employee with the least amount of seniority within that classification or grades of classification shall be properly released and employed in a different grade of that classifi-
cation if there is a job vacancy: Provided, That if there is no job vacancy for employment within the classification or grades of classification, he or she shall be employed in any other job classification which he or she previously held with the county board if there is a vacancy and shall retain any seniority accrued in the job classification or grade of classification.

(k) If, prior to the first day of August after a reduction in force or transfer is approved, the reason for any particular reduction in force or transfer no longer exists as determined by the county board in its sole and exclusive judgment, the board shall rescind the reduction in force or transfer and shall notify the affected employee in writing of his or her right to be restored to his or her former position of employment. Within five days of being so notified, the affected employee shall notify the board of his or her intent to return to his or her former position of employment or the right of restoration to the former position shall terminate: Provided, That the board shall not rescind the reduction in force of an employee until all employees with more seniority in the classification category on the preferred recall list have been offered the opportunity for recall to regular employment as provided in this section. If there are insufficient vacant positions to permit reemployment of all more senior employees on the preferred recall list within the classification category of the employ who was subject to reduction in force, the position of the released employee shall be posted and filled in accordance with this section.

(l) If two or more employees accumulate identical seniority, the priority shall be determined by a random selection system established by the employees and approved by the county board.

(m) All employees whose seniority with the county board is insufficient to allow their retention by the county board during a reduction in work force shall be placed
upon a preferred recall list and shall be recalled to em-
ployment by the county board on the basis of seniority.

(n) Employees placed upon the preferred list shall be
recalled to any position openings by the county board
within the classification(s), where they had previously
been employed, or to any lateral position for which the
employee is qualified or to a lateral area for which an
employee has certification and/or licensure.

(o) Employees on the preferred recall list shall not
forfeit their right to recall by the county board if compel-
ing reasons require an employee to refuse an offer of
reemployment by the county board.

(p) The county board shall notify all employees on the
preferred recall list of all position openings that from time
to time exist. The notice shall be sent by certified mail to
the last known address of the employee; it is the duty of
each such employee to notify the county board of any
change in the address of the employee.

(q) No position openings may be filled by the county
board, whether temporary or permanent, until all employ-
ees on the preferred recall list have been properly notified
of existing vacancies and have been given an opportunity
to accept reemployment.

(r) An employee released from employment for lack of
need as provided in sections eight-a or six, article two of
this chapter shall be accorded preferred recall status on
the first day of July of the succeeding school year if the
employee has not been reemployed as a regular employee.

(s) Any board failing to comply with the provisions of
this article may be compelled to do so by mandamus and
is liable to any party prevailing against the board for court
costs and the prevailing party's reasonable attorney fee, as
determined and established by the court. Further, employ-
ees denied promotion or employment in violation of this
section shall be awarded the job, pay and any applicable
benefits retroactively to the date of the violation and shall be paid entirely from local funds. Further, the board is liable to any party prevailing against the board for any court reporter costs including copies of transcripts.

§18A-4-19. Alteration of contract.

(a) Notwithstanding the provisions of section seven-a of this article relating to professional personnel or any other section of this code to the contrary, any alteration of an employment contract of a professional educator who is employed for more than two hundred days, which alteration changes the number of days in the employment term, shall not be deemed a creation of a new position, nor shall such alteration require the posting of the position.

Notwithstanding the provisions of section seven-a of this article relating to professional personnel or any other section of this code to the contrary, any alteration of an employment contract of a professional educator which reduces or eliminates the local salary supplement or the benefits provided to such employee due to a defeat of a special levy, or a loss in assessed values or events over which it has no control and for which the county board has received approval from the state board prior to making such reduction or elimination in accordance with section five-a of this article, shall not require termination of said employment contract as set forth in sections two and eight-a, article two of this chapter, nor shall it be deemed a creation of a new position, nor shall such alteration require the posting of the position.

(b) Notwithstanding the provisions of section eight-b of this article relating to school service personnel or any other section of this code to the contrary, any alteration of an employment contract of a service personnel employee who is employed for more than two hundred days, which alteration changes the number of days in the employment term, shall not be deemed a creation of a new position, nor shall such alteration require the posting of the position.
Notwithstanding the provisions of section eight-b of this article relating to school service personnel or any other section of this code to the contrary, any alteration of an employment contract of a service personnel employee which reduces or eliminates the local salary supplement or the benefits provided to such employee due to a defeat of a special levy, or a loss in assessed values or events over which it has no control and for which the county board has received approval from the state board prior to making such reduction or elimination in accordance with section five-b of this article, shall not require termination of said employment contract as set forth in sections six and eight-a, article two of this chapter, nor shall it be deemed a creation of a new position, nor shall such alteration require the posting of the position.
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.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within........... was approved........... this the........... Day of........... , 2001.

Governor