WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 1998

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ENROLLED

House Bill No. 4537
(By Mr. Speaker, Mr. Kiss, and Delegate Martin, Jenkins, Michael, Staton, Varner and Hubbard)

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Passed March 14, 1998

In Effect Ninety Days from Passage
AN ACT to amend and reenact sections fourteen and eighteen, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to providing members of the public employees retirement system a period of time to purchase prior credited service which was forfeited due to the employee having left covered service; requiring repayment of any amounts withdrawn with interest thereon; establishing the manner of repayment and setting forth a time period during which repayment may be made; providing that a legislative employee may receive three months service credit for each thirty day session worked prior to one thousand nine hundred seventy-one; extending the date for a legislative employee to purchase retroactive service credit; clarifying that a legislative employee is entitled to the service credit provided regardless when the service occurred; clarifying that regular session legislative employment for seven consecutive years may be served in either or both houses of the Legislature; clarifying that service credit awarded for legislative employment pursuant to this section shall be used not only for the purpose of calculating that member's retirement annuity but also for determining eligibility as it relates to credited service; providing that any legislative employee may request
a recalculation of credited service to comply with the provisions of this section; and providing that the service credit requirements of this section shall be applied retroactively to all periods of legislative employment prior to the passage of this section, including any periods of legislative employment occurring before the seven consecutive calendar year employment referenced in this section.

Be it enacted by the Legislature of West Virginia:

That sections fourteen and eighteen, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-14. Service credit; retroactive provisions.

(a) The board of trustees shall credit each member with the prior service and contributing service to which he or she is entitled based upon such rules as the board of trustees shall from time to time adopt and based upon the following:

(1) Ten or more days of service rendered by a member in any calendar month shall be credited as a month of service: Provided, That for employees of the state Legislature whose term of employment is otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who have been or are so employed during regular sessions or during the interim between regular sessions in seven consecutive calendar years, service credit of one month shall be awarded for each ten days employed in the interim between regular sessions, which interim days shall be cumulatively calculated so that any ten days, regardless of calendar month or year, shall be calculated toward any award of one month of service credit;

(2) Ten or more months of service credit earned in any calendar year shall be credited as a year of service;
(3) No more than one year of service may be credited to any member for all service rendered by him or her in any calendar year; and

(4) Service may be credited to a member who was employed by a political subdivision if his or her employment occurred within a period of thirty years immediately preceding the date the political subdivision became a participating public employer.

(b) The board of trustees shall grant service credit to employees of boards of health, the clerk of the House of Delegates and the clerk of the state Senate, or to any former and present member of the state teachers retirement system who have been contributing members for more than three years, for service previously credited by the state teachers retirement system and shall require the transfer of the member’s contributions to the system and shall also require a deposit, with interest, of any withdrawals of contributions any time prior to the member’s retirement. Repayment of withdrawals shall be as directed by the board of trustees.

(c) Court reporters who are acting in an official capacity, although paid by funds other than the county commission or state auditor, may receive prior service credit for time served in that capacity.

(d) Employees of the state Legislature whose terms of employment are otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions shall receive service credit for the time served in that capacity in accordance with the following. Employees of the state Legislature whose term of employment is otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who have been or are employed during regular sessions or during the interim between regular sessions in seven consecutive calendar years, as certified by the clerk of the houses in which the employee served, shall receive service credit of six months for all regular sessions served as certified by the clerk of
the houses in which the employee served, or shall receive
service credit of three months for each regular thirty day
session served prior to one thousand nine hundred
seventy-one, as certified by the clerk of the houses in
which the employee served, and shall receive service credit
of one month for each ten days served during the interim
between regular sessions, which interim days shall be
cumulatively calculated so that any ten days, regardless of
calendar month or year, shall be calculated toward any
award of one month of service credit. Service credit
awarded for legislative employment pursuant to this
section shall be used for the purpose of calculating that
member’s retirement annuity, pursuant to section twenty-
two of this article, and determining eligibility as it relates
to credited service, notwithstanding any other provision of
this section. Certification of employment for a complete
legislative session and for days of interim sessions shall be
determined by the clerk of the houses in which the
employee served, based upon employment records.
Service of fifty-five days of a regular session constitutes a
presumption of service for a complete legislative session,
and service of twenty seven days of a thirty day regular
session occurring prior to one thousand nine hundred
seventy-one constitutes a presumption of service for a
complete legislative session. Once a legislative employee
has been employed during regular sessions for seven
consecutive years or has become a full time employee of
the legislature, that employee shall receive the service
credit provided in this section for all regular and interim
sessions worked by that employee, as certified by the clerk
of the houses in which the employee served, regardless of
when the session or interim legislative employment
occurred: Provided, That regular session legislative
employment for seven consecutive years may be served in
either or both houses of the Legislature.

