Senate Bill No. 1006

(By Senators Tomblin (Mr. President) and Caruth, By Request of the Executive)

[Passed June 2, 2009; to take effect July 1, 2009.]
ENROLLED

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AN ACT to amend and reenact §18-5-4 of the Code of West Virginia, 1931, as amended; to amend and reenact §18A-1-1 of said code; and to amend and reenact §18A-2-2, §18A-2-6, §18A-2-7 and §18A-2-8a of said code, all relating to the hiring, termination, transfer and reassignment of teachers and school personnel; revising definition of "long-term substitute"; revising certain dates upon which action must be taken with respect to the hiring, termination, resignation or transfer of teachers and school personnel; clarifying probationary professional employee contract; providing conditional contract of prospective and recent graduates and prospective employable professional personnel; revising dates regarding the early notification of retirement; providing for nonrevocation of early notification; and providing an economic hardship exception.

Be it enacted by the Legislature of West Virginia:
That §18-5-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §18A-1-1 of said code be amended and reenacted; and that §18A-2-2, §18A-2-6, §18A-2-7 and §18A-2-8a of said code be amended and reenacted, all to read as follows:

CHAPTER 18. EDUCATION.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-4. Meetings; employment and assignment of teachers; budget hearing; compensation of members; affiliation with state and national associations.

(a) The county board shall meet on the first Monday in July, and upon the dates provided by law for the laying of levies, and at any other times the county board fixes upon its records. Subject to adequate public notice, nothing in this section prohibits the county board from conducting regular meetings in facilities within the county other than the county board office. At any meeting as authorized in this section and in compliance with the provisions of chapter eighteen-a of this code, the county board may employ qualified teachers, or those who will qualify by the time they enter upon their duties, necessary to fill existing or anticipated vacancies for the current or next ensuing school year. Meetings of the county board shall be held in compliance with the provisions of chapter eighteen-a of this code for purposes relating to the assignment, transfer, termination and dismissal of teachers and other school employees.

(b) Special meetings may be called by the president or any three members, but no business may be transacted other than that designated in the call.

(c) In addition, a public hearing shall be held concerning the preliminary operating budget for the next fiscal year not fewer than ten days after the budget has been made
available to the public for inspection and within a reason-
able time prior to the submission of the budget to the state
board for approval. Reasonable time shall be granted at
the hearing to any person who wishes to speak regarding
any part of the budget. Notice of the hearing shall be
published as a Class I legal advertisement in compliance
with the provisions of article three, chapter fifty-nine of
this code.

(d) A majority of the members of the county board
constitutes the quorum necessary for the transaction of
official business.

(e) Board members may receive compensation at a rate
not to exceed $160 per meeting attended, but they may not
receive pay for more than fifty meetings in any one fiscal
year. Board members who serve on an administrative
council of a multicounty vocational center also may
receive compensation for attending up to twelve meetings
of the council at the same rate as for meetings of the
county board. Meetings of the council are not counted as
board meetings for purposes of determining the limit on
compensable board meetings.

(f) Members also shall be paid, upon the presentation of
an itemized sworn statement, for all necessary traveling
expenses, including all authorized meetings, incurred on
official business, at the order of the county board.

(g) When, by a majority vote of its members, a county
board considers it a matter of public interest, the county
board may join the West Virginia School Board Associa-
tion and the National School Board Association and may
pay the dues prescribed by the associations and approved
by action of the respective county boards. Membership
dues and actual traveling expenses incurred by board
members for attending meetings of the West Virginia
School Board Association may be paid by their respective
county boards out of funds available to meet actual
expenses of the members, but no allowance may be made
except upon sworn itemized statements.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 1. GENERAL PROVISIONS.

§18A-1-1. Definitions.

The definitions contained in section one, article one,
chapter eighteen of this code apply to this chapter. In
addition, the following words used in this chapter and in
any proceedings pursuant to this chapter have the mean-
ings ascribed to them unless the context clearly indicates
a different meaning:

(a) "School personnel" means all personnel employed by
a county board whether employed on a regular full-time
basis, an hourly basis or otherwise. "School personnel" is
comprised of two categories: Professional personnel and
service personnel;

(b) "Professional person" or "professional personnel"
means those persons or employees who meet the certifica-
tion requirements of the state, licensing requirements of
the state, or both, and includes a professional educator
and other professional employee;

(c) "Professional educator" has the same meaning as
"teacher" as defined in section one, article one, chapter
eighteen of this code. Professional educators are classified
as follows:

(1) "Classroom teacher" means a professional educator
who has a direct instructional or counseling relationship
with students and who spends the majority of his or her
time in this capacity;

(2) "Principal" means a professional educator who
functions as an agent of the county board and has respon-
sibility for the supervision, management and control of a
school or schools within the guidelines established by the county board. The principal's major area of responsibility is the general supervision of all the schools and all school activities involving students, teachers and other school personnel;

(3) "Supervisor" means a professional educator who is responsible for working primarily in the field with professional and other personnel in instructional and other school improvement. This category includes other appropriate titles or positions with duties that fit within this definition; and

