

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*..... Passage



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 248

(SENATOR B. WILLIAMS, *original sponsor*)

[Passed March 8, 1986; to take 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of elected public office; definitions; membership in retirement system; cessation of membership; reinstatement of withdrawn service; statement and computation of teachers' service; withdrawal and death benefits; disposition of accumulated contributions upon cessation of membership;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
2 less than seven thousand five hundred dollars annually on
3 the effective date of this section shall receive, upon
4 application, a supplemental benefit, prospectively, under
5 this section in any fiscal year for which the Legislature
6 provides by line item appropriation for the payment of such
7 benefit: *Provided*, That the effective date of retirement for
8 such annuitant was prior to the first day of July, one
9 thousand nine hundred seventy-nine, and he had ten years
10 or more of credited service at the time of such retirement.
11 For the purposes of this section, "effective date of
12 retirement" means the last day of actual employment, or the
13 last day carried on the payroll of the employer, whichever is
14 later, together with a meeting fully of all eligibility
15 requirements for retirement prior to the aforesaid effective
16 date. Any annuitant retired pursuant to the disability
17 provisions of this article shall be considered to have had ten
18 years or more credited service at the time of such
19 retirement.

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

28 Any annuitant receiving the supplemental benefit
29 provided for herein for the annuity payment period just
30 prior to the first day of July, one thousand nine hundred
31 eighty-five, or any annuitant made newly eligible for

32 receipt of such supplemental benefit on such date, shall
 33 receive a nineteen percent increase in the amount of such
 34 supplemental benefit prior received or newly calculated,
 35 effective on and after the first day of July, one thousand
 36 nine hundred eighty-five and irrespective of the maximum
 37 total annuity proviso and limitation of seven thousand five
 38 hundred dollars annually. In any fiscal year in which pay
 39 increases are granted by the Legislature to active public
 40 employees, there may also be given an increase in
 41 retirement benefits for retired public employees, if funding
 42 is available for this purpose.

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

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

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

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

14 (b) In the event a retirant is elected to a public office or
 15 appointed to hold an elected public office, he or she has the

16 option, notwithstanding subsection (a) of this section, to
17 either:

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

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

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-3. Definitions.

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

27 "Nonteaching member" means any person, except a
28 teacher member, who is regularly employed for full-time
29 service by (a) any county board of education, (b) the state

30 board of education, (c) the West Virginia board of regents or
31 (d) the teachers retirement board.

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

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

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

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

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

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

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

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

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

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

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

71 "Accumulated contributions" means all deposits and all

72 deductions from the earnable compensation of a
73 contributor minus the total of all supplemental fees
74 deducted from his compensation.

75 "Regular interest" means interest at three percent
76 compounded annually, or a higher earnable rate if
77 approved by the retirement board.

78 "Refund interest" means interest compounded annually
79 at a rate of three percent.

80 "Employer" means the agency of and within the state
81 which has employed or employs a member.

82 "Contributor" means a member of the retirement system
83 who has an account in the teachers accumulation fund.

84 "Beneficiary" means the recipient of annuity payments
85 made under the retirement system.

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

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

101 "Annuities" means the annual retirement payments for
102 life granted beneficiaries in accordance with this article.

103 "Member" means a member of the retirement system.

104 "Public schools" means all publicly supported schools,
105 including normal schools, colleges and universities in this
106 state.

107 "Deposit" means a voluntary payment to his account by a
108 member.

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

111 Age in excess of seventy years shall be deemed to be
112 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
2 the following:

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

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

13 The membership of any person in the retirement system
14 shall cease:

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

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

35 No member shall be eligible for prior service credit unless
36 he is eligible for prior service pension, as prescribed by
37 section twenty-two of this article; however, a new entrant
38 who becomes a present teacher as provided in this
39 paragraph shall be deemed eligible for prior service pension
40 upon retirement.

§18-7A-17. Statement and computation of teachers' service.

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

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

28 For service as a teacher in the employment of the federal
29 government, or a state or territory of the United States, or a
30 governmental subdivision of such state or territory, the
31 retirement board shall grant credit to the member:
32 *Provided*, That the member shall pay to the system double
33 the amount he contributed during the first full year of
34 current employment, times the number of years for which
35 credit is granted, plus interest at a rate to be determined by
36 the retirement board. Such interest shall be deposited in the
37 reserve fund and service credit so granted at the time of
38 retirement shall not exceed the lesser of ten years or fifty
39 percent of the member's total service as a teacher in West
40 Virginia. Any transfer of out-of-state service, as provided in
41 this article, shall not be used to establish eligibility for a

42 retirement allowance and the retirement board shall grant
43 credit for such transferred service as additional service
44 only: *Provided, however,* That a transfer of out-of-state
45 service shall be prohibited if such service is used to obtain a
46 retirement benefit from another retirement system:
47 *Provided further,* That salaries paid to members for service
48 prior to entrance into the retirement system shall not be
49 used to compute the average final salary of such member
50 under the retirement system.

