

SB 1006
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WEST VIRGINIA LEGISLATURE
OFFICE OF WEST VIRGINIA
CLERK OF STATE
SEVENTY-NINTH LEGISLATURE
FIRST EXTRAORDINARY SESSION, 2009

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ENROLLED

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.]

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(BY SENATORS TOMBLIN (MR. PRESIDENT) AND CARUTH,
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[Passed June 2, 2009; to take effect July 1, 2009.]

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.

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

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

21 (c) In addition, a public hearing shall be held concerning
22 the preliminary operating budget for the next fiscal year
23 not fewer than ten days after the budget has been made

24 available to the public for inspection and within a reason-
25 able time prior to the submission of the budget to the state
26 board for approval. Reasonable time shall be granted at
27 the hearing to any person who wishes to speak regarding
28 any part of the budget. Notice of the hearing shall be
29 published as a Class I legal advertisement in compliance
30 with the provisions of article three, chapter fifty-nine of
31 this code.

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

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

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

49 (g) When, by a majority vote of its members, a county
50 board considers it a matter of public interest, the county
51 board may join the West Virginia School Board Associa-
52 tion and the National School Board Association and may
53 pay the dues prescribed by the associations and approved
54 by action of the respective county boards. Membership
55 dues and actual traveling expenses incurred by board
56 members for attending meetings of the West Virginia
57 School Board Association may be paid by their respective
58 county boards out of funds available to meet actual

59 expenses of the members, but no allowance may be made
60 except upon sworn itemized statements.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 1. GENERAL PROVISIONS.

§18A-1-1. Definitions.

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

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

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

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

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

25 (2) "Principal" means a professional educator who
26 functions as an agent of the county board and has respon-
27 sibility for the supervision, management and control of a

28 school or schools within the guidelines established by the
29 county board. The principal's major area of responsibility
30 is the general supervision of all the schools and all school
31 activities involving students, teachers and other school
32 personnel;

33 (3) "Supervisor" means a professional educator who is
34 responsible for working primarily in the field with profes-
35 sional and other personnel in instructional and other
36 school improvement. This category includes other appro-
37 priate titles or positions with duties that fit within this
38 definition; and

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

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

54 (e) "Service person" or "service personnel", whether
55 singular or plural, means a nonteaching school employee
56 who is not included in the meaning of "teacher" as defined
57 in section one, article one, chapter eighteen of this code
58 and who serves the school or schools as a whole, in a
59 nonprofessional capacity, including such areas as secre-
60 tarial, custodial, maintenance, transportation, school
61 lunch and aides. Any reference to "service employee" or
62 "service employees" in this chapter or chapter eighteen of

63 this code means service person or service personnel as
64 defined in this section;

65 (f) "Principals Academy" or "academy" means the
66 academy created pursuant to section two-b, article three-a
67 of this chapter;

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

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

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

79 (1) Has been recruited on a reserve list of a county board;

80 (2) Has been recruited at a job fair or as a result of
81 contact made at a job fair;

82 (3) Has not obtained regular employee status through the
83 job posting process provided in section seven-a, article
84 four of this chapter; and

85 (4) Has obtained a baccalaureate degree from an accred-
86 ited institution of higher education within the past year;

87 (j) "Dangerous student" means a student who is substan-
88 tially likely to cause serious bodily injury to himself,
89 herself or another individual within that student's educa-
90 tional environment, which may include any alternative
91 education environment, as evidenced by a pattern or series
92 of violent behavior exhibited by the student, and docu-
93 mented in writing by the school, with the documentation

94 provided to the student and parent or guardian at the time
95 of any offense;

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

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

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

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

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

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

111 (ii) Is filled by a substitute employee.

112 For the purposes of section two, article sixteen, chapter
113 five of this code, long-term substitute does not include a
114 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.

1 (a) Before entering upon their duties, all teachers shall
2 execute a contract with their county boards, which shall

3 state the salary to be paid and shall be in the form pre-
4 scribed by the state superintendent. Each contract shall
5 be signed by the teacher and by the president and secre-
6 tary of the county board and shall be filed, together with
7 the certificate of the teacher, by the secretary of the office
8 of the county board: *Provided*, That when necessary to
9 facilitate the employment of employable professional
10 personnel and prospective and recent graduates of teacher
11 education programs who have not yet attained certifica-
12 tion, the contract may be signed upon the condition that
13 the certificate is issued to the employee prior to the
14 beginning of the employment term in which the employee
15 enters upon his or her duties.

16 (b) Each teacher's contract, under this section, shall be
17 designated as a probationary or continuing contract. A
18 probationary teacher's contract shall be for a term of not
19 less than one nor more than three years, one of which shall
20 be for completion of a beginning teacher internship
21 pursuant to the provisions of section two-b, article three
22 of this chapter, if applicable. If, after three years of such
23 employment, the teacher who holds a professional certifi-
24 cate, based on at least a bachelor's degree, has met the
25 qualifications for a bachelor's degree and the county board
26 enter into a new contract of employment, it shall be a
27 continuing contract, subject to the following:

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

34 (2) A teacher holding continuing contract status with one
35 county shall be granted continuing contract status with
36 any other county upon completion of one year of accept-
37 able employment if the employment is during the next

38 succeeding school year or immediately following an
39 approved leave of absence extending no more than one
40 year.

