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
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.

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

(1) In no event may less than ten days of service rendered by a member in any calendar month be credited as a month of service: Provided, That for employees of the state Legislature whose term of employment is otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who have been or are so employed during regular sessions or during the interim between regular sessions in seven consecutive calendar years, service credit of one month shall be awarded for each ten days employed in the interim between regular sessions, which interim days shall be cumulatively calculated so that any ten days, regardless of calendar month or year, shall be calculated toward any award of one month of service credit;
(2) Except for hourly employees, ten or more months of service credit earned in any calendar year shall be credited as a year of service: Provided, That no more than one year of service may be credited to any member for all service rendered by him or her in any calendar year and no days may be carried over by a member from one calendar year to another calendar year where the member has received a full-year credit for that year; and

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

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

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

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

(e) Employees of the state Legislature whose terms of employment are otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim time between regular sessions shall receive service credit for the time served in that capacity in accordance with the following. For purposes of this section, the term "regular session" means day one through day sixty of a sixty-day legislative session or day one through day thirty of a thirty-day legislative session. Employees of the state Legislature whose term of employment is otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim time between regular sessions and who have been or are employed during regular sessions or during the interim time between regular sessions in seven consecutive calendar years, as certified by the clerk of the houses in which the employee
served, shall receive service credit of six months for all regular
sessions served, as certified by the clerk of the houses in which
the employee served, or shall receive service credit of three
months for each regular thirty-day session served prior to one
thousand nine hundred seventy-one: Provided, That employees
of the state Legislature whose term of employment is otherwise
classified as temporary and who are employed to perform
services required by the Legislature for its regular sessions and
who have been or are employed during the regular sessions in
thirteen consecutive calendar years as either temporary employ-
ees or full time employees or a combination thereof, as certified
by the clerk of the houses in which the employee served, shall
receive a service credit of twelve months for each regular
session served, as certified by the clerk of the houses in which
the employee served: Provided, however, That the amendments
made to this subsection during the two thousand two regular
session of the Legislature only apply to employees of the
Legislature who are employed by the Legislature as either
temporary employees or full time employees as of the first day
of January, two thousand two or who become employed by the
Legislature as temporary or full time employees for the first
time after the first day of January, two thousand two. Employ-
ees of the state Legislature whose terms of employment are
otherwise classified as temporary and who are employed to
perform services required by the Legislature during the interim
time between regular sessions shall receive service credit of one
month for each ten days served during the interim between
regular sessions, which interim days shall be cumulatively
calculated so that any ten days, regardless of calendar month or
year, shall be calculated toward any award of one month of
service credit: Provided further, That no more than one year of
service may be credited to any temporary legislative employee
for all service rendered by that employee in any calendar year
and no days may be carried over by a temporary legislative
employee from one calendar year to another calendar year
where the member has received a full year credit for that year.

Service credit awarded for legislative employment pursuant to this section shall be used for the purpose of calculating that member’s retirement annuity, pursuant to section twenty-two of this article, and determining eligibility as it relates to credited service, notwithstanding any other provision of this section.

Certification of employment for a complete legislative session and for interim days shall be determined by the clerk of the houses in which the employee served, based upon employment records. Service of fifty-five days of a regular session constitutes an absolute presumption of service for a complete legislative session and service of twenty-seven days of a thirty-day regular session occurring prior to one thousand nine hundred seventy-one constitutes an absolute presumption of service for a complete legislative session. Once a legislative employee has been employed during regular sessions for seven consecutive years or has become a full-time employee of the Legislature, that employee shall receive the service credit provided in this section for all regular and interim sessions and interim days worked by that employee, as certified by the clerk of the houses in which the employee served, regardless of when the session or interim legislative employment occurred: And provided, further, That regular session legislative employment for seven consecutive years may be served in either or both houses of the Legislature.

