WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2009

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 3208

(By Delegates Fragale, Williams, Duke, Shott and Smith)

Passed April 11, 2009
In Effect Ninety Days from Passage
AN ACT to amend and reenact §18-2E-4 of the Code of West Virginia, 1931, as amended; to amend and reenact §18-4-1 and §18-4-4 of said code; and to amend and reenact §18-5-1a of said code, all relating to reporting hours of certain training received by county board members on county report card; clarifying eligibility for county board of education generally; providing for appointment and term of interim county superintendents to fill vacancies; providing for appointment and terms of acting county superintendents under certain circumstances; requiring certification to state superintendent of certain appointments, reappointments and appointment terminations; modifying deadline for setting annual compensation of county superintendents; establishing county board member training standards review committee; providing for member appointments, duties and certain expenses under certain circumstances; clarifying eligibility requirements for candidates, members and members-elect of county boards of education; prohibiting certain political activities and clarifying
which political activities are permissible; removing certain duty of state board of education regarding members of county boards of education; making technical clarifications of current law; authorizing candidates for county boards of education to hold public office until taking the oath of office as members of county boards; adding definition of neglect of duty; making other technical changes; and clarifying terms.

_Be it enacted by the Legislature of West Virginia:_

That §18-2E-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §18-4-1 and §18-4-4 of said code be amended and reenacted; and that §18-5-1a of said code be amended and reenacted, all to read as follows:

**ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.**

§18-2E-4. Better schools accountability; school, school district and statewide school report cards.

(a) For the purpose of providing information to the parents of public school children and the general public on the quality of education in the public schools which is uniform and comparable between schools within and among the various school districts, the state board shall prepare forms for school, school district and statewide school report cards and shall promulgate rules concerning the collection and reporting of data and the preparation, printing and distribution of report cards under this section. The forms shall provide for brief, concise reporting in nontechnical language of required information. Any technical or explanatory material a county board wishes to include shall be contained in a separate appendix available to the general public upon request.

(b) The school report cards shall include information as prescribed by lawfully promulgated rule by the state board to
give the parents of students at the school and the general 
public an indication of the quality of education at the school 
and other programs supportive of community needs, 
including, but not limited to, the following:

(1) Indicators of student performance at the school in 
comparison with the county, state, regional and national 
student performance, as applicable, including student 
performance by grade level in the various subjects measured 
pursuant to a uniform statewide assessment program adopted 
by the state board; school attendance rates; the percent of 
students not promoted to next grade; and the graduation rate;

(2) Indicators of school performance in comparison with 
the aggregate of all other schools in the county and the state, 
as applicable, including average class size; percent of 
enrollments in courses in high school mathematics, science, 
English and social science; amount of time per day devoted 
to mathematics, science, English and social science at 
middle, junior high and high school grade levels; percentage 
distribution of students by career cluster as indicated on the 
individualized student transition plan; pupil-teacher ratio; 
number of exceptions to pupil-teacher ratio requested by the 
county board and the number of exceptions granted; the 
number of split-grade classrooms; pupil-administrator ratio; 
operating expenditure per pupil; county expenditure by fund 
in graphic display; and the average degree classification and 
years of experience of the administrators and teachers at the 
school;

(3) The names of the members of the local school 
 improvement council, created pursuant to section two, article 
five-a of this chapter; and

(4) The name or names of the business partner or partners 
of the school.
In addition, every county board annually shall determine the number of administrators, classroom teachers and service personnel employed that exceeds the number allowed by the public school support plan and determine the amount of salary supplements that would be available per state authorized employee if all expenditures for the excess employees were converted to annual salaries for state authorized administrators, classroom teachers and service personnel within their county. The information shall be published annually in each school report card of each such county.

(c) The school district report card shall include the data for each school for each separately listed applicable indicator and the aggregate of the data for all schools, as applicable, in the county for each indicator. The statewide school report card shall include the data for each county for each separately listed indicator and the aggregate for all counties for each indicator.

(d) The report cards shall be prepared using actual local school, county, state, regional and national data indicating the present performance of the school and also shall include the state norms and the upcoming year's targets for the school and the county board.

The state board shall provide technical assistance to each county board in preparing the school and school district report cards.

