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FILED

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**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**

FILED

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

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COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 227**

(SENATORS HUNTER, BOWMAN, FACEMYER, HELMICK,  
CALDWELL, REDD AND MITCHELL, *original sponsors*)

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[Passed April 14, 2001; in effect from passage.]

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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
- 2 administrative certificate endorsed for superintendent, or
- 3 a first class permit endorsed for superintendent: *Provided,*

4 That a superintendent who holds a first class permit may  
5 be appointed for only one year, and may be reappointed  
6 two times for an additional year each upon an annual  
7 evaluation by the board and a determination of satisfac-  
8 tory performance and reasonable progress toward comple-  
9 tion of the requirements for a professional administrative  
10 certificate endorsed for superintendent: *Provided, how-*  
11 *ever,* That any candidate for superintendent who possesses  
12 an earned doctorate from an accredited institution of  
13 higher education, has completed three successful years of  
14 teaching in public education and has the equivalent of  
15 three years of experience in management or supervision,  
16 upon employment by the county board of education, shall  
17 be granted a permanent administrative certificate and  
18 shall be a licensed county superintendent. Any person  
19 employed as assistant superintendent or educational  
20 administrator prior to the twenty-seventh day of June, one  
21 thousand nine hundred eighty-eight, and who was previ-  
22 ously employed as superintendent is not required to hold  
23 the professional administrative certificate endorsed for  
24 superintendent.

25 (b) Before entering upon the discharge of his or her  
26 duties the superintendent shall file with the president of  
27 the board a health certificate from a reputable physician,  
28 on a form prescribed by the state department of education,  
29 certifying that he or she is physically fit for the duties of  
30 his or her office and that he or she has no infectious or  
31 contagious disease; and if the superintendent, due to  
32 accident or illness, becomes incapacitated to an extent that  
33 could lead to a prolonged absence, the board, upon unani-  
34 mous vote, may enter an order declaring the incapacity  
35 and it shall appoint an acting superintendent until such  
36 time as a majority of the members of the board determine  
37 that the incapacity no longer exists. However, an acting  
38 superintendent shall not serve as such for more than one  
39 year or later than the expiration date of the superinten-  
40 dent's term, whichever is less, without being reappointed  
41 by the board of education.

42 (c) Upon finding that the course work needed by a  
 43 superintendent who holds a first class permit endorsed for  
 44 superintendent is not available or is not scheduled in a  
 45 manner at state institutions of higher education which will  
 46 enable him or her to complete the normal requirements for  
 47 a professional administrative certificate endorsed for  
 48 superintendent within the three-year period allowed for  
 49 appointment and reappointment under the permit, the  
 50 state board shall adopt a rule in accordance with article  
 51 three-b, chapter twenty-nine-a of this code to enable  
 52 completion of the requirements, or comparable alternative  
 53 requirements, for a professional administrative certificate  
 54 endorsed for superintendent.

**ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.**

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

1 (a) There is established at every public school in this  
 2 state a faculty senate which shall be comprised of all  
 3 permanent, full-time professional educators employed at  
 4 the school who shall all be voting members. Professional  
 5 educators as used in this section means professional  
 6 educators as defined in chapter eighteen-a of this code. A  
 7 quorum of more than one half of the voting members of  
 8 the faculty shall be present at any meeting of the faculty  
 9 senate at which official business is conducted. Prior to the  
 10 beginning of the instructional term each year, but within  
 11 the employment term, the principal shall convene a  
 12 meeting of the faculty senate to elect a chair, vice chair  
 13 and secretary and discuss matters relevant to the begin-  
 14 ning of the school year. The vice chair shall preside at  
 15 meetings when the chair is absent. Meetings of the faculty  
 16 senate shall be held on a regular basis as determined by a  
 17 schedule approved by the faculty senate and amended  
 18 from time to time if needed. Emergency meetings may be  
 19 held at the call of the chair or a majority of the voting  
 20 members by petition submitted to the chair and vice chair.  
 21 An agenda of matters to be considered at a scheduled

22 meeting of the faculty senate shall be available to the  
23 members at least two employment days prior to the  
24 meeting and in the case of emergency meetings, as soon as  
25 possible prior to the meeting. The chair of the faculty  
26 senate may appoint such committees as may be desirable  
27 to study and submit recommendations to the full faculty  
28 senate, but the acts of the faculty senate shall be voted  
29 upon by the full body.