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

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

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

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

(a) For the purposes of this section: (1) “Contract” means any personal service agreement, not involving the sale of commodities, that cannot be performed within sixty days or that exceeds two thousand five hundred dollars in any twelve-month period. The term “contract” does not include any agreement obtained by a retiree through a bidding process and which is
for the furnishing of any commodity to a government agency
and that term does not include any person who retired under
this section who works as a contract employee for the Legisla-
ture when such employment commences after the thirty-first
day of December, one thousand nine hundred ninety-nine:

Provided, That such employment may not exceed one hundred
ten days; (2) "governmental entity" means the state of West
Virginia; a constitutional branch or office of the state govern-
ment, or any subdivision thereof; a county, city or town in the
state; a county board of education; a separate corporation or
instrumentality established pursuant to a state statute; any other
entity currently permitted to participate in any state public
retirement system or the public employees insurance agency; or
any officer or official of any entity listed above who is acting
in his or her official capacity; (3) "part-time elected or ap-
pointed office" means any elected or appointed office that pays
annual compensation of less than two thousand five hundred
dollars or requires less than sixty days of service in any
twelve-month period; (4) "substitute teacher" means a teacher,
public school librarian, registered professional nurse employed
by the county board of education or any other person employed
for counseling or instructional purposes in a public school in
this state who is temporarily fulfilling the duties of an existing
real person employed in a specific position who is temporarily
absent from that specified position.

(b) Beginning on the first day of April, one thousand nine
hundred eighty-eight, and continuing through the thirty-first day
of December, one thousand nine hundred eighty-eight (or as
extended by eligibility qualification requirement, as hereinafter
specified), eligible members, being those active, contributing
members actually and currently employed on such beginning
date, retiring pursuant to this section, and from any state,
county or municipal position, covered under the two divisions
of this retirement system (the state division and the public
employer, nonstate division) including those so employed on
said beginning date and leaving the system during the incentive period and who are eligible for taking deferred retirement (but not disability retirees) may elect to participate in this incentive program and may elect any one of the three following incentive options:

(1) Retirement incentive option one:

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

(2) Retirement incentive option two:

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

(3) Retirement incentive option three:

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

Active, contributing members who desire to retire under this section but who are unable to retire by the thirty-first day of December, one thousand nine hundred eighty-eight, and make use of the incentive retirement program because an element of eligibility for retirement, such as age or other element, will not be met until a date after the thirty-first day of December, one thousand nine hundred eighty-eight, and before
the first day of July, one thousand nine hundred eighty-nine,
shall be permitted to postpone actual retirement until the date
of fulfilling such element of eligibility and shall retire on such
date, before the temporary retirement incentive program ends
on the thirtieth day of June, one thousand nine hundred
eighty-nine, with proper credit to be granted for such extended
period: Provided, That they shall have made application for
retirement, including choice of their respective option, and
given notice to their respective employer by the thirty-first day
of December, one thousand nine hundred eighty-eight, although
postponing actual retirement, as aforesaid.

(c) Any member participating in this retirement incentive
program is not eligible to accept further employment or accept,
directly or indirectly, work on a contract basis from any
governmental entity: Provided, That nothing in this section
shall affect any contract entered into prior to the effective date
of this section: Provided, however, That the executive director
may approve, upon written request and for good cause shown,
an exception allowing a retirant to perform work on a contract
basis. The executive director shall report all approved excep-
tions to the board of trustees: Provided further, That a person
may retire under this section and thereafter serve in an elective
office: And provided further, That he shall not receive an
incentive option under this section during the term of service in
said office, but shall receive his or her annuity calculated on
regular basis, as if originally taken not under this section but on
such regular basis. At the end of such term and cessation of
service in such office during which the member shall rejoin and
reenter the retirement system and pay contributions therefor,
such regular annuity shall be recalculated and an increased
annuity due to such additional employment shall be granted and
computed on regular basis and in similar manner as under
section forty-eight of this article. In respect of an appointive
office, as distinguished from an elective office, any person
retiring under this section and thereafter serving in such
appointive office shall not receive an incentive option under this section during the term of service in said office, but the same shall be suspended during such period: And provided further, That at the end of such term and cessation of service in such appointive office the incentive option provided for under this section shall be resumed: And provided further, That any person elected or appointed to office by the state or any of its political subdivisions who waives whatever salary, wage or per diem compensation he may be entitled to by virtue of service in such office and who does not receive any income therefrom except such reimbursement of out-of-pocket costs and expenses as may be permitted by the statutes governing such office shall continue to receive an incentive option under this section. Such service shall not be counted as contributed or credited service for purposes of computing retirement benefits.