Each county board shall prepare report cards in accordance with the guidelines set forth in this section. The school district report cards shall be presented at a regular school board meeting subject to applicable notice requirements and shall be made available to a newspaper of general circulation serving the district. The school report cards shall be mailed directly to the parent or parents of each
child enrolled in that school. In addition, each county board shall
submit the completed report cards to the state board which shall
make copies available to any person requesting them.

The report cards shall be completed and disseminated prior to
January 1, 1989, and in each year thereafter, and shall be based
upon information for the current school year, or for the
most recent school year for which the information is available, in
which case the year shall be clearly footnoted.

(e) In addition to the requirements of subsection (c) of this
section, the school district report card shall list the following
information:

(1) The names of the members of the county board, the
dates upon which their terms expire and whether they have attended
an orientation program for new members approved by the state board
and conducted by the West Virginia School Board Association or
other approved organizations;

(2) The number of hours of training that meets state board
standards that county board members have received during
the school term reported; and

(3) The names of the county school superintendent and every
assistant and associate superintendent and any training programs
related to their area of school administration which they have
attended.

The information also shall be reported by district in the
statewide school report card.

(f) The state board shall develop and implement a separate
report card for nontraditional public schools pursuant to the
appropriate provisions of this section to the extent practicable.
ARTICLE 4. COUNTY SUPERINTENDENT OF SCHOOLS.

§18-4-1. Election and term; interim superintendent.

(a) The county superintendent shall be appointed by the board upon a majority vote of the members thereof to serve for a term of not less than one, nor more than four years. At the expiration of the term or terms for which he or she shall have been appointed, each county superintendent shall be eligible for reappointment for additional terms of not less than one, nor more than four years.

(1) At the expiration of his or her term or terms of service the county superintendent may transfer to any teaching position in the county for which he or she is qualified and has seniority, unless dismissed for statutory reasons.

(2) The appointment of the county superintendent shall be made between January 1 and June 1 for a term beginning on July 1 following the appointment.

(b) In the event of a vacancy in the superintendent’s position that results in an incomplete term, the board may appoint an interim county superintendent:

(1) To serve until the following July 1 if the vacancy occurs before March 1.

(2) To serve until July 1 of the next following year if the vacancy occurs on or after March 1, unless a superintendent is appointed sooner.

(c) If the superintendent becomes incapacitated due to accident or illness to an extent that may lead to prolonged absence, the county board, by unanimous vote, may enter an order declaring that an incapacity exists in which case the county board shall appoint an acting superintendent to serve
until a majority of the members of the board determine that
the incapacity no longer exists. An acting superintendent
may not serve in that capacity for more than one year, nor
later than the expiration date of the superintendent’s term,
whichever occurs sooner, unless he or she is reappointed by
the county board.

(d) Immediately following the appointment of a county
superintendent or an interim county superintendent, the
president of the county board shall certify the appointment to
the state superintendent. Immediately following the
appointment of an acting county superintendent or a vote by
a majority of the members of the county board that an
incapacity no longer exists, the president of the county board
shall certify the appointment, reappointment, or appointment
termination of the acting superintendent to the state
superintendent.

(e) During his or her term of appointment, the county
superintendent shall be a state resident and shall reside in the
county which he or she serves or in a contiguous county. The
county superintendent in office on the effective date of this
section shall continue in office until the expiration of his or
her term.

§18-4-4. Compensation.

On or before June 1 of the year in which the
superintendent is appointed, the board shall fix the annual
salary of the superintendent for the period of appointment for
the term beginning on the following July 1. The board shall
pay the salary from the general current expense fund of the
district.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-1a. Eligibility of members; training requirements.
(a) A person who is a candidate for membership on a county board or who is a member or member-elect of a county board:

(1) Shall be a citizen and resident in the county in which he or she serves or seeks to serve on the county board;

(2) May not be employed by the county board on which he or she serves or seeks to serve, including employment as a teacher or service person;

(3) May not engage in the following political activities:

(A) Become a candidate for or hold any other public office, other than to succeed him or herself as a member of a county board subject to the following:

(i) A candidate for a county board, who is not currently serving on a county board, may hold another public office while a candidate if he or she resigns from the other public office prior to taking the oath of office as a county board member.

