

FILED

2001 MAY 1 P 2:17

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2001



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 2851

(By Delegates Staton, J. Smith and Keener)



Passed April 13, 2001

In Effect Ninety Days from Passage

FILED

2001 MAY -1 P 2: 17

OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2851

(BY DELEGATES STATON, J. SMITH AND KEENER)

[Passed April 13, 2001; in effect ninety days from passage.]

AN ACT to amend and reenact sections two and seventeen, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section three, article seven-a, chapter eighteen of said code, all relating to compliance of the public employees retirement system, and the state teachers retirement system, with the federal tax law qualification requirements of section 401(a) and related sections of the Internal Revenue Code of 1986 as applicable to governmental plans; definition of leased employees and clarification of ineligibility of leased employees to participate in the public employees retirement system; including within the definition of political subdivision the regional community policing institute; clarification of definition of regular interest; and addition of definition of pick up service in the teachers retirement system.

Be it enacted by the Legislature of West Virginia:

FILED

718

WEST VIRGINIA
STATE

That sections two and seventeen, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section three, 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.

§5-10-2. Definitions.

1 The following words and phrases as used in this article,
2 unless a different meaning is clearly indicated by the context,
3 have the following meanings:

4 (1) "State" means the state of West Virginia;

5 (2) "Retirement system" or "system" means the West
6 Virginia public employees retirement system created and
7 established by this article;

8 (3) "Board of trustees" or "board" means the board of
9 trustees of the West Virginia public employees retirement
10 system;

11 (4) "Political subdivision" means the state of West Vir-
12 ginia, a county, city or town in the state; a school corporation
13 or corporate unit; any separate corporation or instrumentality
14 established by one or more counties, cities or towns, as permit-
15 ted by law; any corporation or instrumentality supported in
16 most part by counties, cities or towns; any public corporation
17 charged by law with the performance of a governmental

18 function and whose jurisdiction is coextensive with one or more
19 counties, cities or towns: *Provided*, That any mental health
20 agency participating in the public employees retirement system
21 before the first day of July, one thousand nine hundred ninety-
22 seven, is considered a political subdivision solely for the
23 purpose of permitting those employees who are members of the
24 public employees retirement system to remain members and
25 continue to participate in the retirement system at their option
26 after the first day of July, one thousand nine hundred ninety-
27 seven: *Provided, however*, That the regional community
28 policing institute which participated in the public employees
29 retirement system before the first day of July, two thousand is
30 considered a political subdivision solely for the purpose of
31 permitting those employees who are members of the public
32 employees retirement system to remain members and continue
33 to participate in the public employees retirement system after
34 the first day of July, two thousand;

35 (5) "Participating public employer" means the state of West
36 Virginia, any board, commission, department, institution or
37 spending unit, and includes any agency created by rule of the
38 supreme court of appeals having full-time employees, which for
39 the purposes of this article is considered a department of state
40 government; and any political subdivision in the state which has
41 elected to cover its employees, as defined in this article, under
42 the West Virginia public employees retirement system;

43 (6) "Employee" means any person who serves regularly as
44 an officer or employee, full time, on a salary basis, whose
45 tenure is not restricted as to temporary or provisional appoint-
46 ment, in the service of, and whose compensation is payable, in
47 whole or in part, by any political subdivision, or an officer or
48 employee whose compensation is calculated on a daily basis
49 and paid monthly or on completion of assignment, including
50 technicians and other personnel employed by the West Virginia
51 national guard whose compensation, in whole or in part, is paid

52 by the federal government: *Provided*, That members of the
53 Legislature, the clerk of the House of Delegates, the clerk of the
54 Senate, employees of the Legislature whose term of employ-
55 ment is otherwise classified as temporary and who are em-
56 ployed to perform services required by the Legislature for its
57 regular sessions or during the interim between regular sessions
58 and who have been or are employed during regular sessions or
59 during the interim between regular sessions in seven consecu-
60 tive calendar years, as certified by the clerk of the house in
61 which the employee served, members of the legislative body of
62 any political subdivision and judges of the state court of claims
63 are considered to be employees, anything contained in this
64 article to the contrary notwithstanding. In any case of doubt as
65 to who is an employee within the meaning of this article, the
66 board of trustees shall decide the question;

67 (7) "Member" means any person who is included in the
68 membership of the retirement system;

69 (8) "Retirant" means any member who retires with an
70 annuity payable by the retirement system;

71 (9) "Beneficiary" means any person, except a retirant, who
72 is entitled to, or will be entitled to, an annuity or other benefit
73 payable by the retirement system;

74 (10) "Service" means personal service rendered to a
75 participating public employer by an employee, as defined in this
76 article, of a participating public employer;

