

HB 451R

2010 APR -2 PM 4:06

OFFICE OF THE
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2010



ENROLLED

COMMITTEE SUBSTITUTE

FOR

House Bill No. 4512

(By Delegates Caputo, Paxton, Perry,
Fragale and D. Walker)



Passed March 13, 2010

In Effect July 1, 2010

ENROLLED

2010 APR -2 PM 4:06

COMMITTEE SUBSTITUTE

OFFICE OF THE CLERK
SECRETARY OF STATE

FOR

H. B. 4512

(BY DELEGATES CAPUTO, PAXTON, PERRY,
FRAGALE AND D. WALKER)

[Passed March 13, 2010; in effect July 1, 2010.]

AN ACT to amend and reenact §18A-4-8, §18A-4-8b and §18A-4-8e of the Code of West Virginia, 1931, as amended, all relating to school service personnel; limiting assignments of director or coordinator of services; requiring school bus supervisor to be certified to operate a bus or previously certified to operate a bus; requiring supervisor of transportation and multiclassification position that includes this title first employed after certain date to have five years of experience working in transportation department and defining experience; defining itinerant status, assignments, posting, limit on positions, and exclusions; requiring additional content of notice of a job vacancy generally and aide classification category specifically; and modifying test frequency for re-certifying a bus operators.

Be it enacted by the Legislature of West Virginia:

That §18A-4-8, §18A-4-8b and §18A-4-8e of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-8. Employment term and class titles of service personnel; definitions.

1 (a) The purpose of this section is to establish an
2 employment term and class titles for service personnel. The
3 employment term for service personnel may not be less than
4 ten months. A month is defined as twenty employment days.
5 The county board may contract with all or part of these
6 service personnel for a longer term. The beginning and
7 closing dates of the ten-month employment term may not
8 exceed forty-three weeks.

9 (b) Service personnel employed on a yearly or twelve-
10 month basis may be employed by calendar months.
11 Whenever there is a change in job assignment during the
12 school year, the minimum pay scale and any county
13 supplement are applicable.

14 (c) Service personnel employed in the same classification
15 for more than the two hundred-day minimum employment
16 term shall be paid for additional employment at a daily rate
17 of not less than the daily rate paid for the two hundred-day
18 minimum employment term.

19 (d) A service person may not be required to report for
20 work more than five days per week without his or her
21 agreement, and no part of any working day may be
22 accumulated by the employer for future work assignments,
23 unless the employee agrees thereto.

24 (e) If a service person whose regular work week is
25 scheduled from Monday through Friday agrees to perform
26 work assignments on a Saturday or Sunday, the service
27 person shall be paid for at least one-half day of work for each

28 day he or she reports for work. If the service person works
29 more than three and one-half hours on any Saturday or
30 Sunday, he or she shall be paid for at least a full day of work
31 for each day.

32 (f) A custodian, aide, maintenance, office and school
33 lunch service person required to work a daily work schedule
34 that is interrupted shall be paid additional compensation in
35 accordance with this subsection.

36 (1) A maintenance person means a person who holds a
37 classification title other than in a custodial, aide, school
38 lunch, office or transportation category as provided in section
39 one, article one of this chapter.

40 (2) A service person's schedule is considered to be
41 interrupted if he or she does not work a continuous period in
42 one day. Aides are not regarded as working an interrupted
43 schedule when engaged exclusively in the duties of
44 transporting students;

45 (3) The additional compensation provided for in this
46 subsection:

47 (A) Is equal to at least one-eighth of a service person's
48 total salary as provided by the state minimum pay scale and
49 any county pay supplement; and

50 (B) Is payable entirely from county board funds.

51 (g) When there is a change in classification or when a
52 service person meets the requirements of an advanced
53 classification, his or her salary shall be made to comply with
54 the requirements of this article and any county salary
55 schedule in excess of the minimum requirements of this
56 article, based upon the service person's advanced
57 classification and allowable years of employment.

58 (h) A service person's contract, as provided in section
59 five, article two of this chapter, shall state the appropriate
60 monthly salary the employee is to be paid, based on the class
61 title as provided in this article and on any county salary
62 schedule in excess of the minimum requirements of this
63 article.

64 (i) The column heads of the state minimum pay scale and
65 class titles, set forth in section eight-a of this article, are
66 defined as follows:

67 (1) "Pay grade" means the monthly salary applicable to
68 class titles of service personnel;

69 (2) "Years of employment" means the number of years
70 which an employee classified as a service person has been
71 employed by a county board in any position prior to or
72 subsequent to the effective date of this section and includes
73 service in the Armed Forces of the United States, if the
74 employee was employed at the time of his or her induction.
75 For the purpose of section eight-a of this article, years of
76 employment is limited to the number of years shown and
77 allowed under the state minimum pay scale as set forth in
78 section eight-a of this article;

79 (3) "Class title" means the name of the position or job
80 held by a service person;

