

# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2002



# ENROLLED

## House Bill No. 4658

(By Delegates Campbell, J. Smith, Keener and Browning)



Passed March 9, 2002

In Effect Ninety Days from Passage

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

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## H. B. 4658

(BY DELEGATES CAMPBELL, J. SMITH, KEENER AND BROWNING)

[Passed March 9, 2002; in effect ninety days from passage.]

AN ACT to amend and reenact sections fourteen and forty-eight, 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 generally to public employee's and state teachers retirement; extending the time frame for claiming service credit for having worked under the comprehensive employment and training act; requiring due diligence to notify affected employees of the extension of time; allowing temporary legislative employees who have been employed during regular sessions for thirteen consecutive years to receive a service credit of twelve months for each regular session served; increasing the amount of compensation a retirant may earn from temporary state employment; providing for granting of service credit in the teachers retirement system for certain former members of the state police death, disability and retirement system; and specifying requirements for same.

*Be it enacted by the Legislature of West Virginia:*

That sections fourteen, twenty-two-c and forty-eight, 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.**

1       (a) The board of trustees shall credit each member with the  
2 prior service and contributing service to which he or she is  
3 entitled based upon rules adopted by the board of trustees and  
4 based upon the following:

5       (1) In no event may less than ten days of service rendered  
6 by a member in any calendar month be credited as a month of  
7 service: *Provided*, That for employees of the state Legislature  
8 whose term of employment is otherwise classified as temporary  
9 and who are employed to perform services required by the  
10 Legislature for its regular sessions or during the interim  
11 between regular sessions and who have been or are so em-  
12 ployed during regular sessions or during the interim between  
13 regular sessions in seven consecutive calendar years, service  
14 credit of one month shall be awarded for each ten days em-  
15 ployed in the interim between regular sessions, which interim  
16 days shall be cumulatively calculated so that any ten days,  
17 regardless of calendar month or year, shall be calculated toward  
18 any award of one month of service credit;

19       (2) Except for hourly employees, ten or more months of  
20 service credit earned in any calendar year shall be credited as a  
21 year of service: *Provided*, That no more than one year of  
22 service may be credited to any member for all service rendered  
23 by him or her in any calendar year and no days may be carried  
24 over by a member from one calendar year to another calendar  
25 year where the member has received a full-year credit for that  
26 year; and

27       (3) Service may be credited to a member who was em-  
28 ployed by a political subdivision if his or her employment  
29 occurred within a period of thirty years immediately preceding  
30 the date the political subdivision became a participating public  
31 employer.

32       (b) The board of trustees shall grant service credit to  
33 employees of boards of health, the clerk of the House of  
34 Delegates and the clerk of the state Senate, or to any former and  
35 present member of the state teachers retirement system who  
36 have been contributing members for more than three years, for  
37 service previously credited by the state teachers retirement  
38 system and shall require the transfer of the member's contribu-  
39 tions to the system and shall also require a deposit, with  
40 interest, of any withdrawals of contributions any time prior to  
41 the member's retirement. Repayment of withdrawals shall be as  
42 directed by the board of trustees.

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

47       (d) Active members who previously worked in CETA  
48 (Comprehensive Employment and Training Act) may receive  
49 service credit for time served in that capacity: *Provided*, That  
50 in order to receive service credit under the provisions of this

51 subsection the following conditions must be met: (1) The  
52 member must have moved from temporary employment with  
53 the participating employer to permanent full time employment  
54 with the participating employer within one hundred twenty days  
55 following the termination of the member's CETA employment;  
56 (2) the board must receive evidence that establishes to a  
57 reasonable degree of certainty as determined by the board that  
58 the member previously worked in CETA; and (3) the member  
59 shall pay to the board an amount equal to the employer and  
60 employee contribution plus interest at the amount set by the  
61 board for the amount of service credit sought pursuant to this  
62 subsection: *Provided, however,* That the maximum service  
63 credit that may be obtained under the provisions of this subsec-  
64 tion is two years: *Provided further,* That a member must apply  
65 and pay for the service credit allowed under this subsection and  
66 provide all necessary documentation by the thirty-first day of  
67 March, two thousand three: *And provided further,* That the  
68 board shall exercise due diligence to notify affected employees  
69 of the provisions of this subsection.

70 (e) Employees of the state Legislature whose terms of  
71 employment are otherwise classified as temporary and who are  
72 employed to perform services required by the Legislature for its  
73 regular sessions or during the interim time between regular  
74 sessions shall receive service credit for the time served in that  
75 capacity in accordance with the following. For purposes of this  
76 section, the term "regular session" means day one through day  
77 sixty of a sixty-day legislative session or day one through day  
78 thirty of a thirty-day legislative session. Employees of the state  
79 Legislature whose term of employment is otherwise classified  
80 as temporary and who are employed to perform services  
81 required by the Legislature for its regular sessions or during the  
82 interim time between regular sessions and who have been or are  
83 employed during regular sessions or during the interim time  
84 between regular sessions in seven consecutive calendar years,  
85 as certified by the clerk of the houses in which the employee

