WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994

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ENROLLED

Com. Sub. For

HOUSE BILL No. 4205

(By Delegates Smith, Campbell, Browning, Lindsey, Ashley, Regiose and Wallace)

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Passed .................................. March 12, 1994

In Effect .................................. 90 Days from Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4205
(By Delegates Smith, Campbell, Browning, Lindsey, Ashley, Prezioso and Wallace)

[Passed March 12, 1994; in effect ninety days from passage.]

AN ACT to amend and reenact section twenty-five, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article ten-d of said chapter by adding thereto a new section, designated section five, relating to retirement systems administered by the consolidated public retirement board; limiting eligibility for disability retirement by former members of the public employees retirement system to those who were employed by participating public employers within the last twelve months unless other specifications are met; and prohibiting payment of disability retirement benefits to a member of any state-administered retirement system due to disability resulting from a pre-existing condition.

Be it enacted by the Legislature of West Virginia:

That section twenty-five, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that article ten-d of said chapter be amended by adding thereto a new section, designated section five, all to read as follows:

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.
§5-10-25. Disability retirement.

(a) Upon the application of a member or former member of the retirement system, or his or her present or past employing authority, any member or former member who is in the employ of a participating public employer or was in the employ of a participating public employer on a date which is twelve months or less from the date upon which the former member became incapacitated, who has ten or more years of credited service of which three years is contributing service, and who becomes totally and permanently incapacitated for employment, by reason of a personal injury or disease, may be retired by the board if after a medical examination of the said member or former member made by or under the direction of a medical committee consisting of two physicians, one of whom shall be named by the board, and one by the said member or former member, the said medical committee reports, in writing, to the board that the said member or former member is physically or mentally totally incapacitated for employment, that such incapacity will probably be permanent, and that the said member or former member should be retired. In the event the two above-mentioned examining physicians do not agree in their findings, then the board may, at its discretion, appoint a third physician to examine said member or former member and, based upon the third physician's report in writing, the board may retire said member or former member. A former member who has not been employed by a participating public employer may receive disability retirement under the provisions of this subsection if, in the opinion of the medical committee, the incapacity occurred during the time that the former member was employed by a participating public employer and the incapacity otherwise qualifies the former member for retirement under this subsection.

(b) A member with less than ten years of credited service shall have the service requirement provided for in subsection (a) above (including the requirement of three years contributing service) waived in the event (1) the board finds his or her total and permanent disability
to be the natural and proximate result of a personal injury or disease arising out of and in the course of his or her actual performance of duty in the employ of a participating public employer, and (2) he or she is receiving or has received workers' compensation benefits on account of such physical or mental disability.

(c) For any member or former member retiring and any member retired, as of March one, one thousand nine hundred seventy, he or she shall receive a straight life annuity computed according to section twenty-two hereof and he or she shall have the right to elect an option provided for in section twenty-four hereof: Provided, That his or her straight life annuity payable to his or her attainment of age sixty-five years may not be less than fifty percent of his or her final average salary; and his or her said straight life annuity payable from and after his or her attainment of age sixty-five years may not be less than twenty percent of his or her final average salary: Provided, however, That his or her said annuity shall be subject to section twenty-six hereof.

ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.

§5-10D-5. Award of disability retirement. The board may not award disability retirement to a member of any retirement plan that it administers, if the member is seeking to retire based on a disability that existed at the time the member joined the public retirement plan.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Ernest C. Moore

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Donald L. Ruby

Clerk of the House of Delegates

Matt Burchett

President of the Senate

Speaker of the House of Delegates

The within bill passed this the 3rd day of March, 1994.

Gaston Caperton

Governor