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

42 (1) Each faculty senate shall control funds allocated to  
43 the school from legislative appropriations pursuant to  
44 section nine, article nine-a of this chapter. From such  
45 funds, each classroom teacher and librarian shall be  
46 allotted fifty dollars for expenditure during the instruc-  
47 tional year for academic materials, supplies or equipment  
48 which, in the judgment of the teacher or librarian, will  
49 assist him or her in providing instruction in his or her  
50 assigned academic subjects or shall be returned to the  
51 faculty senate: *Provided*, That nothing contained herein  
52 shall prohibit such funds from being used for programs  
53 and materials that, in the opinion of the teacher, enhance  
54 student behavior, increase academic achievement, improve  
55 self-esteem and address the problems of students at-risk.  
56 The remainder of funds shall be expended for academic  
57 materials, supplies or equipment in accordance with a  
58 budget approved by the faculty senate. Notwithstanding

59 any other provisions of the law to the contrary, funds not  
60 expended in one school year shall be available for expen-  
61 diture in the next school year: *Provided, however,* That  
62 the amount of county funds budgeted in a fiscal year shall  
63 not be reduced throughout the year as a result of the  
64 faculty appropriations in the same fiscal year for such  
65 materials, supplies and equipment. Accounts shall be  
66 maintained of the allocations and expenditures of such  
67 funds for the purpose of financial audit. Academic  
68 materials, supplies or equipment shall be interpreted  
69 broadly, but shall not include materials, supplies or  
70 equipment which will be used in or connected with  
71 interscholastic athletic events.

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

81 (3) A faculty senate may nominate teachers for recogni-  
82 tion as outstanding teachers under state and local teacher  
83 recognition programs and other personnel at the school,  
84 including parents, for recognition under other appropriate  
85 recognition programs and may establish such programs for  
86 operation at the school.

87 (4) A faculty senate may submit recommendations to the  
88 principal regarding the assignment scheduling of secretar-  
89 ies, clerks, aides and paraprofessionals at the school.

90 (5) A faculty senate may submit recommendations to the  
91 principal regarding establishment of the master curricu-  
92 lum schedule for the next ensuing school year.

93 (6) A faculty senate may establish a process for the  
94 review and comment on sabbatical leave requests submit-

95 ted by employees at the school pursuant to section eleven,  
96 article two of this chapter.

97 (7) Each faculty senate shall elect three faculty represen-  
98 tatives to the local school improvement council established  
99 pursuant to section two of this article.

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

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

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

116 (11) On or after the first day of January, one thousand  
117 nine hundred ninety-two, any faculty senate may review  
118 the evaluation procedure as conducted in their school to  
119 ascertain whether such evaluations were conducted in  
120 accordance with the written system required pursuant to  
121 section twelve, article two, chapter eighteen-a of this code  
122 and the general intent of this Legislature regarding  
123 meaningful performance evaluations of school personnel.  
124 If a majority of members of the faculty senate determine  
125 that such evaluations were not so conducted, they shall  
126 submit a report in writing to the state board of education:  
127 *Provided*, That nothing herein shall create any new right  
128 of access to or review of any individual's evaluations.

129 (12) Each faculty senate shall be provided by its local  
130 board of education at least a two-hour per month block of

131 noninstructional time within the school day: *Provided*,  
132 That any such designated day shall constitute a full  
133 instructional day. This time may be utilized and deter-  
134 mined at the local school level and shall include, but not  
135 be limited to, faculty senate meetings.

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

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

## **CHAPTER 18A. SCHOOL PERSONNEL.**

### **ARTICLE 2. SCHOOL PERSONNEL.**

#### **§18A-2-1. Employment in general.**

1 The employment of professional personnel shall be made  
2 by the board only upon nomination and recommendation  
3 of the superintendent: *Provided*, That the superintendent  
4 shall provide the principal at the school at which the