41 (c) The continuing contract of any teacher shall remain
42 in full force and effect except as modified by mutual
43 consent of the school board and the teacher, unless and
44 until terminated, subject to the following:

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

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

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

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

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

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

62 (5) A continuing contract for any teacher holding a
63 certificate valid for more than one year and in full force
64 and effect during the school year 1984-1985 shall remain
65 in full force and effect;

66 (6) A continuing contract does not operate to prevent a
67 teacher's dismissal based upon the lack of need for the
68 teacher's services pursuant to the provisions of law
69 relating to the allocation to teachers and pupil-teacher

70 ratios. The written notification of teachers being consid-
71 ered for dismissal for lack of need shall be limited to only
72 those teachers whose consideration for dismissal is based
73 upon known or expected circumstances which will require
74 dismissal for lack of need. An employee who was not
75 provided notice and an opportunity for a hearing pursuant
76 to this subsection may not be included on the list. In case
77 of dismissal for lack of need, a dismissed teacher shall be
78 placed upon a preferred list in the order of their length of
79 service with that board. No teacher may be employed by
80 the board until each qualified teacher upon the preferred
81 list, in order, has been offered the opportunity for
82 reemployment in a position for which he or she is quali-
83 fied, not including a teacher who has accepted a teaching
84 position elsewhere. The reemployment shall be upon a
85 teacher's preexisting continuing contract and has the same
86 effect as though the contract had been suspended during
87 the time the teacher was not employed.

88 (d) In the assignment of position or duties of a teacher
89 under a continuing contract, the board may provide for
90 released time of a teacher for any special professional or
91 governmental assignment without jeopardizing the
92 contractual rights of the teacher or any other rights,
93 privileges or benefits under the provisions of this chapter.
94 Released time shall be provided for any professional
95 educator while serving as a member of the Legislature
96 during any duly constituted session of that body and its
97 interim and statutory committees and commissions
98 without jeopardizing his or her contractual rights or any
99 other rights, privileges, benefits or accrual of experience
100 for placement on the state minimum salary schedule in the
101 following school year under the provisions of this chapter,
102 board policy and law.

103 (e) Any teacher who fails to fulfill his or her contract
104 with the board, unless prevented from doing so by per-
105 sonal illness or other just cause or unless released from his

106 or her contract by the board, or who violates any lawful
107 provision of the contract, is disqualified to teach in any
108 other public school in the state for a period of the next
109 ensuing school year and the State Department of Educa-
110 tion or board may hold all papers and credentials of the
111 teacher on file for a period of one year for the violation:
112 *Provided*, That marriage of a teacher is not considered a
113 failure to fulfill, or violation of, the contract.

114 (f) Any classroom teacher, as defined in section one,
115 article one of this chapter, who desires to resign employ-
116 ment with a county board or request a leave of absence,
117 the resignation or leave of absence to become effective on
118 or before July 15 of the same year and after completion of
119 the employment term, may do so at any time during the
120 school year by written notification of the resignation or
121 leave of absence and any notification received by a county
122 board shall automatically extend the teacher's public
123 employee insurance coverage until August 31 of the same
124 year.

125 (g) (1) A classroom teacher who gives written notice to
126 the county board on or before December 1 of the school
127 year of his or her retirement from employment with the
128 board at the conclusion of the school year shall be paid
129 \$500 from the Early Notification of Retirement line item
130 established for the Department of Education for this
131 purpose, subject to appropriation by the Legislature. If
132 the appropriations to the Department of Education for
133 this purpose are insufficient to compensate all applicable
134 teachers, the Department of Education shall request a
135 supplemental appropriation in an amount sufficient to
136 compensate all such teachers. Additionally, if funds are
137 still insufficient to compensate all applicable teachers, the
138 priority of payment is for teachers who give written notice
139 the earliest. This payment shall not be counted as part of
140 the final average salary for the purpose of calculating
141 retirement.

142 (2) The position of a classroom teacher providing written
143 notice of retirement pursuant to this subsection may be
144 considered vacant and the county board may immediately
145 post the position as an opening to be filled at the conclu-
146 sion of the school year. If a teacher has been hired to fill
147 the position of a retiring classroom teacher prior to the
148 start of the next school year, the retiring classroom teacher
149 is disqualified from continuing his or her employment in
150 that position. However, the retiring classroom teacher
151 may be permitted to continue his or her employment in
152 that position and forfeit the early retirement notification
153 payment if, after giving notice of retirement in accordance
154 with this subsection, he or she becomes subject to a
155 significant unforeseen financial hardship, including a
156 hardship caused by the death or illness of an immediate
157 family member or loss of employment of a spouse. Other
158 significant unforeseen financial hardships shall be deter-
159 mined by the county superintendent on a case-by-case
160 basis. This subsection does not prohibit a county school
161 board from eliminating the position of a retiring classroom
162 teacher.

