ENROLLED
COMMITTEE SUBSTITUTE FOR
House Bill No. 2139
(By Delegate(s) Perry, Pasdon, L. Phillips, Hamrick, Rowan, Ambler, Cooper, Espinosa, Pethtel, Romine and Longstreth)

Passed March 12, 2015
In effect from passage.
AN ACT to amend and reenact §18A-2-3 of the Code of West Virginia, 1931, as amended, relating to employment of retired teachers as substitutes in areas of critical need and shortage for substitutes; requiring days of retirement before instructional term employed as substitute; requiring electronic posting of vacancy; requiring preemployment submission of information to, and verification of compliance by, state board prior to submission to retirement board; resetting expiration date of provisions; and making other technical improvements.
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; employment of retired teachers as substitutes in areas of critical need and shortage; and 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) Fill the temporary absence of any teacher or an unexpired school term made vacant by resignation, death, suspension or dismissal;

(2) Fill a teaching position of a regular teacher on leave of absence; and

(3) 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 circum-
stances 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 for substitute teachers" 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 article
seven-a, chapter eighteen of this code or who is entitled to
retirement benefits during the fiscal year in which that person
retired may accept employment as a critical needs 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 for
substitute teachers;

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

(G) Prior to employment of a retired teacher as a critical needs substitute teacher beyond the post-retirement employment limitations established by the Consolidated Public Retirement Board, the superintendent of the affected county submits to the state board in a form approved by the Consolidated Public Retirement Board and the state 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, the name or names of the person or persons to be employed as a critical needs substitute pursuant to the policy, the critical need and shortage area position filled by each person, the date that the person gave notice to the county board of the person's intent to retire, and the effective date of the person's retirement. Upon verification of compliance with this section and the eligibility of the critical needs substitute teacher for employment beyond the
post-retirement limit, the state board shall submit the affidavit to
the Consolidated Public Retirement Board.

(3) Any person who retires and begins work as a critical
needs 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 substit-
te 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 may not accrue seniority.

(5) A retired teacher is eligible to be employed as a critical
needs substitute to fill a vacant position only if the retired
teacher’s retirement became effective at least twenty days before
the beginning of the employment term during which he or she is
employed as a substitute;

(6) When a retired teacher is employed as a critical needs
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 who is fully certified or permitted
for the position.

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

(8) Until this subsection is expired pursuant to subdivision
(9) of this subsection, the state board, annually, shall report to
the Joint Committee on Government and Finance prior to
February 1 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 reducing the critical need and shortage of substitute teachers including, but not limited to, the number of retired teachers, by critical need and shortage area position filled and by county, employed beyond the post-retirement employment limit established by the Consolidated Public Retirement Board, the date that each person gave notice to the county board of the person’s intent to retire, and the effective date of the person’s retirement.

(9) The provisions of this subsection shall expire on June 30, 2017.

(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 November 1 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, House Committee

Chairman, Senate Committee

Originating in the House.

In effect from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within is approved this the 26th day of March, 2015.

Governor
PRESENTED TO THE GOVERNOR

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