5 professional educator or paraprofessional employee is to  
6 be employed an opportunity to interview all qualified  
7 applicants and make recommendations to the county  
8 superintendent regarding their employment: *Provided,*  
9 *however,* That nothing shall prohibit the timely employ-  
10 ment of persons to perform necessary duties. In case the  
11 board refuses to employ any or all of the persons nomi-  
12 nated, the superintendent shall nominate others and  
13 submit the same to the board at such time as the board  
14 may direct. All personnel so nominated and recommended  
15 for employment and for subsequent assignment shall meet  
16 the certification, licensing, training and other eligibility  
17 classifications as may be required by provisions of this  
18 chapter and by state board regulation. In addition to any  
19 other information required, the application for any  
20 certification or licensing shall include the applicant's  
21 social security number. Professional personnel employed  
22 as deputy, associate or assistant superintendents by the  
23 board in offices, departments or divisions at locations  
24 other than a school and who are directly answerable to the  
25 superintendent shall serve at the will and pleasure of the  
26 superintendent and may be removed by the superintendent  
27 upon approval of the board. Such professional personnel  
28 shall retain seniority rights only in the area or areas in  
29 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.**

1 (a) Before entering upon their duties, all teachers shall  
2 execute a contract with their boards of education, which  
3 contract shall state the salary to be paid and shall be in the  
4 form prescribed by the state superintendent of schools.  
5 Every such contract shall be signed by the teacher and by  
6 the president and secretary of the board of education and  
7 when so signed shall be filed, together with the certificate  
8 of the teacher, by the secretary of the office of the board.

9 (b) A teacher's contract, under this section, shall be for  
10 a term of not less than one nor more than three years, one  
11 of which shall be for completion of a beginning teacher  
12 internship pursuant to the provisions of section two-b,  
13 article three of this chapter, if applicable; and if, after  
14 three years of such employment, the teacher who holds a  
15 professional certificate, based on at least a bachelor's  
16 degree, has met the qualifications for the same and the  
17 board of education enter into a new contract of employ-  
18 ment, it shall be a continuing contract: *Provided*, That any  
19 teacher holding a valid certificate with less than a bache-  
20 lor's degree who is employed in a county beyond the said  
21 three-year probationary period shall upon qualifying for  
22 said professional certificate based upon a bachelor's  
23 degree, if reemployed, be granted continuing contract  
24 status: *Provided, however*, That a teacher holding continu-  
25 ing contract status with one county shall be granted  
26 continuing contract status with any other county upon  
27 completion of one year of acceptable employment if such  
28 employment is during the next succeeding school year or  
29 immediately following an approved leave of absence  
30 extending no more than one year.

31 (c) The continuing contract of any teacher shall remain  
32 in full force and effect except as modified by mutual  
33 consent of the school board and the teacher, unless and  
34 until terminated: (1) By a majority vote of the full mem-  
35 bership of the board on or before the first Monday of April  
36 of the then current year, after written notice, served upon  
37 the teacher, return receipt requested, stating cause or  
38 causes and an opportunity to be heard at a meeting of the  
39 board prior to the board's action thereon; or (2) by written  
40 resignation of the teacher before that date, to initiate  
41 termination of a continuing contract. Such termination  
42 shall take effect at the close of the school year in which the  
43 contract is so terminated: *Provided*, That the contract may  
44 be terminated at any time by mutual consent of the school  
45 board and the teacher and that this section shall not affect  
46 the powers of the school board to suspend or dismiss a

47 principal or teacher pursuant to section eight of this  
48 article: *Provided, however,* That a continuing contract for  
49 any teacher holding a certificate valid for more than one  
50 year and in full force and effect during the school year one  
51 thousand nine hundred eighty-four and one thousand nine  
52 hundred eighty-five shall remain in full force and effect:  
53 *Provided further,* That a continuing contract shall not  
54 operate to prevent a teacher's dismissal based upon the  
55 lack of need for the teacher's services pursuant to the  
56 provisions of law relating to the allocation to teachers and  
57 pupil-teacher ratios. The written notification of teachers  
58 being considered for dismissal for lack of need shall be  
59 limited to only those teachers whose consideration for  
60 dismissal is based upon known or expected circumstances  
61 which will require dismissal for lack of need. An employee  
62 who was not provided notice and an opportunity for a  
63 hearing pursuant to subsection (a) of this section may not  
64 be included on the list. In case of such dismissal, the  
65 teachers so dismissed shall be placed upon a preferred list  
66 in the order of their length of service with that board, and  
67 no teacher shall be employed by the board until each  
68 qualified teacher upon the preferred list, in order, shall  
69 have been offered the opportunity for reemployment in a  
70 position for which they are qualified: *And provided*  
71 *further,* That he or she has not accepted a teaching posi-  
72 tion elsewhere. Such reemployment shall be upon a  
73 teacher's preexisting continuing contract and shall have  
74 the same effect as though the contract had been suspended  
75 during the time the teacher was not employed.