81 (4) "Accountant I" means a person employed to maintain
82 payroll records and reports and perform one or more
83 operations relating to a phase of the total payroll;

84 (5) "Accountant II" means a person employed to maintain
85 accounting records and to be responsible for the accounting
86 process associated with billing, budgets, purchasing and
87 related operations;

88 (6) “Accountant III” means a person employed in the
89 county board office to manage and supervise accounts
90 payable, payroll procedures, or both;

91 (7) “Accounts payable supervisor” means a person
92 employed in the county board office who has primary
93 responsibility for the accounts payable function and who
94 either has completed twelve college hours of accounting
95 courses from an accredited institution of higher education or
96 has at least eight years of experience performing
97 progressively difficult accounting tasks. Responsibilities of
98 this class title may include supervision of other personnel;

99 (8) “Aide I” means a person selected and trained for a
100 teacher-aide classification such as monitor aide, clerical aide,
101 classroom aide or general aide;

102 (9) “Aide II” means a service person referred to in the
103 “Aide I” classification who has completed a training program
104 approved by the state board, or who holds a high school
105 diploma or has received a general educational development
106 certificate. Only a person classified in an Aide II class title
107 may be employed as an aide in any special education
108 program;

109 (10) “Aide III” means a service person referred to in the
110 “Aide I” classification who holds a high school diploma or a
111 general educational development certificate; and

112 (A) Has completed six semester hours of college credit at
113 an institution of higher education; or

114 (B) Is employed as an aide in a special education program
115 and has one year’s experience as an aide in special education;

116 (11) “Aide IV” means a service person referred to in the
117 “Aide I” classification who holds a high school diploma or a
118 general educational development certificate; and

119 (A) Has completed eighteen hours of state board-approved
120 college credit at a regionally accredited institution of higher
121 education, or

122 (B) Has completed fifteen hours of state board-approved
123 college credit at a regionally accredited institution of higher
124 education; and has successfully completed an in-service
125 training program determined by the state board to be the
126 equivalent of three hours of college credit;

127 (12) “Audiovisual technician” means a person employed
128 to perform minor maintenance on audiovisual equipment,
129 films, and supplies and who fills requests for equipment;

130 (13) “Auditor” means a person employed to examine and
131 verify accounts of individual schools and to assist schools
132 and school personnel in maintaining complete and accurate
133 records of their accounts;

134 (14) “Autism mentor” means a person who works with
135 autistic students and who meets standards and experience to
136 be determined by the state board. A person who has held or
137 holds an aide title and becomes employed as an autism
138 mentor shall hold a multiclassification status that includes
139 both aide and autism mentor titles, in accordance with section
140 eight-b of this article;

141 (15) “Braille or sign language specialist” means a person
142 employed to provide braille and/or sign language assistance
143 to students. A service person who has held or holds an aide
144 title and becomes employed as a braille or sign language
145 specialist shall hold a multiclassification status that includes
146 both aide and braille or sign language specialist title, in
147 accordance with section eight-b of this article;

(16) “Bus operator” means a person employed to operate
school buses and other school transportation vehicles as
provided by the state board;

151 (17) “Buyer” means a person employed to review and
152 write specifications, negotiate purchase bids and recommend
153 purchase agreements for materials and services that meet
154 predetermined specifications at the lowest available costs;

155 (18) “Cabinetmaker” means a person employed to
156 construct cabinets, tables, bookcases and other furniture;

157 (19) “Cafeteria manager” means a person employed to
158 direct the operation of a food services program in a school,
159 including assigning duties to employees, approving
160 requisitions for supplies and repairs, keeping inventories,
161 inspecting areas to maintain high standards of sanitation,
162 preparing financial reports and keeping records pertinent to
163 food services of a school;

164 (20) “Carpenter I” means a person classified as a
165 carpenter’s helper;

166 (21) “Carpenter II” means a person classified as a
167 journeyman carpenter;

168 (22) “Chief mechanic” means a person employed to be
169 responsible for directing activities which ensure that student
170 transportation or other county board-owned vehicles are
171 properly and safely maintained;

172 (23) “Clerk I” means a person employed to perform
173 clerical tasks;

174 (24) “Clerk II” means a person employed to perform
175 general clerical tasks, prepare reports and tabulations and
176 operate office machines;

177 (25) “Computer operator” means a qualified person
178 employed to operate computers;

179 (26) "Cook I" means a person employed as a cook's
180 helper;

181 (27) "Cook II" means a person employed to interpret
182 menus and to prepare and serve meals in a food service
183 program of a school. This definition includes a service
184 person who has been employed as a "Cook I" for a period of
185 four years;

186 (28) "Cook III" means a person employed to prepare and
187 serve meals, make reports, prepare requisitions for supplies,
188 order equipment and repairs for a food service program of a
189 school system;

190 (29) "Crew leader" means a person employed to organize
191 the work for a crew of maintenance employees to carry out
192 assigned projects;

193 (30) "Custodian I" means a person employed to keep
194 buildings clean and free of refuse;

195 (31) "Custodian II" means a person employed as a
196 watchman or groundsman;

197 (32) "Custodian III" means a person employed to keep
198 buildings clean and free of refuse, to operate the heating or
199 cooling systems and to make minor repairs;

200 (33) "Custodian IV" means a person employed as head
201 custodians. In addition to providing services as defined in
202 "custodian III," duties may include supervising other
203 custodian personnel;

204 (34) "Director or coordinator of services" means an
205 employee of a county board who is assigned to direct a
206 department or division.

