

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

## **House Bill 2921**

BY DELEGATES CAMPBELL, R. THOMPSON, SKAFF, C.

THOMPSON, EVANS AND LONGSTRETH

[Introduced February 8, 2019; Referred  
to the Committee on Education.]

1 A BILL to amend and reenact §18-7A-13a of the Code of West Virginia, 1931, as amended; and  
2 to amend and reenact §18A-2-3 of said code, all relating to authorization for county boards  
3 of education to hire retired teachers to work in areas of critical need and shortage as  
4 substitute teachers; extending the authority to 2021; and clarifying that retired teachers  
5 working under the program will continue to receive retirement benefits.

*Be it enacted by the Legislature of West Virginia:*

## **CHAPTER 18. EDUCATION.**

### **ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.**

#### **§18-7A-13a. Resumption of service by retired teachers.**

1 (a) For the purpose of this section, reemployment of a former or retired teacher as a  
2 teacher shall in no way impair the teacher's eligibility for a prior service pension or any other  
3 benefit provided by this article.

4 (b) ~~Retired~~ Except as provided in §18A-2-3(c) of this code, retired teachers who qualified  
5 for an annuity because of age or service may not receive prior service allowance from the  
6 retirement board when employed as a teacher and when regularly employed by the State of West  
7 Virginia. The payment of the allowance shall be discontinued on the first day of the month within  
8 which such employment begins and shall be resumed on the first day of the month succeeding  
9 the month within which such employment ceases. The annuity paid the teacher on first retirement  
10 resulting from the Teachers' Accumulation Fund and the Employers' Accumulation Fund shall  
11 continue throughout the governmental service and thereafter according to the option selected by  
12 the teacher upon first retirement.

13 (c) Retired teachers who qualified for an annuity because of disability shall receive no  
14 further retirement payments if the retirement board finds that the disability of the teacher no longer  
15 exists; payment shall be discontinued on the first day of the month within which the finding is  
16 made. If the retired teacher returns to service as a teacher, he or she shall contribute to the  
17 Teachers' Accumulation Fund as a member of the system. His or her prior service eligibility, if

18 any, shall not be impaired because of his or her disability retirement. His or her accumulated  
19 contributions which were transferred to the benefit fund upon his or her retirement shall be  
20 returned to his or her individual account in the Teachers' Accumulation Fund, minus retirement  
21 payments received which were not supported by such contributions and interest. Upon  
22 subsequent retirement, he or she shall receive credit for all of his or her contributory experience,  
23 anything to the contrary in this article notwithstanding.

24 (d) Notwithstanding any provision of this code to the contrary, a person who retires under  
25 the system provided by this article may subsequently become employed on either a full-time  
26 basis, part-time basis or contract basis by any institution of higher education without any loss of  
27 retirement annuity or retirement benefits if the person's retirement commences between the  
28 effective date of the enactment of this section in 2002 and December 31, 2002: *Provided*, That  
29 the person shall not be eligible to participate in any other state retirement system provided by this  
30 code.

31 (e) The retirement board is herewith authorized to require of the retired teachers and their  
32 employers such reports as it deems necessary to effectuate the provisions of this section.

## CHAPTER 18A. SCHOOL PERSONNEL.

### 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 county board, may employ and  
2 assign substitute teachers to any of the following duties:

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

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

6 (3) Perform the instructional services of any teacher who is authorized by law to be absent

7 from class without loss of pay, providing the absence is approved by the board of education in  
8 accordance with the law.

9 The substitute shall be a duly certified teacher.

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

19 (c) (1) The Legislature hereby finds and declares that due to a shortage of qualified  
20 substitute teachers, a compelling state interest exists in expanding the use of retired teachers to  
21 provide service as substitute teachers in areas of critical need and shortage. The Legislature  
22 further finds that diverse circumstances exist among the counties for the expanded use of retired  
23 teachers as substitutes.

24 (2) For the purposes of this subsection:

25 (A) "Area of critical need and shortage for substitute teachers" means an area of  
26 certification and training in which the number of available substitute teachers in the county who  
27 hold certification and training in that area and who are not retired is insufficient to meet the  
28 projected need for substitute teachers; and

29 (B) "Teacher or substitute teacher" includes speech pathologists and school nurses.

