WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1986

ENROLLED
Committee Substitute for
SENATE BILL NO. 248

(By Senator B. Williams)

PASSED March 8, 1986
In Effect July 1, 1986
AN ACT to amend and reenact sections twenty-two-b and forty-eight, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections three, thirteen, seventeen, twenty-three, twenty-four and twenty-six-h, article seven-a, chapter eighteen of said code, relating to the West Virginia public employees retirement act and the state teachers retirement system; deferred retirement and early retirement; supplemental benefits for certain annuitants; reemployment after retirement and option for holder of elected public office; definitions; membership in retirement system; cessation of membership; reinstatement of withdrawn service; statement and computation of teachers' service; withdrawal and death benefits; disposition of accumulated contributions upon cessation of membership; and supplemental benefits for certain annuitants.

Be it enacted by the Legislature of West Virginia:

That sections twenty-two-b and forty-eight, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and
that sections three, thirteen, seventeen, twenty-three, twenty-four and twenty-six-h, article seven-a, chapter eighteen of said code be amended and reenacted, all to read as follows:

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-22b. Supplemental benefits for certain annuitants.

1 Any annuitant who is receiving a retirement annuity of less than seven thousand five hundred dollars annually on the effective date of this section shall receive, upon application, a supplemental benefit, prospectively, under this section in any fiscal year for which the Legislature provides by line item appropriation for the payment of such benefit: Provided, That the effective date of retirement for such annuitant was prior to the first day of July, one thousand nine hundred seventy-nine, and he had ten years or more of credited service at the time of such retirement.

For the purposes of this section, “effective date of retirement” means the last day of actual employment, or the last day carried on the payroll of the employer, whichever is later, together with a meeting fully of all eligibility requirements for retirement prior to the aforesaid effective date. Any annuitant retired pursuant to the disability provisions of this article shall be considered to have had ten years or more credited service at the time of such retirement.

Each such annuitant shall receive as his supplemental benefit an increased annual amount which is the product of the sum of eighteen dollars multiplied by his years of credited service: Provided, That the total annuity of any annuitant affected by the provisions of this section, together with any of the other provisions of this article, shall not exceed seven thousand five hundred dollars annually.

Any annuitant receiving the supplemental benefit provided for herein for the annuity payment period just prior to the first day of July, one thousand nine hundred eighty-five, or any annuitant made newly eligible for
receipt of such supplemental benefit on such date, shall receive a nineteen percent increase in the amount of such supplemental benefit prior received or newly calculated, effective on and after the first day of July, one thousand nine hundred eighty-five and irrespective of the maximum total annuity proviso and limitation of seven thousand five hundred dollars annually. In any fiscal year in which pay increases are granted by the Legislature to active public employees, there may also be given an increase in retirement benefits for retired public employees, if funding is available for this purpose.

For the purpose of calculating the supplemental benefit provided in this section, fractional parts of a service credit year are to be disregarded unless in excess of one half of a credited service year, in which event the same shall constitute a full year of service credit.

On or after the first day of July, one thousand nine hundred eighty-two, for the purpose of computation for determination of eligibility and for the amount of any supplemental benefit hereunder, separate computation shall be made of a retirant's own benefit and that which may be receivable as beneficiary of another, under the provisions of this article, with each such benefit being eligible for the supplemental benefit herein provided.

§5-10-48. Reemployment after retirement; option for holder of elected public office.

(a) In the event a retirant becomes employed by a participating public employer, payment of his or her annuity shall be suspended during the period of his or her reemployment and he or she shall become a contributing member to the retirement system. If his or her reemployment is for a period of one year or longer, his or her annuity shall be recalculated and he or she shall be granted an increased annuity due to such additional employment, said annuity to be computed according to section twenty-two of this article. A retirant may accept temporary employment from a participating employer so long as he or she does not receive compensation in excess of six thousand dollars.