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

1 After three years of acceptable employment, each service
2 personnel employee who enters into a new contract of
3 employment with the board shall be granted continuing
4 contract status: *Provided*, That a service personnel em-
5 ployee holding continuing contract status with one county
6 shall be granted continuing contract status with any other
7 county upon completion of one year of acceptable employ-
8 ment if such employment is during the next succeeding
9 school year or immediately following an approved leave of
10 absence extending no more than one year. The continuing
11 contract of any such employee shall remain in full force
12 and effect except as modified by mutual consent of the
13 school board and the employee, unless and until termi-

14 nated with written notice, stating cause or causes, to the
15 employee, by a majority vote of the full membership of the
16 board before February 1 of the then current year, or by
17 written resignation of the employee on or before that date.
18 The affected employee has the right of a hearing before the
19 board, if requested, before final action is taken by the
20 board upon the termination of such employment.

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

§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, may assign, transfer, promote, demote or suspend
3 school personnel and recommend their dismissal pursuant
4 to provisions of this chapter. However, an employee shall
5 be notified in writing by the superintendent on or before
6 February 1 if he or she is being considered for transfer or
7 to be transferred. Only those employees whose consider-
8 ation for transfer or intended transfer is based upon
9 known or expected circumstances which will require the
10 transfer of employees shall be considered for transfer or
11 intended for transfer and the notification shall be limited
12 to only those employees. Any teacher or employee who
13 desires to protest the proposed transfer may request in
14 writing a statement of the reasons for the proposed
15 transfer. The statement of reasons shall be delivered to
16 the teacher or employee within ten days of the receipt of
17 the request. Within ten days of the receipt of the state-
18 ment of the reasons, the teacher or employee may make
19 written demand upon the superintendent for a hearing on
20 the proposed transfer before the county board of educa-

21 tion. The hearing on the proposed transfer shall be held on
22 or before March 15. At the hearing, the reasons for the
23 proposed transfer must be shown.

24 (b) The superintendent at a meeting of the board on or
25 before March 15 shall furnish in writing to the board a list
26 of teachers and other employees to be considered for
27 transfer and subsequent assignment for the next ensuing
28 school year. An employee who was not provided notice
29 and an opportunity for a hearing pursuant to subsection
30 (a) of this section may not be included on the list. All
31 other teachers and employees not so listed shall be consid-
32 ered as reassigned to the positions or jobs held at the time
33 of this meeting. The list of those recommended for
34 transfer shall be included in the minute record of the
35 meeting and all those so listed shall be notified in writing,
36 which notice shall be delivered in writing, by certified
37 mail, return receipt requested, to the persons' last known
38 addresses within ten days following the board meeting, of
39 their having been so recommended for transfer and
40 subsequent assignment and the reasons therefor.

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

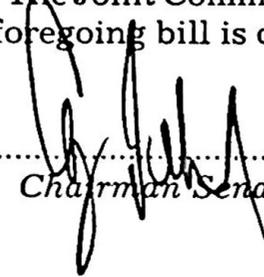
46 (d) The provisions of this section respecting hearing
47 upon notice of transfer is not applicable in emergency
48 situations where the school building becomes damaged or
49 destroyed through an unforeseeable act and which act
50 necessitates a transfer of the school personnel because of
51 the aforementioned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

**§18A-2-8a. Notice to probationary personnel of rehiring or
nonrehiring; hearing.**

1 The superintendent at a meeting of the board on or
2 before March 15 of each year shall provide in writing to
3 the board a list of all probationary teachers that he or she
4 recommends to be rehired for the next ensuing school year.
5 The board shall act upon the superintendent's recommen-
6 dations at that meeting in accordance with section one of
7 this article. The board at this same meeting shall also act
8 upon the retention of other probationary employees as
9 provided in sections two and five of this article. Any such
10 probationary teacher or other probationary employee who
11 is not rehired by the board at that meeting shall be
12 notified in writing, by certified mail, return receipt
13 requested, to such persons' last known addresses within
14 ten days following said board meeting, of their not having
15 been rehired or not having been recommended for rehiring.
16 ing.

17 Any probationary teacher who receives notice that he or
18 she has not been recommended for rehiring or other
19 probationary employee who has not been reemployed may
20 within ten days after receiving the written notice request
21 a statement of the reasons for not having been rehired and
22 may request a hearing before the board. The hearing shall
23 be held at the next regularly scheduled board of education
24 meeting or a special meeting of the board called within
25 thirty days of the request for hearing. At the hearing, the
26 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

PRESENTED TO THE
GOVERNOR

JUN 16 2009

Time 9:00 am