86 served, shall receive service credit of six months for all regular  
87 sessions served, as certified by the clerk of the houses in which  
88 the employee served, or shall receive service credit of three  
89 months for each regular thirty-day session served prior to one  
90 thousand nine hundred seventy-one: *Provided*, That employees  
91 of the state Legislature whose term of employment is otherwise  
92 classified as temporary and who are employed to perform  
93 services required by the Legislature for its regular sessions and  
94 who have been or are employed during the regular sessions in  
95 thirteen consecutive calendar years as either temporary employ-  
96 ees or full time employees or a combination thereof, as certified  
97 by the clerk of the houses in which the employee served, shall  
98 receive a service credit of twelve months for each regular  
99 session served, as certified by the clerk of the houses in which  
100 the employee served: *Provided, however*, That the amendments  
101 made to this subsection during the two thousand two regular  
102 session of the Legislature only apply to employees of the  
103 Legislature who are employed by the Legislature as either  
104 temporary employees or full time employees as of the first day  
105 of January, two thousand two or who become employed by the  
106 Legislature as temporary or full time employees for the first  
107 time after the first day of January, two thousand two. Employ-  
108 ees of the state Legislature whose terms of employment are  
109 otherwise classified as temporary and who are employed to  
110 perform services required by the Legislature during the interim  
111 time between regular sessions shall receive service credit of one  
112 month for each ten days served during the interim between  
113 regular sessions, which interim days shall be cumulatively  
114 calculated so that any ten days, regardless of calendar month or  
115 year, shall be calculated toward any award of one month of  
116 service credit: *Provided further*, That no more than one year of  
117 service may be credited to any temporary legislative employee  
118 for all service rendered by that employee in any calendar year  
119 and no days may be carried over by a temporary legislative  
120 employee from one calendar year to another calendar year

121 where the member has received a full year credit for that year.  
122 Service credit awarded for legislative employment pursuant to  
123 this section shall be used for the purpose of calculating that  
124 member's retirement annuity, pursuant to section twenty-two of  
125 this article, and determining eligibility as it relates to credited  
126 service, notwithstanding any other provision of this section.  
127 Certification of employment for a complete legislative session  
128 and for interim days shall be determined by the clerk of the  
129 houses in which the employee served, based upon employment  
130 records. Service of fifty-five days of a regular session consti-  
131 tutes an absolute presumption of service for a complete  
132 legislative session and service of twenty-seven days of a thirty-  
133 day regular session occurring prior to one thousand nine  
134 hundred seventy-one constitutes an absolute presumption of  
135 service for a complete legislative session. Once a legislative  
136 employee has been employed during regular sessions for seven  
137 consecutive years or has become a full-time employee of the  
138 Legislature, that employee shall receive the service credit  
139 provided in this section for all regular and interim sessions and  
140 interim days worked by that employee, as certified by the clerk  
141 of the houses in which the employee served, regardless of when  
142 the session or interim legislative employment occurred: *And*  
143 *provided, further,* That regular session legislative employment  
144 for seven consecutive years may be served in either or both  
145 houses of the Legislature.

146 (f) Any employee may purchase retroactive service credit  
147 for periods of employment in which contributions were not  
148 deducted from the employee's pay. In the purchase of service  
149 credit for employment prior to the year one thousand nine  
150 hundred eighty-nine in any department, including the Legisla-  
151 ture, which operated from the general revenue fund and which  
152 was not expressly excluded from budget appropriations in  
153 which blanket appropriations were made for the state's share of  
154 public employees' retirement coverage in the years prior to the  
155 year one thousand nine hundred eighty-nine, the employee shall

156 pay the employee's share. Other employees shall pay the state's  
157 share and the employee's share to purchase retroactive service  
158 credit. Where an employee purchases service credit for employ-  
159 ment which occurred after the year one thousand nine hundred  
160 eighty-eight, that employee shall pay for the employee's share  
161 and the employer shall pay its share for the purchase of  
162 retroactive service credit: *Provided*, That no legislative em-  
163 ployee and no current or former member of the Legislature may  
164 be required to pay any interest or penalty upon the purchase of  
165 retroactive service credit in accordance with the provisions of  
166 this section where the employee was not eligible to become a  
167 member during the years he or she is purchasing retroactive  
168 credit for or had the employee attempted to contribute to the  
169 system during the years he or she is purchasing retroactive  
170 service credit for and such contributions would have been  
171 refused by the board: *Provided, however*, That a legislative  
172 employee purchasing retroactive credit under this section does  
173 so within twenty-four months of becoming a member of the  
174 system or no later than the last day of December, two thousand  
175 five, whichever occurs last: *Provided further*, That once a  
176 legislative employee becomes a member of the retirement  
177 system, he or she may purchase retroactive service credit for  
178 any time he or she was employed by the Legislature and did not  
179 receive service credit. Any service credit purchased shall be  
180 credited as six months for each sixty-day session worked, three  
181 months for each thirty-day session worked or twelve months for  
182 each sixty-day session for legislative employees who have been  
183 employed during regular sessions in thirteen consecutive  
184 calendar years, as certified by the clerk of the houses in which  
185 the employee served, and credit for interim employment as  
186 provided in this subsection: *And provided further*, That this  
187 legislative service credit shall also be used for months of  
188 service in order to meet the sixty-month requirement for the  
189 payments of a temporary legislative employee member's  
190 retirement annuity: *And provided further*, That no legislative



191 employee may be required to pay for any service credit beyond  
192 the actual time he or she worked regardless of the service credit  
193 which is credited to him or her pursuant to this section: *And*  
194 *provided further*, That any legislative employee may request a  
195 recalculation of his or her credited service to comply with the  
196 provisions of this section at any time.