(b) In the event a retirant is elected to a public office or appointed to hold an elected public office, he or she has the...
option, notwithstanding subsection (a) of this section, to either:

(1) Continue to receive payment of his or her annuity while holding such public office, in addition to the salary he or she may be entitled to as such officeholder; or

(2) Suspend the payment of his or her annuity and become a contributing member of the retirement system as provided in subsection (a) of this section.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.


"Teacher member" means the following persons, if regularly employed for full-time service: (a) Any person employed for instructional service in the public schools of West Virginia; (b) principals; (c) public school librarians; (d) superintendents of schools and assistant county superintendents of schools; (e) any county school attendance director holding a West Virginia teacher's certificate; (f) the executive secretary of the retirement board; (g) members of the research, extension, administrative or library staffs of the public schools; (h) the state superintendent of schools, heads and assistant heads of the divisions under his supervision, or any other employee thereunder performing services of an educational nature; (i) employees of the state board of education who are performing services of an educational nature; (j) any person employed in a nonteaching capacity by the state board of education, the West Virginia board of regents, any county board of education, the state department of education or the teachers retirement board, if such person was formerly employed as a teacher in the public schools; (k) all classroom teachers, principals and educational administrators in schools under the supervision of the department of corrections, the department of health or the department of human services; and (l) employees of the state board of school finance, if such person was formerly employed as a teacher in the public schools.

"Nonteaching member" means any person, except a teacher member, who is regularly employed for full-time service by (a) any county board of education, (b) the state
board of education, (c) the West Virginia board of regents or (d) the teachers retirement board.

"Members of the administrative staff of the public schools" means deans of instruction, deans of men, deans of women, and financial and administrative secretaries.

"Members of the extension staff of the public schools" means every agricultural agent, boys' and girls' club agent, and every member of the agricultural extension staff whose work is not primarily stenographic, clerical or secretarial.

"Retirement system" means the state teachers retirement system provided for in this article.

"Present teacher" means any person who was a teacher within the thirty-five years beginning July one, one thousand nine hundred thirty-four, and whose membership in the retirement system is currently active.

"New entrant" means a teacher who is not a present teacher.

"Regularly employed for full-time service" means employment in a regular position or job throughout the employment term regardless of the number of hours worked or the method of pay.

"Employment term" means employment for at least ten months, a month being defined as twenty employment days.

"Present member" means a present teacher who is a member of the retirement system.

"Total service" means all service as a teacher while a member of the retirement system since last becoming a member and, in addition thereto, credit for prior service, if any.

"Prior service" means all service as a teacher completed prior to July first, one thousand nine hundred forty-one, and all service of a present member who was employed as a teacher, and did not contribute to a retirement account because he was legally ineligible for membership during such service.

"Average final salary" means the average of the five highest fiscal year salaries earned as a member within the last fifteen fiscal years of total service credit, including military service as provided herein, or if total service is less than fifteen years, the average annual salary for the period on which contributions were made.

"Accumulated contributions" means all deposits and all
deductions from the earnable compensation of a contributor minus the total of all supplemental fees deducted from his compensation.

“Regular interest” means interest at three percent compounded annually, or a higher earnable rate if approved by the retirement board.

“Refund interest” means interest compounded annually at a rate of three percent.

“Employer” means the agency of and within the state which has employed or employs a member.

“Contributor” means a member of the retirement system who has an account in the teachers accumulation fund.

“Beneficiary” means the recipient of annuity payments made under the retirement system.

“Refund beneficiary” means the estate of a deceased contributor, or such person as he shall have nominated as beneficiary of his contributions by written designation duly executed and filed with the retirement board.

“Earnable compensation” means the full compensation actually received by members for service as teachers whether or not a part of such compensation is received from other funds, federal or otherwise, than those provided by the state or its subdivisions. Allowances from employers for maintenance of members shall be deemed a part of earnable compensation for such members whose allowances were approved by the teachers retirement board and contributions to the teachers retirement system were made, in accordance therewith, on or before the first day of July, one thousand nine hundred eighty.

“Annuities” means the annual retirement payments for life granted beneficiaries in accordance with this article.

“Member” means a member of the retirement system.

“Public schools” means all publicly supported schools, including normal schools, colleges and universities in this state.

