WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2001

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ENROLLED

House Bill No. 2080

(By Delegate Michael)

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Passed April 14, 2001

In Effect from Passage
AN ACT to amend and reenact section fourteen, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section seventeen, article seven-a, chapter eighteen of said code, all relating to placing corresponding provisions in the teachers retirement system and the public employees retirement system; providing public employee retirement system service credit and teachers retirement system service credit for time worked in CETA (Comprehensive Employment and Training Act) programs; requirements; setting forth maximum attainable service credit; setting forth applicable time period to obtain service credit; specifying cost of service credit; granting service credit in teachers retirement system for former and present members of the state police death, disability and retirement fund in the same manner as is in the public employees retirement system; setting forth conditions to be met for credit; and setting forth required documentation to substantiate time for the service credit.

Be it enacted by the Legislature of West Virginia:
That section fourteen, article ten, chapter five of the code of West
Virginia, one thousand nine hundred thirty-one, as amended, be
amended and reenacted; and that section seventeen, 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.
§5-10-14. 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) In no event may less than ten days of service rendered
by a member in any calendar month 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 em-
ployed 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 em-
ployed 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) Except for hourly employees, ten or more months of
service credit earned in any calendar year shall be credited as a
year of service: Provided, That 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 no days may be carried
over by a member from one calendar year to another calendar
year where the member has received a full year credit for that
year; and

(3) Service may be credited to a member who was em-
ployed 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 contribu-
tions 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) Active members who previously worked in CETA
(Comprehensive Employment and Training Act) may receive
service credit for time served in that capacity: Provided, That
in order to receive service credit under the provisions of this
subsection the following conditions must be met: (1) The
member must have moved from temporary employment with
the participating employer to permanent full time employment
with the participating employer within one hundred twenty days following the termination of the member’s CETA employment;

(2) The board must receive evidence that establishes to a reasonable degree of certainty as determined by the board that the member previously worked in CETA; and (3) The member shall pay to the board an amount equal to the employer and employee contribution plus interest at the amount set by the board for the amount of service credit sought pursuant to this subsection: Provided, however, That the maximum service credit that may be obtained under the provisions of this subsection is two years: Provided further, That a member must apply and pay for the service credit allowed under this subsection and provide all necessary documentation by the thirty-first day of December, two thousand one.

(e) 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 time between regular sessions shall receive service credit for the time served in that capacity in accordance with the following. For purposes of this section the term “regular session” means day one through day sixty of a sixty-day legislative session or day one through day thirty of a thirty-day legislative session. 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 time between regular sessions and who have been or are employed during regular sessions or during the interim time 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: Provided, That no more than
one year of service may be credited to any temporary legislative
employee for all service rendered by that employee in any
calendar year and no days may be carried over by a temporary
legislative employee from one calendar year to another calendar
year where the member has received a full year credit for that
year. Service credit awarded for legislative employment
pursuant to this section shall be used for the purpose of calcu-
ling 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 interim days 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 an absolute 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 an absolute
 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, and interim days 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, however, 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 and no current or former member of the Legislature 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 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 five, 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 employment 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 temporary legislative employee 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.

(f) 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.

(g) The board of trustees shall grant service credit to any former or present member of the state police death, disability and retirement fund who has been a contributing member of this system for more than three years, for service previously credited by the state police death, disability and retirement fund if the member transfers all of his or her contributions to the state police death, disability and retirement fund to the system created in this article, including repayment of any amounts withdrawn any time from the state police death, disability and retirement fund by the member seeking the transfer allowed in this subsection: 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 or she would have made had the member been under
the public employees retirement system during the period of his
or her membership in the state police death, disability and
retirement fund plus interest at a rate determined by the board.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-17. Statement and computation of teachers’ service; qualified military service.

(a) Under rules adopted by the retirement board, each
teacher shall file a detailed statement of his or her length of
service as a teacher for which he or she claims credit. The
retirement board shall determine what part of a year is the
equivalent of a year of service. In computing the 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.

