

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

**Introduced**

### **House Bill 4596**

BY DELEGATES TONEY, PAYNTER AND DEAN

[Introduced January 29, 2020; Referred to the  
Committee on Education then Finance]

1 A BILL to amend and reenact §18A-4-15 of the Code of West Virginia, 1931, as amended, relating  
2 to declaring a shortage of qualified bus operators and allowing retired bus operators to  
3 accept employment as substitute bus operators without effect on their retirement benefit.

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

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

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

1 (a) The county board shall employ and the county superintendent, subject to the approval  
2 of the county board, shall assign substitute service personnel on the basis of seniority to perform  
3 any of the following duties:

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

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

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

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

9 (C) If an absence pursuant to paragraph (A) or (B) of this subdivision is to extend beyond  
10 30 working days, the county board shall post the position of the absent employee under the  
11 procedures set forth in §18A-4-8b of this code. If a substitute service person is employed to fill  
12 the position of the absent employee and is employed in the position for 20 or more working days,  
13 the substitute service person:

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

16 (ii) Does not accrue regular seniority; and

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

19 (D) If a regular or substitute employee fills a vacancy that is related in any manner to a  
20 leave of absence or the absence of an employee on workers' compensation as provided in this

21 section, upon termination of the absence the employee shall be returned to his or her original  
22 position or status;

23 (E) A service person may not be:

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

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

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

29 (4) To temporarily fill a vacancy in a permanent position caused by severance of  
30 employment by the resignation, transfer, retirement, permanent disability, dismissal pursuant to  
31 §18A-2-8 of this code, or death of the regular service person who had been assigned to the  
32 position. Within 20 working days from the commencement of the vacancy, the county board shall  
33 fill the vacancy under the procedures set forth in §18A-4-8b of this code and §18A-2-5 of this  
34 code. The person hired to fill the vacancy shall have and be accorded all rights, privileges and  
35 benefits pertaining to the position;

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

37 (A) If the suspension is for more than 30 working days, the county board shall post the  
38 position of the suspended employee under the procedures set forth in section §18A-4-8b of this  
39 code.

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

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

44 (ii) Does not accrue regular seniority; and

45 (iii) Is accorded all other rights, privileges and benefits pertaining to the position until the  
46 termination by the county board becomes final or the suspended employee is returned to

47 employment.

48 (C) If the suspended employee is not returned to his or her job, the county board shall fill  
49 the vacancy under the procedures set forth in §18A-4-8b of this code and §18A-2-5 of this code;  
50 and

51 (6) To fill temporarily a vacancy in a newly created position prior to employing a service  
52 person on a regular basis pursuant to §18A-4-8b of this code.

53 (b) Service personnel substitutes shall be assigned in the following manner:

54 (1) The substitute with the greatest length of service time in the vacant category of  
55 employment has priority in accepting the assignment throughout the period of the regular service  
56 person's absence or until the vacancy is filled on a regular basis pursuant to §18A-4-8b of this  
57 code. Length of service time is calculated from the date a substitute service person begins  
58 assigned duties as a substitute in a particular category of employment.

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

62 (3) Any regular service person employed in the same building or working station and the  
63 same classification category of employment as the absent employee shall be given the first  
64 opportunity to fill the position of the absent employee on a rotating and seniority basis. In such  
65 case the regular service person's position is filled by a substitute service person. A regular service  
66 person assigned to fill the position of an absent employee has the opportunity to hold that position  
67 throughout the absence. For the purpose of this section only, all regularly employed school bus  
68 operators are considered to be employed within the same building or working station.

69 (c) The county board shall return a regular school service person to the same position held  
70 prior to any approved leave of absence or period of recovery from injury or illness. The school  
71 service person:

72 (1) Retains all rights, privileges and benefits which had accrued at the time of the absence

73 or accrued under any other provision of law during the absence; and

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

76 (d) The salary of a substitute service person is determined:

77 (1) Based upon his or her years of employment as defined in §18A-4-8 of this code;

78 (2) As provided in the state minimum pay scale set forth in section §18A-4-8a of this code;

79 and

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

82 (e) A substitute service person shall execute a written contract with the county board  
83 pursuant to §18A-2-5 of this code, prior to beginning assigned duties.

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

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

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

91 (g) A substitute service person who has worked 30 days for a school system has all rights  
92 pertaining to suspension, dismissal and contract renewal as are granted to regular service  
93 personnel in §18A-2-6, 7, 8, and 8a of this code.

94 (h) The Legislature hereby finds and declares that due to a shortage of qualified bus  
95 operators, a compelling state interest exists in expanding the use of retired bus operators to  
96 provide service as substitute bus operators in this area of critical need. A person receiving  
97 retirement benefits under §18-7A-1 et seq. of this code or who is entitled to retirement benefits  
98 during the fiscal year in which that person retired may accept employment as a substitute bus

- 99 operator for an unlimited number of days each fiscal year without affecting the monthly retirement
- 100 benefit to which the retirant is otherwise entitled.

NOTE: The purpose of this bill is to declare the need for retired bus operators as substitutes and allow retired bus operators to work as substitutes without affecting their monthly retirement benefit.

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