SENATE BILL NO. 522

(Committee Substitute for)

(BY SENATOR OLIVEIRO ET AL.)

PASSED March 8, 2003

In Effect 90 days from Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 522

(SENATORS OLIVERIO, PREZIOSO, PLYMALE, EDGELL, HUNTER, GUILLS, BOWMAN, ROWE AND LOVE, original sponsors)

[Passed March 8, 2003; in effect ninety days from passage.]

AN ACT to amend and reenact sections one-a and seven, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to removing service on certain boards in certain circumstances from limitation on service on county boards; providing for certain advisory opinions by ethics commission and specifying effect of reliance upon them by board members, members elect and persons seeking office; specifying additional training for board members and options for crediting time; and authorizing a county board of education to lease school property that is no longer needed.

Be it enacted by the Legislature of West Virginia:

That sections one-a and seven, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:
ARTICLE 5. COUNTY BOARD OF EDUCATION.

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

(a) No person shall be eligible for membership on any county board who is not a citizen, resident in such county, or who accepts a position as teacher or service personnel in the school district in which he or she is a resident or who is an elected or an appointed member of any political party executive committee, or who becomes a candidate for any other office than to succeed oneself.

(b) No member or member-elect of any board shall be eligible for nomination, election or appointment to any public office, other than to succeed oneself, or for election or appointment as a member of any political party executive committee, unless and until after that membership on the board, or his status as member-elect to the board, has been terminated at or before the time of his filing for such nomination for, or appointment to, such public office or committee: Provided, That “office” or “committee”, as used in this subsection and subsection (a) of this section, does not include service on any board, elected or appointed, profit or non profit, for which the person does not receive compensation and whose primary scope is not related to the public schools.

(c) A member or member elect of a county board, or a person desiring to become a member of a county board, may make a written request to the West Virginia ethics commission for an advisory opinion on whether another elected or appointed position held or sought by the person is an office or public office which would bar serving on the board pursuant to subsections (a) and (b) of this section. Within thirty days of receipt of the request, the ethics commission shall issue a written advisory opinion in response to the request and shall also publish such opinion in a manner which to the fullest extent possible does not reveal the identity of the person making the
request. Any county board member who relied in good faith upon an advisory opinion issued by the West Virginia ethics commission that holding a particular office or public office is not a bar from membership on a county board of education and against whom proceedings are subsequently brought for removal from the county board on the basis of holding such office or offices shall be entitled to reimbursement by the county board for reasonable attorney’s fees and court costs incurred by the member in defending against such proceedings, regardless of the outcome the proceedings. Further, no vote cast by the member at a meeting of the board shall be invalidated due to a subsequent finding that holding the particular office or public is a bar to membership on the county board. Good faith reliance on a written advisory opinion of the West Virginia ethics commission that a particular office or public office is not a bar to membership on a county board of education is an absolute defense to any civil suit or criminal prosecution arising from any proper action taken within the scope of membership on the board, becoming a member elect of the board or seeking election to the board.

(d) Any person who is elected or appointed to a county board on or after the fifth day of May, one thousand nine hundred ninety-two, shall possess at least a high school diploma or a general educational development (GED) diploma: Provided, That this provision shall not apply to members or members-elect who have taken office prior to the fifth day of May, one thousand nine hundred ninety-two, and who serve continuously therefrom.

(e) No person elected to a county board after the first day of July, one thousand nine hundred ninety, shall assume the duties of board member unless he or she has first attended and completed a course of orientation relating to boardmanship and governance effectiveness which shall be given between the date of election and the beginning of the member’s term of office: Provided, That a portion or portions of subsequent training such as that offered in orientation may be provided to members
after they have commenced their term of office: Provided, however, That attendance at the session of orientation given between the date of election and the beginning of the member's term of office shall permit such member or members to assume the duties of board member, as specified in this section. Members appointed to the board shall attend and complete the next such course offered following their appointment: Provided further, That the provisions of this section relating to orientation shall not apply to members who have taken office prior to the first day of July, one thousand nine hundred eighty-eight, and who serve continuously therefrom.

