

Senate Bill No. 211

(By Senators Wells, Browning, Foster, Laird, Snyder, Stollings,
Plymale and Miller)

[Introduced January 19, 2011; referred to the Committee on
Education; and then to the Committee on Finance.]

**Interim
Bill**

A BILL to amend and reenact §18A-2-3 of the Code of West Virginia,
1931, as amended, relating to resetting the expiration date of
provisions that allow the employment of retired teachers as
substitutes beyond the post-retirement employment limit in
certain circumstances; and requiring certain additional
information to be reported to the Consolidated Public
Retirement Board and the State Board of Education, and
included in the state board's report to the Legislative
Oversight Commission on Education Accountability.

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**

1 **shortage; employment of prospective employable**
2 **professional personnel.**

3 (a) The county superintendent, subject to approval of the
4 county board, may employ and assign substitute teachers to any of
5 the following duties: (1) To fill the temporary absence of any
6 teacher or an unexpired school term made vacant by resignation,
7 death, suspension or dismissal; (2) to fill a teaching position of
8 a regular teacher on leave of absence; and (3) to perform the
9 instructional services of any teacher who is authorized by law to
10 be absent from class without loss of pay, providing the absence is
11 approved by the board of education in accordance with the law. The
12 substitute shall be a duly certified teacher.

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

1 (c) (1) The Legislature hereby finds and declares that due to
2 a shortage of qualified substitute teachers, a compelling state
3 interest exists in expanding the use of retired teachers to provide
4 service as substitute teachers in areas of critical need and
5 shortage. The Legislature further finds that diverse circumstances
6 exist among the counties for the expanded use of retired teachers
7 as substitutes. For the purposes of this subsection, "area of
8 critical need and shortage" means an area of certification and
9 training in which the number of available substitute teachers in
10 the county who hold certification and training in that area and who
11 are not retired is insufficient to meet the projected need for
12 substitute teachers.

13 (2) A person receiving retirement benefits under the
14 provisions of article seven-a, chapter eighteen of this ~~chapter~~ _
15 code or who is entitled to retirement benefits during the fiscal
16 year in which that person retired may accept employment as a
17 substitute teacher for an unlimited number of days each fiscal year
18 without affecting the monthly retirement benefit to which the
19 retirant is otherwise entitled if the following conditions are
20 satisfied:

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

23 (B) The policy sets forth the areas of critical need and
24 shortage in the county in accordance with the definition of area of
25 critical need and shortage set forth in subdivision (1) of this

1 subsection;

2 (C) The policy provides for the employment of retired teachers
3 as substitute teachers during the school year on an expanded basis
4 in areas of critical need and shortage as provided in this
5 subsection;

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

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

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

16 (G) Prior to employment of a substitute teacher beyond the
17 post-retirement employment limitations established by the
18 Consolidated Public Retirement Board, the superintendent of the
19 affected county submits to the Consolidated Public Retirement Board
20 and the state board, in a form approved by the retirement board, an
21 affidavit signed by the superintendent stating the name of the
22 county, the fact that the county has adopted a policy to employ
23 retired teachers as substitutes to address areas of critical need
24 and shortage, ~~and~~ the name or names of the person or persons to be
25 employed pursuant to the policy, the critical need and shortage

1 area position filled by each person, the date that the person gave
2 notice to the county board of the person's intent to retire, and
3 the effective date of the person's retirement.

4 (3) Any person who retires and begins work as a substitute
5 teacher within the same employment term shall lose those retirement
6 benefits attributed to the annuity reserve, effective from the
7 first day of employment as a retiree substitute in that employment
8 term and ending with the month following the date the retiree
9 ceases to perform service as a substitute.

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

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

19 (6) Until this subsection is expired pursuant to subdivision
20 (7) of this subsection, the state board, annually, shall report to
21 the Joint Committee on Government and Finance prior to February 1
22 of each year. Additionally, a copy shall be provided to the
23 Legislative Oversight Commission on Education Accountability. The
24 report shall contain information indicating the effectiveness of
25 the provisions of this subsection on expanding the use of retired

1 substitute teachers to address areas of critical need and shortage
2 including, but not limited to, the number of retired teachers, by
3 critical need and shortage area position filled and by county,
4 employed beyond the post-retirement employment limit established by
5 the Consolidated Public Retirement Board, the date that each person
6 gave notice to the county board of the person's intent to retire,
7 and the effective date of the person's retirement.

8 (7) The provisions of this subsection shall expire on June 30,
9 ~~two thousand ten~~ 2014.

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

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

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

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

23 (2) Prospective employable professional personnel may only be
24 employed from candidates at a job fair who have or will graduate
25 from college in the current school year or whose employment

1 contract with a county board has or will be terminated due to a
2 reduction in force in the current fiscal year.

3 (3) Prospective employable professional personnel employed are
4 limited to three full-time prospective employable professional
5 personnel per one hundred professional personnel employed in a
6 county or twenty-five full-time prospective employable professional
7 personnel in a county, whichever is less.

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

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

14 (e) The state board annually shall review the status of
15 employing personnel under the provisions of subsection (d) of this
16 section and annually shall report to the Legislative Oversight
17 Commission on Education Accountability on or before November 1 of
18 each year. The report shall include, but not be limited to, the
19 following:

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

21 (B) The number of personnel hired;

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

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

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

25 (F) The state board's recommendations on the prospective

1 employable professional personnel program.

NOTE: The purpose of this bill is to reset until 2014, the expiration date of provisions that allow the employment of retired teachers as substitutes beyond the post-retirement employment limit in areas of critical need and shortage. The bill also requires counties to report additional information on the number of these retired teachers and the critical need and shortage area positions filled by them to the Consolidated Public Retirement Board and state board and the dates of their notice of retirement and retirement. The state board is to include this information in its report to the Legislative Oversight Commission on Education Accountability.

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

This bill was recommended for introduction and passage during the Regular Session of the Legislature by the Joint Standing Committee on Education.