(4) "Central office administrator" means a superintendent, associate superintendent, assistant superintendent and other professional educators who are charged with administering and supervising the whole or some assigned part of the total program of the countywide school system. This category includes other appropriate titles or positions with duties that fit within this definition;

(d) "Other professional employee" means a person from another profession who is properly licensed and who is employed to serve the public schools. This definition includes a registered professional nurse, licensed by the West Virginia Board of Examiners for Registered Professional Nurses, who is employed by a county board and has completed either a two-year (sixty-four semester hours) or a three-year (ninety-six semester hours) nursing program;

(e) "Service person" or "service personnel", whether singular or plural, means a nonteaching school employee who is not included in the meaning of "teacher" as defined in section one, article one, chapter eighteen of this code and who serves the school or schools as a whole, in a nonprofessional capacity, including such areas as secretarial, custodial, maintenance, transportation, school lunch and aides. Any reference to "service employee" or "service employees" in this chapter or chapter eighteen of
(f) "Principals Academy" or "academy" means the academy created pursuant to section two-b, article three-a of this chapter;

(g) "Center for Professional Development" means the center created pursuant to section one, article three-a of this chapter;

(h) "Job-sharing arrangement" means a formal, written agreement voluntarily entered into by a county board with two or more of its employees who wish to divide between them the duties and responsibilities of one authorized full-time position;

(i) "Prospective employable professional person", whether singular or plural, means a certified professional educator who:

1. Has been recruited on a reserve list of a county board;
2. Has been recruited at a job fair or as a result of contact made at a job fair;
3. Has obtained regular employment status through the job posting process provided in section seven-a, article four of this chapter; and
4. Has obtained a baccalaureate degree from an accredited institution of higher education within the past year;

(j) "Dangerous student" means a student who is substantially likely to cause serious bodily injury to himself or another individual within that student's educational environment, which may include any alternative education environment, as evidenced by a pattern of violent behavior exhibited by the student and documented in writing by the school, with the documentation of violent behavior exhibited by the student, with the documentation.
provided to the student and parent or guardian at the time of any offense;

(k) "Alternative education" means an authorized departure from the regular school program designed to provide educational and social development for students whose disruptive behavior places them at risk of not succeeding in the traditional school structures and in adult life without positive interventions; and

(l) "Long-term substitute" means a substitute employee who fills a vacant position:

That the county superintendent expects to extend for at least thirty consecutive days, and is either:

(A) Listed in the job posting as a long-term substitute position of over thirty days; or

(B) Listed in a job posting as a regular, full-time position and:

(i) Is not filled by a regular, full-time employee; and

(ii) Is filled by a substitute employee.

For the purposes of section two, article sixteen, chapter five of this code, long-term substitute does not include a retired employee hired to fill the vacant position.

ARTICLE 2. SCHOOL PERSONNEL.

§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; written notice bonus for teachers and professional personnel.

(a) Before entering upon their duties, all teachers shall execute a contract with their county boards, which shall
state the salary to be paid and shall be in the form prescribed by the state superintendent. Each contract shall be signed by the teacher and by the president and secretary of the county board and shall be filed, together with the certificate of the teacher, by the secretary of the office of the county board: Provided, That when necessary to facilitate the employment of employable professional personnel and prospective and recent graduates of teacher education programs who have not yet attained certification, the contract may be signed upon the condition that the certificate is issued to the employee prior to the beginning of the employment term in which the employee enters upon his or her duties.

(b) Each teacher's contract, under this section, shall be designated as a probationary or continuing contract. A probationary teacher's contract 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. 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 a bachelor's degree and the county board enter into a new contract of employment, it shall be a continuing contract, subject to the following:

(1) Any teacher holding a valid certificate with less than a bachelor's degree who is employed in a county beyond the three-year probationary period shall upon qualifying for the professional certificate based upon a bachelor's degree, if reemployed, be granted continuing contract status; and

(2) 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 the 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, subject to the following:

(1) A continuing contract may not be terminated except:

(A) By a majority vote of the full membership of the
county board on or before February 1 of the then current
year, after written notice, served upon the teacher, return
receipt requested, stating cause or causes and an opportu-
nity to be heard at a meeting of the board prior to the
board’s action on the termination issue; or

(B) By written resignation of the teacher on or before
February 1 to initiate termination of a continuing con-
tract;

(2) The termination shall take effect at the close of the
school year in which the contract is terminated;

(3) The contract may be terminated at any time by
mutual consent of the school board and the teacher;

(4) This section does not affect the powers of the school
board to suspend or dismiss a principal or teacher pursu-
ant to section eight of this article;

(5) 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 1984-1985 shall remain
in full force and effect;

(6) A continuing contract does 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 this subsection may not be included on the list. In case of dismissal for lack of need, a dismissed teacher shall be placed upon a preferred list in the order of their length of service with that board. No teacher may be employed by the board until each qualified teacher upon the preferred list, in order, has been offered the opportunity for reemployment in a position for which he or she is qualified, not including a teacher who has accepted a teaching position elsewhere. The reemployment shall be upon a teacher's preexisting continuing contract and has 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 a continuing contract, the board may provide for released time of a teacher for any special professional or governmental assignment without jeopardizing the contractual rights of the teacher or any other rights, privileges or benefits under the provisions of this chapter. Released time shall be provided for any professional educator while serving as a member of the Legislature during any duly constituted session of that body and its interim and statutory committees and commissions without jeopardizing his or her contractual rights or any other rights, privileges, benefits or accrual of experience for placement on the state minimum salary schedule in the following school year under the provisions of this chapter, board policy and law.