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

83 (e) Any teacher who fails to fulfill his contract with the  
84 board, unless prevented from so doing by personal illness

85 or other just cause or unless released from such contract  
86 by the board, or who violates any lawful provision thereof,  
87 shall be disqualified to teach in any other public school in  
88 the state for a period of the next ensuing school year and  
89 the state department of education or board may hold all  
90 papers and credentials of such teacher on file for a period  
91 of one year for such violation: *Provided*, That marriage of  
92 a teacher shall not be considered a failure to fulfill, or  
93 violation of, the contract.

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

105 (g) Any classroom teacher who gives written notice to  
106 the county board of education on or before the first day of  
107 February of the school year of their resignation or retire-  
108 ment from employment with the board at the conclusion of  
109 the school year shall be paid five hundred dollars from the  
110 "Early Notification of Retirement" line item established  
111 for the department of education for this purpose, subject  
112 to appropriation by the Legislature. If the appropriations  
113 to the department of education for this purpose are  
114 insufficient to compensate all applicable teachers, the  
115 department of education shall request a supplemental  
116 appropriation in an amount sufficient to compensate all  
117 such teachers. Additionally, if funds are still insufficient  
118 to compensate all applicable teachers, the priority of  
119 payment is for teachers who give written notice the  
120 earliest. This payment shall not be counted as part of the  
121 final average salary for the purpose of calculating retire-  
122 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.**

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

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

27 (c) (1) The Legislature hereby finds and declares that  
28 due to a shortage of qualified substitute teachers, a  
29 compelling state interest exists in expanding the use of  
30 retired teachers to provide service as substitute teachers.  
31 The Legislature further finds that diverse circumstances  
32 exist among the counties for the expanded use of retired  
33 teachers as substitutes.

34 (2) A person receiving retirement benefits under the  
35 provisions of article seven-a of this chapter or who is  
36 entitled to retirement benefits during the fiscal year in  
37 which that person retired may accept employment as a  
38 substitute teacher for an unlimited number of days each  
39 fiscal year without affecting the monthly retirement  
40 benefit to which the retirant is otherwise entitled if the  
41 following conditions are satisfied:

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

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

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

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

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

64 (3) Any person who retires and begins work as a substi-  
65 tute teacher within the same employment term shall lose  
66 those retirement benefits attributed to the annuity reserve,  
67 effective from the first day of employment as a retiree  
68 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.

103 (2) Prospective employable professional personnel may  
104 only be employed from candidates at a job fair who have  
105 or will graduate from college in the current school year or  
106 whose employment contract with a county board has or  
107 will be terminated due to a reduction in force in the  
108 current fiscal year.

109 (3) Prospective employable professional personnel  
110 employed are limited to three full-time prospective  
111 employable professional personnel per one hundred  
112 professional personnel employed in a county or twenty-  
113 five full-time prospective employable professional person-  
114 nel in a county, whichever is less.

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

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

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

129 (A) The counties that participated in the program;

130 (B) The number of personnel hired;

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

132 (D) The venue from which personnel were employed;

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

134 (F) The state board's recommendations on the prospec-  
135 tive 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.**

1 (a) The superintendent, subject only to approval of the  
2 board, shall have authority to assign, transfer, promote,  
3 demote or suspend school personnel and to recommend  
4 their dismissal pursuant to provisions of this chapter.  
5 However, an employee shall be notified in writing by the  
6 superintendent on or before the first Monday in April if he  
7 is being considered for transfer or to be transferred. Only  
8 those employees whose consideration for transfer or  
9 intended transfer is based upon known or expected  
10 circumstances which will require the transfer of employees  
11 shall be considered for transfer or intended for transfer  
12 and the notification shall be limited to only those employ-  
13 ees. Any teacher or employee who desires to protest such  
14 proposed transfer may request in writing a statement of  
15 the reasons for the proposed transfer. Such statement of  
16 reasons shall be delivered to the teacher or employee  
17 within ten days of the receipt of the request. Within ten  
18 days of the receipt of the statement of the reasons, the  
19 teacher or employee may make written demand upon the  
20 superintendent for a hearing on the proposed transfer  
21 before the county board of education. The hearing on the  
22 proposed transfer shall be held on or before the first  
23 Monday in May. At the hearing, the reasons for the  
24 proposed transfer must be shown.

