

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2139**

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

6
7 (Originating in the House Committee on Finance.)

8 [February 18, 2015]

9
10 A BILL to amend and reenact §18A-2-3 of the Code of West Virginia, 1931, as amended, relating
11 to employment of retired teachers as substitutes in areas of critical need and shortage for
12 substitutes; requiring days of retirement before instructional term employed as substitute;
13 requiring electronic posting of vacancy; requiring preemployment submission of information
14 to, and verification of compliance by, state board prior to submission to retirement board;
15 resetting expiration date of provisions; and making other technical improvements.

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

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

19 **ARTICLE 2. SCHOOL PERSONNEL.**

20 **§18A-2-3. Employment of substitute teachers; employment of retired teachers as substitutes**
21 **in areas of critical need and shortage; and employment of prospective**

1 **employable professional personnel.**

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

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

6 (2) ~~to~~ Fill a teaching position of a regular teacher on leave of absence; and

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

10 The substitute shall be a duly certified teacher.

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

20 (c) (1) The Legislature hereby finds and declares that due to a shortage of qualified substitute
21 teachers, a compelling state interest exists in expanding the use of retired teachers to provide service

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

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

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

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

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

20 (D) The policy provides that a retired teacher may be employed as a substitute teacher in an
21 area of critical need and shortage for substitute teachers on an expanded basis as provided in this

1 subsection only when no other teacher who holds certification and training in the area and who is
2 not retired is available and accepts the substitute assignment;

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

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

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

20 (3) Any person who retires and begins work as a critical needs substitute teacher within the
21 same employment term shall lose those retirement benefits attributed to the annuity reserve, effective

1 from the first day of employment as a retiree substitute in that employment term and ending with the
2 month following the date the retiree ceases to perform service as a substitute.

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

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

10 ~~(5)~~ (6) When a retired teacher is employed as a critical needs substitute to fill a vacant
11 position, the county board shall continue to post the vacant position until it is filled with a regularly
12 employed teacher who is fully certified or permitted for the position.

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

16 ~~(6)~~ (8) Until this subsection is expired pursuant to subdivision ~~(7)~~ (9) of this subsection, the
17 state board, annually, shall report to the Joint Committee on Government and Finance prior to
18 February 1 of each year. Additionally, a copy shall be provided to the Legislative Oversight
19 Commission on Education Accountability. The report shall contain information indicating the
20 effectiveness of the provisions of this subsection on ~~expanding the use of retired substitute teachers~~
21 ~~to address areas of~~ reducing the critical need and shortage of substitute teachers including, but not

1 limited to, the number of retired teachers, by critical need and shortage area position filled and by
2 county, employed beyond the post-retirement employment limit established by the Consolidated
3 Public Retirement Board, the date that each person gave notice to the county board of the person's
4 intent to retire, and the effective date of the person's retirement.

5 ~~(7)~~ (9) The provisions of this subsection shall expire on ~~June 30, 2014~~ 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.