

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **Senate Bill 56**

By Senators Weld and Roberts

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

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
 2 designated §18A-4-15a, relating to setting forth legislative findings and declarations;  
 3 defining "area of critical need and shortage for substitute bus operators"; setting forth  
 4 conditions under which a person receiving certain retirement benefits, or who is entitled to  
 5 retirement benefits during the fiscal year in which that person retired, can accept  
 6 employment as a critical need substitute bus operator for an unlimited number of days  
 7 each fiscal year without affecting the monthly retirement benefit to which the retirant is  
 8 otherwise entitled; requiring loss of certain retirement benefits for any person who retires  
 9 and begins work as a critical need substitute bus operator within the same fiscal year;  
 10 providing that retired bus operators employed to perform expanded substitute service are  
 11 considered day-to-day, temporary, part-time employees who are not eligible for benefits  
 12 paid to regularly employed employees and may not accrue seniority; requiring county  
 13 board to continue to post the vacant position and to post electronically when a retired bus  
 14 operator is employed as critical need substitute; and providing expiration date for section.

*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:

2 (1) Due to a shortage of qualified substitute bus operators, a compelling state interest  
 3 exists in expanding the use of retired bus operators to provide service as substitute bus operators  
 4 in an area of critical need and shortage; and

5 (2) This shortage is significant and overarching, and in order to comply with §18-5-13(f)(1)  
 6 of this code, this need supersedes any preclusion of modification of rights codified in §18-7A-28(e)  
 7 of this code.

8 (b) For the purposes of this subsection: "Area of critical need and shortage for substitute

9 bus operators" means that the number of available qualified substitute bus operators in the county  
10 who are not retired and are available and willing to accept substitute bus operator assignments is  
11 insufficient to meet the projected need for qualified substitute bus operators.

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

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

19 (2) The superintendent of the county board submits the policy to the State Board of  
20 Education for approval in the first year of its utilization. After initial approval by the State Board of  
21 Education, the county board must annually renew the policy at the local level and provide  
22 confirmation to the State Board of Education of its intent to utilize the policy in the subsequent  
23 year;

24 (3) The policy sets forth the critical need and shortage for substitute bus operators in the  
25 county in accordance with the definition of area of critical need and shortage for substitute bus  
26 operators as provided in subsection (b) of this section;

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

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

34 (6) Prior to employment of a retired bus operator as a critical need substitute bus operator

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

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

50 (e) 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 may  
53 not accrue seniority.

54 (f) 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 (g) 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 (h) 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 (i) The provisions of this subsection shall expire on June 30, 2028.