25 (b) The superintendent at a meeting of the board on or  
26 before the first Monday in May shall furnish in writing to  
27 the board a list of teachers and other employees to be  
28 considered for transfer and subsequent assignment for the  
29 next ensuing school year. An employee who was not  
30 provided notice and an opportunity for a hearing pursuant  
31 to subsection (a) of this section may not be included on the  
32 list. All other teachers and employees not so listed shall be

33 considered as reassigned to the positions or jobs held at  
34 the time of this meeting. The list of those recommended  
35 for transfer shall be included in the minute record of such  
36 meeting and all those so listed shall be notified in writing,  
37 which notice shall be delivered in writing, by certified  
38 mail, return receipt requested, to such persons' last known  
39 addresses within ten days following said board meeting, of  
40 their having been so recommended for transfer and  
41 subsequent assignment and the reasons therefor.

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

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

**§18A-2-7a. Statewide job bank.**

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

15 the county and shall be responsible for maintaining  
16 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 meet-  
ings; 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.**

1 (a) The legislature finds that the training, certification  
2 and licensing of professional educators is not well coordi-  
3 nated with the employment laws of the state particularly  
4 with respect to the middle school grade levels. The  
5 Legislature further finds that the statutes place responsi-  
6 bility for the training, certification and licensing of  
7 professional educators with the state board of education  
8 after consultation with the secretary of education and the  
9 arts. Therefore, the Legislature hereby directs the state  
10 board and the secretary of education and the arts to  
11 undertake a study of the policies, programs and statutes  
12 relating to the training, certification and licensing of  
13 professional educators and to report their findings,  
14 conclusions and recommendations along with any neces-  
15 sary legislation for improving the coordination of the  
16 programs, policies and statutes with the needs of the  
17 public schools of this state to the legislative oversight  
18 commission on education accountability at its December,  
19 two thousand one, interim meeting. The study and  
20 recommendations shall also include an analysis of the cost  
21 and availability of certified teachers, along with recom-  
22 mended solutions, for any new courses required by state  
23 board policy to be offered in the public schools.

24 (b) The legislature finds that there is a need to address  
25 areas of critical need and shortage for professional educa-

26 tors and that an expeditious approach for doing so is  
27 through the upgrading of the education and training of  
28 fully certified teachers who because of declining enroll-  
29 ment can no longer be employed in their area of certifica-  
30 tion and licensure. Therefore, the state superintendent,  
31 the vice chancellor for administration, the chancellor of  
32 the higher education policy commission shall collaborate  
33 with the governor's workforce development office on other  
34 potential sources of funds to assist professional educators  
35 whose contract of employment with a county board of  
36 education were not renewed due to a reduction in force to  
37 gain additional certification in areas of critical need and  
38 shortage.

**ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.**

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

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

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

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

11 (1) Appropriate certification and/or licensure;

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

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

17 (4) Academic achievement;

18 (5) Relevant specialized training;

19 (6) Past performance evaluations conducted pursuant to  
20 section twelve, article two of this chapter; and

21 (7) Other measures or indicators upon which the relative  
22 qualifications of the applicant may fairly be judged.

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

29 (1) Appropriate certification and/or licensure;

30 (2) Total amount of teaching experience;

31 (3) The existence of teaching experience in the required  
32 certification area;

33 (4) Degree level in the required certification area;

34 (5) Specialized training directly related to the perfor-  
35 mance of the job as stated in the job description;

36 (6) Receiving an overall rating of satisfactory in evalua-  
37 tions over the previous two years; and

38 (7) Seniority.

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

46 (f) The seniority of classroom teachers, as defined in  
47 section one, article one of this chapter, with the exception  
48 of guidance counselors, shall be determined on the basis of

49 the length of time the employee has been employed as a  
50 regular full-time certified and/or licensed professional  
51 educator by the county board of education and shall be  
52 granted in all areas that the employee is certified and/or  
53 licensed.