“Deposit” means a voluntary payment to his account by a member.

The masculine gender shall be construed so as to include the feminine.

Age in excess of seventy years shall be deemed to be seventy years.
§18-7A-13. Membership in retirement system; cessation of membership; reinstatement of withdrawn service.

1. The membership of the retirement system shall consist of the following:

(a) New entrants, whose membership in the system shall be compulsory upon employment as teachers and nonteachers.

(b) The membership of the retirement system shall not include any person who is an active member of or who has been retired by the West Virginia public employees retirement system, the judge's retirement system, or the retirement system of the department of public safety or the supplemental retirement system as provided in section four-a, article twenty-three of this chapter.

2. The membership of any person in the retirement system shall cease:

(1) Upon the withdrawal of accumulated contributions after the cessation of service, or (2) upon retirement, or (3) at death, or (4) if service amounts to fewer than five years in any period of ten consecutive years.

3. Any former member of the retirement system who has withdrawn accumulated contributions but subsequently reenters the retirement system shall be permitted to repay to the retirement fund the amount withdrawn, plus interest at a rate of six percent, compounded annually from the date of withdrawal to the date of repayment: Provided, That no such repayment may be made until the former member has completed two years of contributory service after reentry; and such member shall be accorded all the rights to prior service and experience as were held at the time of withdrawal of such accumulated contributions: Provided, however, That no withdrawn service may be reinstated that has been transferred to another retirement system from which the member is currently or will in the future draw benefits based on the same service. The interest paid shall be deposited in the reserve fund.

4. No member shall be eligible for prior service credit unless he is eligible for prior service pension, as prescribed by section twenty-two of this article; however, a new entrant who becomes a present teacher as provided in this paragraph shall be deemed eligible for prior service pension upon retirement.
§18-7A-17. Statement and computation of teachers' service.

Under such rules and regulations as the retirement board may adopt, each teacher shall file a detailed statement of his length of service as a teacher for which he claims credit. The retirement board shall determine what part of a year is the equivalent of a year of service. In computing such service, however, it shall credit no period of more than a month's duration during which a member was absent without pay, nor shall it credit for more than one year of service performed in any calendar year.

For the purpose of this article, the retirement board shall grant prior service credit to new entrants and other members of the retirement system for service in any of the armed forces of the United States in any period of national emergency within which a Federal Selective Service Act was in effect. For purposes of this section, "armed forces" shall include Women's Army Corps, Women's Appointed Volunteers for Emergency Service, Army Nurse Corps, Spars, Women's Reserve and other similar units officially parts of the military service of the United States. Such military service shall be deemed equivalent to public school teaching, and the salary equivalent for each year of such service shall be the actual salary of the member as a teacher for his first year of teaching after discharge from military service. Prior service credit for military service shall not exceed ten years for any one member, nor shall it exceed twenty-five percent of total service at the time of retirement.

For service as a teacher in the employment of the federal government, or a state or territory of the United States, or a governmental subdivision of such state or territory, the retirement board shall grant credit to the member: Provided, That the member shall pay to the system double the amount he contributed during the first full year of current employment, times the number of years for which credit is granted, plus interest at a rate to be determined by the retirement board. Such interest shall be deposited in the reserve fund and service credit so granted at the time of retirement shall not exceed the lesser of ten years or fifty percent of the member's total service as a teacher in West Virginia. Any transfer of out-of-state service, as provided in this article, shall not be used to establish eligibility for a
retirement allowance and the retirement board shall grant 
credit for such transferred service as additional service 
only: Provided, however, That a transfer of out-of-state 
service shall be prohibited if such service is used to obtain a 
retirement benefit from another retirement system: 
Provided further, That salaries paid to members for service 
prior to entrance into the retirement system shall not be 
used to compute the average final salary of such member 
under the retirement system.

Service credit for members or retired members shall not 
be denied on the basis of minimum income regulations 
promulgated by the teachers retirement board: Provided, 
That the member or retired member shall pay to the system 
the amount he would have contributed during the year or 
years of public school service for which credit was denied as 
a result of such minimum income regulations of the teachers 
retirement board.

