

1 **H. B. 2378**

2
3 (By Delegates Fleischauer and Marshall)

4 [Introduced February 13, 2013; referred to the
5 Committee on Education then Finance.]

6 **FISCAL**
7 **NOTE**

8
9
10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new section, designated §18-9A-5a; and to
12 amend and reenact §18A-4-15 of said code, all relating to
13 permitting a county superintendent, subject to the approval of
14 the county board, to hire three service personnel workers on
15 a full-time basis as itinerants to meet the day-to-day need
16 for substitutes in the service personnel area; providing that
17 the itinerants shall not count against the county in the
18 calculation of the school aid formula; and providing a
19 provision should the hiring of the three full time substitutes
20 be insufficient to meet the need for substitute service
21 personnel on any given day.

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

23 That the Code of West Virginia, 1931, as amended, be amended
24 by adding thereto a new section, designated §18-9A-5a; and that

1 §18A-4-15 of said code be amended and reenacted, all to read as
2 follows:

3 **CHAPTER 18. EDUCATION.**

4 **ARTICLE 9A. PUBLIC SCHOOL SUPPORT.**

5 **§18-9A-5a. Hiring of substitute service personnel on full-time**
6 **basis.**

7 The county superintendent, subject to the approval of the
8 county board, may hire three service personnel workers from the
9 substitute list, based on seniority, on a full-time basis as
10 itinerants to meet the day-to-day need for substitutes in the
11 service personnel areas. These three itinerants are not counted
12 against the county in the calculation of the school aid formula.

13 **CHAPTER 18A. SCHOOL PERSONNEL.**

14 **ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.**

15 **§18A-4-15. Employment of service personnel substitutes.**

16 (a) If the full-time substitutes hired in section five-a,
17 article nine-a, chapter eighteen of this code are insufficient to
18 meet the need for substitute service personnel on any given day the
19 provisions of this section are to be followed.

20 ~~(a)~~ (b) The county board shall employ and the county
21 superintendent, subject to the approval of the county board, shall
22 assign substitute service personnel on the basis of seniority to
23 perform any of the following duties:

1 (1) To fill the temporary absence of another service employee;

2 (2) To fill the position of a regular service person as
3 follows:

4 (A) If the regular service person requests a leave of absence
5 from the county board in writing and is granted the leave in
6 writing by the county board; or

7 (B) If the regular service person is on workers' compensation
8 and absent.

9 (C) If an absence pursuant to paragraph (A) or (B) of this
10 subdivision is to extend beyond thirty working days, the county
11 board shall post the position of the absent employee under the
12 procedures set forth in section eight-b of this article. If a
13 substitute service person is employed to fill the position of the
14 absent employee and is employed in the position for twenty or more
15 working days, the substitute service person:

16 (i) Acquires regular employment status with the exception of
17 regular employee job bidding rights;

18 (ii) Does not accrue regular seniority; and

19 (iii) Is accorded all other rights, privileges and benefits
20 pertaining to the position until the regular employee returns to
21 the position or ceases to be employed by the county board;

22 (D) If a regular or substitute employee fills a vacancy that
23 is related in any manner to a leave of absence or the absence of an
24 employee on workers' compensation as provided in this section, upon

1 termination of the absence the employee shall be returned to his or
2 her original position or status;

3 (E) A service person may not be:

4 (i) Required to request or to take a leave of absence; or

5 (ii) Deprived of any right or privilege of regular employment
6 status for refusal to request or failure to take a leave of
7 absence;

8 (3) To perform the service of a service person who is
9 authorized to be absent from duties without loss of pay;

10 (4) To temporarily fill a vacancy in a permanent position
11 caused by severance of employment by the resignation, transfer,
12 retirement, permanent disability, dismissal pursuant to section
13 eight, article two of this chapter, or death of the regular service
14 person who had been assigned to the position. Within twenty
15 working days from the commencement of the vacancy, the county board
16 shall fill the vacancy under the procedures set forth in section
17 eight-b of this article and section five, article two of this
18 chapter. The person hired to fill the vacancy shall have and be
19 accorded all rights, privileges and benefits pertaining to the
20 position;

21 (5) To fill the vacancy created by a regular employee's
22 suspension.

