

**WEST VIRGINIA LEGISLATURE**  
FIRST REGULAR SESSION, 2011



**ENROLLED**

**House Bill No. 2556**

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



Passed February 22, 2011

In Effect From Passage

# ENROLLED

## H. B. 2556

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(BY DELEGATES PERRY, M. POLING, SHAVER,  
LAWRENCE, STOWERS, MOYE, ROMINE AND DUKE)

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[Passed February 22, 2011; in effect from passage.]

AN ACT to amend and reenact §18A-2-3 of the Code of West Virginia, 1931, as amended, relating to resetting the expiration date of provisions that allow the employment of retired teachers as substitutes beyond the post-retirement employment limit in certain circumstances; requiring certain additional information be included in the affidavit submitted to the Consolidated Public Retirement Board; requiring the affidavit be submitted to the State Board of Education; and requiring certain additional information be included in the report to the Joint Committee on Government and Finance and the Legislative Oversight Commission on Education Accountability.

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

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

26 (c) (1) The Legislature hereby finds and declares that due  
27 to a shortage of qualified substitute teachers, a compelling

28 state interest exists in expanding the use of retired teachers to  
29 provide service as substitute teachers in areas of critical need  
30 and shortage. The Legislature further finds that diverse  
31 circumstances exist among the counties for the expanded use  
32 of retired teachers as substitutes. For the purposes of this  
33 subsection, “area of critical need and shortage” means an area  
34 of certification and training in which the number of available  
35 substitute teachers in the county who hold certification and  
36 training in that area and who are not retired is insufficient to  
37 meet the projected need for substitute teachers.

38 (2) A person receiving retirement benefits under the  
39 provisions of article seven-a, chapter eighteen of this code  
40 or who is entitled to retirement benefits during the fiscal year  
41 in which that person retired may accept employment as a  
42 substitute teacher for an unlimited number of days each fiscal  
43 year without affecting the monthly retirement benefit to  
44 which the retirant is otherwise entitled if the following  
45 conditions are satisfied:

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

49 (B) The policy sets forth the areas of critical need and  
50 shortage in the county in accordance with the definition of  
51 area of critical need and shortage set forth in subdivision (1)  
52 of this subsection;

53 (C) The policy provides for the employment of retired  
54 teachers as substitute teachers during the school year on an  
55 expanded basis in areas of critical need and shortage as  
56 provided in this subsection;

57 (D) The policy provides that a retired teacher may be  
58 employed as a substitute teacher in an area of critical need

59 and shortage on an expanded basis as provided in this  
60 subsection only when no other teacher who holds  
61 certification and training in the area and who is not retired is  
62 available and accepts the substitute assignment;

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

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

69 (G) Prior to employment of a substitute teacher beyond  
70 the post-retirement employment limitations established by the  
71 Consolidated Public Retirement Board, the superintendent of  
72 the affected county submits to the Consolidated Public  
73 Retirement Board and the state board, in a form approved by  
74 the retirement board, an affidavit signed by the  
75 superintendent stating the name of the county, the fact that  
76 the county has adopted a policy to employ retired teachers as  
77 substitutes to address areas of critical need and shortage, the  
78 name or names of the person or persons to be employed  
79 pursuant to the policy, the critical need and shortage area  
80 position filled by each person, the date that the person gave  
81 notice to the county board of the person's intent to retire, and  
82 the effective date of the person's retirement.

83 (3) Any person who retires and begins work as a  
84 substitute teacher within the same employment term shall  
85 lose those retirement benefits attributed to the annuity  
86 reserve, effective from the first day of employment as a  
87 retiree substitute in that employment term and ending with  
88 the month following the date the retiree ceases to perform  
89 service as a substitute.

90 (4) Retired teachers employed to perform expanded  
91 substitute service pursuant to this subsection are considered  
92 day-to-day, temporary, part-time employees. The substitutes  
93 are not eligible for additional pension or other benefits paid  
94 to regularly employed employees and shall not accrue  
95 seniority.

96 (5) When a retired teacher is employed as a substitute to  
97 fill a vacant position, the county board shall continue to post  
98 the vacant position until it is filled with a regularly employed  
99 teacher.

100 (6) Until this subsection is expired pursuant to  
101 subdivision (7) of this subsection, the state board, annually,  
102 shall report to the Joint Committee on Government and  
103 Finance prior to February 1 of each year. Additionally, a  
104 copy shall be provided to the Legislative Oversight  
105 Commission on Education Accountability. The report shall  
106 contain information indicating the effectiveness of the  
107 provisions of this subsection on expanding the use of retired  
108 substitute teachers to address areas of critical need and  
109 shortage including, but not limited to, the number of retired  
110 teachers, by critical need and shortage area position filled  
111 and by county, employed beyond the post-retirement  
112 employment limit established by the Consolidated Public  
113 Retirement Board, the date that each person gave notice to  
114 the county board of the person's intent to retire, and the  
115 effective date of the person's retirement.

116 (7) The provisions of this subsection shall expire on June  
117 30, 2014.

118 (d) (1) Notwithstanding any other provision of this code  
119 to the contrary, each year a county superintendent may  
120 employ prospective employable professional personnel on a  
121 reserve list at the county level subject to the following  
122 conditions:

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

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

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

132 (2) Prospective employable professional personnel may  
133 only be employed from candidates at a job fair who have or  
134 will graduate from college in the current school year or  
135 whose employment contract with a county board has or will  
136 be terminated due to a reduction in force in the current fiscal  
137 year.

138 (3) Prospective employable professional personnel  
139 employed are limited to three full-time prospective  
140 employable professional personnel per one hundred  
141 professional personnel employed in a county or twenty-five  
142 full-time prospective employable professional personnel in a  
143 county, whichever is less.

144 (4) Prospective employable professional personnel shall  
145 be granted benefits at a cost to the county board and as a  
146 condition of the employment contract as approved by the  
147 county board.

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

152 (e) The state board annually shall review the status of  
153 employing personnel under the provisions of subsection (d)  
154 of this section and annually shall report to the Legislative  
155 Oversight Commission on Education Accountability on or  
156 before November 1 of each year. The report shall include,  
157 but not be limited to, the following:

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

159 (B) The number of personnel hired;

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

161 (D) The venue from which personnel were employed;

162 (E) The place of residency of the individual hired; and

163 (F) The state board's recommendations on the  
164 prospective employable professional personnel program.



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

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*Chairman, House Committee*

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*Chairman, Senate Committee*

Originating in the House.

To take effect from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

The within \_\_\_\_\_ this the \_\_\_\_\_  
day of \_\_\_\_\_, 2011.

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*Governor*