207 (A) Nothing in this subdivision prohibits a professional
208 person or a professional educator from holding this class title;

209 (B) Professional personnel holding this class title may not
210 be defined or classified as service personnel unless the
211 professional person held a service personnel title under this
212 section prior to holding the class title of “director or
213 coordinator of services.”

214 (C) The director or coordinator of services shall be
215 classified either as a professional person or a service person
216 for state aid formula funding purposes;

217 (D) Funding for the position of director or coordinator of
218 services is based upon the employment status of the director
219 or coordinator either as a professional person or a service
220 person; and

221 (E) A person employed under the class title “director or
222 coordinator of services” may not be exclusively assigned to
223 perform the duties ascribed to any other class title as defined
224 in this subsection: *Provided*, That nothing in this paragraph
225 prohibits a person in this position from being multiclassified;

226 (35) “Draftsman” means a person employed to plan,
227 design and produce detailed architectural/engineering
228 drawings;

229 (36) “Electrician I” means a person employed as an
230 apprentice electrician helper or one who holds an electrician
231 helper license issued by the State Fire Marshal;

232 (37) “Electrician II” means a person employed as an
233 electrician journeyman or one who holds a journeyman
234 electrician license issued by the State Fire Marshal;

235 (38) “Electronic technician I” means a person employed
236 at the apprentice level to repair and maintain electronic
237 equipment;

238 (39) “Electronic technician II” means a person employed
239 at the journeyman level to repair and maintain electronic
240 equipment;

241 (40) “Executive secretary” means a person employed as
242 secretary to the county school superintendent or as a
243 secretary who is assigned to a position characterized by
244 significant administrative duties;

245 (41) “Food services supervisor” means a qualified person
246 who is not a professional person or professional educator as
247 defined in section one, article one of this chapter. The food
248 services supervisor is employed to manage and supervise a
249 county school system’s food service program. The duties
250 include preparing in-service training programs for cooks and
251 food service employees, instructing personnel in the areas of
252 quantity cooking with economy and efficiency and keeping
253 aggregate records and reports;

254 (42) “Foreman” means a skilled person employed to
255 supervise personnel who work in the areas of repair and
256 maintenance of school property and equipment;

257 (43) “General maintenance” means a person employed as
258 a helper to skilled maintenance employees and to perform
259 minor repairs to equipment and buildings of a county school
260 system;

261 (44) “Glazier” means a person employed to replace glass
262 or other materials in windows and doors and to do minor
263 carpentry tasks;

264 (45) “Graphic artist” means a person employed to prepare
265 graphic illustrations;

266 (46) “Groundsman” means a person employed to perform
267 duties that relate to the appearance, repair and general care of
268 school grounds in a county school system. Additional
269 assignments may include the operation of a small heating
270 plant and routine cleaning duties in buildings;

271 (47) “Handyman” means a person employed to perform
272 routine manual tasks in any operation of the county school
273 system;

274 (48) “Heating and air conditioning mechanic I” means a
275 person employed at the apprentice level to install, repair and
276 maintain heating and air conditioning plants and related
277 electrical equipment;

278 (49) “Heating and air conditioning mechanic II” means
279 a person employed at the journeyman level to install, repair
280 and maintain heating and air conditioning plants and related
281 electrical equipment;

282 (50) “Heavy equipment operator” means a person
283 employed to operate heavy equipment;

284 (51) “Inventory supervisor” means a person employed to
285 supervise or maintain operations in the receipt, storage,
286 inventory and issuance of materials and supplies;

287 (52) “Key punch operator” means a qualified person
288 employed to operate key punch machines or verifying
289 machines;

290 (53) “Licensed practical nurse” means a nurse, licensed
291 by the West Virginia Board of Examiners for Licensed

292 Practical Nurses, employed to work in a public school under
293 the supervision of a school nurse;

294 (54) "Locksmith" means a person employed to repair and
295 maintain locks and safes;

296 (55) "Lubrication man" means a person employed to
297 lubricate and service gasoline or diesel-powered equipment
298 of a county school system;

299 (56) "Machinist" means a person employed to perform
300 machinist tasks which include the ability to operate a lathe,
301 planer, shaper, threading machine and wheel press. A person
302 holding this class title also should have the ability to work
303 from blueprints and drawings;

304 (57) "Mail clerk" means a person employed to receive,
305 sort, dispatch, deliver or otherwise handle letters, parcels and
306 other mail;

