BY DELEGATES ELLINGTON, DEAN, ESPINOSA, COOPER,
HANNAH, ATKINSON, EVANS, HORNBUCKLE AND
CAMPBELL

[Passed March 4, 2020; in effect from passage.]
ENROLLED

House Bill 4691

BY DELEGATES ELLINGTON, DEAN, ESPINOSA, COOPER,

HANNAH, ATKINSON, EVANS, HORNBUCKLE AND

CAMPBELL

[Passed March 4, 2020; in effect from passage.]
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18A-2-2b; and to amend and reenact §18A-2-3 of said code all related to employment in areas of critical need; re-codifying provisions related to employment of prospective employable professional personnel as prospective teachers and other professional personnel in a separate code section; requiring county board approval; clarifying placement in next ensuing school year; deleting prospective employable professional personnel provisions; adding intent; removing reference to job fairs; restating authorization to employ prospective teachers on condition that certification is issued prior to beginning duties; requiring at least one job posting prior to placement; clarifying that placement is into school-specific critical need position; and extending date upon which provisions related to employment of retired teachers as critical need substitutes will expire.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-2b. Employment of prospective teachers and other professional personnel for next ensuing school year; and payment of financial incentive for recruitment.

(a) Notwithstanding any other provision of this code to the contrary, the county superintendent, subject to approval of the county board, may employ prospective teachers and other professional personnel each year who will be placed in positions and begin regular employment in the next ensuing school year. The intent of this section is to enable school systems to recruit and employ prospective teachers and other professional personnel during the prime recruiting season for new graduates in positions in which the county board has a critical need. The employment of prospective teachers and other professional personnel is subject to the following:

(1) The county board adopts a policy authorizing the employment of prospective teachers and other professional personnel to address areas of critical need;
(2) The county board posts a notice of the critical need positions in the county in which the county intends to employ the prospective teachers and other professional personnel. The notice is posted in a conspicuous place in each school or on the county board website for at least ten working days prior to making offers of employment to prospective teachers and other professional personnel;

(3) No qualified applicants currently employed by the county are available and willing to fill the critical need position in the next ensuing school year;

(4) The prospective teachers and other professional personnel may only be employed from candidates who will graduate or have graduated from an institution of higher education during the current school year and will commence employment in the next ensuing school year;

(5) When necessary to facilitate the employment of prospective teachers and other professional personnel who have not yet attained certification, the contract may be signed upon the condition that the certificate is issued to the employee prior to the beginning of the employment term in which the employee enters upon his or her duties;

(6) The number of prospective teachers and other professional personnel employed is limited to the number required to fill the critical need positions posted in accordance with subdivision (2) of this subsection;

(7) For the purpose of recruiting teachers and other professional personnel in critical needs areas and to attract teachers and other professional personnel in a critical need areas, the county board may from local funds pay prospective teachers and other professional personnel a one-time financial incentive such as, but not limited to, a signing bonus or moving expenses, after a contract of employment has been signed;

(8) The prospective teachers and other professional personnel are initially employed on a reserve list at the county level and placed into a school-specific critical need position if the job has been posted at least once resulting in no qualified applicants; and
Regular employment status for prospective teachers and other professional personnel may be obtained only upon recommendation by the superintendent and approval by the county board following consideration of the qualifications of the candidate in accordance with the applicable provisions of §18A-4-7a of this code;

(b) Nothing in this section prevents a county board from filling a posted vacancy in an established, existing or newly created position at any time in accordance with the other provisions of this chapter.

§18A-2-3. Employment of substitute teachers; and employment of retired teachers as substitutes in areas of critical need and shortage.

(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
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.

(2) For the purposes of this subsection:

(A) “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; and

(B) “Teacher or substitute teacher” includes speech pathologists, school nurses and
school counselors.

(3) 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 (2) 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.

(4) Any person who retires and begins work as a critical needs substitute teacher within the same fiscal year in which that person retired shall lose those retirement benefits attributed to
the annuity reserve, effective from the first day of employment as a retiree critical needs substitute teacher in that fiscal year and ending with the month following the date the retiree ceases to perform service as a critical needs substitute teacher.

(5) 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 may not accrue seniority.

(6) A retired teacher is eligible to be employed as a critical needs substitute teacher to fill a vacant position without any loss of retirement benefits attributed to the annuity reserve only if the retired teacher’s retirement became effective before the first day of July preceding at least the fiscal year during which he or she is employed as a critical needs substitute teacher.

(7) 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.

(8) 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.

(9) Until this subsection is expired pursuant to subdivision (10) of this subsection, the state board shall report to the Joint Committee on Government and Finance, prior to February 1 of each year, 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. A copy of the report shall also be provided to the Legislative Oversight Commission on Education Accountability.

(10) The provisions of this subsection shall expire on June 30, 2025.
The 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 25th day of March, 2020.

Governor
PRESENTED TO THE GOVERNOR

MAR 19 2020

Time 1:15pm