

**H. B. 2139**

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(By Delegate Perry, Pasdon, Phillips, L., Hamrick, Rowan, Ambler, Cooper, Espinosa, Pethel,  
Romine and Longstreth)

[Introduced January 20, 2015; referred to the  
Committee on Education then Finance.]

11 A BILL 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 reenacted  
19 to read as follows:

20 **ARTICLE 2. SCHOOL PERSONNEL.**

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

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

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

19          (c) (1) The Legislature hereby finds and declares that due to a shortage of qualified substitute  
20 teachers, a compelling state interest exists in expanding the use of retired teachers to provide service  
21 as substitute teachers in areas of critical need and shortage. The Legislature further finds that diverse  
22 circumstances exist among the counties for the expanded use of retired teachers as substitutes. For

1 the purposes of this subsection, “area of critical need and shortage for substitute teachers” means an  
2 area of certification and training in which the number of available substitute teachers in the county  
3 who hold certification and training in that area and who are not retired is insufficient to meet the  
4 projected need for substitute teachers.

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

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

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

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

18 (D) The policy provides that a retired teacher may be employed as a substitute teacher in an  
19 area of critical need and shortage for substitute teachers on an expanded basis as provided in this  
20 subsection only when no other teacher who holds certification and training in the area and who is  
21 not retired is available and accepts the substitute assignment;

22 (E) The retired teacher’s retirement became effective at least forty days before the first

1 instructional term during which he or she is employed as a substitute;

2 (F) The position vacancy is posted electronically and is easily accessible to prospective  
3 employees as determined by the state board;

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

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

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

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

1 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 not  
6 accrue seniority.

7 (5) When a retired teacher is employed as a substitute to fill a vacant position, the county  
8 board shall continue to post the vacant position until it is filled with a regularly employed teacher  
9 who is fully certified or permitted.

10 (6) Until this subsection is expired pursuant to subdivision (7) of this subsection, the state  
11 board, annually, shall report to the Joint Committee on Government and Finance prior to February  
12 1 of each year. Additionally, a copy shall be provided to the Legislative Oversight Commission on  
13 Education Accountability. The report shall contain information indicating the effectiveness of the  
14 provisions of this subsection on ~~expanding the use of retired substitute teachers to address areas of~~  
15 reducing the critical need and shortage of substitute teachers including, but not limited to, the  
16 number of retired teachers, by critical need and shortage area position filled and by county,  
17 employed beyond the post-retirement employment limit established by the Consolidated Public  
18 Retirement Board, the date that each person gave notice to the county board of the person's intent  
19 to retire, and the effective date of the person's retirement.

20 (7) The provisions of this subsection shall expire on ~~June 30, 2014~~ June 30, 2017.

21 (d) (1) Notwithstanding any other provision of this code to the contrary, each year a county  
22 superintendent may employ prospective employable professional personnel on a reserve list at the

1 county level subject to the following conditions:

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

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

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

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

12 (3) Prospective employable professional personnel employed are limited to three full-time  
13 prospective employable professional personnel per one hundred professional personnel employed  
14 in a county or twenty-five full-time prospective employable professional personnel in a county,  
15 whichever is less.

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

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

20 (e) The state board annually shall review the status of employing personnel under the  
21 provisions of subsection (d) of this section and annually shall report to the Legislative Oversight  
22 Commission on Education Accountability on or before November 1 of each year. The report shall

1 include, but not be limited to, the following:

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

3 (B) The number of personnel hired;

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

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

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

7 (F) The state board's recommendations on the prospective employable professional personnel

8 program.

NOTE: The purpose of this bill is to restart expired provisions that allow retired teachers to be employed as substitutes in areas of critical need and shortage for substitutes beyond the 140 day post-retirement employment limit. The bill adds additional features to improve monitoring of compliance with the provisions and encourage the long-term posting of critical shortage positions.

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