

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **H. B. 2139**

5 (By Delegates Perry, Pasdon, Phillips, L., Hamrick, Rowan, Ambler, Cooper, Espinosa, Pethtel,  
6 Romine and Longstreth)

7  
8  
9 [Passed March 12, 2015; in effect from passage.]

10  
11 AN ACT to amend and reenact §18A-2-3 of the Code of West Virginia, 1931, as amended, relating  
12 to employment of retired teachers as substitutes in areas of critical need and shortage for  
13 substitutes; requiring days of retirement before instructional term employed as substitute;  
14 requiring electronic posting of vacancy; requiring preemployment submission of information  
15 to, and verification of compliance by, state board prior to submission to retirement board;  
16 resetting expiration date of provisions; and making other technical improvements.

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

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

20 **ARTICLE 2. SCHOOL PERSONNEL.**

21 **§18A-2-3. Employment of substitute teachers; employment of retired teachers as substitutes**

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

3                   (a) The county superintendent, subject to approval of the county board, may employ and  
4 assign substitute teachers to any of the following duties:

5                   (1) Fill the temporary absence of any teacher or an unexpired school term made vacant by  
6 resignation, death, suspension or dismissal;

7                   (2) Fill a teaching position of a regular teacher on leave of absence; and

8                   (3) Perform the instructional services of any teacher who is authorized by law to be absent  
9 from class without loss of pay, providing the absence is approved by the board of education in  
10 accordance with the law.

11                  The substitute shall be a duly certified teacher.

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

21                  (c) (1) The Legislature hereby finds and declares that due to a shortage of qualified substitute

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

8 (2) A person receiving retirement benefits under article seven-a, chapter eighteen of this code  
9 or who is entitled to retirement benefits during the fiscal year in which that person retired may accept  
10 employment as a critical needs substitute teacher for an unlimited number of days each fiscal year  
11 without affecting the monthly retirement benefit to which the retirant is otherwise entitled if the  
12 following conditions are satisfied:

13 (A) The county board adopts a policy recommended by the superintendent to address areas  
14 of critical need and shortage for substitute teachers;

15 (B) The policy sets forth the areas of critical need and shortage for substitute teachers in the  
16 county in accordance with the definition of area of critical need and shortage for substitute teachers  
17 set forth in subdivision (1) of this subsection;

18 (C) The policy provides for the employment of retired teachers as critical needs substitute  
19 teachers during the school year on an expanded basis in areas of critical need and shortage for  
20 substitute teachers as provided in this subsection;

21 (D) The policy provides that a retired teacher may be employed as a substitute teacher in an

1 area of critical need and shortage for substitute teachers on an expanded basis as provided in this  
2 subsection only when no other teacher who holds certification and training in the area and who is  
3 not retired is available and accepts the substitute assignment;

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

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

9 (G) Prior to employment of a retired teacher as a critical needs substitute teacher beyond the  
10 post-retirement employment limitations established by the Consolidated Public Retirement Board,  
11 the superintendent of the affected county submits to the state board in a form approved by the  
12 Consolidated Public Retirement Board and the state board, an affidavit signed by the superintendent  
13 stating the name of the county, the fact that the county has adopted a policy to employ retired  
14 teachers as substitutes to address areas of critical need and shortage, the name or names of the person  
15 or persons to be employed as a critical needs substitute pursuant to the policy, the critical need and  
16 shortage area position filled by each person, the date that the person gave notice to the county board  
17 of the person's intent to retire, and the effective date of the person's retirement. Upon verification  
18 of compliance with this section and the eligibility of the critical needs substitute teacher for  
19 employment beyond the post-retirement limit, the state board shall submit the affidavit to the  
20 Consolidated Public Retirement Board.

21 (3) Any person who retires and begins work as a critical needs substitute teacher within the

1 same employment term shall lose those retirement benefits attributed to the annuity reserve, effective  
2 from the first day of employment as a retiree substitute in that employment term and ending with the  
3 month following the date the retiree ceases to perform service as a substitute.

4 (4) Retired teachers employed to perform expanded substitute service pursuant to this  
5 subsection are considered day-to-day, temporary, part-time employees. The substitutes are not  
6 eligible for additional pension or other benefits paid to regularly employed employees and may not  
7 accrue seniority.

8 (5) A retired teacher is eligible to be employed as a critical needs substitute to fill a vacant  
9 position only if the retired teacher's retirement became effective at least twenty days before the  
10 beginning of the employment term during which he or she is employed as a substitute;

11 (6) When a retired teacher is employed as a critical needs substitute to fill a vacant position,  
12 the county board shall continue to post the vacant position until it is filled with a regularly employed  
13 teacher who is fully certified or permitted for the position.

14 (7) When a retired teacher is employed as a critical needs substitute to fill a vacant position,  
15 the position vacancy shall be posted electronically and easily accessible to prospective employees  
16 as determined by the state board;

17 (8) Until this subsection is expired pursuant to subdivision (9) of this subsection, the state  
18 board, annually, shall report to the Joint Committee on Government and Finance prior to February  
19 1 of each year. Additionally, a copy shall be provided to the Legislative Oversight Commission on  
20 Education Accountability. The report shall contain information indicating the effectiveness of the  
21 provisions of this subsection on reducing the critical need and shortage of substitute teachers

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

5 (9) The provisions of this subsection shall expire on June 30, 2017.

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

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

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

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

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

19 (3) Prospective employable professional personnel employed are limited to three full-time  
20 prospective employable professional personnel per one hundred professional personnel employed  
21 in a county or twenty-five full-time prospective employable professional personnel in a county,

1       whichever is less.

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

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

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

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

11              (B) The number of personnel hired;

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

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

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

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