

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2637

BY DELEGATES ESPINOSA, STATLER, UPSON, BLAIR,

WILSON, WESTFALL, R. ROMINE, HIGGINBOTHAM,

HARSHBARGER, COOPER AND FOLK

[Passed April 8, 2017; in effect ninety days from passage.]

1 AN ACT to amend and reenact §18A-2-3 of the Code of West Virginia, 1931, as amended, relating
2 to employment of retired teachers and prospective employable professional personnel in
3 areas of critical need and shortage; including speech pathologists and school nurses in
4 definition of teacher or substitute teacher for purposes of employment of retired teachers
5 beyond the post-retirement limit; establishing uniform date retirement must become
6 effective to determine status of retirement benefits during employment as critical needs
7 substitute teacher; restating reporting requirement to legislative committees; extending
8 date for expiration of provisions related to employment of retired teacher as substitute
9 teach beyond the post-retirement limit; eliminating requirement that county policy for
10 employment of prospective employable professional personnel be based on areas of
11 critical need and shortage identified by state board; requiring posting of notice of critical
12 need and shortage area positions prior to making offers of employment and options for
13 posting; limiting employment of prospective employable professional personnel to certain
14 candidates at job fair who will commence employment at the next employment term;
15 changing limit on number of prospective employable professional personnel that may be
16 employed to number required to fill positions posted; clarifying action required for
17 prospective employable professional personnel to obtain regular employment status;
18 clarifying that provisions relating to prospective employable professional personnel do not
19 prevent filling posted vacancy at any time in accordance with other provisions; eliminating
20 any requirement for successive postings where there were no qualified applicants in
21 response to the initial posting; clarifying that no additional faculty senate involvement is
22 required after initial faculty senate involvement; and allowing financial incentives for
23 purposes of recruiting professional personnel in critical needs areas and to attract
24 professional personnel in a critical need or shortage area.

Be it enacted by the Legislature of West Virginia:

1 That §18A-2-3 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted to read as follows:

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

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
4 by 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
12 than one half of a grading period and whose assignment remains in effect two weeks prior to the
13 end of the grading period, shall remain in the assignment until the grading period has ended,
14 unless the principal of the school certifies that the regularly employed teacher has communicated
15 with and assisted the substitute with the preparation of lesson plans and monitoring student
16 progress or has been approved to return to work by his or her physician. For the purposes of this
17 section, teacher and substitute teacher, in the singular or plural, mean professional educator as
18 defined in section 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 and school nurses.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

92 (10) The provisions of this subsection shall expire on June 30, 2020.

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

96 (A) The county board adopts a policy authorizing the employment of prospective
97 employable professional personnel to address areas of critical need and shortage;

98 (B) The county board posts a notice of the critical need and shortage area positions in the
99 county in a conspicuous place in each school or on the county website for at least ten working
100 days prior to making offers of employment to prospective candidates; and

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

103 (2) Prospective employable professional personnel may only be employed from
104 candidates at a job fair who have or will graduate from college in the current school year and will
105 commence employment at the next employment term.

106 (3) The number of prospective employable professional personnel employed is limited to
107 the number required to fill the critical need and shortage area positions posted in accordance with
108 subdivision (1) of this subsection.

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

111 (5) Regular employment status for prospective employable professional personnel may
112 be obtained only upon recommendation by the superintendent and approval by the county board
113 following consideration of the qualifications of the candidate in accordance with the applicable
114 provisions of section seven-a, article four of this chapter. Upon board approval, prospective
115 employable professional personnel may be placed into a critical needs position if the job has been
116 posted at least once in accordance with paragraph (B), subdivision (1) of this subsection resulting
117 in no qualified applicants. Employment of the prospective employable professional personnel
118 pursuant to this subsection may occur without the need for additional postings and without the
119 need for additional faculty senate involvement other than the initial faculty senate involvement
120 required in the case of a classroom teaching position pursuant to section seven-a, article four of
121 this chapter.

122 (6) Nothing in this subsection prevents a county board from filling a posted vacancy in an
123 established, existing or newly created position at any time in accordance with the other provisions
124 of this chapter.

125 (7) For the purpose of recruiting professional personnel in critical needs areas and to
126 attract professional personnel in a critical need or shortage area, county boards of education may
127 from local funds pay prospective employable professional personnel a one-time financial incentive
128 such as, but not limited to, a signing bonus or moving expenses, after a contract of employment
129 has been signed.

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

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2017.

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Governor