(e) Any teacher who fails to fulfill his or her contract with the board, unless prevented from doing so by personal illness or other just cause or unless released from his
or her contract by the board, or who violates any lawful
provision of the contract, is 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 Educa-
tion or board may hold all papers and credentials of the
teacher on file for a period of one year for the violation:
Provided, That marriage of a teacher is not 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 county board or request a leave of absence,
the resignation or leave of absence to become effective on
or before July 15 of the same year and after completion of
the employment term, may do so at any time during the
school year by written notification of the resignation or
leave of absence and any notification received by a county
board shall automatically extend the teacher's public
employee insurance coverage until August 31 of the same
year.

(g) (1) A classroom teacher who gives written notice to
the county board on or before December 1 of the school
year of his or her retirement from employment with the
board at the conclusion of the school year shall be paid
$500 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
retirement.
(2) The position of a classroom teacher providing written notice of retirement pursuant to this subsection may be considered vacant and the county board may immediately post the position as an opening to be filled at the conclusion of the school year. If a teacher has been hired to fill the position of a retiring classroom teacher prior to the start of the next school year, the retiring classroom teacher is disqualified from continuing his or her employment in that position. However, the retiring classroom teacher may be permitted to continue his or her employment in that position and forfeit the early retirement notification payment if, after giving notice of retirement in accordance with this subsection, he or she becomes subject to a significant unforeseen financial hardship, including a hardship caused by the death or illness of an immediate family member or loss of employment of a spouse. Other significant unforeseen financial hardships shall be determined by the county superintendent on a case-by-case basis. This subsection does not prohibit a county school board from eliminating the position of a retiring classroom teacher.

§18A-2-6. Continuing contract status for service personnel; termination.

After three years of acceptable employment, each service personnel employee who enters into a new contract of employment with the board shall be granted continuing contract status: Provided, That a service personnel employee 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. The continuing contract of any such employee shall remain in full force and effect except as modified by mutual consent of the school board and the employee, unless and until termi-
nated with written notice, stating cause or causes, to the
employee, by a majority vote of the full membership of the
board before February 1 of the then current year, or by
written resignation of the employee on or before that date.
The affected employee has the right of a hearing before the
board, if requested, before final action is taken by the
board upon the termination of such employment.

Those employees who have completed three years of
acceptable employment as of the effective date of this
legislation shall be granted continuing contract status.

§18A-2-7. Assignment, transfer, promotion, demotion, suspen-
sion and recommendation of dismissal of school
personnel by superintendent; preliminary notice
of transfer; hearing on the transfer; proof re-
quired.

(a) The superintendent, subject only to approval of the
board, may assign, transfer, promote, demote or suspend
school personnel and recommend their dismissal pursuant
to provisions of this chapter. However, an employee shall
be notified in writing by the superintendent on or before
February 1 if he or she is being considered for transfer or
to be transferred. Only those employees whose consider-
atation 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 the proposed transfer may request in
writing a statement of the reasons for the proposed
transfer. The 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 state-
ment 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 educa-
The hearing on the proposed transfer shall be held on or before March 15. At the hearing, the reasons for the proposed transfer must be shown.

(b) The superintendent at a meeting of the board on or before March 15 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 the 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 the persons' last known addresses within ten days following the 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 the period of suspension may not exceed thirty days unless extended by order of the board.

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

§18A-2-8a. Notice to probationary personnel of rehiring or nonrehiring; hearing.
The superintendent at a meeting of the board on or before March 15 of each year shall provide in writing to the board a list of all probationary teachers that he or she recommends to be rehired for the next ensuing school year. The board shall act upon the superintendent’s recommendations at that meeting in accordance with section one of this article. The board at this same meeting shall also act upon the retention of other probationary employees as provided in sections two and five of this article. Any such probationary teacher or other probationary employee who is not rehired by the board at that meeting shall be notified in writing, by certified mail, return receipt requested, to such persons’ last known addresses within ten days following said board meeting, of their not having been rehired or not having been recommended for rehiring.

Any probationary teacher who receives notice that he or she has not been recommended for rehiring or other probationary employee who has not been reemployed may within ten days after receiving the written notice request a statement of the reasons for not having been rehired and may request a hearing before the board. The hearing shall be held at the next regularly scheduled board of education meeting or a special meeting of the board called within thirty days of the request for hearing. At the hearing, the reasons for the nonrehiring must be shown.
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.

To take effect July 1, 2009.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 17th Day of June, 2009.

Governor