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

Prior to the initiation or renewal of any contract entered into pursuant to the provisions of this section or the acceptance of any elective or appointive office by a person who has elected to retire under the early retirement provisions of this article, such person shall complete a disclosure and waiver statement executed under oath and acknowledged by a notary public. The board shall promulgate rules, pursuant to chapter twenty-nine-a, of this code regarding the form and contents of the disclosure and waiver statement. The disclosure and waiver statement shall be forwarded to the appropriate state public retirement system administrator who shall take action to ensure that the early retirement incentive benefits are reduced in accordance with the provisions of this section. The administrator shall then certify such action in writing to the appropriate governmental entity.
In any event, an eligible member may retire under this section and thereafter continue to receive his incentive annuity and be employed as a substitute teacher or as adjunct faculty.

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

The additional annuity allowed for temporary early retirement under these options, in respect of state division retirants of this system, is intended to be paid from the retirement incentive account hereby created as a special account in the state treasury and from the funds therein established with moneys required to be transferred by heads of spending units from the unused portion of salary and fringe benefits in their budgets accruing in respect of such positions vacated and subsequently canceled under this temporary early retirement program. Salary and fringe benefit moneys actually saved in a particular fiscal year shall constitute the fund source for payment of such additional annuity, the funds of the retirement system to be used for payment of the base annuity under the early retirement incentive program: Provided, That such additional annuity shall be paid from the unused portion of both salary and fringe benefits and with any remainder of any fringe benefit moneys, as such, to remain with the spending unit and any remainder of salary, as such, to be directed as additional funding to the teachers retirement system and as a part of the assets thereof. No such additional annuity shall be disallowed even though initial receipts may not be sufficient, with funds of the system to be applied for such purpose, as for the base annuity. With respect to public employer division retirants (nonstate division retirants of the system), such incentive
annuity shall be paid from the nonstate division funds of the system.

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

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

(e) Within every spending unit, department, board, corporation, commission, or any other agency or entity wherein two or multiples of two members elect to retire either under the temporary early retirement incentives set forth above, or under regular, voluntary retirement, and countable on an agency-wide or entity-wide basis, no more than one of such vacated positions may be filled, with the second position being abolished upon the effective day of the member’s retirement. The vacant position abolishment requirement shall not apply to elective positions or appointed public officers whose positions are established by state constitutional or statutory provision. The retirant’s employing entity shall decide as to which of the vacated positions made available through special early retirement or through regular, voluntary retirement are to be abolished and the head of such spending unit shall immediately notify the state auditor, the legislative auditor, and the commissioner of the department of finance and administration of the decisions and shall then apply and/or transfer the remaining salary and fringe benefits as aforesaid: Provided, That this vacant position abolishment provision shall not apply to any county or municipal position except those under the authority...
of a county board of education, nor to any position or positions, whether designated by spending unit, department, agency, commission, entity or otherwise, which the governor in respect of the executive branch, or the chief justice of the supreme court of appeals in respect of the judicial branch, or the president of the Senate or speaker of the House of Delegates, in respect of the legislative branch, may exempt or amend, under such abolishment provision, upon his respective recommendation that such exemption or amendment is necessary to provide for continuity of governmental operation or to preserve the health, welfare or safety of the people of West Virginia, and with the prior concurrence of the joint committee on government and finance in such recommendation, after the chairmen thereof shall cause such committee to meet.

