

# WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

ENROLLED

House Bill 4691

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

2020 MAR 25 P 4:39

FILED

BY DELEGATES ELLINGTON, DEAN, ESPINOSA, COOPER,

HANNAH, ATKINSON, EVANS, HORNBUCKLE AND

CAMPBELL

[Passed March 4, 2020; in effect from passage.]

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1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
2 designated §18A-2-2b; and to amend and reenact §18A-2-3 of said code all related to  
3 employment in areas of critical need; re-codifying provisions related to employment of  
4 prospective employable professional personnel as prospective teachers and other  
5 professional personnel in a separate code section; requiring county board approval;  
6 clarifying placement in next ensuing school year; deleting prospective employable  
7 professional personnel provisions; adding intent; removing reference to job fairs; restating  
8 authorization to employ prospective teachers on condition that certification is issued prior  
9 to beginning duties; requiring at least one job posting prior to placement; clarifying that  
10 placement is into school-specific critical need position; and extending date upon which  
11 provisions related to employment of retired teachers as critical need substitutes will expire.

*Be it enacted by the Legislature of West Virginia:*

## **ARTICLE 2. SCHOOL PERSONNEL.**

### **§18A-2-2b. Employment of prospective teachers and other professional personnel for next ensuing school year; and payment of financial incentive for recruitment.**

1 (a) Notwithstanding any other provision of this code to the contrary, the county  
2 superintendent, subject to approval of the county board, may employ prospective teachers and  
3 other professional personnel each year who will be placed in positions and begin regular  
4 employment in the next ensuing school year. The intent of this section is to enable school systems  
5 to recruit and employ prospective teachers and other professional personnel during the prime  
6 recruiting season for new graduates in positions in which the county board has a critical need.  
7 The employment of prospective teachers and other professional personnel is subject to the  
8 following:

9 (1) The county board adopts a policy authorizing the employment of prospective teachers  
10 and other professional personnel to address areas of critical need;

11 (2) The county board posts a notice of the critical need positions in the county in which  
12 the county intends to employ the prospective teachers and other professional personnel. The  
13 notice is posted in a conspicuous place in each school or on the county board website for at least  
14 ten working days prior to making offers of employment to prospective teachers and other  
15 professional personnel;

16 (3) No qualified applicants currently employed by the county are available and willing to  
17 fill the critical need position in the next ensuing school year;

18 (4) The prospective teachers and other professional personnel may only be employed  
19 from candidates who will graduate or have graduated from an institution of higher education  
20 during the current school year and will commence employment in the next ensuing school year;

21 (5) When necessary to facilitate the employment of prospective teachers and other  
22 professional personnel who have not yet attained certification, the contract may be signed upon  
23 the condition that the certificate is issued to the employee prior to the beginning of the employment  
24 term in which the employee enters upon his or her duties;

25 (6) The number of prospective teachers and other professional personnel employed is  
26 limited to the number required to fill the critical need positions posted in accordance with  
27 subdivision (2) of this subsection;

28 (7) For the purpose of recruiting teachers and other professional personnel in critical  
29 needs areas and to attract teachers and other professional personnel in a critical need areas, the  
30 county board may from local funds pay prospective teachers and other professional personnel a  
31 one-time financial incentive such as, but not limited to, a signing bonus or moving expenses, after  
32 a contract of employment has been signed;

33 (8) The prospective teachers and other professional personnel are initially employed on a  
34 reserve list at the county level and placed into a school-specific critical need position if the job has  
35 been posted at least once resulting in no qualified applicants; and

36 (9) Regular employment status for prospective teachers and other professional personnel  
37 may be obtained only upon recommendation by the superintendent and approval by the county  
38 board following consideration of the qualifications of the candidate in accordance with the  
39 applicable provisions of §18A-4-7a of this code;

40 (b) Nothing in this section prevents a county board from filling a posted vacancy in an  
41 established, existing or newly created position at any time in accordance with the other provisions  
42 of this chapter.

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

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, school nurses and  
30 school counselors.

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

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

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

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

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

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

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

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

65 (4) Any person who retires and begins work as a critical needs substitute teacher within  
66 the same fiscal year in which that person retired shall lose those retirement benefits attributed to

67 the annuity reserve, effective from the first day of employment as a retiree critical needs substitute  
68 teacher in that fiscal year and ending with the month following the date the retiree ceases to  
69 perform service as a critical needs substitute teacher.

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

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

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

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

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

93 (10) The provisions of this subsection shall expire on June 30, 2025.



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

*Kevin Coyne*  
.....  
Chairman, House Committee

*Mark W. Warner*  
.....  
Chairman, Senate Committee

Originating in the House.

In effect from passage.

*Steve Harris*  
.....  
Clerk of the House of Delegates

*Jee Kim*  
.....  
Clerk of the Senate

*Lee H. Hunter*  
.....  
Speaker of the House of Delegates

*Walter B. Gooden*  
.....  
President of the Senate

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SECRETARY OF STATE

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FILED

The within *is* ..... *approved* this the *25<sup>th</sup>* .....  
day of *March* ..... 2020.

*James O. Eastman*  
.....  
Governor

PRESENTED TO THE GOVERNOR

MAR 19 2020

Time 1:15pm