

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

Senate Bill 226

BY SENATOR ROBERTS

[Introduced January 12 ,2022; referred
to the Committee on Education]

1 A BILL to amend and reenact §18A-2-3 of the Code of West Virginia, 1931, as amended, relating
 2 to allowing substitute teachers who suspect or believe they are being unfairly excluded
 3 from certain assignments or all assignments to request an explanation from certain school
 4 officials; and requiring that an explanation be provided if a request for explanation is made
 5 unless more than one request is made for every 90 instructional day period.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. SCHOOL PERSONNEL.

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

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) Any substitute teacher who suspects or believes that he or she is being unfairly
 11 excluded from certain assignments or all assignments may request an explanation from the
 12 county superintendent, principal of the applicable school, or both. If the request for an explanation
 13 pursuant to this subsection is made, the county superintendent, principal, or both, as applicable,
 14 shall provide the explanation unless more than one request is made for every 90 instructional day
 15 period.

16 ~~(b)~~ (c) Notwithstanding any other provision of this code to the contrary, a substitute teacher
 17 who has been assigned as a classroom teacher in the same classroom continuously for more

18 than one half of a grading period and whose assignment remains in effect two weeks prior to the
19 end of the grading period, shall remain in the assignment until the grading period has ended,
20 unless the principal of the school certifies that the regularly employed teacher has communicated
21 with and assisted the substitute with the preparation of lesson plans and monitoring student
22 progress or has been approved to return to work by his or her physician. For the purposes of this
23 section, teacher and substitute teacher, in the singular or plural, mean professional educator as
24 defined in section one, article one of this chapter.

25 ~~(c)~~ (d) (1) The Legislature hereby finds and declares that due to a shortage of qualified
26 substitute teachers, a compelling state interest exists in expanding the use of retired teachers to
27 provide service as substitute teachers in areas of critical need and shortage. The Legislature
28 further finds that diverse circumstances exist among the counties for the expanded use of retired
29 teachers as substitutes.

30 (2) For the purposes of this subsection:

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

35 (B) "Teacher or substitute teacher" includes speech pathologists, school nurses and
36 school counselors.

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

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

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

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

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

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

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

59 (G) Prior to employment of a retired teacher as a critical needs substitute teacher beyond
60 the post-retirement employment limitations established by the Consolidated Public Retirement
61 Board, the superintendent of the affected county submits to the state board in a form approved
62 by the Consolidated Public Retirement Board and the state board, an affidavit signed by the
63 superintendent stating the name of the county, the fact that the county has adopted a policy to
64 employ retired teachers as substitutes to address areas of critical need and shortage, the name
65 or names of the person or persons to be employed as a critical needs substitute pursuant to the
66 policy, the critical need and shortage area position filled by each person, the date that the person
67 gave notice to the county board of the person's intent to retire, and the effective date of the
68 person's retirement. Upon verification of compliance with this section and the eligibility of the
69 critical needs substitute teacher for employment beyond the post-retirement limit, the state board

70 shall submit the affidavit to the Consolidated Public Retirement Board.

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

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

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

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

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

90 (9) Until this subsection is expired pursuant to subdivision (10) of this subsection, the state
91 board shall report to the Joint Committee on Government and Finance, prior to February 1 of each
92 year, information indicating the effectiveness of the provisions of this subsection on reducing the
93 critical need and shortage of substitute teachers including, but not limited to, the number of retired
94 teachers, by critical need and shortage area position filled and by county, employed beyond the
95 post-retirement employment limit established by the Consolidated Public Retirement Board, the

96 date that each person gave notice to the county board of the person's intent to retire, and the
97 effective date of the person's retirement. A copy of the report shall also be provided to the
98 Legislative Oversight Commission on Education Accountability.

99 (10) The provisions of this subsection shall expire on June 30, 2025.

NOTE: The purpose of this bill is to allow any substitute teacher who suspects or believes that he or she is being unfairly excluded from certain assignments or all assignments to request an explanation from the county superintendent, principal of the applicable school, or both; and, if the request for an explanation is made, the county superintendent, principal, or both, as applicable, shall provide the explanation unless more than one request is made for every 90 instructional day period.

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