

H. B. 2523

(By Delegates L. Phillips and Hall)
[Introduced January 17, 2011; referred to the
Committee on Education then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §18A-2-3 of the Code of West Virginia, 1931, as amended, relating to school personnel; and employment of substitute teachers and retired teachers as substitutes in areas of critical need and shortage for an unlimited number of days each fiscal year without affecting the monthly retirement benefit.

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 and retired teachers as substitutes in areas of critical need and shortage; employment of prospective employable professional personnel.

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

1 teacher or an unexpired school term made vacant by resignation,
2 death, suspension or dismissal; (2) to fill a teaching position of
3 a regular teacher on leave of absence; and (3) to perform the
4 instructional services of any teacher who is authorized by law to
5 be absent from class without loss of pay, providing the absence is
6 approved by the board of education in accordance with the law. The
7 substitute shall be a duly certified teacher.

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

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

1 as substitutes. For the purposes of this subsection, "area of
2 critical need and shortage" means an area of certification and
3 training in which the number of available substitute teachers in
4 the county who hold certification and training in that area and who
5 are not retired is insufficient to meet the projected need for
6 substitute teachers.

7 (2) A person receiving retirement benefits under the
8 provisions of article seven-a of this chapter or who is entitled to
9 retirement benefits during the fiscal year in which that person
10 retired may accept employment as a substitute teacher for an
11 unlimited number of days each fiscal year without affecting the
12 monthly retirement benefit to which the retirant is otherwise
13 entitled if the following conditions are satisfied:

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

16 (B) The policy sets forth the areas of critical need and
17 shortage in the county in accordance with the definition of area of
18 critical need and shortage set forth in subdivision (1) of this
19 subsection;

20 (C) The policy provides for the employment of retired teachers
21 as substitute teachers during the school year on an expanded basis
22 in areas of critical need and shortage as provided in this
23 subsection;

24 (D) The policy provides that a retired teacher may be employed
25 as a substitute teacher in an area of critical need and shortage on
26 an expanded basis as provided in this subsection only when no other

1 teacher who holds certification and training in the area and who is
2 not retired is available and accepts the substitute assignment;

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

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

8 (G) Prior to employment of a substitute teacher beyond the
9 post-retirement employment limitations established by the
10 Consolidated Public Retirement Board, the superintendent of the
11 affected county submits to the Consolidated Public Retirement
12 Board, in a form approved by the retirement board, an affidavit
13 signed by the superintendent stating the name of the county, the
14 fact that the county has adopted a policy to employ retired
15 teachers as substitutes to address areas of critical need and
16 shortage and the name or names of the person or persons to be
17 employed pursuant to the policy.

18 (3) Any person who retires and begins work as a substitute
19 teacher within the same employment term shall lose those retirement
20 benefits attributed to the annuity reserve, effective from the
21 first day of employment as a retiree substitute in that employment
22 term and ending with the month following the date the retiree
23 ceases to perform service as a substitute.

24 (4) Retired teachers employed to perform expanded substitute
25 service pursuant to this subsection are considered day-to-day,
26 temporary, part-time employees. The substitutes are not eligible

1 for additional pension or other benefits paid to regularly employed
2 employees and shall not accrue seniority.

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

7 (6) Until this subsection is expired pursuant to subdivision
8 (7) of this subsection, the state board, annually, shall report to
9 the Joint Committee on Government and Finance prior to February 1
10 of each year. Additionally, a copy shall be provided to the
11 Legislative Oversight Commission on Education Accountability. The
12 report shall contain information indicating the effectiveness of
13 the provisions of this subsection on expanding the use of retired
14 substitute teachers to address areas of critical need and shortage.

15 (7) The provisions of this subsection shall expire on June 30,
16 ~~2010~~ 2015.

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

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

25 (B) The county board posts a notice of the areas of critical
26 need and shortage in the county in a conspicuous place in each

1 school for at least ten working days; and

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

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

9 (3) Prospective employable professional personnel employed are
10 limited to three full-time prospective employable professional
11 personnel per one hundred professional personnel employed in a
12 county or twenty-five full-time prospective employable professional
13 personnel in a county, whichever is less.

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

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

20 (e) The state board annually shall review the status of
21 employing personnel under the provisions of subsection (d) of this
22 section and annually shall report to the Legislative Oversight
23 Commission on Education Accountability on or before November 1, of
24 each year. The report shall include, but not be limited to, the
25 following:

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

- 1 (B) The number of personnel hired;
- 2 (C) The teaching fields in which personnel were hired;
- 3 (D) The venue from which personnel were employed;
- 4 (E) The place of residency of the individual hired; and
- 5 (F) The state board's recommendations on the prospective
- 6 employable professional personnel program.

NOTE: The purpose of this bill is to permit a retired person to accept employment as a substitute teacher for an unlimited number of days each fiscal year without affecting monthly retirement benefits.

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