307 (58) "Maintenance clerk" means a person employed to
308 maintain and control a stocking facility to keep adequate
309 tools and supplies on hand for daily withdrawal for all school
310 maintenance crafts;

311 (59) "Mason" means a person employed to perform tasks
312 connected with brick and block laying and carpentry tasks
313 related to these activities;

314 (60) "Mechanic" means a person employed to perform
315 skilled duties independently in the maintenance and repair of
316 automobiles, school buses and other mechanical and mobile
317 equipment to use in a county school system;

318 (61) "Mechanic assistant" means a person employed as
319 a mechanic apprentice and helper;

320 (62) "Multiclassification" means a person employed to
321 perform tasks that involve the combination of two or more
322 class titles in this section. In these instances the minimum
323 salary scale shall be the higher pay grade of the class titles
324 involved;

325 (63) "Office equipment repairman I" means a person
326 employed as an office equipment repairman apprentice or
327 helper;

328 (64) "Office equipment repairman II" means a person
329 responsible for servicing and repairing all office machines
330 and equipment. A person holding this class title is
331 responsible for the purchase of parts necessary for the proper
332 operation of a program of continuous maintenance and repair;

333 (65) "Painter" means a person employed to perform
334 duties painting, finishing and decorating wood, metal and
335 concrete surfaces of buildings, other structures, equipment,
336 machinery and furnishings of a county school system;

337 (66) "Paraprofessional" means a person certified pursuant
338 to section two-a, article three of this chapter to perform duties
339 in a support capacity including, but not limited to, facilitating
340 in the instruction and direct or indirect supervision of
341 students under the direction of a principal, a teacher or
342 another designated professional educator.

343 (A) A person employed on the effective date of this
344 section in the position of an aide may not be subject to a
345 reduction in force or transferred to create a vacancy for the
346 employment of a paraprofessional;

347 (B) A person who has held or holds an aide title and
348 becomes employed as a paraprofessional shall hold a
349 multiclassification status that includes both aide and

350 paraprofessional titles in accordance with section eight-b of
351 this article; and

352 (C) When a service person who holds an aide title
353 becomes certified as a paraprofessional and is required to
354 perform duties that may not be performed by an aide without
355 paraprofessional certification, he or she shall receive the
356 paraprofessional title pay grade;

357 (67) "Payroll supervisor" means a person employed in the
358 county board office who has primary responsibility for the
359 payroll function and who either has completed twelve college
360 hours of accounting from an accredited institution of higher
361 education or has at least eight years of experience performing
362 progressively difficult accounting tasks. Responsibilities of
363 this class title may include supervision of other personnel;

364 (68) "Plumber I" means a person employed as an
365 apprentice plumber and helper;

366 (69) "Plumber II" means a person employed as a
367 journeyman plumber;

368 (70) "Printing operator" means a person employed to
369 operate duplication equipment, and to cut, collate, staple,
370 bind and shelve materials as required;

371 (71) "Printing supervisor" means a person employed to
372 supervise the operation of a print shop;

373 (72) "Programmer" means a person employed to design
374 and prepare programs for computer operation;

375 (73) "Roofing/sheet metal mechanic" means a person
3 employed to install, repair, fabricate and maintain roofs,
37 gutters, flashing and duct work for heating and ventilation;

378 (74) “Sanitation plant operator” means a person
379 employed to operate and maintain a water or sewage
380 treatment plant to ensure the safety of the plant’s effluent for
381 human consumption or environmental protection;

382 (75) “School bus supervisor” means a qualified person:

383 (A) Employed to assist in selecting school bus operators
384 and routing and scheduling school buses, operate a bus when
385 needed, relay instructions to bus operators, plan emergency
386 routing of buses and promote good relationships with parents,
387 students, bus operators and other employees; and

388 (B) Certified to operate a bus or previously certified to
389 operate a bus;

390 (76) “Secretary I” means a person employed to transcribe
391 from notes or mechanical equipment, receive callers, perform
392 clerical tasks, prepare reports and operate office machines;

393 (77) “Secretary II” means a person employed in any
394 elementary, secondary, kindergarten, nursery, special
395 education, vocational or any other school as a secretary. The
396 duties may include performing general clerical tasks;
397 transcribing from notes, stenotype, mechanical equipment or
398 a sound-producing machine; preparing reports; receiving
399 callers and referring them to proper persons; operating office
400 machines; keeping records and handling routine
401 correspondence. Nothing in this subdivision prevents a
402 service person from holding or being elevated to a higher
403 classification;

404 (78) “Secretary III” means a person assigned to the
405 county board office administrators in charge of various
406 instructional, maintenance, transportation, food services,
407 operations and health departments, federal programs or

408 departments with particular responsibilities in purchasing and
409 financial control or any person who has served for eight years
410 in a position which meets the definition of “secretary II” or
411 “secretary III”;

