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
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.

(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
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
enrolled 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 ten.

(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.
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 January, 2007.

Governor