

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Committee Substitute

for

Senate Bill 11

BY SENATORS RUCKER, ROBERTS, TAKUBO, MARONEY,

AND SWOPE

[Originating in the Committee on Education; reported

on February 17, 2021]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §18-5-45a, relating to declaring any work stoppage or strike by public
3 employees to be unlawful; providing legislative findings; defining when a county board of
4 education employee is considered to be participating in a concerted work stoppage or
5 strike; prohibiting use of accrued and equivalent instructional time and delivery of
6 instruction through alternative methods to cancel days lost due to a concerted work
7 stoppage or strike; prohibiting a waiver by the state board for a county board of education's
8 noncompliance with the employment and instructional term requirements if the
9 noncompliance is the result of a concerted work stoppage or strike; declaring participation
10 in a concerted work stoppage or strike to be grounds for termination; requiring, if the
11 employee remains employed, county boards of education to withhold the prorated salary
12 or hourly pay of each employee participating in the concerted work stoppage or strike for
13 each day the employee participates; requiring the sums to be forfeited to the county board
14 of education; and prohibiting participation in extracurricular activities when an originally
15 scheduled instructional day or noninstructional day is canceled due to a concerted work
16 stoppage or strike.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-45a. Legislative findings; time lost due to work stoppage or strike; effect on pay and extracurricular activities; closure of schools due to work stoppage or strike prohibited.

1 (a) Legislative findings. —

2 (1) The West Virginia Supreme Court of Appeals held, in *Jefferson County Bd. of Educ. v. Jefferson County Educ. Ass'n*, 183 W.Va. 15 (1990), that “[p]ublic employees have no right to
3 strike in the absence of express legislation or, at the very least, appropriate statutory provisions
4 for collective bargaining, mediation, and arbitration”.
5

6 (2) Public employees in West Virginia have no right, statutory or otherwise, to engage in
7 collective bargaining, mediation, or arbitration, and any work stoppage or strike by public
8 employees is hereby declared to be unlawful. Furthermore, any work stoppage or strike by
9 employees of a county board of education poses a serious disruption to the thorough and efficient
10 system of free schools, guaranteed to the children of West Virginia by section one, article XII of
11 the Constitution of West Virginia.

12 (3) Section 18-5-45 of this code is designed to define the school term both for employment
13 of school personnel and for instruction of students. The employment term consists of at least 200
14 days and, within the employment term, an instructional term for students must consist of at least
15 180 separate instructional days. Section 18-5-45 of this code also defines the minimum length of
16 an instructional day, requires county boards to develop a policy for additional minutes of
17 instruction to recover time lost due to late arrivals and early dismissals, and allows schools with
18 an instructional day in excess of certain minimums to apply this equivalent instructional time to
19 cancel time lost due to necessary closures and other purposes designed to improve instruction.
20 Furthermore, §18-5-45 of this code allows a county board, subject to approval of its plan by the
21 state board, to deliver instruction through alternative methods for a maximum of five days, when
22 schools are closed and provides that these days are considered to be instructional days,
23 notwithstanding the closure of schools.

24 (4) The Legislature intended, by providing for equivalent instructional time and the use of
25 alternative methods to deliver instruction on days when schools are closed, as defined in §18-5-
26 45 of this code, to: (1) Provide flexibility for collaborative time and other methods of improving
27 instruction; and (2) lessen the disruption of the planned school calendar if rescheduling and
28 adding instructional days became necessary to make up lost days due to closures pursuant to
29 §18-4-10(5) of this code, when conditions are detrimental to the health, safety, or welfare of pupils.
30 The Legislature did not intend with the enactment of these provisions to permit a reduction in the

31 instructional term for students or in the employment term for personnel when the conditions
32 causing the closure of the school are a concerted work stoppage or strike by the employees.

33 (b) For the purposes of this section, an employee of a county board of education is
34 considered to be participating in a concerted work stoppage or strike if, on any day during a
35 concerted stoppage of work or interruption of operations by the employees of the county board of
36 education:

37 (1) The employee does not report to work as required by his or her contract of employment;

38 (2) The employee is not on leave, as specifically permitted by any provision of this code:

39 Provided, That nothing in this section permits an employee to use personal leave in connection
40 with a work stoppage or strike in violation of §18A-4-10 of this code; and

41 (3) The employee is not otherwise prevented from reporting to work based on
42 circumstances beyond the employee's control, that are unrelated to the employee's participation
43 in the ongoing concerted work stoppage or strike, as determined by the county superintendent.

44 (c) The provisions of §18-5-45 of this code, permitting accrued and equivalent instructional
45 time to cancel days lost, and the delivery of instruction through alternative methods, do not apply
46 to and may not be used to cancel days lost due to a concerted work stoppage or strike.
47 Notwithstanding any provision of this code to the contrary, the state board may not grant a waiver
48 to a county board of education for its noncompliance with the 200-day minimum employment term
49 or the 180-day minimum instructional term requirements if such noncompliance is the result of a
50 concerted work stoppage or strike.

51 (d) Notwithstanding §18-5-2 of this code or any other provision of this code to the contrary,
52 if an employee remains employed by the county board of education, notwithstanding his or her
53 participation in a concerted work stoppage or strike, which the Legislature hereby determines to
54 be a ground for termination, the county board of education shall withhold the prorated salary or
55 hourly pay of each employee participating in the concerted work stoppage or strike for each day

56 that such employee participates in a concerted work stoppage or strike, and such sums shall be
57 forfeited to the county board of education.

58 (e) If an originally scheduled instructional day or noninstructional day is canceled due to a
59 concerted work stoppage or strike by the employees assigned to a school, the school for which
60 the day was canceled may not participate in any extracurricular activities during any part of that
61 same day.