No members shall be deemed absent from service while 
serving as a member or employee of the Legislature of the 
state of West Virginia during any duly constituted session of 
that body or while serving as an elected member of a county 
commission during any duly constituted session of that 
body: Provided, That the member makes contributions to 
the system equal to what would have been contributed 
during the period of absence had he performed his duties.

No member shall be deemed absent from service as a 
teacher while serving on leave of absence as an officer with 
a statewide professional teaching association, or who has 
served in such capacity, and no retired teacher, who served 
on such leave of absence while a member, shall be deemed to 
have been absent from service as a teacher by reason of such 
service on leave of absence: Provided, That the period of 
service credit granted for such service on leave of absence 
shall not exceed two years: Provided, however, That a 
member or retired teacher who is serving or has served as an 
officer of a statewide professional teaching association 
shall make deposits to the teachers retirement board, for the 
time of any such absence, in an amount double the amount 
which he would have contributed in his regular assignment 
for a like period of time.

The teachers retirement board shall grant service credit 
to any former or present member of the West Virginia public
employees retirement system who has been a contributing
member for more than three years, for service previously
credited by the public employees retirement system, and (1)
shall require the transfer of the member's contributions to
the teachers retirement system or (2) shall require a
repayment of the amount withdrawn any time prior to the
member's retirement: Provided, That there shall be added
by the member to the amounts transferred or repaid under
this paragraph an amount which shall be sufficient to equal
the contributions he would have made had the member been
under the teachers retirement system during the period of
his membership in the public employees retirement system
plus interest at a rate of six percent compounded annually
from the date of withdrawal to the date of payment. The
interest paid shall be deposited in the reserve fund.
For service as a teacher in an elementary or secondary
parochial school, located within this state and fully
accredited by the West Virginia department of education,
the retirement board shall grant credit to the member:
Provided, That the member shall pay to the system double
the amount contributed during the first full year of current
employment, times the number of years for which credit is
granted, plus interest at a rate to be determined by the
retirement board. Such interest shall be deposited in the
reserve fund and service so granted at the time of retirement
shall not exceed the lesser of ten years or fifty percent of the
member's total service as a teacher in the West Virginia
public school system. Any transfer of parochial school
service, as provided in this section, may not be used to
establish eligibility for a retirement allowance and the
board shall grant credit for such transfer as additional
service only: Provided, however, That a transfer of
parochial school service is prohibited if such service is used
to obtain a retirement benefit from another retirement
system.
If a member is not eligible for prior service credit or
pension as provided in this article, then his prior service
shall not be deemed a part of his total service.
A member who withdrew from membership shall be
permitted to regain his former membership rights as
specified in section thirteen of this article only in case he
has served two years since his last withdrawal.
Subject to the above provisions, the board shall verify as soon as practicable the statements of service submitted. The retirement board shall issue prior service certificates to all persons eligible therefor under the provisions of this article. Such certificates shall state the length of such prior service credit, but in no case shall the prior service credit exceed forty years.


Benefits upon withdrawal from service prior to retirement under the provisions of this article shall be as follows:

(a) A contributor who withdraws from service for any cause other than death or retirement shall, upon application, be paid his accumulated contributions plus refund interest up to the end of the fiscal year preceding the year in which application is made, but in no event shall interest be paid beyond the end of five years following the year in which the last contribution was made: Provided, That such contributor, at the time of application, is then no longer under contract, verbal or otherwise, to serve as a teacher;

(b) If a contributor with fewer than five years of established service does not apply for the refund of his accumulated contributions within five years from the year in which he quits service, then his accumulated contributions plus refund interest, up to and including the fifth year, shall be returned to such member or to his legal representative; or

