WEST VIRGINIA LEGISLATURE

**FISCAL NOTE**

2023 REGULAR SESSION

Introduced

House Bill 2346

By Delegate Toney

[Introduced January 11, 2023; Referred to the Committee on Education then Finance]

A BILL to amend and reenact §18A-4-15 of the Code of West Virginia, 1931, as amended, relating to declaring a shortage of qualified bus operators and allowing retired bus operators to accept employment as substitute bus operators without effect on their retirement benefit.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-15. Employment of service personnel substitutes.

(a) The county board shall employ and the county superintendent, subject to the approval of the county board, shall assign substitute service personnel ~~on the basis of~~ based on seniority to perform any of the following duties:

(1) To fill the temporary absence of another service employee;

(2) To fill the position of a regular service person as follows:

(A) If the regular service person requests a leave of absence from the county board in writing and is granted the leave in writing by the county board; or

(B) If the regular service person is on workers compensation and absent.

(C) If an absence pursuant to paragraph (A) or (B) of this subdivision is to extend beyond 30 working days, the county board shall post the position of the absent employee under the procedures set forth in §18A-4-8b of this code. If a substitute service person is employed to fill the position of the absent employee and is employed in the position for 20 or more working days, the substitute service person:

(i) Acquires regular employment status ~~with the exception of~~ except for regular employee job bidding rights;

(ii) Does not accrue regular seniority; and

(iii) Is accorded all other rights, privileges and benefits pertaining to the position until the regular employee returns to the position or ceases to be employed by the county board;

(D) If a regular or substitute employee fills a vacancy that is related in any manner to a leave of absence or the absence of an employee on workers compensation as provided in this section, upon termination of the absence the employee shall be returned to his or her original position or status;

(E) A service person may not be:

(i) Required to request or to take a leave of absence; or

(ii) Deprived of any right or privilege of regular employment status for refusal to request or failure to take a leave of absence;

(3) To perform the service of a service person who is authorized to be absent from duties without loss of pay;

(4) To temporarily fill a vacancy in a permanent position caused by severance of employment by the resignation, transfer, retirement, permanent disability, dismissal pursuant to §18A-2-8 of this code, or death of the regular service person who had been assigned to the position. Within 20 working days from the commencement of the vacancy, the county board shall fill the vacancy under the procedures set forth in §18A-4-8b of this code and §18A-2-5 of this code. The person hired to fill the vacancy shall have and be accorded all rights, privileges and benefits pertaining to the position;

(5) To fill the vacancy created by a regular employee's suspension.

(A) If the suspension is for more than 30 working days, the county board shall post the position of the suspended employee under the procedures set forth in section §18A-4-8b of this code.

(B) If a substitute service person is employed to fill the suspended employees position, the substitute service person:

(i) Acquires regular employment status ~~with the exception of~~ except for regular employee job-bidding rights;

(ii) Does not accrue regular seniority; and

(iii) Is accorded all other rights, privileges and benefits pertaining to the position until the termination by the county board becomes final or the suspended employee is returned to employment.

(C) If the suspended employee is not returned to his or her job, the county board shall fill the vacancy under the procedures set forth in §18A-4-8b, and §18A-2-5 of this code; and

(6) To fill temporarily a vacancy in a newly created position prior to employing a service person on a regular basis pursuant to §18A-4-8b of this code.

(b) Service personnel substitutes shall be assigned in the following manner:

(1) The substitute with the greatest length of service time in the vacant category of employment has priority in accepting the assignment throughout the period of the regular service persons absence or until the vacancy is filled on a regular basis pursuant to §18A-4-8b of this code. Length of service time is calculated from the date a substitute service person begins assigned duties as a substitute in a particular category of employment.

(2) All service personnel substitutes are employed on a rotating basis according to their lengths of service time until each substitute has had an opportunity to perform similar assignments.

(3) Any regular service person employed in the same building or working station and the same classification category of employment as the absent employee shall be given the first opportunity to fill the position of the absent employee on a rotating and seniority basis. In such case the regular service persons position is filled by a substitute service person. A regular service person assigned to fill the position of an absent employee has the opportunity to hold that position throughout the absence. For the purpose of this section only, all regularly employed school bus operators are considered to be employed within the same building or working station.

(c) The county board shall return a regular school service person to the same position held prior to any approved leave of absence or period of recovery from injury or illness. The school service person:

 (1) Retains all rights, privileges and benefits which had accrued at the time of the absence or accrued under any other provision of law during the absence; and

(2) Has all rights, privileges, and benefits generally accorded school service personnel at the time of return to work.

(d) The salary of a substitute service person is determined:

(1) Based upon his or her years of employment as defined in §18A-4-8 of this code;

(2) As provided in the state minimum pay scale set forth in section §18A-4-8a of this code; and

(3) In accordance with the salary schedule of persons regularly employed in the same position in the county in which he or she is employed.

(e) A substitute service person shall execute a written contract with the county board pursuant to §18A-2-5 of this code, prior to beginning assigned duties.

(f) The following method shall be used to establish a fair, equitable and uniform system for assigning service personnel substitutes to their duties for the first time:

(1) The initial order of assigning newly-employed substitutes is determined by a random selection system established by the affected substitute employees and approved by the county board; and

(2) The initial order is effective only until the substitute service personnel have begun their duties for the first time.

(g) A substitute service person who has worked 30 days for a school system has all rights pertaining to suspension, dismissal, and contract renewal as are granted to regular service personnel in §18A-2-6, 7, 8, and 8a of this code.

(h) The Legislature hereby finds and declares that due to a shortage of qualified bus operators, a compelling state interest exists in expanding the use of retired bus operators to provide service as substitute bus operators in this area of critical need. A person receiving retirement benefits under §18-7A-1 *et seq.* of this code or who is entitled to retirement benefits during the fiscal year in which that person retired may accept employment as a substitute bus operator for an unlimited number of days each fiscal year without affecting the monthly retirement benefit to which the retirant is otherwise entitled.

NOTE: The purpose of this bill is to declare the need for retired bus operators as substitutes and allow retired bus operators to work as substitutes without affecting their monthly retirement benefit.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.