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

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

77 (i) Employment for a full employment term shall equal  
78 one year of seniority, but no employee may accrue more  
79 than one year of seniority during any given fiscal year.  
80 Employment for less than the full employment term shall  
81 be prorated. A random selection system established by the  
82 employees and approved by the board shall be used to  
83 determine the priority if two or more employees accumu-  
84 late identical seniority: *Provided*, That when two or more

85 principals have accumulated identical seniority, decisions  
86 on reductions in force shall be based on qualifications.

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

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

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

105 (3) If an employee subject to release holds certification  
106 and/or licensure in more than one lateral area and if such  
107 employee's seniority is greater than the seniority of any  
108 other employee in one or more of those areas of certifica-  
109 tion and/or licensure, the employee subject to release shall  
110 be employed in the professional position held by the  
111 employee with the least seniority in any of those areas of  
112 certification and/or licensure; and

113 (4) If, prior to the first day of August of the year a  
114 reduction in force is approved, the reason for any particu-  
115 lar reduction in force no longer exists as determined by the  
116 county board in its sole and exclusive judgment, the board  
117 shall rescind the reduction in force and shall notify the  
118 released employee in writing of his or her right to be  
119 restored to his or her position of employment. Within five

120 days of being so notified, the released employee shall  
121 notify the board, in writing, of his or her intent to resume  
122 his or her position of employment or the right to be  
123 restored shall terminate. Notwithstanding any other  
124 provision of this subdivision, if there is another employee  
125 on the preferred recall list with proper certification and  
126 higher seniority, that person shall be placed in the position  
127 restored as a result of the reduction in force being re-  
128 scinded.

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

149 (l) After the fifth day prior to the beginning of the  
150 instructional term, no person employed and assigned to a  
151 professional position may transfer to another professional  
152 position in the county during that instructional term  
153 unless the person holding that position does not have valid  
154 certification. The provisions of this subsection are subject  
155 to the following:

156 (1) The person may apply for any posted, vacant posi-  
157 tions with the successful applicant assuming the position  
158 at the beginning of the next instructional term;

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

162 (3) The county board, upon recommendation of the  
163 superintendent may fill a position before the next instruc-  
164 tional term when it is determined to be in the best interest  
165 of the students: *Provided*, That the county superintendent  
166 shall notify the state board of each transfer of a person  
167 employed in a professional position to another profes-  
168 sional position after the fifth day prior to the beginning of  
169 the instructional term. The Legislature finds that it is not  
170 in the best interest of the students particularly in the  
171 elementary grades to have multiple teachers for any one  
172 grade level or course during the instructional term. It is  
173 the intent of the Legislature that the filling of positions  
174 through transfers of personnel from one professional  
175 position to another after the fifth day prior to the begin-  
176 ning of the instructional term should be kept to a mini-  
177 mum.

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

189 (n) Before position openings that are known or expected  
190 to extend for twenty consecutive employment days or  
191 longer for professional personnel may be filled by the

192 board, the board shall be required to notify all qualified  
193 professional personnel on the preferred list and give them  
194 an opportunity to apply, but failure to apply shall not  
195 cause the employee to forfeit any right to recall. The  
196 notice shall be sent by certified mail to the last known  
197 address of the employee, and it shall be the duty of each  
198 professional personnel to notify the board of continued  
199 availability annually, of any change in address or of any  
200 change in certification and/or licensure.

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

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

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

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

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

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

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

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

223 (3) If one or more applicants meets the qualifications  
224 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.

260 (r) Any board failing to comply with the provisions of  
261 this article may be compelled to do so by mandamus and  
262 shall be liable to any party prevailing against the board  
263 for court costs and reasonable attorney fees as determined  
264 and established by the court. Further, employees denied  
265 promotion or employment in violation of this section shall  
266 be awarded the job, pay and any applicable benefits  
267 retroactive to the date of the violation and payable  
268 entirely from local funds. Further, the board shall be  
269 liable to any party prevailing against the board for any  
270 court reporter costs including copies of transcripts.

