

1 **ENROLLED**

2 **H. B. 2556**

3
4 (By Delegates Perry, M. Poling, Shaver,
5 Lawrence, Stowers, Moye, Romine and Duke)

6 [Passed February 22, 2011; in effect from passage.]
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10 AN ACT to amend and reenact §18A-2-3 of the Code of West Virginia,
11 1931, as amended, relating to resetting the expiration date of
12 provisions that allow the employment of retired teachers as
13 substitutes beyond the post-retirement employment limit in
14 certain circumstances; requiring certain additional
15 information be included in the affidavit submitted to the
16 Consolidated Public Retirement Board; requiring the affidavit
17 be submitted to the State Board of Education; and requiring
18 certain additional information be included in the report to
19 the Joint Committee on Government and Finance and the
20 Legislative Oversight Commission on Education Accountability.

21 *Be it enacted by the Legislature of West Virginia:*

22 That §18A-2-3 of the Code of West Virginia, 1931, as amended,
23 be amended and reenacted to read as follows:

24 **ARTICLE 2. SCHOOL PERSONNEL.**

25 **§18A-2-3. Employment of substitute teachers and retired teachers**

1 **as substitutes in areas of critical need and**
2 **shortage; employment of prospective employable**
3 **professional personnel.**

4 (a) The county superintendent, subject to approval of the
5 county board, may employ and assign substitute teachers to any of
6 the following duties: (1) To fill the temporary absence of any
7 teacher or an unexpired school term made vacant by resignation,
8 death, suspension or dismissal; (2) to fill a teaching position of
9 a regular teacher on leave of absence; and (3) to perform the
10 instructional services of any teacher who is authorized by law to
11 be absent from class without loss of pay, providing the absence is
12 approved by the board of education in accordance with the law. The
13 substitute shall be a duly certified teacher.

14 (b) Notwithstanding any other provision of this code to the
15 contrary, a substitute teacher who has been assigned as a classroom
16 teacher in the same classroom continuously for more than one half
17 of a grading period and whose assignment remains in effect two
18 weeks prior to the end of the grading period, shall remain in the
19 assignment until the grading period has ended, unless the principal
20 of the school certifies that the regularly employed teacher has
21 communicated with and assisted the substitute with the preparation
22 of lesson plans and monitoring student progress or has been
23 approved to return to work by his or her physician. For the
24 purposes of this section, teacher and substitute teacher, in the

1 singular or plural, mean professional educator as defined in
2 section one, article one of this chapter.

3 (c) (1) The Legislature hereby finds and declares that due to
4 a shortage of qualified substitute teachers, a compelling state
5 interest exists in expanding the use of retired teachers to provide
6 service as substitute teachers in areas of critical need and
7 shortage. The Legislature further finds that diverse circumstances
8 exist among the counties for the expanded use of retired teachers
9 as substitutes. For the purposes of this subsection, "area of
10 critical need and shortage" means an area of certification and
11 training in which the number of available substitute teachers in
12 the county who hold certification and training in that area and who
13 are not retired is insufficient to meet the projected need for
14 substitute teachers.

15 (2) A person receiving retirement benefits under the
16 provisions of article seven-a, chapter eighteen of this code or
17 who is entitled to retirement benefits during the fiscal year in
18 which that person retired may accept employment as a substitute
19 teacher for an unlimited number of days each fiscal year without
20 affecting the monthly retirement benefit to which the retirant is
21 otherwise entitled if the following conditions are satisfied:

22 (A) The county board adopts a policy recommended by the
23 superintendent to address areas of critical need and shortage;

24 (B) The policy sets forth the areas of critical need and

1 shortage in the county in accordance with the definition of area of
2 critical need and shortage set forth in subdivision (1) of this
3 subsection;

4 (C) The policy provides for the employment of retired teachers
5 as substitute teachers during the school year on an expanded basis
6 in areas of critical need and shortage as provided in this
7 subsection;

8 (D) The policy provides that a retired teacher may be employed
9 as a substitute teacher in an area of critical need and shortage on
10 an expanded basis as provided in this subsection only when no other
11 teacher who holds certification and training in the area and who is
12 not retired is available and accepts the substitute assignment;

13 (E) The policy is effective for one school year only and is
14 subject to annual renewal by the county board;