(b) 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” includes 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. The military service is considered equivalent to public
school teaching, and the salary equivalent for each year of that
service is the actual salary of the member as a teacher for his or
her 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. Notwithstand-
ing the preceding provisions of this subsection, contributions,
benefits and service credit with respect to qualified military
service shall be provided in accordance with Section 414(u) of
the Internal Revenue Code. For purposes of this section,
"qualified military service" has the same meaning as in Section
414(u) of the Internal Revenue Code. The retirement board is
authorized to determine all questions and make all decisions
relating to this section and, pursuant to the authority granted to
the retirement board in section one, article ten-d, chapter five of
this code, may promulgate rules relating to contributions,
benefits and service credit to comply with Section 414(u) of the
Internal Revenue Code.

(c) 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 that state or territory, the retire-
ment board shall grant credit to the member: Provided, That the
member shall pay to the system double the amount he or she
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. The
interest shall be deposited in the reserve fund and service credit
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 the transferred service as additional service
only: Provided, however, That a transfer of out-of-state service
is prohibited if the 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
the member under the retirement system.

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

(e) No members shall be considered 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.

(f) No member shall be considered absent from service as a teacher while serving as an officer with a statewide professional teaching association, or who has served in that capacity, and no retired teacher, who served in that capacity while a member, shall be considered to have been absent from service as a teacher by reason of that service: Provided, That the period of service credit granted for that service shall not exceed ten 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 absence, in an amount double the amount which he or she would have contributed in his or her regular assignment for a like period of time.

(g) 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 subsection an amount
which shall be sufficient to equal the contributions he or she would have made had the member been under the teachers retirement system during the period of his or her 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.

(h) 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. The interest shall be deposited in the reserve fund and service 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 the transfer as additional service only: Provided, however, That a transfer of parochial school service is prohibited if the service is used to obtain a retirement benefit from another retirement system.

(i) Active members who previously worked in CETA (Comprehensive Employment and Training Act) may receive service credit for time served in that capacity: Provided, That in order to receive service credit under the provisions of this subsection the following conditions must be met: (1) The member must have moved from temporary employment with the participating employer to permanent full time employment with the participating employer within one hundred twenty days following the termination of the member's CETA employment;
(2) The board must receive evidence that establishes to a reasonable degree of certainty as determined by the board that the member previously worked in CETA; and (3) The member shall pay to the board an amount equal to the employer and employee contribution plus interest at the amount set by the board for the amount of service credit sought pursuant to this subsection: *Provided, however, That the maximum service credit that may be obtained under the provisions of this subsection is two years: Provided further, That a member must apply and pay for the service credit allowed under this subsection and provide all necessary documentation by the thirty-first day of December, two thousand one."

(j) If a member is not eligible for prior service credit or pension as provided in this article, then his or her prior service shall not be considered a part of his or her total service.

(k) A member who withdrew from membership may regain his or her former membership rights as specified in section thirteen of this article only in case he or she has served two years since his or her last withdrawal.

(l) Subject to the provisions of subsections (a) through (l), inclusive, of this section, 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 for the certificates under the provisions of this article. The certificates shall state the length of the prior service credit, but in no case shall the prior service credit exceed forty years.

(m) Notwithstanding any provision of this article to the contrary, when a member is or has been elected to serve as a member of the Legislature, and the proper discharge of his or her duties of public office require that member to be absent from his or her teaching or administrative duties, the time served in discharge of his or her duties of the legislative office
are credited as time served for purposes of computing service credit: *Provided,* That the board may not require any additional contributions from that member in order for the board to credit him or her with the contributing service credit earned while discharging official legislative duties: *Provided, however,* That nothing herein may be construed to relieve the employer from making the employer contribution at the member's regular salary rate or rate of pay from that employer on the contributing service credit earned while the member is discharging his or her official legislative duties. These employer payments shall commence as of the first day of June, two thousand: *Provided further,* That any member to which the provisions of this subsection apply may elect to pay to the board an amount equal to what his or her contribution would have been for those periods of time he or she was serving in the Legislature. The periods of time upon which the member paid his or her contribution shall then be included for purposes of determining his or her final average salary as well as for determining years of service: *And provided further,* That a member utilizing the provisions of this subsection is not required to pay interest on any contributions he or she may decide to make.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signatures]

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect from passage.

[Signatures]

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 27th day of April, 2001.

Governor
PRESENTED TO THE
GOVERNOR

Date 4/2/01
Time 4:35 PM