23 (A) If the suspension is for more than thirty working days,
24 the county board shall post the position of the suspended employee

1 under the procedures set forth in section eight-b of this article.

2 (B) If a substitute service person is employed to fill the
3 suspended employee's position, the substitute service person:

4 (i) Acquires regular employment status with the exception of
5 regular employee job-bidding rights;

6 (ii) Does not accrue regular seniority; and

7 (iii) Is accorded all other rights, privileges and benefits
8 pertaining to the position until the termination by the county
9 board becomes final or the suspended employee is returned to
10 employment.

11 (C) If the suspended employee is not returned to his or her
12 job, the county board shall fill the vacancy under the procedures
13 set forth in section eight-b of this article and section five,
14 article two of this chapter; and

15 (6) To fill temporarily a vacancy in a newly created position
16 prior to employing a service person on a regular basis pursuant to
17 section eight-b of this article.

18 ~~(b)~~ (c) Service personnel substitutes shall be assigned in the
19 following manner:

20 (1) The substitute with the greatest length of service time in
21 the vacant category of employment has priority in accepting the
22 assignment throughout the period of the regular service person's
23 absence or until the vacancy is filled on a regular basis pursuant
24 to section eight-b of this article. Length of service time is

1 calculated from the date a substitute service person begins
2 assigned duties as a substitute in a particular category of
3 employment.

4 (2) All service personnel substitutes are employed on a
5 rotating basis according to their lengths of service time until
6 each substitute has had an opportunity to perform similar
7 assignments.

8 (3) Any regular service person employed in the same building
9 or working station and the same classification category of
10 employment as the absent employee shall be given the first
11 opportunity to fill the position of the absent employee on a
12 rotating and seniority basis. In such case the regular service
13 person's position is filled by a substitute service person. A
14 regular service person assigned to fill the position of an absent
15 employee has the opportunity to hold that position throughout the
16 absence. For the purpose of this section only, all regularly
17 employed school bus operators are considered to be employed within
18 the same building or working station.

19 ~~(c)~~ (d) The county board shall return a regular school service
20 person to the same position held prior to any approved leave of
21 absence or period of recovery from injury or illness. The school
22 service person:

23 (1) Retains all rights, privileges and benefits which had
24 accrued at the time of the absence or accrued under any other

1 provision of law during the absence; and

2 (2) Has all rights, privileges and benefits generally accorded
3 school service personnel at the time of return to work.

4 ~~(d)~~ (e) The salary of a substitute service person is
5 determined:

6 (1) Based upon his or her years of employment as defined in
7 section eight of this article;

8 (2) As provided in the state minimum pay scale set forth in
9 section eight-a of this article; and

10 (3) In accordance with the salary schedule of persons
11 regularly employed in the same position in the county in which he
12 or she is employed.

13 ~~(e)~~ (f) A substitute service person shall execute a written
14 contract with the county board pursuant to section five, article
15 two of this chapter, prior to beginning assigned duties.

16 ~~(f)~~ (g) The following method shall be used to establish a
17 fair, equitable and uniform system for assigning service personnel
18 substitutes to their duties for the first time:

19 (1) The initial order of assigning newly-employed substitutes
20 is determined by a random selection system established by the
21 affected substitute employees and approved by the county board; and

22 (2) The initial order is effective only until the substitute
23 service personnel have begun their duties for the first time.

24 ~~(g)~~ (h) A substitute service person who has worked thirty days

1 for a school system has all rights pertaining to suspension,
2 dismissal and contract renewal as are granted to regular service
3 personnel in sections six, seven, eight and eight-a, article two of
4 this chapter.

NOTE: The purpose of this bill is to permit a county superintendent, subject to the approval of the county board, to hire three service personnel workers from the substitute list, based on seniority, on a full-time basis as itinerants to meet the day-to-day need for substitutes in the service personnel area. The bill provides that the itinerants do not count against the county in the calculation of the school aid formula. The bill also provides a provision should the hiring of the three full time substitutes prove to be insufficient to meet the need for substitute service personnel on any given day.

§18-9A-5a is new; therefore, it has been completely underscored.

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