77 (11) "Prior service" means service rendered prior to the
78 first day of July, one thousand nine hundred sixty-one, to the
79 extent credited a member as provided in this article;

80 (12) "Contributing service" means service rendered by a
81 member within this state and for which the member made
82 contributions to a public retirement system account of this state,

83 to the extent credited him or her as provided by this article. This
84 revised definition is retroactive and applicable to the first day
85 of April, one thousand nine hundred eighty-eight, and thereaf-
86 ter;

87 (13) "Credited service" means the sum of a member's prior
88 service credit and contributing service credit standing to his or
89 her credit as provided in this article;

90 (14) "Limited credited service" means service by employ-
91 ees of the West Virginia educational broadcasting authority, in
92 the employment of West Virginia university, during a period
93 when the employee made contributions to another retirement
94 system, as required by West Virginia university, and did not
95 make contributions to the public employees retirement system:
96 *Provided*, That while limited credited service can be used for
97 the formula set forth in section twenty-one, subsection (e) of
98 this article, it may not be used to increase benefits calculated
99 under section twenty-two of this article;

100 (15) "Compensation" means the remuneration paid a
101 member by a participating public employer for personal
102 services rendered by him or her to the participating public
103 employer. In the event a member's remuneration is not all paid
104 in money, his or her participating public employer shall fix the
105 value of the portion of his or her remuneration which is not paid
106 in money;

107 (16) "Final average salary" means either:

108 (A) The average of the highest annual compensation
109 received by a member (including a member of the Legislature
110 who participates in the retirement system in the year one
111 thousand nine hundred seventy-one or thereafter) during any
112 period of three consecutive years of his or her credited service
113 contained within his or her ten years of credited service

114 immediately preceding the date his or her employment with a
115 participating public employer last terminated; or

116 (B) If he or she has less than five years of credited service,
117 the average of the annual rate of compensation received by him
118 or her during his or her total years of credited service; and in
119 determining the annual compensation, under either paragraph
120 (A) or (B) of this subdivision, of a member of the Legislature
121 who participates in the retirement system as a member of the
122 Legislature in the year one thousand nine hundred seventy-one
123 or in any year thereafter, his or her actual legislative compensa-
124 tion (the total of all compensation paid under sections two,
125 three, four and five, article two-a, chapter four of this code) in
126 the year one thousand nine hundred seventy-one or in any year
127 thereafter, plus any other compensation he or she receives in
128 any year from any other participating public employer including
129 the state of West Virginia, without any multiple in excess of
130 one times his or her actual legislative compensation and other
131 compensation, shall be used: *Provided*, That “final average
132 salary” for any former member of the Legislature or for any
133 member of the Legislature in the year one thousand nine
134 hundred seventy-one who, in either event, was a member of the
135 Legislature on the thirtieth day of November, one thousand nine
136 hundred sixty-eight, or the thirtieth day of November, one
137 thousand nine hundred sixty-nine, or the thirtieth day of
138 November, one thousand nine hundred seventy, or on the
139 thirtieth day of November in any one or more of those three
140 years, and who participated in the retirement system as a
141 member of the Legislature in any one or more of those years
142 means: (i) Either (notwithstanding the provisions of this
143 subdivision preceding this proviso) one thousand five hundred
144 dollars multiplied by eight, plus the highest other compensation
145 the former member or member received in any one of the three
146 years from any other participating public employer including
147 the state of West Virginia; or (ii) “final average salary”
148 determined in accordance with paragraph (A) or (B) of this

149 subdivision, whichever computation produces the higher final
150 average salary (and in determining the annual compensation
151 under (ii) of this proviso, the legislative compensation of the
152 former member shall be computed on the basis of one thousand
153 five hundred dollars multiplied by eight, and the legislative
154 compensation of the member shall be computed on the basis set
155 forth in the provisions of this subdivision immediately preced-
156 ing this proviso or on the basis of one thousand five hundred
157 dollars multiplied by eight, whichever computation as to the
158 member produces the higher annual compensation);

159 (17) "Accumulated contributions" means the sum of all
160 amounts deducted from the compensations of a member and
161 credited to his or her individual account in the members'
162 deposit fund, together with regular interest on the contributions;

163 (18) "Regular interest" means the rate or rates of interest
164 per annum, compounded annually, as the board of trustees
165 adopts from time to time;

166 (19) "Annuity" means an annual amount payable by the
167 retirement system throughout the life of a person. All annuities
168 shall be paid in equal monthly installments, using the upper
169 cent for any fraction of a cent;