197 (g) Notwithstanding any provision to the contrary, the  
198 seven consecutive calendar years requirement and the thirteen  
199 consecutive calendar years requirement and the service credit  
200 requirements set forth in this section shall be applied retroac-  
201 tively to all periods of legislative employment prior to the  
202 passage of this section, including any periods of legislative  
203 employment occurring before the seven and thirteen consecu-  
204 tive calendar years referenced in this section: *Provided*, That  
205 the employee has not retired prior to the effective date of the  
206 amendments made to this section in the two thousand two  
207 regular session of the Legislature.

208 (h) The board of trustees shall grant service credit to any  
209 former or present member of the state police death, disability  
210 and retirement fund who has been a contributing member of this  
211 system for more than three years for service previously credited  
212 by the state police death, disability and retirement fund if the  
213 member transfers all of his or her contributions to the state  
214 police death, disability and retirement fund to the system  
215 created in this article, including repayment of any amounts  
216 withdrawn any time from the state police death, disability and  
217 retirement fund by the member seeking the transfer allowed in  
218 this subsection: *Provided*, That there shall be added by the  
219 member to the amounts transferred or repaid under this subsec-  
220 tion an amount which shall be sufficient to equal the contribu-  
221 tions he or she would have made had the member been under  
222 the public employees retirement system during the period of his  
223 or her membership in the state police death, disability and  
224 retirement fund plus interest at a rate determined by the board.

**§5-10-22c. Temporary early retirement incentives program; legislative declaration and finding of compelling state interest and public purpose; specifying eligible and ineligible members for incentives program; options, conditions, and exceptions; certain positions abolished; special rule of eighty; effective, termination, and notice dates.**

1       The Legislature hereby finds and declares that a compelling  
2 state interest exists in providing a temporary early retirement  
3 incentives program for encouraging the early, voluntary  
4 retirement of those public employees who were current, active  
5 contributing members of this retirement system on the first day  
6 of April, one thousand nine hundred eighty-eight, in the  
7 reduction of the number of such employees and in reduction of  
8 governmental costs therefor; that such program constitutes a  
9 public purpose; and that the special classifications and differen-  
10 tiations provided in respect of such program are reasonable and  
11 equitable ones for the accomplishment of such purpose and  
12 program as enacted in Enrolled Committee Substitute for H. B.  
13 No. 4672, regular session, one thousand nine hundred  
14 eighty-eight, and as clarified and supplemented herein, retroac-  
15 tive to such beginning date, aforesaid. The Legislature further  
16 finds that maintaining an actuarially sound retirement fund is a  
17 necessity and that the reemployment of persons who retire  
18 under this section in any manner, including reemployment on  
19 a contract basis, is contrary to the intent of the early retirement  
20 program and severely threatens the fiscal integrity of the  
21 retirement fund.

22       (a) For the purposes of this section: (1) "Contract" means  
23 any personal service agreement, not involving the sale of  
24 commodities, that cannot be performed within sixty days or that  
25 exceeds two thousand five hundred dollars in any twelve-month  
26 period. The term "contract" does not include any agreement  
27 obtained by a retirant through a bidding process and which is

28 for the furnishing of any commodity to a government agency  
29 and that term does not include any person who retired under  
30 this section who works as a contract employee for the Legisla-  
31 ture when such employment commences after the thirty-first  
32 day of December, one thousand nine hundred ninety-nine:  
33 *Provided*, That such employment may not exceed one hundred  
34 ten days; (2) “governmental entity” means the state of West  
35 Virginia; a constitutional branch or office of the state govern-  
36 ment, or any subdivision thereof; a county, city or town in the  
37 state; a county board of education; a separate corporation or  
38 instrumentality established pursuant to a state statute; any other  
39 entity currently permitted to participate in any state public  
40 retirement system or the public employees insurance agency; or  
41 any officer or official of any entity listed above who is acting  
42 in his or her official capacity; (3) “part-time elected or ap-  
43 pointed office” means any elected or appointed office that pays  
44 annual compensation of less than two thousand five hundred  
45 dollars or requires less than sixty days of service in any  
46 twelve-month period; (4) “substitute teacher” means a teacher,  
47 public school librarian, registered professional nurse employed  
48 by the county board of education or any other person employed  
49 for counseling or instructional purposes in a public school in  
50 this state who is temporarily fulfilling the duties of an existing  
51 real person employed in a specific position who is temporarily  
52 absent from that specified position.

