

H. B. 2778

(By Delegates M. Poling, Duke, Walker, Smith,
Rodighiero, Moye, Paxton, Stowers
and Lawrence)

[Introduced January 24, 2011; referred to the
Committee on Education then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §18A-2-3 of the Code of West Virginia,
1931, as amended, relating to extending the expiration date of
employment of retired teachers beyond the post-retirement
employment limit established by the Consolidated Public
Retirement Board; requiring additional information to be
reported to Consolidated Public Retirement Board and State
Board of Education; and continuing reports to the Joint
Committee on Government and Finance until 2013.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. SCHOOL PERSONNEL.

**§18A-2-3. Employment of substitute teachers and retired teachers
as substitutes in areas of critical need and shortage;
employment of prospective employable professional
personnel.**

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

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

24 (c) (1) The Legislature hereby finds and declares that due to

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

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

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

22 (B) The policy sets forth the areas of critical need and
23 shortage in the county in accordance with the definition of area of
24 critical need and shortage set forth in subdivision (1) of this

1 subsection;

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

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

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

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

16 (G) Prior to employment of a substitute teacher beyond the
17 post-retirement employment limitations established by the
18 Consolidated Public Retirement Board and the state board, the
19 superintendent of the affected county submits to the Consolidated
20 Public Retirement Board, in a form approved by the retirement board,
21 an affidavit signed by the superintendent stating the name of the
22 county, the fact that the county has adopted a policy to employ
23 retired teachers as substitutes to address areas of critical need
24 and shortage, ~~and~~ the name or names of the person or persons to be

1 employed pursuant to the policy, the shortage area position filled
2 by each person, the date that the person gave notice to the county
3 board of their intent to retire and the effective date of their
4 retirement.

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

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

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

20 (6) Until this subsection is expired pursuant to subdivision
21 (7) of this subsection, the state board, annually, shall report to
22 the Joint Committee on Government and Finance prior to February 1
23 of each year. Additionally, a copy shall be provided to the
24 Legislative Oversight Commission on Education Accountability. The

1 report shall contain information indicating the effectiveness of the
2 provisions of this subsection on expanding the use of retired
3 substitute teachers to address areas of critical need and shortage
4 including, but not limited to, the number of retired teachers, by
5 subject area and county, employed beyond the post-retirement
6 employment limit established by the retirement board and the date
7 that the person gave notice to the county board of their intent to
8 retire and the effective date of their retirement.

9 (7) The provisions of this subsection shall expire on June 30,
10 ~~two thousand ten~~ 2014.

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

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

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

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

24 (2) Prospective employable professional personnel may only be

1 employed from candidates at a job fair who have or will graduate
2 from college in the current school year or whose employment contract
3 with a county board has or will be terminated due to a reduction in
4 force in the current fiscal year.

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

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

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

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

22 (A) The counties that participated in the program;

23 (B) The number of personnel hired;

24 (C) The teaching fields in which personnel were hired;

- 1 (D) The venue from which personnel were employed;
- 2 (E) The place of residency of the individual hired; and
- 3 (F) The state board's recommendations on the prospective
- 4 employable professional personnel program.

NOTE: The purpose of this bill is to extend the expiration date of provisions for employment of retired teachers beyond the post-retirement employment limit established by the retirement board. The bill requires additional information to be reported to retirement board and state board. The bill also continues reports to Joint Committee on Government and Finance until 2013.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.