

E N R O L L E D

COMMITTEE SUBSTITUTE

FOR

H. B. 2139

(BY DELEGATE(S) PERRY, PASDON, L. PHILLIPS,
HAMRICK, ROWAN, AMBLER, COOPER, ESPINOSA,
PETHTEL, ROMINE AND LONGSTRETH)

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

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

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; employment of retired teachers as substitutes in areas of critical need and shortage; and 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 any
3 of the following duties:

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

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

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

13 The substitute shall be a duly certified teacher.

14 (b) Notwithstanding any other provision of this code to the
15 contrary, a substitute teacher who has been assigned as a
16 classroom teacher in the same classroom continuously for more
17 than one half of a grading period and whose assignment remains
18 in effect two weeks prior to the end of the grading period, shall
19 remain in the assignment until the grading period has ended,
20 unless the principal of the school certifies that the regularly

21 employed teacher has communicated with and assisted the
22 substitute with the preparation of lesson plans and monitoring
23 student progress or has been approved to return to work by his
24 or her physician. For the purposes of this section, teacher and
25 substitute teacher, in the singular or plural, mean professional
26 educator as defined in section one, article one of this chapter.

27 (c) (1) The Legislature hereby finds and declares that due to
28 a shortage of qualified substitute teachers, a compelling state
29 interest exists in expanding the use of retired teachers to provide
30 service as substitute teachers in areas of critical need and
31 shortage. The Legislature further finds that diverse circum-
32 stances exist among the counties for the expanded use of retired
33 teachers as substitutes. For the purposes of this subsection, “area
34 of critical need and shortage for substitute teachers” means an
35 area of certification and training in which the number of
36 available substitute teachers in the county who hold certification
37 and training in that area and who are not retired is insufficient to
38 meet the projected need for substitute teachers.

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

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

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

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

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

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

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

69 (G) Prior to employment of a retired teacher as a critical
70 needs substitute teacher beyond the post-retirement employment
71 limitations established by the Consolidated Public Retirement
72 Board, the superintendent of the affected county submits to the
73 state board in a form approved by the Consolidated Public
74 Retirement Board and the state board, an affidavit signed by the
75 superintendent stating the name of the county, the fact that the
76 county has adopted a policy to employ retired teachers as
77 substitutes to address areas of critical need and shortage, the
78 name or names of the person or persons to be employed as a
79 critical needs substitute pursuant to the policy, the critical need
80 and shortage area position filled by each person, the date that the
81 person gave notice to the county board of the person's intent to
82 retire, and the effective date of the person's retirement. Upon
83 verification of compliance with this section and the eligibility of
84 the critical needs substitute teacher for employment beyond the

85 post-retirement limit, the state board shall submit the affidavit to
86 the Consolidated Public Retirement Board.

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

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

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

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

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

112 (8) Until this subsection is expired pursuant to subdivision
113 (9) of this subsection, the state board, annually, shall report to
114 the Joint Committee on Government and Finance prior to

115 February 1 of each year. Additionally, a copy shall be provided
116 to the Legislative Oversight Commission on Education Account-
117 ability. The report shall contain information indicating the
118 effectiveness of the provisions of this subsection on reducing the
119 critical need and shortage of substitute teachers including, but
120 not limited to, the number of retired teachers, by critical need
121 and shortage area position filled and by county, employed
122 beyond the post-retirement employment limit established by the
123 Consolidated Public Retirement Board, the date that each person
124 gave notice to the county board of the person's intent to retire,
125 and the effective date of the person's retirement.

126 (9) The provisions of this subsection shall expire on June 30,
127 2017.

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

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

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

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

141 (2) Prospective employable professional personnel may only
142 be employed from candidates at a job fair who have or will
143 graduate from college in the current school year or whose
144 employment contract with a county board has or will be termi-
145 nated due to a reduction in force in the current fiscal year.

146 (3) Prospective employable professional personnel employed
147 are limited to three full-time prospective employable profes-
148 sional personnel per one hundred professional personnel
149 employed in a county or twenty-five full-time prospective
150 employable professional personnel in a county, whichever is
151 less.

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

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

158 (e) The state board annually shall review the status of
159 employing personnel under the provisions of subsection (d) of
160 this section and annually shall report to the Legislative Oversight
161 Commission on Education Accountability on or before Novem-
162 ber 1 of each year. The report shall include, but not be limited to,
163 the following:

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

165 (B) The number of personnel hired;

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

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

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

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

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2015.

Governor