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

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

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

82 The teachers retirement board shall grant service credit
83 to any former or present member of the West Virginia public

84 employees retirement system who has been a contributing
85 member for more than three years, for service previously
86 credited by the public employees retirement system, and (1)
87 shall require the transfer of the member's contributions to
88 the teachers retirement system or (2) shall require a
89 repayment of the amount withdrawn any time prior to the
90 member's retirement: *Provided*, That there shall be added
91 by the member to the amounts transferred or repaid under
92 this paragraph an amount which shall be sufficient to equal
93 the contributions he would have made had the member been
94 under the teachers retirement system during the period of
95 his membership in the public employees retirement system
96 plus interest at a rate of six percent compounded annually
97 from the date of withdrawal to the date of payment. The
98 interest paid shall be deposited in the reserve fund.

99 For service as a teacher in an elementary or secondary
100 parochial school, located within this state and fully
101 accredited by the West Virginia department of education,
102 the retirement board shall grant credit to the member:
103 *Provided*, That the member shall pay to the system double
104 the amount contributed during the first full year of current
105 employment, times the number of years for which credit is
106 granted, plus interest at a rate to be determined by the
107 retirement board. Such interest shall be deposited in the
108 reserve fund and service so granted at the time of retirement
109 shall not exceed the lesser of ten years or fifty percent of the
110 member's total service as a teacher in the West Virginia
111 public school system. Any transfer of parochial school
112 service, as provided in this section, may not be used to
113 establish eligibility for a retirement allowance and the
114 board shall grant credit for such transfer as additional
115 service only: *Provided, however*, That a transfer of
116 parochial school service is prohibited if such service is used
117 to obtain a retirement benefit from another retirement
118 system.

119 If a member is not eligible for prior service credit or
120 pension as provided in this article, then his prior service
121 shall not be deemed a part of his total service.

122 A member who withdrew from membership shall be
123 permitted to regain his former membership rights as
124 specified in section thirteen of this article only in case he
125 has served two years since his last withdrawal.

126 Subject to the above provisions, the board shall verify as
127 soon as practicable the statements of service submitted. The
128 retirement board shall issue prior service certificates to all
129 persons eligible therefor under the provisions of this article.
130 Such certificates shall state the length of such prior service
131 credit, but in no case shall the prior service credit exceed
132 forty years.

§18-7A-23. Withdrawal and death benefits.

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

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

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

21 (c) If such contributor has completed twenty years of
22 total service, he may elect to receive at retirement age an
23 annuity which shall be computed as provided in this article:
24 *Provided*, That if such contributor has completed at least
25 five, but fewer than twenty years of total service in this
26 state, he may elect to receive at age sixty-two, an annuity
27 which shall be computed as provided in this article. The
28 contributor must notify the retirement board in writing
29 concerning such election. If such contributor has completed
30 fewer than five years of service in this state, he shall be
31 subject to the provisions as outlined in subsections (a) or (b)
32 above.

33 Benefits upon the death of a contributor prior to
34 retirement under the provisions of this article shall be paid
35 as follows:

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

46 (2) If the facts do not permit payment under the
47 preceding paragraph (1), then the following sum shall be
48 paid to the refund beneficiary of the contributor: His
49 accumulated contributions with refund interest up to the
50 year of his death plus the amount of his accumulated
51 contributions. The latter sum shall emanate from the
52 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
2 absence from service as a teacher, his accumulated
3 contributions with refund interest up to and including the
4 fiscal year in which his membership ceased, shall be
5 returned to him, or to his legal representative. Five years
6 after cessation of membership, if the contributor or his legal
7 representative cannot be found, his accumulated
8 contributions with refund interest shall be forfeited to the
9 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
2 less than seven thousand five hundred dollars annually on
3 the effective date of this section shall receive a
4 supplemental benefit, prospectively, under this section in
5 any fiscal year for which the Legislature provides by line
6 item appropriation for the payment of such benefit:
7 *Provided*, That the effective date of retirement for such

8 annuitant was prior to the first day of July, one thousand
9 nine hundred seventy-nine, and he had ten years or more of
10 credited service at the time of such retirement. For the
11 purposes of this section, "effective date of retirement"
12 means the last day of actual employment, or the last day
13 carried on the payroll of the employer, whichever is later,
14 together with a meeting fully of all eligibility requirements
15 for retirement prior to the aforesaid effective date. Any
16 annuitant retired pursuant to the disability provisions of
17 this article shall be considered to have had ten years or more
18 credited service at the time of such retirement.

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

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

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

46 On or after the first day of July, one thousand nine
47 hundred eighty-two, for the purpose of computation for
48 determination of eligibility and for the amount of any

49 supplemental benefit hereunder, separate computation
50 shall be made of a retirant's own benefit and that which
51 may be receivable as beneficiary of another, under the
52 provisions of this article, with each such benefit being
53 eligible for the supplemental benefit herein provided.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Bruce O. Williams
.....
Chairman Senate Committee

Floyd Fuller
.....
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1986.

Joseph C. Sticks
.....
Clerk of the Senate

Donald G. Kopp
.....
Clerk of the House of Delegates

James Tombari
.....
President of the Senate

Joseph P. Allright
.....
Speaker House of Delegates

The within *approved* this the *26th*
Frank
day of , 1986.

Richard S. Murray
.....
Governor



PRESENTED TO THE
GOVERNOR

Date 3/20/86

Time 4:06 p.m.

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THIS DATE 3/26/86