

COMMITTEE SUBSTITUTE

FOR

**H. B. 2139**

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(BY DELEGATE(S) PERRY, PASDON, L. PHILLIPS,  
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(Originating in the House Committee on Finance.)  
[February 18, 2015]

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A BILL 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.**

1 (a) The county superintendent, subject to approval of the  
2 county board, may employ and assign substitute teachers to any  
3 of the following duties:

4 (1) ~~To~~ Fill the temporary absence of any teacher or an  
5 unexpired school term made vacant by resignation, death,  
6 suspension or dismissal;

7 (2) ~~to~~ Fill a teaching position of a regular teacher on leave of  
8 absence; and

9 (3) ~~to~~ Perform the instructional services of any teacher who  
10 is authorized by law to be absent from class without loss of pay,  
11 providing the absence is approved by the board of education in  
12 accordance with the law.

13 The substitute shall be a duly certified teacher.

14 (b) Notwithstanding any other provision of this code to the  
15 contrary, a substitute teacher who has been assigned as a  
16 classroom teacher in the same classroom continuously for more  
17 than one half of a grading period and whose assignment remains  
18 in effect two weeks prior to the end of the grading period, shall  
19 remain in the assignment until the grading period has ended,  
20 unless the principal of the school certifies that the regularly  
21 employed teacher has communicated with and assisted the  
22 substitute with the preparation of lesson plans and monitoring  
23 student progress or has been approved to return to work by his  
24 or her physician. For the purposes of this section, teacher and  
25 substitute teacher, in the singular or plural, mean professional  
26 educator as defined in section one, article one of this chapter.

27 (c) (1) The Legislature hereby finds and declares that due to  
28 a shortage of qualified substitute teachers, a compelling state  
29 interest exists in expanding the use of retired teachers to provide  
30 service as substitute teachers in areas of critical need and  
31 shortage. The Legislature further finds that diverse circum-  
32 stances exist among the counties for the expanded use of retired

33 teachers as substitutes. For the purposes of this subsection, “area  
34 of critical need and shortage for substitute teachers” means an  
35 area of certification and training in which the number of  
36 available substitute teachers in the county who hold certification  
37 and training in that area and who are not retired is insufficient to  
38 meet the projected need for substitute teachers.

39 (2) A person receiving retirement benefits under ~~the provi-~~  
40 ~~sions of~~ article seven-a, chapter eighteen of this code or who is  
41 entitled to retirement benefits during the fiscal year in which that  
42 person retired may accept employment as a critical needs  
43 substitute teacher for an unlimited number of days each fiscal  
44 year without affecting the monthly retirement benefit to which  
45 the retirant is otherwise entitled if the following conditions are  
46 satisfied:

47 (A) The county board adopts a policy recommended by the  
48 superintendent to address areas of critical need and shortage for  
49 substitute teachers;

50 (B) The policy sets forth the areas of critical need and  
51 shortage for substitute teachers in the county in accordance with

52 the definition of area of critical need and shortage for substitute  
53 teachers set forth in subdivision (1) of this subsection;

54 (C) The policy provides for the employment of retired  
55 teachers as critical needs substitute teachers during the school  
56 year on an expanded basis in areas of critical need and shortage  
57 for substitute teachers as provided in this subsection;

58 (D) The policy provides that a retired teacher may be  
59 employed as a substitute teacher in an area of critical need and  
60 shortage for substitute teachers on an expanded basis as provided  
61 in this subsection only when no other teacher who holds certifi-  
62 cation and training in the area and who is not retired is available  
63 and accepts the substitute assignment;

64 (E) The policy is effective for one school year only and is  
65 subject to annual renewal by the county board;

66 (F) The state board approves the policy and the use of retired  
67 teachers as substitute teachers on an expanded basis in areas of  
68 critical need and shortage for substitute teachers as provided in  
69 this subsection; and

70 (G) Prior to employment of a retired teacher as a critical  
71 needs substitute teacher beyond the post-retirement employment

72 limitations established by the Consolidated Public Retirement  
73 Board, the superintendent of the affected county submits to the  
74 state board in a form approved by the Consolidated Public  
75 Retirement Board and the state board, ~~in a form approved by the~~  
76 ~~retirement board~~, an affidavit signed by the superintendent  
77 stating the name of the county, the fact that the county has  
78 adopted a policy to employ retired teachers as substitutes to  
79 address areas of critical need and shortage, the name or names of  
80 the person or persons to be employed as a critical needs substi-  
81 tute pursuant to the policy, the critical need and shortage area  
82 position filled by each person, the date that the person gave  
83 notice to the county board of the person's intent to retire, and the  
84 effective date of the person's retirement. Upon verification of  
85 compliance with this section and the eligibility of the critical  
86 needs substitute teacher for employment beyond the post-  
87 retirement limit, the state board shall submit the affidavit to the  
88 Consolidated Public Retirement Board.

