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OFFICE WEST VIRGINIA
SECRETARY OF STATE

HB 2105

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)

[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.

- 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.

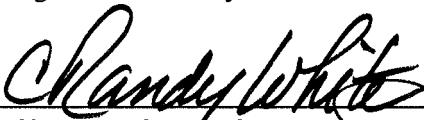
121 (3) Prospective employable professional personnel
122 employed are limited to three full-time prospective employable
123 professional personnel per one hundred professional personnel
124 employed in a county or twenty-five full-time prospective
125 employable professional personnel in a county, whichever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



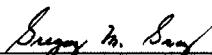
Randy White
Chairman Senate Committee

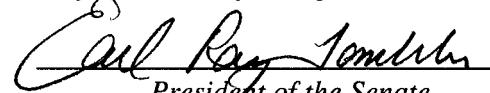

Jim Jones
Chairman House Committee

Originating in the House.

In effect from passage.



Darrell Edwards
Clerk of the Senate


Bryan M. Sane
Clerk of the House of Delegates


Carl Ray Tomlin
President of the Senate


Speaker of the House of Delegates

The within 15 apprioved this the 2nd
day of January, 2007.



J. W. K.
Governor

PRESENTED TO THE
GOVERNOR

JAN 30 2007

Time

4:45 pm