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

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

1 Notwithstanding any other provision of this code to the  
2 contrary, seniority for professional personnel as defined in  
3 section one, article one, chapter eighteen-a of this code  
4 shall be calculated pursuant to the provisions of section  
5 seven-a of this article as well as the following: *Provided,*  
6 That any recalculation of seniority of a professional  
7 personnel employee that may be required in order to  
8 remain consistent with the provisions contained herein  
9 shall be calculated retroactively, but shall not be utilized  
10 for the purposes of reversing any decision that has been  
11 made or grievance that has been filed prior to the effective  
12 date of this section:

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

15 (b) An employee shall receive seniority credit for each  
16 day the employee is professionally employed regardless of  
17 whether the employee receives pay for that day: *Provided,*  
18 That no employee shall receive seniority credit for any day

19 the employee is suspended without pay pursuant to section  
20 eight, article two of this chapter: *Provided, however,* That  
21 an employee who is on an approved leave of absence shall  
22 accrue seniority during the period of time that the em-  
23 ployee is on the approved leave of absence.

24 (c) Any professional employee whose employment with  
25 a county board of education is terminated either volun-  
26 tarily or through a reduction-in-force shall, upon  
27 reemployment with the same board of education in a  
28 regular full-time position, receive credit for all seniority  
29 previously accumulated with the board of education at the  
30 date the employee's employment was terminated.

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

37 (e) Any professional employee employed for a full  
38 employment term but in a part-time position shall receive  
39 seniority credit for each day of employment prorated to  
40 the proportion of a full employment day the employee is  
41 required to work: *Provided,* That nothing herein allows a  
42 regular full-time employee to be credited with less than a  
43 full day of seniority credit for each day the employee is  
44 employed by the board: *Provided, however,* That this  
45 calculation of seniority for part-time professional person-  
46 nel is prospective and does not reduce any seniority credit  
47 accumulated by any employee prior to the effective date of  
48 this section: *Provided further,* That for the purposes of  
49 this section a part-time employee shall be defined as an  
50 employee who is employed less than three and one-half  
51 hours per day.

**§18A-4-8b. Seniority rights for school service personnel.**

1 (a) A county board shall make decisions affecting  
2 promotions and the filling of any service personnel  
3 positions of employment or jobs occurring throughout the  
4 school year that are to be performed by service personnel  
5 as provided in section eight of this article, on the basis of  
6 seniority, qualifications and evaluation of past service.

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

19 (1) Regularly employed service personnel;

20 (2) Service personnel whose employment has been  
21 discontinued in accordance with this section;

22 (3) Professional personnel who held temporary service  
23 personnel jobs or positions prior to the ninth day of June,  
24 one thousand nine hundred eighty-two, and who apply  
25 only for such temporary jobs or positions;

26 (4) Substitute service personnel; and

27 (5) New service personnel.

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

32 (d) A promotion shall be defined as any change in his  
33 employment that the employee deems to improve his  
34 working circumstance within his classification category of

35 employment and shall include a transfer to another  
36 classification category or place of employment if the  
37 position is not filled by an employee who holds a title  
38 within that classification category of employment. Each  
39 class title listed in section eight of this article shall be  
40 considered a separate classification category of employ-  
41 ment for service personnel, except for those class titles  
42 having Roman numeral designations, which shall be  
43 considered a single classification of employment. The  
44 cafeteria manager class title shall be included in the same  
45 classification category as cooks. The executive secretary  
46 class title shall be included in the same classification  
47 category as secretaries. Paraprofessional, autism mentor  
48 and braille or sign language specialist class titles shall be  
49 included in the same classification category as aides.

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

53 (f) Notwithstanding any other provisions of this chapter  
54 to the contrary, decisions affecting service personnel with  
55 respect to extra-duty assignments shall be made in the  
56 following manner: An employee with the greatest length  
57 of service time in a particular category of employment  
58 shall be given priority in accepting extra duty assign-  
59 ments, followed by other fellow employees on a rotating  
60 basis according to the length of their service time until all  
61 such employees have had an opportunity to perform  
62 similar assignments. The cycle then shall be repeated:  
63 *Provided*, That an alternative procedure for making extra-  
64 duty assignments within a particular classification  
65 category of employment may be utilized if the alternative  
66 procedure is approved both by the county board and by an  
67 affirmative vote of two thirds of the employees within that  
68 classification category of employment. For the purpose of  
69 this section, "extra-duty assignments" are defined as  
70 irregular jobs that occur periodically or occasionally such

71 as, but not limited to, field trips, athletic events, proms,  
72 banquets and band festival trips.

