SENATE BILL NO. 636

(By Senator Plymale)

PASSED March 13, 2004

In Effect ninety days from Passage
AN ACT to amend and reenact §18-7A-13a and §18-7A-17 of the code of West Virginia, 1931, as amended, all relating to employment of members of the teachers defined benefit retirement system by institutions of higher education following the retirement of the member; and including certain compensation of certain members in determination of benefits if certain conditions are met.

Be it enacted by the Legislature of West Virginia:

That §18-7A-13a and §18-7A-17 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-13a. Resumption of service by retired teachers.

1 (a) For the purpose of this section, reemployment of a former or retired teacher as a teacher shall in no way
Enr. S. B. No. 636] 2

3 impair that teacher's eligibility for a prior service pension
4 or any other benefit provided by this article.

5 (b) Retired teachers, who qualified for an annuity
6 because of age or service, may not receive prior service
7 allowance from the retirement board when employed as a
8 teacher and when regularly employed by the state of West
9 Virginia. The payment of the allowance shall be discontin-
10 ued on the first day of the month within which employ-
11 ment begins and shall be resumed on the first day of the
12 month succeeding the month within which employment
13 ceases. The annuity paid the teacher on first retirement
14 resulting from the teachers' accumulation fund and the
15 employers' accumulation fund shall continue throughout
16 the governmental service and thereafter according to the
17 option selected by the teacher upon first retirement.

18 (c) Retired teachers, who qualified for an annuity
19 because of disability, shall receive no further retirement
20 payments if the retirement board finds that the disability
21 of the teacher no longer exists; payment shall be discontin-
22 ued on the first day of the month within which the finding
23 is made. If the retired teacher returns to service as a
24 teacher, he or she shall contribute to the teachers' accumu-
25 lation fund as a member of the system. His or her prior
26 service eligibility, if any, shall not be impaired because of
27 his or her disability retirement. His or her accumulated
28 contributions and interest which were transferred to the
29 benefit fund upon his or her retirement shall be returned
30 to his or her individual account in the teachers' accumula-
31 tion fund, minus retirement payments received which were
32 not supported by the contributions and interest. Upon
33 subsequent retirement, he or she shall receive credit for all
34 of his or her contributory experience, anything to the
35 contrary in this article notwithstanding.

36 (d) Notwithstanding any provision of this code to the
37 contrary, a person who retires under the system provided
38 by this article may subsequently become employed on
39 either a full-time, part-time basis or contract basis by any
3

[Enr. S. B. No. 636

in institution of higher education. Any such employment after the effective date of the enactment of this section in two thousand four shall be without any loss of retirement annuity or retirement benefits if the person's retirement commences between the first day of January, one thousand nine hundred ninety-five, and the thirty-first day of December, two thousand three: Provided, That the person shall not be eligible to participate in any other state retirement system provided by this code.

(e) The retirement board is authorized to require of the retired teachers and their employers such reports as it considers necessary to effectuate the provisions of this section.

§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 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
96 retirement system and: (1) Shall require the transfer of the
97 member's contributions to the teachers retirement system;
98 or (2) shall require a repayment of the amount withdrawn
99 any time prior to the member's retirement: Provided, That
100 there shall be added by the member to the amounts
101 transferred or repaid under this subsection an amount
102 which shall be sufficient to equal the contributions he or
103 she would have made had the member been under the
104 teachers retirement system during the period of his or her
105 membership in the public employees retirement system
106 plus interest at a rate to be determined by the board
107 compounded annually from the date of withdrawal to the
108 date of payment. The interest paid shall be deposited in
109 the reserve fund.

110 (h) For service as a teacher in an elementary or second-
111 ary parochial school, located within this state and fully
112 accredited by the West Virginia department of education,
113 the retirement board shall grant credit to the member:
114 Provided, That the member shall pay to the system double
115 the amount contributed during the first full year of current
116 employment, times the number of years for which credit is
117 granted, plus interest at a rate to be determined by the
118 retirement board. The interest shall be deposited in the
119 reserve fund and service granted at the time of retirement
120 shall not exceed the lesser of ten years or fifty percent of
121 the member's total service as a teacher in the West Vir-
122 ginia public school system. Any transfer of parochial
123 school service, as provided in this section, may not be used
124 to establish eligibility for a retirement allowance and the
125 board shall grant credit for the transfer as additional
126 service only: Provided, however, That a transfer of paro-
127 chial school service is prohibited if the service is used to
128 obtain a retirement benefit from another retirement
129 system.

130 (i) Active members who previously worked in CETA
131 (Comprehensive Employment and Training Act) may
132 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 and, for service after the effective date of the amendment of this section in two thousand four, may also elect to pay in addition both the employer and employee share for legislative compensation 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 and, if applicable, the compensation for which he or she paid both the employer and employee share, 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Greg Bull

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is hereby declared 6th this the Day of April, 2004.

Governor
PRESENTED TO THE
GOVERNOR

DATE  3/23/04
TIME  9:45 AM