89 (3) Any person who retires and begins work as a critical  
90 needs substitute teacher within the same employment term shall  
91 lose those retirement benefits attributed to the annuity reserve,

92 effective from the first day of employment as a retiree substitute  
93 in that employment term and ending with the month following  
94 the date the retiree ceases to perform service as a substitute.

95 (4) Retired teachers employed to perform expanded substi-  
96 tute service pursuant to this subsection are considered day-to-  
97 day, temporary, part-time employees. The substitutes are not  
98 eligible for additional pension or other benefits paid to regularly  
99 employed employees and ~~shall~~ may not accrue seniority.

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

105 ~~(5)~~ (6) When a retired teacher is employed as a critical needs  
106 substitute to fill a vacant position, the county board shall  
107 continue to post the vacant position until it is filled with a  
108 regularly employed teacher who is fully certified or permitted  
109 for the position.

110 (7) When a retired teacher is employed as a critical needs  
111 substitute to fill a vacant position, the position vacancy shall be

112 posted electronically and easily accessible to prospective  
113 employees as determined by the state board;

114 ~~(6)~~ (8) Until this subsection is expired pursuant to subdivi-  
115 sion ~~(7)~~ (9) of this subsection, the state board, annually, shall  
116 report to the Joint Committee on Government and Finance prior  
117 to February 1 of each year. Additionally, a copy shall be  
118 provided to the Legislative Oversight Commission on Education  
119 Accountability. The report shall contain information indicating  
120 the effectiveness of the provisions of this subsection on ~~expand-~~  
121 ~~ing the use of retired substitute teachers to address areas of~~  
122 reducing the critical need and shortage of substitute teachers  
123 including, but not limited to, the number of retired teachers, by  
124 critical need and shortage area position filled and by county,  
125 employed beyond the post-retirement employment limit estab-  
126 lished by the Consolidated Public Retirement Board, the date  
127 that each person gave notice to the county board of the person's  
128 intent to retire, and the effective date of the person's retirement.  
129 ~~(7)~~ (9) The provisions of this subsection shall expire on ~~June~~  
130 ~~30, 2014~~ June 30, 2017.



131 (d) (1) Notwithstanding any other provision of this code to  
132 the contrary, each year a county superintendent may employ  
133 prospective employable professional personnel on a reserve list  
134 at the county level subject to the following conditions:

135 (A) The county board adopts a policy to address areas of  
136 critical need and shortage as identified by the state board. The  
137 policy shall include authorization to employ prospective  
138 employable professional personnel;

139 (B) The county board posts a notice of the areas of critical  
140 need and shortage in the county in a conspicuous place in each  
141 school for at least ten working days; and

142 (C) There are not any potentially qualified applicants  
143 available and willing to fill the position.

144 (2) Prospective employable professional personnel may only  
145 be employed from candidates at a job fair who have or will  
146 graduate from college in the current school year or whose  
147 employment contract with a county board has or will be termi-  
148 nated due to a reduction in force in the current fiscal year.

149 (3) Prospective employable professional personnel employed  
150 are limited to three full-time prospective employable profes-

151 sional personnel per one hundred professional personnel  
152 employed in a county or twenty-five full-time prospective  
153 employable professional personnel in a county, whichever is  
154 less.

155 (4) Prospective employable professional personnel shall be  
156 granted benefits at a cost to the county board and as a condition  
157 of the employment contract as approved by the county board.

158 (5) Regular employment status for prospective employable  
159 professional personnel may be obtained only in accordance with  
160 the provisions of section seven-a, article four of this chapter.

161 (e) The state board annually shall review the status of  
162 employing personnel under the provisions of subsection (d) of  
163 this section and annually shall report to the Legislative Oversight  
164 Commission on Education Accountability on or before Novem-  
165 ber 1 of each year. The report shall include, but not be limited to,  
166 the following:

167 (A) The counties that participated in the program;

168 (B) The number of personnel hired;

169 (C) The teaching fields in which personnel were hired;

170 (D) The venue from which personnel were employed;

171 (E) The place of residency of the individual hired; and

172 (F) The state board's recommendations on the prospective

173 employable professional personnel program.