412 (79) “Supervisor of maintenance” means a skilled person
413 who is not a professional person or professional educator as
414 defined in section one, article one of this chapter. The
415 responsibilities include directing the upkeep of buildings and
416 shops, and issuing instructions to subordinates relating to
417 cleaning, repairs and maintenance of all structures and
418 mechanical and electrical equipment of a county board;

419 (80) “Supervisor of transportation” means a qualified
420 person employed to direct school transportation activities
421 properly and safely, and to supervise the maintenance and
422 repair of vehicles, buses and other mechanical and mobile
423 equipment used by the county school system. After July 1,
424 2010, all persons employed for the first time in a position
425 with this classification title or in a multi-classification
426 position that includes this title shall have five years of
427 experience working in the transportation department of a
428 county board. Experience working in the transportation
429 department shall consist of serving as a bus operator, bus
430 aide, assistant mechanic, mechanic, chief mechanic or in a
431 clerical position within the transportation department;

432 (81) “Switchboard operator-receptionist” means a person
433 employed to refer incoming calls, to assume contact with the
434 public, to direct and to give instructions as necessary, to
435 operate switchboard equipment and to provide clerical
436 assistance;

437 (82) “Truck driver” means a person employed to operate
438 light or heavy duty gasoline and diesel-powered vehicles;

439 (83) “Warehouse clerk” means a person employed to be
440 responsible for receiving, storing, packing and shipping
441 goods;

442 (84) “Watchman” means a person employed to protect
443 school property against damage or theft. Additional assignments
444 may include operation of a small heating plant and routine
445 cleaning duties;

446 (85) “Welder” means a person employed to provide
447 acetylene or electric welding services for a school system;
448 and

449 (86) “WVEIS data entry and administrative clerk” means
450 a person employed to work under the direction of a school
451 principal to assist the school counselor or counselors in the
452 performance of administrative duties, to perform data entry
453 tasks on the West Virginia Education Information System,
454 and to perform other administrative duties assigned by the
455 principal.

456 (j) Notwithstanding any provision in this code to the
457 contrary, and in addition to the compensation provided for
458 service personnel in section eight-a of this article, each
459 service person is entitled to all service personnel employee
460 rights, privileges and benefits provided under this or any
461 other chapter of this code without regard to the employee’s
462 hours of employment or the methods or sources of
463 compensation.

464 (k) A service person whose years of employment exceeds
465 the number of years shown and provided for under the state
466 minimum pay scale set forth in section eight-a of this article
467 may not be paid less than the amount shown for the
468 maximum years of employment shown and provided for in
469 the classification in which he or she is employed.

470 (l) Each county board shall review each service person's
471 job classification annually and shall reclassify all service
472 persons as required by the job classifications. The state
473 superintendent may withhold state funds appropriated
474 pursuant to this article for salaries for service personnel who
475 are improperly classified by the county boards. Further, the
476 state superintendent shall order a county board to correct
477 immediately any improper classification matter and, with the
478 assistance of the Attorney General, shall take any legal action
479 necessary against any county board to enforce the order.

480 (m) Without his or her written consent, a service person
481 may not be:

482 (1) Reclassified by class title; or

483 (2) Relegated to any condition of employment which
484 would result in a reduction of his or her salary, rate of pay,
485 compensation or benefits earned during the current fiscal
486 year; or for which he or she would qualify by continuing in
487 the same job position and classification held during that fiscal
488 year and subsequent years.

489 (n) Any county board failing to comply with the
490 provisions of this article may be compelled to do so by
491 mandamus and is liable to any party prevailing against the
492 board for court costs and the prevailing party's reasonable
493 attorney fee, as determined and established by the court.

494 (o) Notwithstanding any provision of this code to the
495 contrary, a service person who holds a continuing contract in
496 a specific job classification and who is physically unable to
497 perform the job's duties as confirmed by a physician chosen
498 by the employee, shall be given priority status over any
499 employee not holding a continuing contract in filling other
500 service personnel job vacancies if the service person is
501 qualified as provided in section eight-e of this article.

502 (p) Any person employed in an aide position on the
503 effective date of this section may not be transferred or subject
504 to a reduction in force for the purpose of creating a vacancy
505 for the employment of a licensed practical nurse.

506 (q) Without the written consent of the service person, a
507 county board may not establish the beginning work station
508 for a bus operator or transportation aide at any site other than
509 a county board-owned facility with available parking. The
510 workday of the bus operator or transportation aide
511 commences at the bus at the designated beginning work
512 station and ends when the employee is able to leave the bus
513 at the designated beginning work station, unless he or she
514 agrees otherwise in writing. The application or acceptance of
515 a posted position may not be construed as the written consent
516 referred to in this subsection.