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

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

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

102 (j) If a county board is required to reduce the number of  
103 employees within a particular job classification, the  
104 employee with the least amount of seniority within that  
105 classification or grades of classification shall be properly  
106 released and employed in a different grade of that classifi-

107 cation if there is a job vacancy: *Provided*, That if there is  
108 no job vacancy for employment within the classification or  
109 grades of classification, he or she shall be employed in any  
110 other job classification which he or she previously held  
111 with the county board if there is a vacancy and shall retain  
112 any seniority accrued in the job classification or grade of  
113 classification.

114 (k) If, prior to the first day of August after a reduction  
115 in force or transfer is approved, the reason for any particu-  
116 lar reduction in force or transfer no longer exists as  
117 determined by the county board in its sole and exclusive  
118 judgment, the board shall rescind the reduction in force or  
119 transfer and shall notify the affected employee in writing  
120 of his or her right to be restored to his or her former  
121 position of employment. Within five days of being so  
122 notified, the affected employee shall notify the board of  
123 his or her intent to return to his or her former position of  
124 employment or the right of restoration to the former  
125 position shall terminate: *Provided*, That the board shall  
126 not rescind the reduction in force of an employee until all  
127 employees with more seniority in the classification cate-  
128 gory on the preferred recall list have been offered the  
129 opportunity for recall to regular employment as provided  
130 in this section. If there are insufficient vacant positions to  
131 permit reemployment of all more senior employees on the  
132 preferred recall list within the classification category of  
133 the employ who was subject to reduction in force, the  
134 position of the released employee shall be posted and filled  
135 in accordance with this section.

136 (l) If two or more employees accumulate identical  
137 seniority, the priority shall be determined by a random  
138 selection system established by the employees and ap-  
139 proved by the county board.

140 (m) All employees whose seniority with the county  
141 board is insufficient to allow their retention by the county  
142 board during a reduction in work force shall be placed

143 upon a preferred recall list and shall be recalled to em-  
144 ployment by the county board on the basis of seniority.

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

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

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

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

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

171 (s) Any board failing to comply with the provisions of  
172 this article may be compelled to do so by mandamus and  
173 is liable to any party prevailing against the board for court  
174 costs and the prevailing party's reasonable attorney fee, as  
175 determined and established by the court. Further, employ-  
176 ees denied promotion or employment in violation of this  
177 section shall be awarded the job, pay and any applicable

178 benefits retroactively to the date of the violation and shall  
179 be paid entirely from local funds. Further, the board is  
180 liable to any party prevailing against the board for any  
181 court reporter costs including copies of transcripts.

**§18A-4-19. Alteration of contract.**

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

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

24 (b) Notwithstanding the provisions of section eight-b of  
25 this article relating to school service personnel or any  
26 other section of this code to the contrary, any alteration of  
27 an employment contract of a service personnel employee  
28 who is employed for more than two hundred days, which  
29 alteration changes the number of days in the employment  
30 term, shall not be deemed a creation of a new position, nor  
31 shall such alteration require the posting of the position.

32 Notwithstanding the provisions of section eight-b of this  
33 article relating to school service personnel or any other  
34 section of this code to the contrary, any alteration of an  
35 employment contract of a service personnel employee  
36 which reduces or eliminates the local salary supplement or  
37 the benefits provided to such employee due to a defeat of  
38 a special levy, or a loss in assessed values or events over  
39 which it has no control and for which the county board has  
40 received approval from the state board prior to making  
41 such reduction or elimination in accordance with section  
42 five-b of this article, shall not require termination of said  
43 employment contract as set forth in sections six and eight-  
44 a, article two of this chapter, nor shall it be deemed a  
45 creation of a new position, nor shall such alteration  
46 require the posting of the position.

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

*Lucy P. Moore*

.....  
Chairman Senate Committee

*J. J. Langford*

.....  
Chairman House Committee

Originated in the Senate.

In effect from passage.

*Dorrell Clarke*

.....  
Clerk of the Senate

*Bryson M. Smith*

.....  
Clerk of the House of Delegates

*Carl Ray Tomblin*

.....  
President of the Senate

*John H. Harman*

.....  
Speaker House of Delegates

The within *is approved* this the *30<sup>th</sup>*  
Day of *April*....., 2001.

*Rob Wise*

.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 4/30/01

Time 2:35 pm