(ii) The term “public office” as used in this section does not include service on any other board, elected or appointed, profit or nonprofit, under the following conditions:

(I) The person does not receive compensation; and

(II) The primary scope of the board is not related to public schools.

(B) Become a candidate for, or serve as, an elected member of any political party executive committee;

(C) Become a candidate for, or serve as, a delegate, alternate or proxy to a national political party convention;
(D) Solicit or receive political contributions to support the election of, or to retire the campaign debt of, any candidate for partisan office;

(4) May engage in any or all of the following political activities:

(A) Make campaign contributions to partisan or bipartisan candidates;

(B) Attend political fund raisers for partisan or bipartisan candidates;

(C) Serve as an unpaid volunteer on a partisan campaign;

(D) Politically endorse any candidate in a partisan or bipartisan election; or

(E) Attend a county, state or national political party convention.

(b) 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 to determine if another elected or appointed position held or sought by the person is an office or public office which would bar service on a county board pursuant to subsection (a) of this section.

(1) Within thirty days of receipt of the request, the Ethics Commission shall issue a written advisory opinion in response to the request and also shall publish the opinion in a manner which, to the fullest extent possible, does not reveal the identity of the person making the request.

(2) A county board member who relies in good faith upon an advisory opinion issued by the West Virginia Ethics
Commission to the effect that holding a particular office or public office is not a bar from membership on a county board and against whom proceedings are subsequently brought for removal from the county board on the basis of holding that office or offices is entitled to reimbursement by the county board for reasonable attorney's fees and court costs incurred by the member in defending against these proceedings, regardless of the outcome of the proceedings.

(3) A vote cast by the member at a meeting of the county board may not be invalidated due to a subsequent finding that holding the particular office or public office is a bar to membership on the county board.

(4) 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 is an absolute defense to any civil suit or criminal prosecution arising from any proper action taken within the scope of membership on the county board, becoming a member-elect of the county board or seeking election to the county board.

(c) To be eligible for election or appointment as a member of a county board on or after May 5, 1992, a person shall possess at least a high school diploma or a general educational development (GED) diploma. This provision does not apply to members or members-elect who have taken office prior to May 5, 1992, and who serve continuously from that date forward.

(d) A person elected to a county board after July 1, 1990, may not assume the duties of county board member unless he or she has first attended and completed a course of orientation relating to boardsmanship and governance effectiveness which shall be given between the date of election and the beginning of the member's term of office under the following conditions:
(1) 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;

(2) Attendance at the session of orientation given between the date of election and the beginning of the member's term of office permits the member-elect to assume the duties of county board member, as specified in this section;

(3) Members appointed to the county board shall attend and complete the next such course offered following their appointment; and

(4) The provisions of this subsection relating to orientation do not apply to members who have taken office prior to July 1, 1988, and who serve continuously from that date forward.

(e) Annually, each member of a county board shall 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.

(1) The 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:

(A) The state board may exclude time spent in training on school performance issues from the requisite seven hours herein required; and
(B) If the state board elects to exclude time spent in training on school performance issues from the requisite seven hours, the state board shall limit the training to a feasible and practicable amount of time.

(2) Failure to attend and complete the approved course of orientation and training relating to boardsmanship and governance effectiveness without good cause as determined by the state board by duly promulgated legislative rules constitutes neglect of duty under section seven, article six, chapter six of this code.

(g) In the final year of any four-year term of office, a member shall satisfy the annual training requirement before January 1. Failure to comply with the training requirements of this section without good cause as defined by the state board by duly promulgated legislative rules constitutes neglect of duty under section seven, article six, chapter six of this code.

(h) The state board shall appoint a committee named the "county board member training standards review committee" whose members shall meet at least annually. Subject to state board approval, the committee shall determine which particular trainings and training organizations shall be approved and whether county board members have satisfied the annual training requirement. Members of the committee serve without compensation, but may be reimbursed by their agencies or employers for all reasonable and necessary expenses actually incurred in the performance of their duties under this subsection.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 13th
day of May, 2009.

Governor
PRESENTED TO THE GOVERNOR

MAY 8 2009

Time 2:25 p.m.