517 (r) Itinerant status means a service person who does not
518 have a fixed work site and may be involuntarily reassigned to
519 another work site. A service person is considered to hold
520 itinerant status if he or she has bid upon a position posted as
521 itinerant or has agreed to accept this status. A county board
522 may establish positions with itinerant status only within the
523 aide and autism mentor classification categories and only
524 when the job duties involve exceptional students. A service
525 person with itinerant status may be assigned to a different
526 work site upon written notice ten days prior to the
527 reassignment without the consent of the employee and
528 without posting the vacancy. A service person with itinerant
529 status may be involuntarily reassigned no more than twice
530 during the school year. At the conclusion of each school
531 year, the county board shall post and fill, pursuant to section
532 eight-b of this article, all positions that have been filled
533 without posting by a service person with itinerant status. A
534 service person who is assigned to a beginning and ending
535 work site and travels at the expense of the county board to

536 other work sites during the daily schedule, shall not be
537 considered to hold itinerant status.

§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 positions
3 of employment or jobs occurring throughout the school year
4 that are to be performed by service personnel as provided in
5 section eight of this article, on the basis of seniority,
6 qualifications and evaluation of past service.

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

19 (1) Regularly employed service personnel who hold a
20 classification title within the classification category of the
21 vacancy;

22 (2) Service personnel who have held a classification title
23 within the classification category of the vacancy whose
24 employment has been discontinued in accordance with this
25 section;

26 (3) Regularly employed service personnel who do not
27 hold a classification title within the classification category of
28 vacancy;

29 (4) Service personnel who have not held a classification
30 title within the classification category of the vacancy and
31 whose employment has been discontinued in accordance with
32 this section;

33 (5) Substitute service personnel who hold a classification
34 title within the classification category of the vacancy;

35 (6) Substitute service personnel who do not hold a
36 classification title within the classification category of the
37 vacancy; and

38 (7) New service personnel.

39 (c) The county board may not prohibit a service person
40 from retaining or continuing his or her employment in any
41 positions or jobs held prior to the effective date of this
42 section and thereafter.

43 (d) A promotion means any change in employment that
44 the service person considers to improve his or her working
45 circumstance within the classification category of
46 employment.

47 (1) A promotion includes a transfer to another
48 classification category or place of employment if the position
49 is not filled by an employee who holds a title within that
50 classification category of employment.

51 (2) Each class title listed in section eight of this article is
52 considered a separate classification category of employment
53 for service personnel, except for those class titles having
54 Roman numeral designations, which are considered a single
55 classification of employment:

56 (A) The cafeteria manager class title is included in the
57 same classification category as cooks;

58 (B) The executive secretary class title is included in the
59 same classification category as secretaries;

60 (C) Paraprofessional, autism mentor and braille or sign
61 language specialist class titles are included in the same
62 classification category as aides; and

63 (D) The mechanic assistant and chief mechanic class
64 titles are included in the same classification category as
65 mechanics.

66 (3) The assignment of an aide to a particular position
67 within a school is based on seniority within the aide
68 classification category if the aide is qualified for the position.

69 (4) Assignment of a custodian to work shifts in a school
70 or work site is based on seniority within the custodian
71 classification category.

72 (e) For purposes of determining seniority under this
73 section a service person's seniority begins on the date that he
74 or she enters into the assigned duties.

75 (f) *Extra-duty assignments.* --

76 (1) For the purpose of this section, "extra-duty
77 assignment" means an irregular job that occurs periodically
78 or occasionally such as, but not limited to, field trips, athletic
79 events, proms, banquets and band festival trips.

80 (2) Notwithstanding any other provisions of this chapter
81 to the contrary, decisions affecting service personnel with
82 respect to extra-duty assignments are made in the following
83 manner:

84 (A) A service person with the greatest length of service
85 time in a particular category of employment is given priority

86 in accepting extra duty assignments, followed by other fellow
87 employees on a rotating basis according to the length of their
88 service time until all employees have had an opportunity to
89 perform similar assignments. The cycle then is repeated.

90 (B) An alternative procedure for making extra-duty
91 assignments within a particular classification category of
92 employment may be used if the alternative procedure is
93 approved both by the county board and by an affirmative vote
94 of two-thirds of the employees within that classification
95 category of employment.

96 (g) County boards shall post and date notices of all job
97 vacancies of existing or newly created positions in
98 conspicuous places for all school service personnel to
99 observe for at least five working days.

100 (1) Posting locations include any website maintained by
101 or available for the use of the county board.

102 (2) Notice of a job vacancy shall include the job
103 description, the period of employment, the work site, the
104 starting and ending time of the daily shift, the amount of pay
105 and any benefits and other information that is helpful to
106 prospective applicants to understand the particulars of the
107 job. The notice of a job vacancy in the aide classification
108 categories shall include the program or primary assignment
109 of the position. Job postings for vacancies made pursuant to
110 this section shall be written to ensure that the largest possible
111 pool of qualified applicants may apply. Job postings may not
112 require criteria which are not necessary for the successful
113 performance of the job and may not be written with the intent
114 to favor a specific applicant.

115 (3) After the five-day minimum posting period, all
116 vacancies shall be filled within twenty working days from the

117 posting date notice of any job vacancies of existing or newly
118 created positions.