53 (b) Beginning on the first day of April, one thousand nine  
54 hundred eighty-eight, and continuing through the thirty-first day  
55 of December, one thousand nine hundred eighty-eight (or as  
56 extended by eligibility qualification requirement, as hereinafter  
57 specified), eligible members, being those active, contributing  
58 members actually and currently employed on such beginning  
59 date, retiring pursuant to this section, and from any state,  
60 county or municipal position, covered under the two divisions  
61 of this retirement system (the state division and the public  
62 employer, nonstate division) including those so employed on

63 said beginning date and leaving the system during the incentive  
64 period and who are eligible for taking deferred retirement (but  
65 not disability retirees) may elect to participate in this incentive  
66 program and may elect any one of the three following incentive  
67 options:

68 (1) Retirement incentive option one:

69 For the purpose of computing the member's annuity, the  
70 normal final average salary shall be computed and one-eighth  
71 thereof shall be added thereto in arriving at the true final  
72 average salary for use in actual computation of retirement  
73 benefit.

74 (2) Retirement incentive option two:

75 A member may elect a lump sum payment, in addition to  
76 his regular retirement annuity, equal to ten percent of his final  
77 average salary not to exceed five thousand dollars, and in the  
78 case of a deferred retirement electing this option, such lump  
79 sum payment shall be receivable and deferred to the time of  
80 receipt of such deferred retirement annuity.

81 (3) Retirement incentive option three:

82 A person shall be credited with an additional two years of  
83 contributing service and an additional two years of age. The  
84 years credited under this option shall in no way add to a  
85 member's final average salary factor of computation.

86 Active, contributing members who desire to retire under  
87 this section but who are unable to retire by the thirty-first day  
88 of December, one thousand nine hundred eighty-eight, and  
89 make use of the incentive retirement program because an  
90 element of eligibility for retirement, such as age or other  
91 element, will not be met until a date after the thirty-first day of  
92 December, one thousand nine hundred eighty-eight, and before

93 the first day of July, one thousand nine hundred eighty-nine,  
94 shall be permitted to postpone actual retirement until the date  
95 of fulfilling such element of eligibility and shall retire on such  
96 date, before the temporary retirement incentive program ends  
97 on the thirtieth day of June, one thousand nine hundred  
98 eighty-nine, with proper credit to be granted for such extended  
99 period: *Provided*, That they shall have made application for  
100 retirement, including choice of their respective option, and  
101 given notice to their respective employer by the thirty-first day  
102 of December, one thousand nine hundred eighty-eight, although  
103 postponing actual retirement, as aforesaid.

104 (c) Any member participating in this retirement incentive  
105 program is not eligible to accept further employment or accept,  
106 directly or indirectly, work on a contract basis from any  
107 governmental entity: *Provided*, That nothing in this section  
108 shall affect any contract entered into prior to the effective date  
109 of this section: *Provided, however*, That the executive director  
110 may approve, upon written request and for good cause shown,  
111 an exception allowing a retirant to perform work on a contract  
112 basis. The executive director shall report all approved excep-  
113 tions to the board of trustees: *Provided further*, That a person  
114 may retire under this section and thereafter serve in an elective  
115 office: *And provided further*, That he shall not receive an  
116 incentive option under this section during the term of service in  
117 said office, but shall receive his or her annuity calculated on  
118 regular basis, as if originally taken not under this section but on  
119 such regular basis. At the end of such term and cessation of  
120 service in such office during which the member shall rejoin and  
121 reenter the retirement system and pay contributions therefor,  
122 such regular annuity shall be recalculated and an increased  
123 annuity due to such additional employment shall be granted and  
124 computed on regular basis and in similar manner as under  
125 section forty-eight of this article. In respect of an appointive  
126 office, as distinguished from an elective office, any person  
127 retiring under this section and thereafter serving in such

128 appointive office shall not receive an incentive option under  
129 this section during the term of service in said office, but the  
130 same shall be suspended during such period: *And provided*  
131 *further*, That at the end of such term and cessation of service in  
132 such appointive office the incentive option provided for under  
133 this section shall be resumed: *And provided further*, That any  
134 person elected or appointed to office by the state or any of its  
135 political subdivisions who waives whatever salary, wage or per  
136 diem compensation he may be entitled to by virtue of service in  
137 such office and who does not receive any income therefrom  
138 except such reimbursement of out-of-pocket costs and expenses  
139 as may be permitted by the statutes governing such office shall  
140 continue to receive an incentive option under this section. Such  
141 service shall not be counted as contributed or credited service  
142 for purposes of computing retirement benefits.

143       If such elected or appointed office is a part-time elected or  
144 appointed office, a person electing retirement under this section  
145 may serve in such elected or appointed office without a loss of  
146 the benefits provided under this section.

147       Prior to the initiation or renewal of any contract entered  
148 into pursuant to the provisions of this section or the acceptance  
149 of any elective or appointive office by a person who has elected  
150 to retire under the early retirement provisions of this article,  
151 such person shall complete a disclosure and waiver statement  
152 executed under oath and acknowledged by a notary public. The  
153 board shall promulgate rules, pursuant to chapter twenty-nine-a,  
154 of this code regarding the form and contents of the disclosure  
155 and waiver statement. The disclosure and waiver statement  
156 shall be forwarded to the appropriate state public retirement  
157 system administrator who shall take action to ensure that the  
158 early retirement incentive benefits are reduced in accordance  
159 with the provisions of this section. The administrator shall then  
160 certify such action in writing to the appropriate governmental  
161 entity.

162 In any event, an eligible member may retire under this  
163 section and thereafter continue to receive his incentive annuity  
164 and be employed as a substitute teacher or as adjunct faculty.

