WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2004

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ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2268

(By Delegates Susman, Poling, Perry, Beach, Renner, Hartman and Tabb)

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Passed March 12, 2004

In Effect from Passage
AN ACT to amend and reenact §18-7A-38 of the code of West Virginia, 1931, as amended; to amend and reenact §18A-2-3 of said code; and to amend and reenact §18C-4-2 of said code, all relating to the maximum number of days a retired teacher may accept employment; the employment of retired teachers in areas of critical need and shortage; defining area of critical need and shortage; adding conditions for expanding use of retired teachers to provide service as substitute teachers in areas of critical need and shortage; requiring certain vacancies to continue to be posted; providing for future expiration of provisions; providing priority for certain applicants for the Underwood-Smith scholarships; and technical amendments.

Be it enacted by the Legislature of West Virginia:
That §18-7A-38 of the code of West Virginia, 1931, as amended, be amended and reenacted; that §18A-2-3 of said code be amended and reenacted; and that §18C-4-2 of said code be amended and reenacted, all to read as follows:

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-38. Maximum number of days a retired teacher may accept employment; calculating days worked for retirants engaged in substitute teaching.

(a) The Legislature finds that:

(1) The consolidated public retirement board has determined that retired substitute teachers should not perform substitute teaching without limit;

(2) The consolidated public retirement board has established, by rule, a maximum number of days in which a retired teacher may accept employment prior to having his or her retirement benefit reduced; and

(3) There have been inconsistencies in the manner in which county boards calculate the maximum number of days established by rule.

(b) The consolidated public retirement board may not set forth in rule a maximum number of days in which a retired teacher may accept employment prior to having his or her retirement benefit reduced that is less than one hundred forty days.

(c) For the purpose of calculating whether a retired substitute teacher has exceeded the maximum number of days in which a substitute teacher may accept employment without
incurring a reduction in his or her retirement benefit, the number of days worked shall be determined by:

(1) Totaling the number of hours worked; and

(2) Dividing by the standard number of hours that a full-time teacher works per day.

CHAPTER 18A. SCHOOL PERSONNEL.

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

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

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

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

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

(B) The policy sets forth the areas of critical need and shortage in the county in accordance with the definition of area of critical need and shortage set forth in subdivision (1) of this subsection;
(C) The policy provides for the employment of retired teachers as substitute teachers during the school year on an expanded basis in areas of critical need and shortage as provided in this subsection;

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

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

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

(G) Prior to employment of a substitute teacher beyond the post-retirement employment limitations established by the consolidated public retirement board, the superintendent of the affected county submits to the consolidated public retirement board, in a form approved by the retirement board, an affidavit signed by the superintendent stating the name of the county, the fact that the county has adopted a policy to employ retired teachers as substitutes to address areas of critical need and shortage and the name or names of the person or persons to be employed pursuant to the policy.

(3) Any person who retires and begins work as a substitute teacher within the same employment term shall lose those retirement benefits attributed to the annuity reserve, effective from the first day of employment as a retiree substitute in that employment term and ending with the month following the date the retiree ceases to perform service as a substitute.
(4) Retired teachers employed to perform expanded substitute service pursuant to this subsection are considered day-to-day, temporary, part-time employees. The substitutes are not eligible for additional pension or other benefits paid to regularly employed employees and shall not accrue seniority.

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

(6) Until this subsection is expired pursuant to subdivision (7) of this subsection, the state board, annually, shall report to the joint committee on government and finance prior to the first day of February of each year. Additionally, a copy shall be provided to the legislative oversight commission on education accountability. The report shall contain information indicating the effectiveness of the provisions of this subsection on expanding the use of retired substitute teachers to address areas of critical need and shortage.

(7) The provisions of this subsection shall expire on the thirtieth day of June, two thousand six.

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

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

(B) The county board posts a notice of the areas of critical need and shortage in the county in a conspicuous place in each school for at least ten working days; and
(C) There are not any potentially qualified applicants available and willing to fill the position.

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

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

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

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

(e) The state board annually shall review the status of employing personnel under the provisions of subsection (d) of this section and annually shall report to the legislative oversight commission on education accountability on or before the first day of November of each year. The report shall include, but not be limited to, the following:

(A) The counties that participated in the program;

(B) The number of personnel hired;

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

(D) The venue from which personnel were employed;
(E) The place of residency of the individual hired; and

(F) The state board's recommendations on the prospective employable professional personnel program.

CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS AND STATE AID.

ARTICLE 4. UNDERWOOD-SMITH TEACHER SCHOLARSHIP PROGRAM.

§18C-4-2. Selection criteria and procedures.

(a) The governor shall designate an existing scholarship selection agency or panel to select the recipients of Underwood-Smith teacher scholarships who meet the eligibility criteria set forth in subsection (b) of this section. If no such agency or panel exists, the governor shall appoint a scholarship selection panel for this purpose which shall consist of seven persons representative of public school administrators, teachers, including preschool teachers, and parents.

(b) Eligibility for an Underwood-Smith teacher scholarship award shall be limited to West Virginia resident students who:

1. Have graduated or are graduating from high school and rank in the top ten percent of their graduating class or the top ten percent statewide of those West Virginia students taking the American college test;

2. Have a cumulative grade point average of at least three and twenty-five one hundredths on a possible scale of four after successfully completing two years of course work at an approved institution of higher education;

3. Are public school aides or paraprofessionals as defined in section eight, article four, chapter eighteen-a of this code and who have a cumulative grade point average of at least three and
twenty-five one hundredths on a possible scale of four after successfully completing two years of course work at an approved institution of higher education; or

(4) Are graduate students at the master's degree level who have graduated or are graduating in the top ten percent of their college graduating class.

(c) In accordance with the rules of the commission, the vice chancellor for administration shall develop criteria and procedures for the selection of scholarship recipients that reflect the purposes of this article and the areas in which particular efforts will be made in the selection of scholars as set forth in section one of this article and which also may include, but not be limited to, the grade point average of the applicant, involvement in extracurricular activities, financial need, current academic standing and an expression of interest in teaching as expressed in an essay written by the applicant. Such criteria and procedures further may require the applicant to furnish letters of recommendation from teachers and others. It is the intent of the Legislature that academic abilities be the primary criteria for selecting scholarship recipients: Provided, That the qualified applicants with the highest academic abilities who intend to pursue teaching careers in areas of critical need and shortage as determined by the state board of education shall be given priority.

(d) In developing the selection criteria and procedures to be used by the panel, the vice chancellor for administration shall solicit the views of public and private education agencies and institutions and other interested parties. These views: (1) Shall be solicited by means of written and published selection criteria and procedures in final form for implementation; and (2) may be solicited by means of public hearings on the present and projected teacher needs of the state or any other methods the
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vice chancellor for administration may determine to be appro-
appropriate to gather the information.

(e) The vice chancellor for administration shall make
application forms for Underwood-Smith teacher scholarships
available to public and private high schools in the state and in
other locations convenient to applicants, parents and others, and
shall make an effort to attract students from low-income
backgrounds, ethnic or racial minority students, students with
disabilities, and women or minority students who show interest
in pursuing teaching careers in mathematics and science and
who are under represented in those fields.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

[Signature]

Chairman House Committee

[Signature]

Originating in the House.

In effect from passage.

Clerk of the Senate

[Signature]

Clerk of the House of Delegates

[Signature]

President of the Senate

[Signature]

Speaker of the House of Delegates

[Signature]

The within is approved this the 5th day of April, 2004.

Governor

[Signature]