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

(g) *Termination of temporary retirement incentives program.* — The right to elect, choose, select or use any of the options, special rule of eighty, or other benefits set forth in this section shall terminate on the thirtieth day of June, one thousand nine hundred eighty-nine.

(h) The board shall promulgate rules and regulations in accordance with the provisions of article three, chapter twenty-nine of this code regarding the calculation of the amount
of incentive option that may be forfeited pursuant to the provisions of subsection (b) of this section.

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

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

(a) For the purposes of this section: (1) “Regularly employed on a full-time basis” means employment of an individual by a participating public employer, in a position other than as an elected or appointed public official, which normally requires twelve months per year service and/or requires at least one thousand forty hours of service per year in that position; (2) “temporary full-time employment or temporary part-time
employment” means employment of an individual on a temporary or provisional basis by a participating public employer, other than as an elected or appointed public official, in a position which does not otherwise render the individual as regularly employed; (3) “former employee of the Legislature” means any person who has retired from the Legislature and who has at least ten years contributing service with the Legislature; and (4) “reemployed by the Legislature” means a former employee of the Legislature who has been reemployed on a per diem basis not to exceed one hundred seventy-five days per calendar year.

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

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

(1) Continue to receive payment of his or her annuity while holding such public office or during any reemployment of a former employee of the Legislature on a per diem basis, in
addition to the salary he or she may be entitled to as such office holder or as a per diem reemployed former employee of the Legislature; or

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

(d) A member who is participating in the system simultaneously as both a regular, full-time employee of a participating public employer and as an elected or appointed member of the legislative body of the state or any political subdivision may, upon meeting the age and service requirements of this article, elect to retire from his or her regular full-time state employment and may commence to receive an annuity from the system without terminating his or her position as a member of the legislative body of the state or political subdivision: Provided, That the retired member shall not, during the term of his or her retirement and continued service as a member of the legislative body of a political subdivision, be eligible to continue his or her participation as a contributing member of the system and shall
not continue to accrue any additional service credit or benefits in the system related to the continued service.

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

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

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

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

(b) For the purpose of this article, the retirement board shall grant prior service credit to new entrants and other members of the retirement system for service in any of the armed forces of the United States in any period of national emergency within which a federal Selective Service Act was in effect. For
purposes of this section, “armed forces” includes women’s army corps, women’s appointed volunteers for emergency service, army nurse corps, spars, women’s reserve and other similar units officially parts of the military service of the United States. The military service is considered equivalent to public school teaching, and the salary equivalent for each year of that service is the actual salary of the member as a teacher for his or her first year of teaching after discharge from military service. Prior service credit for military service shall not exceed ten years for any one member, nor shall it exceed twenty-five percent of total service at the time of retirement. Notwithstanding the preceding provisions of this subsection, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code. For purposes of this section, “qualified military service” has the same meaning as in Section 414(u) of the Internal Revenue Code. The retirement board is authorized to determine all questions and make all decisions relating to this section and, pursuant to the authority granted to the retirement board in section one, article ten-d, chapter five of this code, may promulgate rules relating to contributions, benefits and service credit to comply with Section 414(u) of the Internal Revenue Code.

(c) For service as a teacher in the employment of the federal government, or a state or territory of the United States, or a governmental subdivision of that state or territory, the retirement board shall grant credit to the member: Provided, That the member shall pay to the system double the amount he or she contributed during the first full year of current employment, times the number of years for which credit is granted, plus interest at a rate to be determined by the retirement board. The interest shall be deposited in the reserve fund and service credit granted at the time of retirement shall not exceed the lesser of ten years or fifty percent of the member’s total service as a teacher in West Virginia. Any transfer of out-of-state service,
as provided in this article, shall not be used to establish eligibility for a retirement allowance and the retirement board shall grant credit for the transferred service as additional service only: Provided, however, That a transfer of out-of-state service is prohibited if the service is used to obtain a retirement benefit from another retirement system: Provided further, That salaries paid to members for service prior to entrance into the retirement system shall not be used to compute the average final salary of the member under the retirement system.