165 Any such incentive retirants, under this section, may not  
166 thereafter receive such annuity and enter or reenter any govern-  
167 mental retirement system established or authorized to be  
168 established by the state, notwithstanding any provision of the  
169 code to the contrary, unless required by constitutional provision  
170 or as hereby specifically permitted to those retiring and  
171 thereafter serving in elective office, as aforesaid.

172 The additional annuity allowed for temporary early  
173 retirement under these options, in respect of state division  
174 retirants of this system, is intended to be paid from the retire-  
175 ment incentive account hereby created as a special account in  
176 the state treasury and from the funds therein established with  
177 moneys required to be transferred by heads of spending units  
178 from the unused portion of salary and fringe benefits in their  
179 budgets accruing in respect of such positions vacated and  
180 subsequently canceled under this temporary early retirement  
181 program. Salary and fringe benefit moneys actually saved in a  
182 particular fiscal year shall constitute the fund source for  
183 payment of such additional annuity, the funds of the retirement  
184 system to be used for payment of the base annuity under the  
185 early retirement incentive program: *Provided*, That such  
186 additional annuity shall be paid from the unused portion of both  
187 salary and fringe benefits and with any remainder of any fringe  
188 benefit moneys, as such, to remain with the spending unit and  
189 any remainder of salary, as such, to be directed as additional  
190 funding to the teachers retirement system and as a part of the  
191 assets thereof. No such additional annuity shall be disallowed  
192 even though initial receipts may not be sufficient, with funds of  
193 the system to be applied for such purpose, as for the base  
194 annuity. With respect to public employer division retirants  
195 (nonstate division retirants of the system), such incentive

196 annuity shall be paid from the nonstate division funds of the  
197 system.

198 (d) The executive secretary of the retirement system shall  
199 provide forms for applicants. Such forms shall include a  
200 detailed description of the incentive plan options.

201 The executive secretary of the retirement system shall file  
202 a report to the Legislature no later than the fifteenth day of  
203 February, one thousand nine hundred eighty-nine, and quarterly  
204 thereafter, detailing the number of retirees who have elected to  
205 accept early retirement incentive options, the dollar cost to date  
206 by option selected, and the projected annual cost through the  
207 year two thousand.

208 (e) Within every spending unit, department, board, corpora-  
209 tion, commission, or any other agency or entity wherein two or  
210 multiples of two members elect to retire either under the  
211 temporary early retirement incentives set forth above, or under  
212 regular, voluntary retirement, and countable on an agency-wide  
213 or entity-wide basis, no more than one of such vacated positions  
214 may be filled, with the second position being abolished upon  
215 the effective day of the member's retirement. The vacant  
216 position abolishment requirement shall not apply to elective  
217 positions or appointed public officers whose positions are  
218 established by state constitutional or statutory provision. The  
219 retirant's employing entity shall decide as to which of the  
220 vacated positions made available through special early retire-  
221 ment or through regular, voluntary retirement are to be abol-  
222 ished and the head of such spending unit shall immediately  
223 notify the state auditor, the legislative auditor, and the commis-  
224 sioner of the department of finance and administration of the  
225 decisions and shall then apply and/or transfer the remaining  
226 salary and fringe benefits as aforesaid: *Provided*, That this  
227 vacant position abolishment provision shall not apply to any  
228 county or municipal position except those under the authority



229 of a county board of education, nor to any position or positions,  
230 whether designated by spending unit, department, agency,  
231 commission, entity or otherwise, which the governor in respect  
232 of the executive branch, or the chief justice of the supreme  
233 court of appeals in respect of the judicial branch, or the presi-  
234 dent of the Senate or speaker of the House of Delegates, in  
235 respect of the legislative branch, may exempt or amend, under  
236 such abolishment provision, upon his respective recommenda-  
237 tion that such exemption or amendment is necessary to provide  
238 for continuity of governmental operation or to preserve the  
239 health, welfare or safety of the people of West Virginia, and  
240 with the prior concurrence of the joint committee on govern-  
241 ment and finance in such recommendation, after the chairmen  
242 thereof shall cause such committee to meet.

243 (f) *Special rule of eighty.* — Any active, contributing  
244 member of the retirement system as of the first day of April,  
245 one thousand nine hundred eighty-eight, who selects one of the  
246 incentive options in this section, may retire under the special  
247 early retirement provisions with full pension rights, without  
248 reduction of benefits if the sum of such member's age plus  
249 years of contributing service equals or exceeds eighty: *Pro-*  
250 *vided,* That such person has at least twenty years of contributing  
251 service; up to two years of which may be military service, or  
252 prior service, or any combination thereof not exceeding an  
253 aggregate of two years.

254 (g) *Termination of temporary retirement incentives pro-*  
255 *gram.* — The right to elect, choose, select or use any of the  
256 options, special rule of eighty, or other benefits set forth in this  
257 section shall terminate on the thirtieth day of June, one thou-  
258 sand nine hundred eighty-nine.

259 (h) The board shall promulgate rules and regulations in  
260 accordance with the provisions of article three, chapter  
261 twenty-nine of this code regarding the calculation of the amount

262 of incentive option that may be forfeited pursuant to the  
263 provisions of subsection (b) of this section.