170 (20) "Annuity reserve" means the present value of all
171 payments to be made to a retirant or beneficiary of a retirant on
172 account of any annuity, computed upon the basis of such
173 mortality and other tables of experience, and regular interest, as
174 the board of trustees adopts from time to time;

175 (21) "Retirement" means a member's withdrawal from the
176 employ of a participating public employer with an annuity
177 payable by the retirement system;

178 (22) "Actuarial equivalent" means a benefit of equal value
179 computed upon the basis of such mortality table and regular
180 interest as the board of trustees adopts from time to time; and

181 (23) "Retroactive service" means: (1) Service an employee
182 was entitled to, but which the employer has not withheld or paid
183 for; or (2) that service from the first day of July, one thousand
184 nine hundred sixty-one, and the date an employer decides to
185 become a participating member of the public employees
186 retirement system; or (3) service prior to the first day of July,
187 one thousand nine hundred sixty-one, for which the employee
188 is not entitled to prior service at no cost in accordance with 162
189 CSR 5.16;

190 (24) "Required beginning date" means the first day of April
191 of the calendar year following the later of: (A) the calendar year
192 in which the member attains age seventy and one-half, or (B)
193 the calendar year in which the member ceases providing service
194 covered under this system to a participating employer;

195 (25) "Internal Revenue Code" means the Internal Revenue
196 Code of 1986, as amended; and

197 (26) "Plan year" means the same as referenced in section
198 forty-two of this article.

§5-10-17. Retirement system membership.

1 The membership of the retirement system consists of the
2 following persons:

3 (a) All employees, as defined in section two of this article,
4 who are in the employ of a political subdivision the day
5 preceding the date it becomes a participating public employer
6 and who continue in the employ of the participating public
7 employer on and after that date shall become members of the
8 retirement system; and all persons who become employees of

9 a participating public employer on or after that date shall
10 thereupon become members of the system; except as provided
11 in subdivisions (b) and (c) of this section.

12 (b) The membership of the retirement system shall not
13 include any person who is a member of, or who has been retired
14 by, any of the state teachers retirement systems, the judges
15 retirement system, the retirement system of the division of
16 public safety, the deputy sheriff retirement system or any
17 municipal retirement system for either, or both, policemen or
18 firemen; and the bureau of employment programs, by the
19 commissioner of the bureau, may elect whether its employees
20 will accept coverage under this article or be covered under the
21 authorization of a separate enactment: *Provided*, That the
22 exclusions of membership shall not apply to any member of the
23 state Legislature, the clerk of the House of Delegates, the clerk
24 of the state Senate or to any member of the legislative body of
25 any political subdivision provided he or she once becomes a
26 contributing member of the retirement system: *Provided*,
27 *however*, That any retired member of the retirement system of
28 the division of public safety, the deputy sheriff retirement
29 system and any retired member of any municipal retirement
30 system for either, or both, policemen or firemen may on and
31 after the effective date of this section become a member of the
32 retirement system as provided in this article, without receiving
33 credit for prior service as a municipal policeman or fireman or
34 as a member of the division of public safety or of the deputy
35 sheriff retirement system: *Provided further*, That the member-
36 ship of the retirement system does not include any person who
37 becomes employed by the Prestera center for mental health
38 services, valley comprehensive mental health center, Westbrook
39 health services or eastern panhandle mental health center on or
40 after the first day of July, one thousand nine hundred ninety-
41 seven: *And provided further*, That membership of the retirement
42 system does not include any person who becomes a member of

43 the federal railroad retirement act on or after the first day of
44 July, two thousand.

45 (c) Any member of the state Legislature, the clerk of the
46 House of Delegates, the clerk of the state Senate and any
47 employee of the state Legislature whose employment is
48 otherwise classified as temporary and who is employed to
49 perform services required by the Legislature for its regular
50 sessions or during the interim between regular sessions and who
51 has been or is so employed during regular sessions or during the
52 interim between sessions in seven consecutive calendar years,
53 as certified by the clerk of the house in which the employee
54 served, or any member of the legislative body of any other
55 political subdivision shall become a member of the retirement
56 system provided he or she notifies the retirement system in
57 writing of his or her intention to be a member of the system and
58 files a membership enrollment form as prescribed by the board
59 of trustees, and each person, upon filing his or her written
60 notice to participate in the retirement system, shall by that act
61 authorize the clerk of the House of Delegates or the clerk of the
62 state Senate or such person or legislative agency as the legisla-
63 tive body of any other political subdivision shall designate to
64 deduct the member's contribution, as provided in subsection
65 (b), section twenty-nine of this article, and after the deductions
66 have been made from the member's compensation, the deduc-
67 tions shall be forwarded to the retirement system.

68 (d) If question arises regarding the membership status of
69 any employee, the board of trustees has the final power to
70 decide the question.

