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OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2004



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 2268

(By Delegates Susman, Poling, Perry, Beach, Renner,
Hartman and Tabb)



Passed March 12, 2004

In Effect from Passage

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H. B. 2268

(BY DELEGATES SUSMAN, POLING, PERRY, BEACH,
RENNER, HARTMAN AND TABB)

[Passed March 12, 2004; in effect from passage.]

AN ACT to amend and reenact §18-7A-38 of the code of West Virginia, 1931, as amended; to amend and reenact §18A-2-3 of said code; and to amend and reenact §18C-4-2 of said code, all relating to the maximum number of days a retired teacher may accept employment; the employment of retired teachers in areas of critical need and shortage; defining area of critical need and shortage; adding conditions for expanding use of retired teachers to provide service as substitute teachers in areas of critical need and shortage; requiring certain vacancies to continue to be posted; providing for future expiration of provisions; providing priority for certain applicants for the Underwood-Smith scholarships; and technical amendments.

Be it enacted by the Legislature of West Virginia:

That §18-7A-38 of the code of West Virginia, 1931, as amended, be amended and reenacted; that §18A-2-3 of said code be amended and reenacted; and that §18C-4-2 of said code be amended and reenacted, all to read as follows:

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-38. Maximum number of days a retired teacher may accept employment; calculating days worked for retirants engaged in substitute teaching.

1 (a) The Legislature finds that:

2 (1) The consolidated public retirement board has deter-
3 mined that retired substitute teachers should not perform
4 substitute teaching without limit;

5 (2) The consolidated public retirement board has estab-
6 lished, by rule, a maximum number of days in which a retired
7 teacher may accept employment prior to having his or her
8 retirement benefit reduced; and

9 (3) There have been inconsistencies in the manner in which
10 county boards calculate the maximum number of days estab-
11 lished by rule.

12 (b) The consolidated public retirement board may not set
13 forth in rule a maximum number of days in which a retired
14 teacher may accept employment prior to having his or her
15 retirement benefit reduced that is less than one hundred forty
16 days.

17 (c) For the purpose of calculating whether a retired substi-
18 tute teacher has exceeded the maximum number of days in
19 which a substitute teacher may accept employment without

20 incurring a reduction in his or her retirement benefit, the
21 number of days worked shall be determined by:

22 (1) Totaling the number of hours worked; and

23 (2) Dividing by the standard number of hours that a full-
24 time teacher works per day.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-3. Employment of substitute teachers and retired teachers as substitutes in areas of critical need and shortage; 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: (1) To fill the temporary absence of any
4 teacher or an unexpired school term made vacant by resigna-
5 tion, death, suspension or dismissal; (2) to fill a teaching
6 position of a regular teacher on leave of absence; and (3) to
7 perform the instructional services of any teacher who is
8 authorized by law to be absent from class without loss of pay,
9 providing the absence is approved by the board of education in
10 accordance with the law. The substitute shall be a duly certified
11 teacher.

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

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

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

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

45 (A) The county board adopts a policy recommended by the
46 superintendent to address areas of critical need and shortage;

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

51 (C) The policy provides for the employment of retired
52 teachers as substitute teachers during the school year on an
53 expanded basis in areas of critical need and shortage as pro-
54 vided in this subsection;

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

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

63 (F) The state board approves the policy and the use of
64 retired teachers as substitute teachers on an expanded basis in
65 areas of critical need and shortage as provided in this subsec-
66 tion; and

67 (G) Prior to employment of a substitute teacher beyond the
68 post-retirement employment limitations established by the
69 consolidated public retirement board, the superintendent of the
70 affected county submits to the consolidated public retirement
71 board, in a form approved by the retirement board, an affidavit
72 signed by the superintendent stating the name of the county, the
73 fact that the county has adopted a policy to employ retired
74 teachers as substitutes to address areas of critical need and
75 shortage and the name or names of the person or persons to be
76 employed pursuant to the policy.

77 (3) Any person who retires and begins work as a substitute
78 teacher within the same employment term shall lose those
79 retirement benefits attributed to the annuity reserve, effective
80 from the first day of employment as a retiree substitute in that
81 employment term and ending with the month following the date
82 the retiree ceases to perform service as a substitute.

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

88 (5) When a retired teacher is employed as a substitute to fill
89 a vacant position, the county board shall continue to post the
90 vacant position until it is filled with a regularly employed
91 teacher.

92 (6) Until this subsection is expired pursuant to subdivision
93 (7) of this subsection, the state board, annually, shall report to
94 the joint committee on government and finance prior to the first
95 day of February of each year. Additionally, a copy shall be
96 provided to the legislative oversight commission on education
97 accountability. The report shall contain information indicating
98 the effectiveness of the provisions of this subsection on
99 expanding the use of retired substitute teachers to address areas
100 of critical need and shortage.

101 (7) The provisions of this subsection shall expire on the
102 thirtieth day of June, two thousand six.

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

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

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

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

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

121 (3) Prospective employable professional personnel em-
122 ployed are limited to three full-time prospective employable
123 professional personnel per one hundred professional personnel
124 employed in a county or twenty-five full-time prospective
125 employable professional personnel in a county, whichever is
126 less.