**§5-10-48. Reemployment after retirement; options for holder of  
elected public office.**

1 The Legislature finds that a compelling state interest exists  
2 in maintaining an actuarially sound retirement system and that  
3 this interest necessitates that certain limitations be placed upon  
4 an individual's ability to retire from the system and to then later  
5 return to state employment as an employee with a participating  
6 public employer while contemporaneously drawing an annuity  
7 from the system. The Legislature hereby further finds and  
8 declares that the interests of the public are served when persons  
9 having retired from public employment are permitted, within  
10 certain limitations, to render post-retirement employment in  
11 positions of public service, either in elected or appointed  
12 capacities. The Legislature further finds and declares that it has  
13 the need for qualified employees and that in many cases an  
14 employee of the Legislature will retire and be available to  
15 return to work for the Legislature as a per diem employee. The  
16 Legislature further finds and declares that in many instances  
17 these employees have particularly valuable expertise which the  
18 Legislature cannot find elsewhere. The Legislature further finds  
19 and declares that reemploying these persons on a limited per  
20 diem after they have retired is not only in the best interests of  
21 this state, but has no adverse effect whatsoever upon the  
22 actuarial soundness of this particular retirement system.

23 (a) For the purposes of this section: (1) "Regularly em-  
24 ployed on a full-time basis" means employment of an individ-  
25 ual by a participating public employer, in a position other than  
26 as an elected or appointed public official, which normally  
27 requires twelve months per year service and/or requires at least  
28 one thousand forty hours of service per year in that position; (2)  
29 "temporary full-time employment or temporary part-time

30 employment” means employment of an individual on a tempo-  
31 rary or provisional basis by a participating public employer,  
32 other than as an elected or appointed public official, in a  
33 position which does not otherwise render the individual as  
34 regularly employed; (3) “former employee of the Legislature”  
35 means any person who has retired from the Legislature and who  
36 has at least ten years contributing service with the Legislature;  
37 and (4) “reemployed by the Legislature” means a former  
38 employee of the Legislature who has been reemployed on a per  
39 diem basis not to exceed one hundred seventy-five days per  
40 calendar year.

41 (b) In the event a retirant becomes regularly employed on  
42 a full-time basis by a participating public employer, payment of  
43 his or her annuity shall be suspended during the period of his or  
44 her reemployment and he or she shall become a contributing  
45 member to the retirement system. If his or her reemployment is  
46 for a period of one year or longer, his or her annuity shall be  
47 recalculated and he or she shall be granted an increased annuity  
48 due to such additional employment, said annuity to be com-  
49 puted according to section twenty-two of this article. A retirant  
50 may accept temporary full-time or temporary part-time employ-  
51 ment from a participating employer without suspending his or  
52 her retirement annuity so long as he or she does not receive  
53 annual compensation in excess of fifteen thousand dollars.

54 (c) In the event a member retires and is then subsequently  
55 elected to a public office or is subsequently appointed to hold  
56 an elected public office, or is a former employee of the Legisla-  
57 ture who has been reemployed by the Legislature, he or she has  
58 the option, notwithstanding subsection (b) of this section, to  
59 either:

60 (1) Continue to receive payment of his or her annuity while  
61 holding such public office or during any reemployment of a  
62 former employee of the Legislature on a per diem basis, in

63 addition to the salary he or she may be entitled to as such office  
64 holder or as a per diem reemployed former employee of the  
65 Legislature; or

66 (2) Suspend the payment of his or her annuity and become  
67 a contributing member of the retirement system as provided in  
68 subsection (b) of this section. Notwithstanding the provisions  
69 of this subsection, a member who is participating in the system  
70 as an elected public official may not retire from his or her  
71 elected position and commence to receive an annuity from the  
72 system and then be reappointed to the same position unless and  
73 until a continuous six-month period has passed since his or her  
74 retirement from the position: *Provided*, That a former employee  
75 of the Legislature may not be reemployed by the Legislature on  
76 a per diem basis until at least sixty days after the employee has  
77 retired: *Provided, however*, That the limitation on compensation  
78 provided by subsection (b) of this section does not apply to the  
79 reemployed former employee: *Provided, however*, That in no  
80 event may reemployment by the Legislature of a per diem  
81 employee exceed one hundred seventy-five days per calendar  
82 year.

83 (d) A member who is participating in the system simulta-  
84 neously as both a regular, full-time employee of a participating  
85 public employer and as an elected or appointed member of the  
86 legislative body of the state or any political subdivision may,  
87 upon meeting the age and service requirements of this article,  
88 elect to retire from his or her regular full-time state employment  
89 and may commence to receive an annuity from the system  
90 without terminating his or her position as a member of the  
91 legislative body of the state or political subdivision: *Provided*,  
92 That the retired member shall not, during the term of his or her  
93 retirement and continued service as a member of the legislative  
94 body of a political subdivision, be eligible to continue his or her  
95 participation as a contributing member of the system and shall

96 not continue to accrue any additional service credit or benefits  
97 in the system related to the continued service.