30 (3) A person receiving retirement benefits under §18-7a-1 *et seq.* of this code or who is  
31 entitled to retirement benefits during the fiscal year in which that person retired may accept  
32 employment as a critical needs substitute teacher for an unlimited number of days each fiscal

33 year without affecting the monthly retirement benefit to which the retirant is otherwise entitled if  
34 the following conditions are satisfied:

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

37 (B) The policy sets forth the areas of critical need and shortage for substitute teachers in  
38 the county in accordance with the definition of area of critical need and shortage for substitute  
39 teachers set forth in subdivision (2) of this subsection;

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

43 (D) The policy provides that a retired teacher may be employed as a substitute teacher in  
44 an area of critical need and shortage for substitute teachers on an expanded basis as provided  
45 in this subsection only when no other teacher who holds certification and training in the area and  
46 who is not retired is available and accepts the substitute assignment;

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

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

52 (G) Prior to employment of a retired teacher as a critical needs substitute teacher beyond  
53 the post-retirement employment limitations established by the Consolidated Public Retirement  
54 Board, the superintendent of the affected county submits to the state board in a form approved  
55 by the Consolidated Public Retirement Board and the state board, an affidavit signed by the  
56 superintendent stating the name of the county, the fact that the county has adopted a policy to  
57 employ retired teachers as substitutes to address areas of critical need and shortage, the name  
58 or names of the person or persons to be employed as a critical needs substitute pursuant to the

59 policy, the critical need and shortage area position filled by each person, the date that the person  
60 gave notice to the county board of the person's intent to retire, and the effective date of the  
61 person's retirement. Upon verification of compliance with this section and the eligibility of the  
62 critical needs substitute teacher for employment beyond the post-retirement limit, the state board  
63 shall submit the affidavit to the Consolidated Public Retirement Board.

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

69 (5) Retired teachers employed to perform expanded substitute service pursuant to this  
70 subsection are considered day-to-day, temporary, part-time employees. The substitutes are not  
71 eligible for additional pension or other benefits paid to regularly employed employees and may  
72 not accrue seniority.

73 (6) A retired teacher is eligible to be employed as a critical needs substitute teacher to fill  
74 a vacant position without any loss of retirement benefits attributed to the annuity reserve only if  
75 the retired teacher's retirement became effective before July 1 preceding at least the fiscal year  
76 during which he or she is employed as a critical needs substitute teacher.

77 (7) When a retired teacher is employed as a critical needs substitute to fill a vacant  
78 position, the county board shall continue to post the vacant position until it is filled with a regularly  
79 employed teacher who is fully certified or permitted for the position.

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

83 (9) Until this subsection is expired pursuant to subdivision (10) of this subsection, the state  
84 board shall report to the Joint Committee on Government and Finance, prior to February 1 of each

85 year, information indicating the effectiveness of the provisions of this subsection on reducing the  
86 critical need and shortage of substitute teachers including, but not limited to, the number of retired  
87 teachers, by critical need and shortage area position filled and by county, employed beyond the  
88 post-retirement employment limit established by the Consolidated Public Retirement Board, the  
89 date that each person gave notice to the county board of the person's intent to retire, and the  
90 effective date of the person's retirement. A copy of the report shall also be provided to the  
91 Legislative Oversight Commission on Education Accountability.

92 (10) The provisions of this subsection shall expire on June 30, ~~2020~~ 2021.

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

96 (A) The county board adopts a policy authorizing the employment of prospective  
97 employable professional personnel to address areas of critical need and shortage;

98 (B) The county board posts a notice of the critical need and shortage area positions in the  
99 county in a conspicuous place in each school or on the county website for at least ten working  
100 days prior to making offers of employment to prospective candidates; and

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

103 (2) Prospective employable professional personnel may only be employed from  
104 candidates at a job fair who have or will graduate from college in the current school year and will  
105 commence employment at the next employment term.

106 (3) The number of prospective employable professional personnel employed is limited to  
107 the number required to fill the critical need and shortage area positions posted in accordance with  
108 subdivision (1) of this subsection.

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

111 (5) Regular employment status for prospective employable professional personnel may  
112 be obtained only upon recommendation by the superintendent and approval by the county board  
113 following consideration of the qualifications of the candidate in accordance with the applicable  
114 provisions of §18A-4-1 of this code. Upon board approval, prospective employable professional  
115 personnel may be placed into a critical needs position if the job has been posted at least once in  
116 accordance with paragraph (B), subdivision (1) of this subsection resulting in no qualified  
117 applicants. Employment of the prospective employable professional personnel pursuant to this  
118 subsection may occur without the need for additional postings and without the need for additional  
119 faculty senate involvement other than the initial faculty senate involvement required in the case  
120 of a classroom teaching position pursuant to §18A-4-7a of this code.

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

124 (7) For the purpose of recruiting professional personnel in critical needs areas and to  
125 attract professional personnel in a critical need or shortage area, county boards of education may  
126 from local funds pay prospective employable professional personnel a one-time financial incentive  
127 such as, but not limited to, a signing bonus or moving expenses, after a contract of employment  
128 has been signed.

NOTE: The purpose of this bill is to extend the period in which county boards of education may hire certified, retired teachers in areas of critical shortages of certified teachers.

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