

HB 2105  
GH

FILED

2007 FEB -2 PM 4: 56

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
FIRST REGULAR SESSION, 2007



**ENROLLED**

**House Bill 2105**

(By Delegates Poling, Paxton, Perry, Wells,  
Stephens, Tabb, Wysong, Duke, Fragale and Sumner)



Passed January 24, 2007

In Effect from Passage

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# H. B. 2105

(BY DELEGATES POLING, PAXTON, PERRY, WELLS,  
STEPHENS, TABB, WYSONG, DUKE, FRAGALE AND SUMNER)

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[Passed January 24, 2007; in effect from passage.]

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AN ACT to amend and reenact §18A-2-3 of the Code of West Virginia, 1931, as amended, relating to extending expiration date of provisions permitting retired teachers to accept employment as substitutes in areas of critical need and shortage for an unlimited number of days without affecting retirement benefits.

*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.**

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

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

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

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

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

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

47 (B) The policy sets forth the areas of critical need and  
48 shortage in the county in accordance with the definition of area  
49 of critical need and shortage set forth in subdivision (1) of this  
50 subsection;

51 (C) The policy provides for the employment of retired  
52 teachers as substitute teachers during the school year on an  
53 expanded basis in areas of critical need and shortage as  
54 provided in this subsection;

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

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

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

67 (G) Prior to employment of a substitute teacher beyond the  
68 post-retirement employment limitations established by the

69 consolidated public retirement board, the superintendent of the  
70 affected county submits to the Consolidated Public Retirement  
71 Board, in a form approved by the retirement board, an affidavit  
72 signed by the superintendent stating the name of the county,  
73 the fact that the county has adopted a policy to employ retired  
74 teachers as substitutes to address areas of critical need and  
75 shortage and the name or names of the person or persons to be  
76 employed pursuant to the policy.

77 (3) Any person who retires and begins work as a substitute  
78 teacher within the same employment term shall lose those  
79 retirement benefits attributed to the annuity reserve, effective  
80 from the first day of employment as a retiree substitute in that  
81 employment term and ending with the month following the  
82 date the retiree ceases to perform service as a substitute.

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

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

92 (6) Until this subsection is expired pursuant to subdivision  
93 (7) of this subsection, the state board, annually, shall report to  
94 the Joint Committee on Government and Finance prior to the  
95 first day of February of each year. Additionally, a copy shall  
96 be provided to the Legislative Oversight Commission on  
97 Education Accountability. The report shall contain  
98 information indicating the effectiveness of the provisions of  
99 this subsection on expanding the use of retired substitute  
100 teachers to address areas of critical need and shortage.

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

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

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

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

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

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

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

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

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

135 (e) The state board annually shall review the status of  
136 employing personnel under the provisions of subsection (d) of  
137 this section and annually shall report to the Legislative  
138 Oversight Commission on Education Accountability on or  
139 before the first day of November of each year. The report shall  
140 include, but not be limited to, the following:

- 141 (A) The counties that participated in the program;
- 142 (B) The number of personnel hired;
- 143 (C) The teaching fields in which personnel were hired;
- 144 (D) The venue from which personnel were employed;
- 145 (E) The place of residency of the individual hired; and
- 146 (F) The state board's recommendations on the prospective  
147 employable professional personnel program.

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

  
Chairman Senate Committee

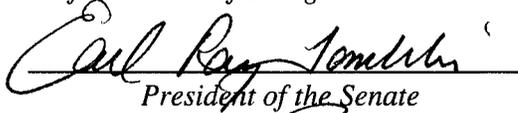
  
Chairman House Committee

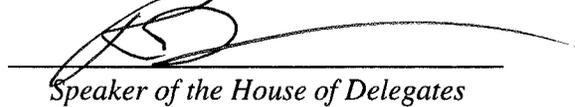
Originating in the House.

In effect from passage.

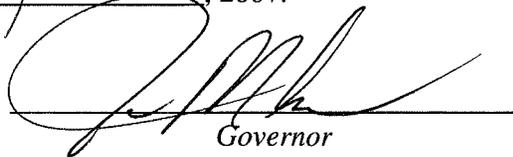
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within is approved this the 2nd  
day of February, 2007.

  
Governor

PRESENTED TO THE  
GOVERNOR

JAN 30 2007

Time

4:45 pm