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

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

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

(g) The teachers retirement board shall grant service credit to any former or present member of the West Virginia public employees retirement system who has been a contributing member for more than three years, for service previously credited by the public employees retirement system and: (1) Shall require the transfer of the member’s contributions to the teachers retirement system; or (2) shall require a repayment of the amount withdrawn any time prior to the member’s retirement: Provided, That there shall be added by the member to the amounts transferred or repaid under this subsection an amount which shall be sufficient to equal the contributions he or she would have made had the member been under the teachers retirement system during the period of his or her membership in the public employees retirement system plus interest at a rate of six percent compounded annually from the date of withdrawal to the date of payment. The interest paid shall be deposited in the reserve fund.

(h) For service as a teacher in an elementary or secondary parochial school, located within this state and fully accredited by the West Virginia department of education, the retirement board shall grant credit to the member: Provided, That the member shall pay to the system double the amount contributed during the first full year of current employment, times the number of years for which credit is granted, plus interest at a rate to be determined by the retirement board. The interest shall be deposited in the reserve fund and service granted at the time of retirement shall not exceed the lesser of ten years or fifty percent of the member’s total service as a teacher in the West Virginia public school system. Any transfer of parochial school service, as provided in this section, may not be used to establish eligibility for a retirement allowance and the board shall grant credit for the transfer as additional service only: Provided,
however, That a transfer of parochial school service is prohibited if the service is used to obtain a retirement benefit from another retirement system.

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

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

(k) A member who withdrew from membership may regain his or her former membership rights as specified in section thirteen of this article only in case he or she has served two years since his or her last withdrawal.
(l) Subject to the provisions of subsections (a) through (l), inclusive, of this section, the board shall verify as soon as practicable the statements of service submitted. The retirement board shall issue prior service certificates to all persons eligible for the certificates under the provisions of this article. The certificates shall state the length of the prior service credit, but in no case shall the prior service credit exceed forty years.

(m) Notwithstanding any provision of this article to the contrary, when a member is or has been elected to serve as a member of the Legislature, and the proper discharge of his or her duties of public office require that member to be absent from his or her teaching or administrative duties, the time served in discharge of his or her duties of the legislative office are credited as time served for purposes of computing service credit: Provided, That the board may not require any additional contributions from that member in order for the board to credit him or her with the contributing service credit earned while discharging official legislative duties: Provided, however, That nothing herein may be construed to relieve the employer from making the employer contribution at the member’s regular salary rate or rate of pay from that employer on the contributing service credit earned while the member is discharging his or her official legislative duties. These employer payments shall commence as of the first day of June, two thousand: Provided further, That any member to which the provisions of this subsection apply may elect to pay to the board an amount equal to what his or her contribution would have been for those periods of time he or she was serving in the Legislature. The periods of time upon which the member paid his or her contribution shall then be included for purposes of determining his or her final average salary as well as for determining years of service: And provided further, That a member utilizing the provisions of this subsection is not required to pay interest on any contributions he or she may decide to make.
(n) The teachers retirement board shall grant service credit to any former member of the state police death, disability and retirement system who has been a contributing member for more than three years, for service previously credited by the state police death, disability and retirement system; and: (1) Shall require the transfer of the member’s contributions to the teachers retirement system; or (2) shall require a repayment of the amount withdrawn any time prior to the member’s retirement: Provided, That the member shall add to the amounts transferred or repaid under this paragraph an amount which is sufficient to equal the contributions he or she would have made had the member been under the teachers retirement system during the period of his or her membership in the state police death, disability and retirement system plus interest at a rate of six percent compounded annually from the date of withdrawal to the date of payment. The interest paid shall be deposited in the reserve fund.
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 Disappeared this the 17th day of March, 2002.

Governor
PRESENTED TO THE
GOVERNOR
Date: 3/15/02
Time: 5:07