119 (4) The county board shall notify any person who has
120 applied for a job posted pursuant to this section of the status
121 of his or her application as soon as possible after the county
122 board makes a hiring decision regarding the posted position.

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

126 (i) The seniority of a service person is determined on the
127 basis of the length of time the employee has been employed
128 by the county board within a particular job classification. For
129 the purpose of establishing seniority for a preferred recall list
130 as provided in this section, a service person who has been
131 employed in one or more classifications retains the seniority
132 accrued in each previous classification.

133 (j) If a county board is required to reduce the number of
134 service personnel within a particular job classification, the
135 following conditions apply:

136 (1) The employee with the least amount of seniority
137 within that classification or grades of classification is
138 properly released and employed in a different grade of that
139 classification if there is a job vacancy;

140 (2) If there is no job vacancy for employment within that
141 classification or grades of classification, the service person is
142 employed in any other job classification which he or she
143 previously held with the county board if there is a vacancy
144 and retains any seniority accrued in the job classification or
145 grade of classification.

146 (k) After a reduction in force or transfer is approved, but
147 prior to August 1, a county board in its sole and exclusive
148 judgment may determine that the reason for any particular
149 reduction in force or transfer no longer exists.

150 (1) If the board makes this determination, it shall rescind
151 the reduction in force or transfer and notify the affected
152 employee in writing of the right to be restored to his or her
153 former position of employment.

154 (2) The affected employee shall notify the county board
155 of his or her intent to return to the former position of
156 employment within five days of being notified or lose the
157 right to be restored to the former position.

158 (3) The county board may not rescind the reduction in
159 force of an employee until all service personnel with more
160 seniority in the classification category on the preferred recall
161 list have been offered the opportunity for recall to regular
162 employment as provided in this section.

163 (4) If there are insufficient vacant positions to permit
164 reemployment of all more senior employees on the preferred
165 recall list within the classification category of the service
166 person who was subject to reduction in force, the position of
167 the released service person shall be posted and filled in
168 accordance with this section.

169 (l) If two or more service persons accumulate identical
170 seniority, the priority is determined by a random selection
171 system established by the employees and approved by the
172 county board.

173 (m) All service personnel whose seniority with the county
174 board is insufficient to allow their retention by the county
175 board during a reduction in work force are placed upon a

176 preferred recall list and shall be recalled to employment by
177 the county board on the basis of seniority.

178 (n) A service person placed upon the preferred recall list
179 shall be recalled to any position openings by the county board
180 within the classification(s) where he or she had previously
181 been employed, to any lateral position for which the service
182 person is qualified or to a lateral area for which a service
183 person has certification and/or licensure.

184 (o) A service person on the preferred recall list does not
185 forfeit the right to recall by the county board if compelling
186 reasons require him or her to refuse an offer of reemployment
187 by the county board.

188 (p) The county board shall notify all service personnel on
189 the preferred recall list of all position openings that exist
190 from time to time. The notice shall be sent by certified mail
191 to the last known address of the service person. Each service
192 person shall notify the county board of any change of
193 address.

194 (q) No position openings may be filled by the county
195 board, whether temporary or permanent, until all service
196 personnel on the preferred recall list have been properly
197 notified of existing vacancies and have been given an
198 opportunity to accept reemployment.

199 (r) A service person released from employment for lack
200 of need as provided in sections six and eight-a, article two of
201 this chapter is accorded preferred recall status on July 1 of
202 the succeeding school year if he or she has not been
203 reemployed as a regular employee.

204 (s) A county board failing to comply with the provisions
205 of this article may be compelled to do so by mandamus and

206 is liable to any party prevailing against the board for court
207 costs and the prevailing party's reasonable attorney fee, as
208 determined and established by the court.

209 (1) A service person denied promotion or employment in
210 violation of this section shall be awarded the job, pay and any
211 applicable benefits retroactively to the date of the violation
212 and shall be paid entirely from local funds.

213 (2) The county board is liable to any party prevailing
214 against the board for any court reporter costs including copies
215 of transcripts.

**§18A-4-8e. Competency testing for service personnel; and
recertification testing for bus operators.**

1 (a) The State Board of Education shall develop and make
2 available competency tests for all of the classification titles
3 defined in section eight of this article and listed in section
4 eight-a of this article for service personnel. Each
5 classification title defined and listed is considered a separate
6 classification category of employment for service personnel
7 and has a separate competency test, except for those class
8 titles having Roman numeral designations, which are
9 considered a single classification of employment and have a
10 single competency test.

11 (1) The cafeteria manager class title is included in the
12 same classification category as cooks and has the same
13 competency test.

14 (2) The executive secretary class title is included in the
15 same classification category as secretaries and has the same
16 competency test.

17 (3) The classification titles of chief mechanic, mechanic
18 and assistant mechanic are included in one classification title
19 and have the same competency test.

