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
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:
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.

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

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

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

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

(4) "Political subdivision" means the state of West Virginia, a county, city or town in the state; a school corporation or corporate unit; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; any public corporation charged by law with the performance of a governmental...
function and whose jurisdiction is coextensive with one or more counties, cities or towns: Provided, That any mental health agency participating in the public employees retirement system before the first day of July, one thousand nine hundred ninety-seven, is considered a political subdivision solely for the purpose of permitting those employees who are members of the public employees retirement system to remain members and continue to participate in the retirement system at their option after the first day of July, one thousand nine hundred ninety-seven: Provided, however, That the regional community policing institute which participated in the public employees retirement system before the first day of July, two thousand is considered a political subdivision solely for the purpose of permitting those employees who are members of the public employees retirement system to remain members and continue to participate in the public employees retirement system after the first day of July, two thousand;

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

(6) "Employee" means any person who serves regularly as an officer or employee, full time, on a salary basis, whose tenure is not restricted as to temporary or provisional appointment, in the service of, and whose compensation is payable, in whole or in part, by any political subdivision, or an officer or employee whose compensation is calculated on a daily basis and paid monthly or on completion of assignment, including technicians and other personnel employed by the West Virginia national guard whose compensation, in whole or in part, is paid
by the federal government: Provided, That members of the Legislature, the clerk of the House of Delegates, the clerk of the Senate, employees of the 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 house in which the employee served, members of the legislative body of any political subdivision and judges of the state court of claims are considered to be employees, anything contained in this article to the contrary notwithstanding. In any case of doubt as to who is an employee within the meaning of this article, the board of trustees shall decide the question;

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

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

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

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

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

(12) "Contributing service" means service rendered by a member within this state and for which the member made contributions to a public retirement system account of this state,
to the extent credited him or her as provided by this article. This revised definition is retroactive and applicable to the first day of April, one thousand nine hundred eighty-eight, and thereafter;

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

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

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

(16) "Final average salary" means either:

(A) The average of the highest annual compensation received by a member (including a member of the Legislature who participates in the retirement system in the year one thousand nine hundred seventy-one or thereafter) during any period of three consecutive years of his or her credited service contained within his or her ten years of credited service
immediately preceding the date his or her employment with a
participating public employer last terminated; or

(B) If he or she has less than five years of credited service,
the average of the annual rate of compensation received by him
or her during his or her total years of credited service; and in
determining the annual compensation, under either paragraph
(A) or (B) of this subdivision, of a member of the Legislature
who participates in the retirement system as a member of the
Legislature in the year one thousand nine hundred seventy-one
or in any year thereafter, his or her actual legislative compensa-
tion (the total of all compensation paid under sections two,
three, four and five, article two-a, chapter four of this code) in
the year one thousand nine hundred seventy-one or in any year
thereafter, plus any other compensation he or she receives in
any year from any other participating public employer including
the state of West Virginia, without any multiple in excess of
one times his or her actual legislative compensation and other
compensation, shall be used: Provided, That "final average
salary" for any former member of the Legislature or for any
member of the Legislature in the year one thousand nine
hundred seventy-one who, in either event, was a member of the
Legislature on the thirtieth day of November, one thousand nine
hundred sixty-eight, or the thirtieth day of November, one
thousand nine hundred sixty-nine, or the thirtieth day of
November, one thousand nine hundred seventy, or on the
thirtieth day of November in any one or more of those three
years, and who participated in the retirement system as a
member of the Legislature in any one or more of those years
means: (i) Either (notwithstanding the provisions of this
subdivision preceding this proviso) one thousand five hundred
dollars multiplied by eight, plus the highest other compensation
the former member or member received in any one of the three
years from any other participating public employer including
the state of West Virginia; or (ii) "final average salary"
determined in accordance with paragraph (A) or (B) of this
subdivision, whichever computation produces the higher final
average salary (and in determining the annual compensation
under (ii) of this proviso, the legislative compensation of the
former member shall be computed on the basis of one thousand
five hundred dollars multiplied by eight, and the legislative
compensation of the member shall be computed on the basis set
forth in the provisions of this subdivision immediately preced-
ing this proviso or on the basis of one thousand five hundred
dollars multiplied by eight, whichever computation as to the
member produces the higher annual compensation);

(17) “Accumulated contributions” means the sum of all
amounts deducted from the compensations of a member and
credited to his or her individual account in the members’
deposit fund, together with regular interest on the contributions;

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

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

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

(21) “Retirement” means a member’s withdrawal from the
employ of a participating public employer with an annuity
payable by the retirement system;
“Actuarial equivalent” means a benefit of equal value computed upon the basis of such mortality table and regular interest as the board of trustees adopts from time to time; and

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

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

“Internal Revenue Code” means the Internal Revenue Code of 1986, as amended; and

“Plan year” means the same as referenced in section forty-two of this article.