98 (e) Notwithstanding the provisions of section twenty-seven  
99 b of this article, any publicly elected member of the legislative  
100 body of any political subdivision or of the state Legislature, the  
101 clerk of the House of Delegates and the clerk of the Senate may  
102 elect to commence receiving in-service retirement distributions  
103 from this system upon attaining the age of seventy and one-half  
104 years: *Provided*, That the member is eligible to retire under the  
105 provisions of section twenty or section twenty-one of this  
106 article: *Provided, however*, That the member elects to stop  
107 actively contributing to the system while receiving such in-  
108 service distributions.

## CHAPTER 18. EDUCATION.

### ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

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

1 (a) Under rules adopted by the retirement board, each  
2 teacher shall file a detailed statement of his or her length of  
3 service as a teacher for which he or she claims credit. The  
4 retirement board shall determine what part of a year is the  
5 equivalent of a year of service. In computing the service,  
6 however, it shall credit no period of more than a month's  
7 duration during which a member was absent without pay, nor  
8 shall it credit for more than one year of service performed in  
9 any calendar year.

10 (b) For the purpose of this article, the retirement board shall  
11 grant prior service credit to new entrants and other members of  
12 the retirement system for service in any of the armed forces of  
13 the United States in any period of national emergency within  
14 which a federal Selective Service Act was in effect. For

15 purposes of this section, “armed forces” includes women’s  
16 army corps, women’s appointed volunteers for emergency  
17 service, army nurse corps, spars, women’s reserve and other  
18 similar units officially parts of the military service of the United  
19 States. The military service is considered equivalent to public  
20 school teaching, and the salary equivalent for each year of that  
21 service is the actual salary of the member as a teacher for his or  
22 her first year of teaching after discharge from military service.  
23 Prior service credit for military service shall not exceed ten  
24 years for any one member, nor shall it exceed twenty-five  
25 percent of total service at the time of retirement. Notwithstand-  
26 ing the preceding provisions of this subsection, contributions,  
27 benefits and service credit with respect to qualified military  
28 service shall be provided in accordance with Section 414(u) of  
29 the Internal Revenue Code. For purposes of this section,  
30 “qualified military service” has the same meaning as in Section  
31 414(u) of the Internal Revenue Code. The retirement board is  
32 authorized to determine all questions and make all decisions  
33 relating to this section and, pursuant to the authority granted to  
34 the retirement board in section one, article ten-d, chapter five of  
35 this code, may promulgate rules relating to contributions,  
36 benefits and service credit to comply with Section 414(u) of the  
37 Internal Revenue Code.

38 (c) For service as a teacher in the employment of the federal  
39 government, or a state or territory of the United States, or a  
40 governmental subdivision of that state or territory, the retire-  
41 ment board shall grant credit to the member: *Provided*, That the  
42 member shall pay to the system double the amount he or she  
43 contributed during the first full year of current employment,  
44 times the number of years for which credit is granted, plus  
45 interest at a rate to be determined by the retirement board. The  
46 interest shall be deposited in the reserve fund and service credit  
47 granted at the time of retirement shall not exceed the lesser of  
48 ten years or fifty percent of the member’s total service as a  
49 teacher in West Virginia. Any transfer of out-of-state service,

50 as provided in this article, shall not be used to establish  
51 eligibility for a retirement allowance and the retirement board  
52 shall grant credit for the transferred service as additional service  
53 only: *Provided, however,* That a transfer of out-of-state service  
54 is prohibited if the service is used to obtain a retirement benefit  
55 from another retirement system: *Provided further,* That salaries  
56 paid to members for service prior to entrance into the retirement  
57 system shall not be used to compute the average final salary of  
58 the member under the retirement system.

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

66 (e) No members shall be considered absent from service  
67 while serving as a member or employee of the Legislature of  
68 the state of West Virginia during any duly constituted session  
69 of that body or while serving as an elected member of a county  
70 commission during any duly constituted session of that body.

71 (f) No member shall be considered absent from service as  
72 a teacher while serving as an officer with a statewide profes-  
73 sional teaching association, or who has served in that capacity,  
74 and no retired teacher, who served in that capacity while a  
75 member, shall be considered to have been absent from service  
76 as a teacher by reason of that service: *Provided,* That the period  
77 of service credit granted for that service shall not exceed ten  
78 years: *Provided, however,* That a member or retired teacher  
79 who is serving or has served as an officer of a statewide  
80 professional teaching association shall make deposits to the  
81 teachers retirement board, for the time of any absence, in an  
82 amount double the amount which he or she would have

83 contributed in his or her regular assignment for a like period of  
84 time.

85 (g) The teachers retirement board shall grant service credit  
86 to any former or present member of the West Virginia public  
87 employees retirement system who has been a contributing  
88 member for more than three years, for service previously  
89 credited by the public employees retirement system and: (1)  
90 Shall require the transfer of the member's contributions to the  
91 teachers retirement system; or (2) shall require a repayment of  
92 the amount withdrawn any time prior to the member's retire-  
93 ment: *Provided*, That there shall be added by the member to the  
94 amounts transferred or repaid under this subsection an amount  
95 which shall be sufficient to equal the contributions he or she  
96 would have made had the member been under the teachers  
97 retirement system during the period of his or her membership  
98 in the public employees retirement system plus interest at a rate  
99 of six percent compounded annually from the date of with-  
100 drawal to the date of payment. The interest paid shall be  
101 deposited in the reserve fund.

