

# H. B. 2556

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[Introduced January 19, 2011; referred to the  
Committee on Education then Finance.]

A BILL 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; and requiring certain additional information to be reported to the Consolidated Retirement Board and the State Board of Education, and included in the state board's report to 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  
4 absence of any teacher or an unexpired school term made  
5 vacant by resignation, death, suspension or dismissal; (2) to  
6 fill a teaching position of a regular teacher on leave of  
7 absence; and (3) to perform the instructional services of any  
8 teacher who is authorized by law to be absent from class  
9 without loss of pay, providing the absence is approved by the  
10 board of education in accordance with the law. The  
11 substitute shall be 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  
34 area of certification and training in which the number of

35 available substitute teachers in the county who hold  
36 certification and training in that area and who are not retired  
37 is insufficient to meet the projected need for substitute  
38 teachers.

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

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

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

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

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

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

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

70 (G) Prior to employment of a substitute teacher beyond the  
71 post-retirement employment limitations established by the  
72 Consolidated Public Retirement Board, the superintendent of

73 the affected county submits to the Consolidated Public  
74 Retirement Board and the state board, in a form approved by  
75 the retirement board, an affidavit signed by the  
76 superintendent stating the name of the county, the fact that  
77 the county has adopted a policy to employ retired teachers as  
78 substitutes to address areas of critical need and shortage, ~~and~~  
79 the name or names of the person or persons to be employed  
80 pursuant to the policy, the critical need and shortage area  
81 position filled by each person, the date that the person gave  
82 notice to the county board of the person's intent to retire, and  
83 the effective date of the person's retirement.

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

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

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

101       (6) Until this subsection is expired pursuant to  
102 subdivision (7) of this subsection, the state board, annually,  
103 shall report to the Joint Committee on Government and  
104 Finance prior to February 1 of each year. Additionally, a  
105 copy shall be provided to the Legislative Oversight  
106 Commission on Education Accountability. The report shall  
107 contain information indicating the effectiveness of the  
108 provisions of this subsection on expanding the use of retired  
109 substitute teachers to address areas of critical need and

110 shortage including, but not limited to, the number of retired  
111 teachers, by critical need and shortage area position filled  
112 and by county, employed beyond the post-retirement  
113 employment limit established by the Consolidated Public  
114 Retirement Board, the date that each person gave notice to  
115 the county board of the person's intent to retire, and the  
116 effective date of the person's retirement.

117 (7) The provisions of this subsection shall expire on June  
118 30, ~~two thousand ten~~ 2014.

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

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



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

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

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

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

145 (4) Prospective employable professional personnel shall  
146 be granted benefits at a cost to the county board and as a

147 condition of the employment contract as approved by the  
148 county board.

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

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

- 159 (A) The counties that participated in the program;  
160 (B) The number of personnel hired;  
161 (C) The teaching fields in which personnel were hired;  
162 (D) The venue from which personnel were employed;  
163 (E) The place of residency of the individual hired; and  
164 (F) The state board's recommendations on the  
165 prospective employable professional personnel program.

NOTE: The purpose of this bill is to reset until 2014, the expiration date of provisions that allow the employment of retired teachers as substitutes beyond the post-retirement employment limit in areas of critical need and shortage. The bill also requires counties to report additional information on the number of these retired teachers and the critical need and shortage area positions filled by them to the Consolidated Public Retirement Board and state board and the dates of their notice of retirement and retirement. The state board is to include this information in its report to the Legislative Oversight Commission on Education Accountability.

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

This bill was recommended for introduction and passage during the Regular Session of the Legislature by the Joint Standing Committee on Education.