

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5436

By Delegates Campbell, Dean, Foggin, Barnhart, E.
Pritt, Shamblin, Stephens, Dittman, Miller, Cooper,
and Toney

[Introduced February 05, 2024; Referred to the
Committee on Education]

1 A BILL to amend and reenact §18A-2-3 of the Code of West Virginia, 1931, as amended, relating
 2 to employment of substitute teachers; and providing that the county superintendents
 3 subject to approval of the county board, may employ and assign substitute teachers who
 4 are elected members of county boards for short term assignments of no more than nine
 5 days in the same substitute assignment.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. SCHOOL PERSONNEL.

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

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

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

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

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

9 The substitute shall be a duly certified teacher.

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

18 one, article one of this chapter.

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

24 (2) For the purposes of this subsection:

25 (A) "Area of critical need and shortage for substitute teachers" means an area of
26 certification and training in which the number of available substitute teachers in the county who
27 hold certification and training in that area and who are not retired is insufficient to meet the
28 projected need for substitute teachers; and

29 (B) "Teacher or substitute teacher" includes speech pathologists, school nurses and
30 school counselors.

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

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

38 (B) The policy sets forth the areas of critical need and shortage for substitute teachers in
39 the county in accordance with the definition of area of critical need and shortage for substitute
40 teachers set forth in subdivision (2) of this subsection;

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

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

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

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

53 (G) Prior to employment of a retired teacher as a critical needs substitute teacher beyond
54 the post-retirement employment limitations established by the Consolidated Public Retirement
55 Board, the superintendent of the affected county submits to the state board in a form approved by
56 the Consolidated Public Retirement Board and the state board, an affidavit signed by the
57 superintendent stating the name of the county, the fact that the county has adopted a policy to
58 employ retired teachers as substitutes to address areas of critical need and shortage, the name or
59 names of the person or persons to be employed as a critical needs substitute pursuant to the
60 policy, the critical need and shortage area position filled by each person, the date that the person
61 gave notice to the county board of the person's intent to retire, and the effective date of the
62 person's retirement. Upon verification of compliance with this section and the eligibility of the
63 critical needs substitute teacher for employment beyond the post-retirement limit, the state board
64 shall submit the affidavit to the Consolidated Public Retirement Board.

65 (4) Any person who retires and begins work as a critical needs substitute teacher within the
66 same fiscal year in which that person retired shall lose those retirement benefits attributed to the
67 annuity reserve, effective from the first day of employment as a retiree critical needs substitute
68 teacher in that fiscal year and ending with the month following the date the retiree ceases to
69 perform service as a critical needs substitute teacher.

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

74 (6) A retired teacher is eligible to be employed as a critical needs substitute teacher to fill a
75 vacant position without any loss of retirement benefits attributed to the annuity reserve only if the
76 retired teacher's retirement became effective before the first day of July preceding at least the
77 fiscal year during which he or she is employed as a critical needs substitute teacher.

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

81 (8) When a retired teacher is employed as a critical needs substitute to fill a vacant
82 position, the position vacancy shall be posted electronically and easily accessible to prospective
83 employees as determined by the state board.

84 (9) Until this subsection is expired pursuant to subdivision (10) of this subsection, the state
85 board shall report to the Joint Committee on Government and Finance, prior to February 1 of each
86 year, information indicating the effectiveness of the provisions of this subsection on reducing the
87 critical need and shortage of substitute teachers including, but not limited to, the number of retired
88 teachers, by critical need and shortage area position filled and by county, employed beyond the
89 post-retirement employment limit established by the Consolidated Public Retirement Board, the
90 date that each person gave notice to the county board of the person's intent to retire, and the
91 effective date of the person's retirement. A copy of the report shall also be provided to the
92 Legislative Oversight Commission on Education Accountability.

93 (10) The provisions of this subsection shall expire on June 30, 2025.

1 (d) Notwithstanding any provision of this code to the contrary, the county superintendent,
2 subject to approval of the county board, may employ and assign substitute teachers who are

- 3 elected members of county boards for short term assignments of no more than nine days in the
4 same substitute assignment: *Provided*, That the board member is qualified and has the
5 requirements and training in place for current substitute teachers.

NOTE: The purpose of this bill is to provide that the county superintendents, subject to approval of the county board, may employ and assign substitute teachers who are elected members of county boards for short term assignments of no more than nine days in the same substitute assignment.

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