§5-10-17. Retirement system membership.

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

(a) All employees, as defined in section two of this article, who are in the employ of a political subdivision the day preceding the date it becomes a participating public employer and who continue in the employ of the participating public employer on and after that date shall become members of the retirement system; and all persons who become employees of
a participating public employer on or after that date shall thereupon become members of the system; except as provided in subdivisions (b) and (c) of this section.

(b) The membership of the retirement system shall not include any person who is a member of, or who has been retired by, any of the state teachers retirement systems, the judges retirement system, the retirement system of the division of public safety, the deputy sheriff retirement system or any municipal retirement system for either, or both, policemen or firemen; and the bureau of employment programs, by the commissioner of the bureau, may elect whether its employees will accept coverage under this article or be covered under the authorization of a separate enactment: Provided, That the exclusions of membership shall not apply to any member of the state Legislature, the clerk of the House of Delegates, the clerk of the state Senate or to any member of the legislative body of any political subdivision provided he or she once becomes a contributing member of the retirement system; Provided, however, That any retired member of the retirement system of the division of public safety, the deputy sheriff retirement system and any retired member of any municipal retirement system for either, or both, policemen or firemen may on and after the effective date of this section become a member of the retirement system as provided in this article, without receiving credit for prior service as a municipal policeman or fireman or as a member of the division of public safety or of the deputy sheriff retirement system: Provided further, That the membership of the retirement system does not include any person who becomes employed by the Prestera center for mental health services, valley comprehensive mental health center, Westbrook health services or eastern panhandle mental health center on or after the first day of July, one thousand nine hundred ninety-seven: And provided further, That membership of the retirement system does not include any person who becomes a member of
the federal railroad retirement act on or after the first day of
July, two thousand.

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

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

(e) Any individual who is leased employee is not eligible to
participate in the system. For the purposes of this article, the
term “leased employee” means any individual who performs
services as an independent contractor or pursuant to an agree-
ment with an employee leasing organization or other similar
If a question arises regarding the status of an individual as a leased employee, the board has final authority to decide the question.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.


"Teacher member" means the following persons, if regularly employed for full-time service: (a) Any person employed for instructional service in the public schools of West Virginia; (b) principals; (c) public school librarians; (d) superintendents of schools and assistant county superintendents of schools; (e) any county school attendance director holding a West Virginia teacher's certificate; (f) the executive secretary of the retirement board; (g) members of the research, extension, administrative or library staffs of the public schools; (h) the state superintendent of schools, heads and assistant heads of the divisions under his supervision, or any other employee thereunder performing services of an educational nature; (i) employees of the state board of education who are performing services of an educational nature; (j) any person employed in a nonteaching capacity by the state board of education, the West Virginia board of regents [abolished], any county board of education, the state department of education or the teachers retirement board, if such person was formerly employed as a teacher in the public schools; (k) all classroom teachers, principals and educational administrators in schools under the supervision of the department of corrections, the division of health or the division of human services; and (l) employees of the state board of school finance, if such person was formerly employed as a teacher in the public schools.

"Nonteaching member" means any person, except a teacher member, who is regularly employed for full-time service by: (a)
Any county board of education; (b) the state board of education; (c) the West Virginia board of regents [abolished]; or (d) the teachers retirement board.

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

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

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

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

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

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

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

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

“Total service” means all service as a teacher while a member of the retirement system since last becoming a member and, in addition thereto, credit for prior service, if any.
“Prior service” means all service as a teacher completed prior to the first day of July, one thousand nine hundred forty-one, and all service of a present member who was employed as a teacher, and did not contribute to a retirement account because he was legally ineligible for membership during the service.

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

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

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

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

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

“Employer” means the agency of and within the state which has employed or employs a member.

“Contributor” means a member of the retirement system who has an account in the teachers accumulation fund.
“Beneficiary” means the recipient of annuity payments made under the retirement system.

“Refund beneficiary” means the estate of a deceased contributor, or a person as he shall have nominated as beneficiary of his contributions by written designation duly executed and filed with the retirement board.

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

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

“Member” means a member of the retirement system.

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

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

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

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

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

Age in excess of seventy years shall be considered to be 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