71 (e) Any individual who is leased employee is not eligible to
72 participate in the system. For the purposes of this article, the
73 term "leased employee" means any individual who performs
74 services as an independent contractor or pursuant to an agree-
75 ment with an employee leasing organization or other similar

76 organization. If a question arises regarding the status of an
77 individual as a leased employee, the board has final authority to
78 decide the question.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-3. Definitions.

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

25 “Nonteaching member” means any person, except a teacher
26 member, who is regularly employed for full-time service by: (a)

27 Any county board of education; (b) the state board of education;
28 (c) the West Virginia board of regents [abolished]; or (d) the
29 teachers retirement board.

30 “Members of the administrative staff of the public schools”
31 means deans of instruction, deans of men, deans of women, and
32 financial and administrative secretaries.

33 “Members of the extension staff of the public schools”
34 means every agricultural agent, boys’ and girls’ club agent, and
35 every member of the agricultural extension staff whose work is
36 not primarily stenographic, clerical or secretarial.

37 “Retirement system” means the state teachers retirement
38 system provided for in this article.

39 “Present teacher” means any person who was a teacher
40 within the thirty-five years beginning the first day of July, one
41 thousand nine hundred thirty-four, and whose membership in
42 the retirement system is currently active.

43 “New entrant” means a teacher who is not a present teacher.

44 “Regularly employed for full-time service” means employ-
45 ment in a regular position or job throughout the employment
46 term regardless of the number of hours worked or the method
47 of pay.

48 “Employment term” means employment for at least ten
49 months, a month being defined as twenty employment days.

50 “Present member” means a present teacher who is a
51 member of the retirement system.

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

55 “Prior service” means all service as a teacher completed
56 prior to the first day of July, one thousand nine hundred forty-
57 one, and all service of a present member who was employed as
58 a teacher, and did not contribute to a retirement account
59 because he was legally ineligible for membership during the
60 service.

61 “Pick-up service” means service that a member was entitled
62 to, but which the employer has not withheld or paid for.

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

69 “Accumulated contributions” means all deposits and all
70 deductions from the earnable compensation of a contributor
71 minus the total of all supplemental fees deducted from his
72 compensation.

73 “Regular interest” means interest at four percent com-
74 pounded annually, or a higher earnable rate if set forth in the
75 formula established in legislative rules, series seven of the
76 consolidated public retirement board.

77 “Refund interest” means interest compounded, according to
78 the formula established in legislative rules, series seven of the
79 consolidated public retirement board.

80 “Employer” means the agency of and within the state which
81 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 a person as he shall have nominated as benefi-
88 ciary of his contributions by written designation duly executed
89 and filed with the retirement board.

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

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

102 “Member” means a member of the retirement system.

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

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

107 “Plan year” means the twelve-month period commencing
108 on the first day of July and ending the following thirtieth day of
109 June of any designated year.

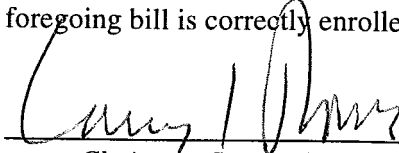
110 “Internal Revenue Code” means the Internal Revenue Code
111 of 1986, as amended.

112 "Required beginning date" means the first day of April of
113 the calendar year following the later of: (a) the calendar year in
114 which the member attains age seventy and one-half, or (b) the
115 calendar year in which the member retires or ceases covered
116 employment under the system.

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

119 Age in excess of seventy years shall be considered to be
120 seventy years.

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



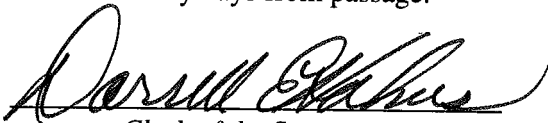
Chairman Senate Committee



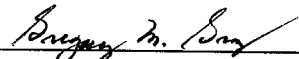
Chairman House Committee

Originating in the House.

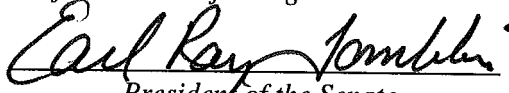
In effect ninety days from passage.



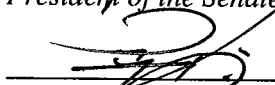
Clerk of the Senate



Clerk of the House of Delegates

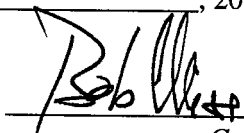


President of the Senate



Speaker of the House of Delegates

The within is approved this the 30th
day of April, 2001.



Governor

PRESENTED TO THE

GOVERNOR

Date 4/24/01

Time 4:53pm