20 (b) The purpose of these tests is to provide county boards
21 a uniform means of determining whether school service
22 personnel who do not hold a classification title in a particular
23 category of employment meet the definition of the
24 classification title in another category of employment as
25 defined in section eight of this article. Competency tests may
26 not be used to evaluate employees who hold the classification
27 title in the category of their employment.

28 (c) The competency test consists of an objective written
29 or performance test, or both. Applicants may take the written
30 test orally if requested. Oral tests are recorded mechanically
31 and kept on file. The oral test is administered by persons
32 who do not know the applicant personally.

33 (1) The performance test for all classifications and
34 categories other than bus operator is administered by an
35 employee of the county board or an employee of a
36 multicounty vocational school that serves the county at a
37 location designated by the superintendent and approved by
38 the board. The location may be a vocational school that
39 serves the county.

40 (2) A standard passing score is established by the state
41 Department of Education for each test and is used by county
42 boards.

43 (3) The subject matter of each competency test is
44 commensurate with the requirements of the definitions of the
45 classification titles as provided in section eight of this article.
46 The subject matter of each competency test is designed in
47 such a manner that achieving a passing grade does not require
48 knowledge and skill in excess of the requirements of the
49 definitions of the classification titles. Achieving a passing
50 score conclusively demonstrates the qualification of an
51 applicant for a classification title.

52 (4) Once an employee passes the competency test of a
53 classification title, the applicant is fully qualified to fill
54 vacancies in that classification category of employment as
55 provided in section eight-b of this article and may not be
56 required to take the competency test again.

57 (d) An applicant who fails to achieve a passing score is
58 given other opportunities to pass the competency test when
59 making application for another vacancy within the
60 classification category.

61 (e) Competency tests are administered to applicants in a
62 uniform manner under uniform testing conditions. County
63 boards are responsible for scheduling competency tests,
64 notifying applicants of the date and time of the one day of
65 training prior to taking the test, and the date and time of the
66 test. County boards may not use a competency test other than
67 the test authorized by this section.

68 (f) When scheduling of the competency test conflicts with
69 the work schedule of a school employee who has applied for
70 a vacancy, the employee is excused from work to take the
71 competency test without loss of pay.

72 (g) A minimum of one day of appropriate in-service
73 training is provided to employees to assist them in preparing
74 to take the competency tests.

75 (h) Competency tests are used to determine the
76 qualification of new applicants seeking initial employment in
77 a particular classification title as either a regular or substitute
78 employee.

79 (i) Notwithstanding any provisions in this code to the
80 contrary, once an employee holds or has held a classification
81 title in a category of employment, that employee is

82 considered qualified for the classification title even though
83 that employee no longer holds that classification.

84 (j) The requirements of this section do not alter the
85 definitions of class titles as provided in section eight of this
86 article or the procedure and requirements of section eight-b
87 of this article.

88 (k) Notwithstanding any other provision of this code to
89 the contrary and notwithstanding any rules of the school
90 board concerning school bus operator certification in effect
91 on the effective date of this section, the certification test for
92 school bus operators shall be required as follows, and school
93 bus operators shall not be required to take the certification
94 test more frequently:

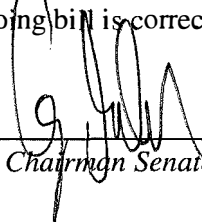
95 (1) For substitute school bus operators and for school bus
96 operators with regular employee status but on a probationary
97 contract, the certification test shall be administered annually;

98 (2) For school bus operators with regular employee status
99 and continuing contract status, the certification test shall be
100 administered triennially; and

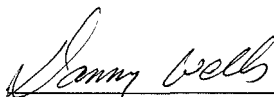
101 (3) For substitute school bus operators who are retired
102 from a county board and who at the time of retirement had
103 ten years of experience as a regular full-time bus operator,
104 the certification test shall be administered triennially.

105 The state board shall promulgate in accordance with
106 article three-b, chapter twenty-nine-a of this code, revised
107 rules in compliance with this subsection.

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



Chairman Senate Committee



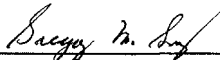
Chairman House Committee

Originating in the House.

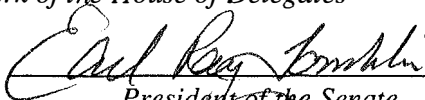
In effect July 1, 2010.



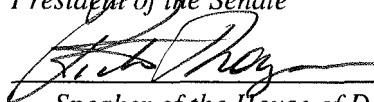
Clerk of the Senate



Clerk of the House of Delegates

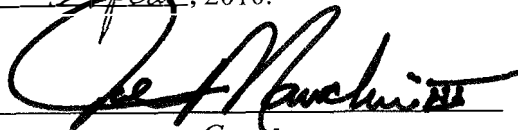


President of the Senate



Speaker of the House of Delegates

The within is approved this the 2nd
day of April, 2010.



Governor

PRESENTED TO THE
GOVERNOR

MAR 31 2010

Time 3:50p