Any employee may purchase retroactive service credit
for periods of employment in which contributions were
not deducted from the employee’s pay. In the purchase of
service credit for employment prior to the year one
thousand nine hundred eighty-nine in any department,
including the Legislature, which operated from the general
revenue fund and which was not expressly excluded from budget appropriations in which blanket appropriations were made for the state's share of public employees' retirement coverage in the years prior to the year one thousand nine hundred eighty-nine, the employee shall pay the employee's share. Other employees shall pay the state's share and the employee's share to purchase retroactive service credit. Where an employee purchases service credit for employment which occurred after the year one thousand nine hundred eighty-eight, that employee shall pay for the employee's share and the employer shall pay its share for the purchase of retroactive service credit. Provided, That no legislative employee may be required to pay any interest or penalty upon the purchase of retroactive service credit in accordance with the provisions of this section where the employee was not eligible to become a member during the years he or she is purchasing retroactive credit for or had the employee attempted to contribute to the system during the years he or she is purchasing retroactive service credit for and such contributions would have been refused by the board: Provided, however, That a legislative employee purchasing retroactive service credit under this section does so within twenty-four months of becoming a member of the system or no later than the last day of December, two thousand two, whichever occurs last: Provided further, That once a legislative employee becomes a member of the retirement system, he or she may purchase retroactive service credit for any time he or she was employed by the Legislature and did not receive service credit. Any service credit purchased shall be credited as six months for each sixty day session worked and three months for each thirty day session worked, and credit for interim sessions as provided in this subsection: And provided further, That this legislative service credit shall also be used for months of service in order to meet the sixty month requirement for the payments of a member's retirement annuity: And provided further, That no legislative employee may be required to pay for any service credit beyond the actual time he or she worked regardless of the service credit which is credited to him or her pursuant to this section: And provided further, That any legislative employee may
request a recalculation of his or her credited service to comply with the provisions of this section at any time.

(e) Notwithstanding any provision to the contrary, the seven consecutive calendar years requirement and the service credit requirements set forth in this section shall be applied retroactively to all periods of legislative employment prior to the passage of this section, including any periods of legislative employment occurring before the seven consecutive calendar years referenced in this section.

§5-10-18. Termination of membership; reentry.

(a) When a member of the retirement system retires or dies, he or she ceases to be a member. When a member leaves the employ of a participating public employer for any other reason, he or she ceases to be a member and forfeits service credited to him or her at that time. If he or she becomes reemployed by a participating public employer he or she shall be reinstated as a member of the retirement system and his or her credited service last forfeited by him or her shall be restored to his or her credit: Provided, That he or she must be reemployed for a period of one year or longer to have the service restored: Provided, however, That he or she returns to the members’ deposit fund the amount, if any, he or she withdrew from the fund, together with regular interest on the withdrawn amount from the date of withdrawal to the date of repayment, and that the repayment begins within two years of the return to employment and that the full amount is repaid within five years of the return to employment.

(b) Effective on the first day of July, one thousand nine hundred ninety-seven, and continuing through the first day of July, one thousand nine hundred ninety-eight, any employee of the Prestera center for mental health services, valley comprehensive mental health center, Westbrook health services and eastern panhandle mental health center who is a member of the retirement system may elect to withdraw from membership without forfeiting service credited to him or her.
(c) The Prestera center for mental health services, valley comprehensive mental health center, Westbrook health services and eastern panhandle mental health center, and their successors in interest, shall provide for their employees a pension plan in lieu of the public employees retirement system on or before the first day of July, one thousand nine hundred ninety-seven, and continuing thereafter during the existence of the named mental health centers and their successors in interest.

(d) The administrative bodies of the Prestera center for mental health services, valley comprehensive mental health center, Westbrook health services and eastern panhandle mental health center shall, on or before the first day of May, one thousand nine hundred ninety-seven, give written notice to each employee who is a member of the public employees retirement system of the option to withdraw from or remain in the system. The notice shall include a copy of this section and a statement explaining the member’s options regarding membership. The notice shall include a statement in plain language giving a full explanation and actuarial projection figures in support of the explanation regarding the individual member’s current account balance, vested and nonvested, and his or her projected return upon remaining in the public employees retirement system until retirement, disability or death, in comparison with the projected return upon withdrawing from the public employees retirement system and joining a private pension plan provided by the community mental health center and remaining therein until retirement, disability or death. The administrative bodies shall keep in their respective records a permanent record of each employee’s signature confirming receipt of the notice.

(e) Effective the first day of March, one thousand nine hundred ninety-eight, and ending the thirty-first day of December, two thousand two, any member may purchase credited service previously forfeited by him or her and such credited service shall be restored to his or her credit: Provided, That he or she returns to the members’ deposit fund the amount, if any, he or she withdrew from the fund, together with interest on the withdrawn amount from the
date of withdrawal to the date of repayment at a rate to be determined by the board. The repayment under this section may be made by lump sum or repaid over a period of time not to exceed sixty months. Where the member elects to repay the required amount other than by lump sum, the member is required to pay interest at the rate determined by the board until all sums are fully repaid.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within _______ day of _______, 1998.

Governor
PRESENTED TO THE
GOVERNOR
Date: 4/6/48
Time: 12:03