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

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

133 (e) The state board annually shall review the status of
134 employing personnel under the provisions of subsection (d) of
135 this section and annually shall report to the legislative oversight
136 commission on education accountability on or before the first
137 day of November of each year. The report shall include, but not
138 be limited to, the following:

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

140 (B) The number of personnel hired;

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

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

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

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

**CHAPTER 18C. STUDENT LOANS;
SCHOLARSHIPS AND STATE AID.**

**ARTICLE 4. UNDERWOOD-SMITH TEACHER SCHOLARSHIP PRO-
GRAM.**

§18C-4-2. Selection criteria and procedures.

1 (a) The governor shall designate an existing scholarship
2 selection agency or panel to select the recipients of Under-
3 wood-Smith teacher scholarships who meet the eligibility
4 criteria set forth in subsection (b) of this section. If no such
5 agency or panel exists, the governor shall appoint a scholarship
6 selection panel for this purpose which shall consist of seven
7 persons representative of public school administrators, teachers,
8 including preschool teachers, and parents.

9 (b) Eligibility for an Underwood-Smith teacher scholarship
10 award shall be limited to West Virginia resident students who:

11 (1) Have graduated or are graduating from high school and
12 rank in the top ten percent of their graduating class or the top
13 ten percent statewide of those West Virginia students taking the
14 American college test;

15 (2) Have a cumulative grade point average of at least three
16 and twenty-five one hundredths on a possible scale of four after
17 successfully completing two years of course work at an
18 approved institution of higher education;

19 (3) Are public school aides or paraprofessionals as defined
20 in section eight, article four, chapter eighteen-a of this code and
21 who have a cumulative grade point average of at least three and

22 twenty-five one hundredths on a possible scale of four after
23 successfully completing two years of course work at an
24 approved institution of higher education; or

25 (4) Are graduate students at the master's degree level who
26 have graduated or are graduating in the top ten percent of their
27 college graduating class.

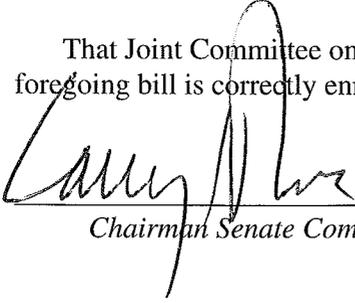
28 (c) In accordance with the rules of the commission, the vice
29 chancellor for administration shall develop criteria and proce-
30 dures for the selection of scholarship recipients that reflect the
31 purposes of this article and the areas in which particular efforts
32 will be made in the selection of scholars as set forth in section
33 one of this article and which also may include, but not be
34 limited to, the grade point average of the applicant, involvement
35 in extracurricular activities, financial need, current academic
36 standing and an expression of interest in teaching as expressed
37 in an essay written by the applicant. Such criteria and proce-
38 dures further may require the applicant to furnish letters of
39 recommendation from teachers and others. It is the intent of the
40 Legislature that academic abilities be the primary criteria for
41 selecting scholarship recipients: *Provided*, That the qualified
42 applicants with the highest academic abilities who intend to
43 pursue teaching careers in areas of critical need and shortage as
44 determined by the state board of education shall be given
45 priority.

46 (d) In developing the selection criteria and procedures to be
47 used by the panel, the vice chancellor for administration shall
48 solicit the views of public and private education agencies and
49 institutions and other interested parties. These views: (1) Shall
50 be solicited by means of written and published selection criteria
51 and procedures in final form for implementation; and (2) may
52 be solicited by means of public hearings on the present and
53 projected teacher needs of the state or any other methods the

54 vice chancellor for administration may determine to be appro-
55 priate to gather the information.

56 (e) The vice chancellor for administration shall make
57 application forms for Underwood-Smith teacher scholarships
58 available to public and private high schools in the state and in
59 other locations convenient to applicants, parents and others, and
60 shall make an effort to attract students from low-income
61 backgrounds, ethnic or racial minority students, students with
62 disabilities, and women or minority students who show interest
63 in pursuing teaching careers in mathematics and science and
64 who are under represented in those fields.

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



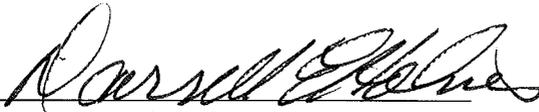
Chairman Senate Committee



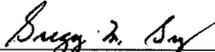
Chairman House Committee

Originating in the House.

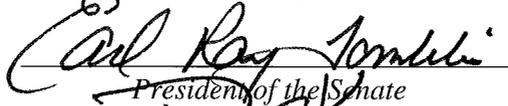
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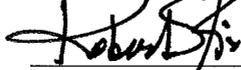
Clerk of the Senate



Clerk of the House of Delegates

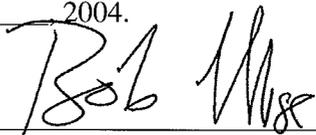


President of the Senate



Speaker of the House of Delegates

The within is approved this the 5th
day of April 2004.



Governor

PRESENTED TO THE
GOVERNOR

DATE 7/1/04
TIME 4:38pm