(f) Commencing on the effective date of this section, members shall annually receive seven clock hours of training in areas relating to boardsmanship, governance effectiveness, and school performance issues including, but not limited to, pertinent state and federal statutes such as the “Process for Improving Education” set forth in section five, article two-e of this chapter and the “No Child Left Behind Act” and their respective administrative rules. Such orientation and training shall be approved by the state board and conducted by the West Virginia school board association or other organization or organizations approved by the state board: Provided, That the state board may exclude time spent in training on school performance issues from the requisite seven hours herein required: Provided, however, That if the state board elects to exclude time spent in training on school performance issues from the requisite seven hours, such training shall be limited by the state board to a feasible and practicable amount of time. Failure to attend and complete such an approved course of orientation and training relating to boardsmanship and governance effectiveness without good cause as determined by legislative rules of the state board shall constitute neglect of duty.

(g) In the final year of any four-year term of office, a member shall satisfy the annual training requirement before the first day of January. The state board shall petition the circuit
court of Kanawha County to remove any county board member who has failed to or who refuses to attend and complete the approved course of orientation and training. If the county board member fails to show good cause for not attending the approved course of orientation and training, the court shall remove the member from office.

§ 18-5-7. Sale of school property at public auction; rights of grantor of lands in rural communities; oil and gas leases; disposition of proceeds; lease of school property.

(a) Except as set forth in subsection (b) of this section, if at any time a county board determines that any building or any land is no longer needed for school purposes, the county board may sell, dismantle, remove or relocate the building and sell the land on which it is located at public auction, after proper notice and on such terms as it orders, to the highest responsible bidder.

(b) Notwithstanding the provisions of subsection (a) of this section, in rural communities, the grantor of the lands or his or her heirs or assigns has the right to purchase at the sale, the land, exclusive of the buildings on the land and the mineral rights, at the same price for which it was originally sold: Provided, That the sale to the board was not a voluntary arms length transaction for valuable consideration approximating the fair market value of the property at the time of the sale to the board Provided, however, That the provisions of this section may not operate to invalidate any provision of the deed to the contrary.

(c) The county board, by the same method set forth in subsection (a) of this section for the sale of school buildings and lands, may, in lieu of offering the property for sale, enter into a lease for oil or gas or other minerals any lands or school sites owned in fee by it. The proceeds of the sales and rentals shall be placed to the credit of the fund or funds of the district as the county board may direct.
(d) The county board may make any sale of property subject to the provision that all liability for hazards associated with the premises are to be assumed by the purchaser. In any sale by the county board of improved property in which the actual consideration is less than ten thousand dollars or in any sale of unimproved property in which the actual consideration is less than one thousand dollars, the county board shall make any sale of property subject to the provision that all liability for hazards associated with the premises are to be assumed by the purchaser. The county board shall inform any prospective purchaser of known or suspected hazards associated with the property.

(e) Except as provided by the provisions of subsection (b) of this section, where a county board determines that any school property is no longer needed for school purposes, the county board may, upon determining that it will serve the best interests of the school system and the community, offer the property for lease. The procedure set forth in subsection (a) of this section relating to sale of school buildings and lands shall apply to leasing the school property. Any lease authorized by the provisions of this subsection shall be in writing. The writing shall include a recitation of all known or reasonably suspected hazards associated with the property, an assumption by the lessee of all liability related to all hazards, whether disclosed or not, and provisions wherein the lessee assumes all liability for any actions arising from the property during the term of the lease.

(f) Notwithstanding any provision of this section to the contrary, the provisions of this section concerning sale or lease at public auction may not apply to a county board selling, leasing or otherwise disposing of its property for a public use to the state of West Virginia, or its political subdivisions, including county commissions, for an adequate consideration without considering alone the present commercial or market value of the property.
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 ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is hereby approved this the Day of March, 2003.

Governor
PRESENTED TO THE GOVERNOR

Date 3-15-03
Time 10:35 AM