

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2346

BY DELEGATE TONEY

[Passed March 9, 2023; in effect July 1, 2023.]

1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §18A-4-15a, relating to retired bus operators as substitutes in areas of critical
3 need and shortage.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

**§18A-4-15a. Employment of retired bus operators as substitutes in areas of critical need
and shortage.**

1 (a) The Legislature hereby finds and declares that due to a shortage of qualified substitute
2 bus operators a compelling state interest exists in expanding the use of retired bus operators to
3 provide service as substitute bus operators in an area of critical need and shortage.

4 (b) The Legislature further finds and declares that this shortage is significant and
5 overarching, and in order to comply with §18-5-13(f)(1) of this code, this need supersedes any
6 preclusion of modification of rights codified in §18-7A-28e of this code.

7 (1) For the purposes of this subsection: “Area of critical need and shortage for substitute
8 bus operators” means that the number of available qualified substitute bus operators in the county
9 who are not retired and are available and willing to accept substitute bus operator assignments is
10 insufficient to meet the projected need for qualified substitute bus operators.

11 (2) A person receiving retirement benefits under §18-7A-1 *et seq.* of this code, or who is
12 entitled to retirement benefits during the fiscal year in which that person retired, may accept
13 employment as a critical need substitute bus operator for an unlimited number of days each fiscal
14 year without affecting the monthly retirement benefit to which the retirant is otherwise entitled,
15 subject to satisfaction of the following conditions:

16 (A) The county board adopts a policy recommended by the superintendent to address a
17 critical need and shortage for substitute bus operators;

18 (B) The superintendent of the county board submits the policy to the State Board of
19 Education for approval in the first year of its utilization. After initial approval by the State Board of

20 Education, the county board must annually renew the policy at the local level and provide
21 confirmation to the State Board of Education of its intent to utilize the policy in the subsequent
22 year;

23 (C) The policy sets forth the critical need and shortage for substitute bus operators in the
24 county in accordance with the definition of area of critical need and shortage for substitute bus
25 operators as provided in subdivision (1) of this subsection;

26 (D) The policy provides for the employment of retired bus operators as critical need
27 substitute bus operators during the school year on an expanded basis in areas of critical need
28 and shortage for substitute bus operators as provided in this subsection;

29 (E) The policy provides that a retired bus operator may be employed as a substitute bus
30 operator in an area of critical need and shortage for substitute bus operators on an expanded
31 basis as provided in this subsection only when no other qualified bus operator who is not retired
32 is available and accepts the substitute assignment; and

33 (F) Prior to employment of a retired bus operator as a critical need substitute bus operator
34 beyond the post-retirement employment limitations established by the Consolidated Public
35 Retirement Board, the superintendent of the affected county submits to the state board in a form
36 approved by the Consolidated Public Retirement Board and the state board, an affidavit signed
37 by the superintendent stating the name of the county, the fact that the county has adopted a policy
38 to employ retired bus operators as substitutes to address its critical need and shortage, the name
39 or names of the person or persons to be employed as a critical need substitute pursuant to the
40 policy, the date that the person gave notice to the county board of the person's intent to retire,
41 and the effective date of the person's retirement. Upon verification of compliance with this section
42 and the eligibility of the critical need substitute bus operator for employment beyond the post-
43 retirement limit, the state board shall submit the affidavit to the Consolidated Public Retirement
44 Board.

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

50 (4) Retired bus operators employed to perform expanded substitute service pursuant to
51 this subsection are considered day-to-day, temporary, part-time employees. The substitutes are
52 not eligible for additional pension or other benefits paid to regularly employed employees and
53 may not accrue seniority.

54 (5) A retired bus operator is eligible to be employed as a critical need substitute bus
55 operator to fill a vacant position without any loss of retirement benefits attributed to the annuity
56 reserve only if the retired bus operator's retirement became effective before the first day of July
57 preceding at least the fiscal year during which he or she is employed as a critical need substitute
58 bus operator.

59 (6) When a retired bus operator is employed as a critical need substitute to fill a vacant
60 position, the county board shall continue to post the vacant position until it is filled with a regularly
61 employed bus operator who is fully qualified for the position.

62 (7) When a retired bus operator is employed as a critical need substitute to fill a vacant
63 position, the position vacancy shall be posted electronically and easily accessible to prospective
64 employees as determined by the state board.

65 (8) The provisions of this subsection shall expire on June 30, 2028.

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

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Clerk of the House of Delegates

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Clerk of the Senate

Originated in the House of Delegates.

In effect July 1, 2023.

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Speaker of the House of Delegates

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President of the Senate

The within is this the.....
Day of, 2023.

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Governor