102 (h) For service as a teacher in an elementary or secondary  
103 parochial school, located within this state and fully accredited  
104 by the West Virginia department of education, the retirement  
105 board shall grant credit to the member: *Provided*, That the  
106 member shall pay to the system double the amount contributed  
107 during the first full year of current employment, times the  
108 number of years for which credit is granted, plus interest at a  
109 rate to be determined by the retirement board. The interest shall  
110 be deposited in the reserve fund and service granted at the time  
111 of retirement shall not exceed the lesser of ten years or fifty  
112 percent of the member's total service as a teacher in the West  
113 Virginia public school system. Any transfer of parochial school  
114 service, as provided in this section, may not be used to establish  
115 eligibility for a retirement allowance and the board shall grant  
116 credit for the transfer as additional service only: *Provided*,



117 *however*, That a transfer of parochial school service is prohib-  
118 ited if the service is used to obtain a retirement benefit from  
119 another retirement system.

120 (i) Active members who previously worked in CETA  
121 (Comprehensive Employment and Training Act) may receive  
122 service credit for time served in that capacity: *Provided*, That  
123 in order to receive service credit under the provisions of this  
124 subsection the following conditions must be met: (1) The  
125 member must have moved from temporary employment with  
126 the participating employer to permanent full time employment  
127 with the participating employer within one hundred twenty days  
128 following the termination of the member's CETA employment;  
129 (2) the board must receive evidence that establishes to a  
130 reasonable degree of certainty as determined by the board that  
131 the member previously worked in CETA; and (3) the member  
132 shall pay to the board an amount equal to the employer and  
133 employee contribution plus interest at the amount set by the  
134 board for the amount of service credit sought pursuant to this  
135 subsection: *Provided, however*, That the maximum service  
136 credit that may be obtained under the provisions of this subsec-  
137 tion is two years: *Provided further*, That a member must apply  
138 and pay for the service credit allowed under this subsection and  
139 provide all necessary documentation by the thirty-first day of  
140 March, two thousand three: *And provided further*, That the  
141 board shall exercise due diligence to notify affected employees  
142 of the provisions of this subsection.

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

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

150 (l) Subject to the provisions of subsections (a) through (l),  
151 inclusive, of this section, the board shall verify as soon as  
152 practicable the statements of service submitted. The retirement  
153 board shall issue prior service certificates to all persons eligible  
154 for the certificates under the provisions of this article. The  
155 certificates shall state the length of the prior service credit, but  
156 in no case shall the prior service credit exceed forty years.

157 (m) Notwithstanding any provision of this article to the  
158 contrary, when a member is or has been elected to serve as a  
159 member of the Legislature, and the proper discharge of his or  
160 her duties of public office require that member to be absent  
161 from his or her teaching or administrative duties, the time  
162 served in discharge of his or her duties of the legislative office  
163 are credited as time served for purposes of computing service  
164 credit: *Provided*, That the board may not require any additional  
165 contributions from that member in order for the board to credit  
166 him or her with the contributing service credit earned while  
167 discharging official legislative duties: *Provided, however*, That  
168 nothing herein may be construed to relieve the employer from  
169 making the employer contribution at the member's regular  
170 salary rate or rate of pay from that employer on the contributing  
171 service credit earned while the member is discharging his or her  
172 official legislative duties. These employer payments shall  
173 commence as of the first day of June, two thousand: *Provided*  
174 *further*, That any member to which the provisions of this  
175 subsection apply may elect to pay to the board an amount equal  
176 to what his or her contribution would have been for those  
177 periods of time he or she was serving in the Legislature. The  
178 periods of time upon which the member paid his or her contri-  
179 bution shall then be included for purposes of determining his or  
180 her final average salary as well as for determining years of  
181 service: *And provided further*, That a member utilizing the  
182 provisions of this subsection is not required to pay interest on  
183 any contributions he or she may decide to make.

184       (n) The teachers retirement board shall grant service credit  
185 to any former member of the state police death, disability and  
186 retirement system who has been a contributing member for  
187 more than three years, for service previously credited by the  
188 state police death, disability and retirement system; and: (1)  
189 Shall require the transfer of the member's contributions to the  
190 teachers retirement system; or (2) shall require a repayment of  
191 the amount withdrawn any time prior to the member's retire-  
192 ment: *Provided*, That the member shall add to the amounts  
193 transferred or repaid under this paragraph an amount which is  
194 sufficient to equal the contributions he or she would have made  
195 had the member been under the teachers retirement system  
196 during the period of his or her membership in the state police  
197 death, disability and retirement system plus interest at a rate of  
198 six percent compounded annually from the date of withdrawal  
199 to the date of payment. The interest paid shall be deposited in  
200 the reserve fund.

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

*Cary R. Mc*

Chairman Senate Committee

*[Signature]*

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

*[Signature]*

Clerk of the Senate

*[Signature]*

Clerk of the House of Delegates

*[Signature]*

President of the Senate

*[Signature]*

Speaker of the House of Delegates

The within Disappeared this the 17<sup>th</sup> day of March, 2002.

*[Signature]*

Governor

FILED

2002 MAR 17 P 2:48

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

PRESENTED TO THE

GOVERNOR

Date

3/15/02

Time

5:07 pm