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2004 MAR 25 P 4:11

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2004



ENROLLED

House Bill No. 4554

(By Delegates Shaver, Beach, Howard, Paxton,
Long, Canterbury and Mezzatesta)



Passed March 10, 2004

In Effect from Passage

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H. B. 4554

(BY DELEGATES SHAVER, BEACH, HOWARD, PAXTON,
LONG, CANTERBURY AND MEZZATESTA)

[Passed March 10, 2004; in effect from passage.]

AN ACT to amend and reenact §18A-4-15 of the code of West Virginia, 1931, as amended, relating to the rights, privileges and benefits of substitute service personnel employed to fill vacancies created by leaves of absence, workers' compensation and suspensions for more than thirty working days; and considering certain bus operators to be employed in the same building or working station.

Be it enacted by the Legislature of West Virginia:

That §18A-4-15 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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 superin-
- 2 tendent, subject to the approval of the county board, shall assign

3 substitute service personnel on the basis of seniority to perform
4 any of the following duties:

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

7 (2) To fill the position of a regular service employee who
8 requests a leave of absence from the county board in writing
9 and who is granted the leave in writing by the county board, and
10 to fill the position of a regular service employee who is on
11 workers' compensation and absent: *Provided*, That if the
12 absence is to extend beyond thirty working days, the county
13 board shall post the position of the absent employee under the
14 procedures set forth in section eight-b of this article. If a
15 substitute service employee is employed to fill the position of
16 the absent employee and is employed in the position for twenty
17 or more working days, the substitute service personnel shall
18 have regular employment status and be accorded all rights,
19 privileges and benefits pertaining to the position until the
20 regular employee returns to the position or ceases to be em-
21 ployed by the county board: *Provided, however*, That if a
22 regular or substitute employee fills a vacancy that is related to
23 a leave of absence or the absence of an employee on workers'
24 compensation in any manner as provided in this section, upon
25 termination of the absence the employee shall be returned to his
26 or her original position: *Provided further*, That no service
27 person may be required to request or to take a leave of absence:
28 *And provided further*, That no service person shall be deprived
29 of any right or privilege of regular employment status for
30 refusal to request or failure to take a leave of absence;

31 (3) To perform the service of a service employee who is
32 authorized to be absent from duties without loss of pay;

33 (4) To temporarily fill a vacancy in a permanent position
34 caused by severance of employment by the resignation, transfer,

35 retirement, permanent disability, dismissal pursuant to section
36 eight, article two of this chapter, or death of the regular service
37 employee who had been assigned to fill the position: *Provided*,
38 That within twenty working days from the commencement of
39 the vacancy, the board shall fill the vacancy under the proce-
40 dures set out in section eight-b of this article and section five,
41 article two of this chapter and the person hired to fill the
42 vacancy shall have and shall be accorded all rights, privileges
43 and benefits pertaining to the position;

44 (5) To fill the vacancy created by a regular employee's
45 suspension: *Provided*, That if the suspension is for more than
46 thirty working days, the county board shall post the position of
47 the suspended employee under the procedures set forth in
48 section eight-b of this article. If a substitute service employee
49 is employed to fill the suspended employee's position, the
50 substitute service personnel shall have regular employment
51 status and be accorded all rights, privileges and benefits
52 pertaining to the position until the termination by the county
53 board becomes final or the suspended employee is returned to
54 employment. If the suspended employee is not returned to his
55 or her job, the board shall fill the vacancy under the procedures
56 set out in section eight-b of this article and section five, article
57 two of this chapter; and

58 (6) To temporarily fill a vacancy in a newly created
59 position prior to employment of a service personnel on a regular
60 basis under the procedure set forth in section eight-b of this
61 article.

62 (b) Substitutes shall be assigned in the following manner:
63 A substitute with the greatest length of service time, that is,
64 from the date he or she began his or her assigned duties as a
65 substitute in that particular category of employment, shall be
66 given priority in accepting the assignment throughout the period
67 of the regular employee's absence or until the vacancy is filled

68 on a regular basis under the procedures set out in section eight-
69 b of this article. All substitutes shall be employed on a rotating
70 basis according to the length of their service time until each
71 substitute has had an opportunity to perform similar assign-
72 ments: *Provided*, That if there are regular service employees
73 employed in the same building or working station as the absent
74 employee and who are employed in the same classification
75 category of employment, the regular employees shall be first
76 offered the opportunity to fill the position of the absent em-
77 ployee on a rotating and seniority basis with the substitute then
78 filling the regular employee's position. A regular employee
79 assigned to fill the position of an absent employee shall be
80 given the opportunity to hold that position throughout the
81 absence. For the purpose of this section only, all regularly
82 employed school bus operators are considered to be employed
83 within the same building or working station.

84 (c) Regular school service personnel shall be returned by
85 the county board of education to the same position held prior to
86 any approved leave of absence or period of recovery from
87 injury or illness. The school service personnel shall retain all
88 rights, privileges and benefits which had accrued at the time of
89 the absence or accrued under any other provision of law during
90 the absence and shall have all rights, privileges and benefits
91 generally accorded school service employees at the time of
92 return to work.

93 (d) The salary of a substitute service employee shall be
94 based upon his or her years of employment as defined in section
95 eight of this article and as provided in the state minimum pay
96 scale set forth in section eight-a of this article and shall be in
97 accordance with the salary schedule of persons regularly
98 employed in the same position in the county in which he or she
99 is employed.

100 (e) Before any substitute service employee enters upon his
101 or her duties, he or she shall execute with the county board a
102 written contract as provided in section five, article two of this
103 chapter.

104 (f) To establish a uniform system of providing a fair and
105 equitable opportunity for substitutes to enter upon their duties
106 for the first time, the following method shall be used: The
107 initial order of assigning newly employed substitutes shall be
108 determined by a random selection system established by the
109 affected substitute employees and approved by the county
110 board. This initial priority order shall be in effect only until the
111 substitute service personnel have entered upon their duties for
112 the first time.

113 (g) Substitute service employees who have worked thirty
114 days for a school system shall have all rights pertaining to
115 suspension, dismissal and contract renewal as is granted to
116 regular service personnel in sections six, seven, eight and eight-
117 a, article two of this chapter.

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.

In effect from passage.

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 25th
day of March, 2004.

Governor

PRESENTED TO THE

GOVERNOR

DATE 3/19/04

TIME 3:00 pm