15 (F) The state board approves the policy and the use of retired
16 teachers as substitute teachers on an expanded basis in areas of
17 critical need and shortage as provided in this subsection; and

18 (G) Prior to employment of a substitute teacher beyond the
19 post-retirement employment limitations established by the
20 Consolidated Public Retirement Board, the superintendent of the
21 affected county submits to the Consolidated Public Retirement Board
22 and the state board, in a form approved by the retirement board, an
23 affidavit signed by the superintendent stating the name of the
24 county, the fact that the county has adopted a policy to employ

1 retired teachers as substitutes to address areas of critical need
2 and shortage, the name or names of the person or persons to be
3 employed pursuant to the policy, the critical need and shortage
4 area position filled by each person, the date that the person gave
5 notice to the county board of the person's intent to retire, and
6 the effective date of the person's retirement.

7 (3) Any person who retires and begins work as a substitute
8 teacher within the same employment term shall lose those retirement
9 benefits attributed to the annuity reserve, effective from the
10 first day of employment as a retiree substitute in that employment
11 term and ending with the month following the date the retiree
12 ceases to perform service as a substitute.

13 (4) Retired teachers employed to perform expanded substitute
14 service pursuant to this subsection are considered day-to-day,
15 temporary, part-time employees. The substitutes are not eligible
16 for additional pension or other benefits paid to regularly employed
17 employees and shall not accrue seniority.

18 (5) When a retired teacher is employed as a substitute to fill
19 a vacant position, the county board shall continue to post the
20 vacant position until it is filled with a regularly employed
21 teacher.

22 (6) Until this subsection is expired pursuant to subdivision
23 (7) of this subsection, the state board, annually, shall report to
24 the Joint Committee on Government and Finance prior to February 1

1 of each year. Additionally, a copy shall be provided to the
2 Legislative Oversight Commission on Education Accountability. The
3 report shall contain information indicating the effectiveness of
4 the provisions of this subsection on expanding the use of retired
5 substitute teachers to address areas of critical need and shortage
6 including, but not limited to, the number of retired teachers, by
7 critical need and shortage area position filled and by county,
8 employed beyond the post-retirement employment limit established by
9 the Consolidated Public Retirement Board, the date that each person
10 gave notice to the county board of the person's intent to retire,
11 and the effective date of the person's retirement.

12 (7) The provisions of this subsection shall expire on June 30,
13 2014.

14 (d) (1) Notwithstanding any other provision of this code to
15 the contrary, each year a county superintendent may employ
16 prospective employable professional personnel on a reserve list at
17 the county level subject to the following conditions:

18 (A) The county board adopts a policy to address areas of
19 critical need and shortage as identified by the state board. The
20 policy shall include authorization to employ prospective employable
21 professional personnel;

22 (B) The county board posts a notice of the areas of critical
23 need and shortage in the county in a conspicuous place in each
24 school for at least ten working days; and

1 (C) There are not any potentially qualified applicants
2 available and willing to fill the position.

3 (2) Prospective employable professional personnel may only be
4 employed from candidates at a job fair who have or will graduate
5 from college in the current school year or whose employment
6 contract with a county board has or will be terminated due to a
7 reduction in force in the current fiscal year.

8 (3) Prospective employable professional personnel employed are
9 limited to three full-time prospective employable professional
10 personnel per one hundred professional personnel employed in a
11 county or twenty-five full-time prospective employable professional
12 personnel in a county, whichever is less.

13 (4) Prospective employable professional personnel shall be
14 granted benefits at a cost to the county board and as a condition
15 of the employment contract as approved by the county board.

16 (5) Regular employment status for prospective employable
17 professional personnel may be obtained only in accordance with the
18 provisions of section seven-a, article four of this chapter.

19 (e) The state board annually shall review the status of
20 employing personnel under the provisions of subsection (d) of this
21 section and annually shall report to the Legislative Oversight
22 Commission on Education Accountability on or before November 1 of
23 each year. The report shall include, but not be limited to, the
24 following:

- 1 (A) The counties that participated in the program;
- 2 (B) The number of personnel hired;
- 3 (C) The teaching fields in which personnel were hired;
- 4 (D) The venue from which personnel were employed;
- 5 (E) The place of residency of the individual hired; and
- 6 (F) The state board's recommendations on the prospective
- 7 employable professional personnel program.