(c) If such contributor has completed twenty years of total service, he may elect to receive at retirement age an annuity which shall be computed as provided in this article: Provided, That if such contributor has completed at least five, but fewer than twenty years of total service in this state, he may elect to receive at age sixty-two, an annuity which shall be computed as provided in this article. The contributor must notify the retirement board in writing concerning such election. If such contributor has completed fewer than five years of service in this state, he shall be subject to the provisions as outlined in subsections (a) or (b) above.
Benefits upon the death of a contributor prior to retirement under the provisions of this article shall be paid as follows:

1. If the contributor was at least fifty years old, and if his total service as a teacher was at least twenty-five years at the time of his death, then the surviving spouse of the deceased, provided said spouse is designated as the sole refund beneficiary, shall be eligible for an annuity which shall be computed as though the deceased were actually a retired teacher at the time of death, and had selected a survivorship option which pays such spouse the same monthly amount which would have been received by the deceased; or

2. If the facts do not permit payment under the preceding paragraph (1), then the following sum shall be paid to the refund beneficiary of the contributor: His accumulated contributions with refund interest up to the year of his death plus the amount of his accumulated contributions. The latter sum shall emanate from the employer's accumulation fund.

§18-7A-24. Disposition of accumulated contributions upon cessation of membership.

1. When a contributor ceases to be a member because of absence from service as a teacher, his accumulated contributions with refund interest up to and including the fiscal year in which his membership ceased, shall be returned to him, or to his legal representative. Five years after cessation of membership, if the contributor or his legal representative cannot be found, his accumulated contributions with refund interest shall be forfeited to the retirement system and credited to the reserve fund.

§18-7A-26h. Supplemental benefits for certain annuitants.

1. Any annuitant who is receiving a retirement annuity of less than seven thousand five hundred dollars annually on the effective date of this section shall receive a supplemental benefit, prospectively, under this section in any fiscal year for which the Legislature provides by line item appropriation for the payment of such benefit:

Provided, That the effective date of retirement for such
annuitant was prior to the first day of July, one thousand
nine hundred seventy-nine, and he had ten years or more of
credited service at the time of such retirement. For the
purposes of this section, “effective date of retirement”
means the last day of actual employment, or the last day
carried on the payroll of the employer, whichever is later,
together with a meeting fully of all eligibility requirements
for retirement prior to the aforesaid effective date. Any
annuitant retired pursuant to the disability provisions of
this article shall be considered to have had ten years or more
credited service at the time of such retirement.
Each such annuitant shall receive as his supplemental
benefit an increased annual amount which is the product of
the sum of eighteen dollars multiplied by his years of
credited service: Provided, That the total annuity of any
annuitant affected by the provisions of this section,
together with any of the other provisions of this article,
shall not exceed seven thousand five hundred dollars
annually.
Any annuitant receiving the supplemental benefit
provided for herein for the annuity payment period just
prior to the first day of July, one thousand nine hundred
eighty-five, or any annuitant made newly eligible for
receipt of such supplemental benefit on such date, shall
receive a nineteen percent increase in the amount of such
supplemental benefit prior received or newly calculated,
effective on and after the first day of July, one thousand
nine hundred eighty-five, and irrespective of the maximum
total annuity proviso, and limitation of seven thousand five
hundred dollars annually. In any fiscal year in which pay
increases are granted by the Legislature to active teachers,
there may also be given an increase in retirement benefits
for retired teachers, if funding is available for this purpose.
For the purpose of calculating the supplemental benefit
provided in this section, fractional parts of a service credit
year are to be disregarded unless in excess of one half of a
credited service year, in which event the same shall
constitute a full year of service credit.
On or after the first day of July, one thousand nine
hundred eighty-two, for the purpose of computation for
determination of eligibility and for the amount of any
supplemental benefit hereunder, separate computation shall be made of a retirant's own benefit and that which may be receivable as beneficiary of another, under the provisions of this article, with each such benefit being eligible for the supplemental benefit herein provided.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Bruce O. Watson
Chairman Senate Committee

Floyd Fuller
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1986.

Joel C. Wills
Clerk of the Senate

Donald C. Kopp
Clerk of the House of Delegates

Joseph P. Allwright
Speaker House of Delegates

The within ............... approved this the 26th day of ............... 1986.

Anne Shenfield
Governor