ENROLLED
Committee Substitute for
SENATE BILL NO. 173

(By Senator Foster, et al)

PASSED March 11, 2006

In Effect 90 days from Passage
AN ACT to amend and reenact §5-10-14, §5-10-27 and §5-10-48 of the Code of West Virginia, 1931, as amended, all relating to the Public Employees Retirement System generally; providing service credit for certain temporary legislative employees for retirement purposes; clarifying right of members and former members to select certain beneficiaries for preretirement death annuities; limiting choice of beneficiaries to receive preretirement death annuities for new members only; providing for preretirement death benefit of accumulated contributions to be paid in a lump sum amount to any beneficiary or beneficiaries chosen by a member; providing that the date of membership and date of passage control election of benefits; recognizing exception for certain members who die as a result of active military service; and providing for the reemployment of certain former legislative employees on a per diem basis under certain restrictions without suspension of retirement annuity.
Be it enacted by the Legislature of West Virginia:

That §5-10-14, §5-10-27 and §5-10-48 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

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 employ-
ment 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 documen-
tation by the thirty-first day of March, two thousand	hree: And provided further, That the board shall exercise
due diligence to notify affected employees of the provi-
sions of this subsection.

(e)(1) 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
house in which the employee served, shall receive service
credit of six months for all regular sessions served, as
certified by the clerk of the house in which the employee
served, or shall receive service credit of three months for
each regular thirty-day session served prior to one thou-
sand 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 calen-
dar years as either temporary employees or full-time
employees or a combination thereof, as certified by the
clerk of the house 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 house 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. 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 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 house 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
143 days of a thirty-day regular session occurring prior to one
144 thousand nine hundred seventy-one constitutes an abso-
145 lute presumption of service for a complete legislative
146 session. Once a legislative employee has been employed
147 during regular sessions for seven consecutive years or has
148 become a full-time employee of the Legislature, that
149 employee shall receive the service credit provided in this
150 section for all regular and interim sessions and interim
151 days worked by that employee, as certified by the clerk of
152 the house in which the employee served, regardless of
153 when the session or interim legislative employment
154 occurred: And provided further, That regular session
155 legislative employment for seven consecutive years may be
156 served in either or both houses of the Legislature.

157 (e)(2) For purposes of this section, employees of the Joint
158 Committee on Government and Finance are entitled to the
159 same benefits as employees of the House of Delegates or
160 the Senate: Provided, That for joint committee employees
161 whose terms of employment are otherwise classified as
162 temporary, employment in preparation for regular ses-
163 sions, certified by the Legislative Manager as required by
164 the Legislature for its regular sessions, shall be considered
165 the same as employment during regular sessions to meet
166 service credit requirements for sessions served.

167 (f) Any employee may purchase retroactive service credit
168 for periods of employment in which contributions were not
169 deducted from the employee's pay. In the purchase of
170 service credit for employment prior to the year one
171 thousand nine hundred eighty-nine in any department,
172 including the Legislature, which operated from the
173 General Revenue Fund and which was not expressly
174 excluded from budget appropriations in which blanket
175 appropriations were made for the state's share of public
176 employees' retirement coverage in the years prior to the
177 year one thousand nine hundred eighty-nine, the employee
178 shall pay the employee's share. Other employees shall pay
179 the state's share and the employee's share to purchase
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 for which he or she is purchasing retroactive credit or had the employee attempted to contribute to the system during the years for which he or she is purchasing retroactive service credit 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 eight, whichever occurs last: Provided further, That once a legislative employee becomes a member of 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.
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regardless of the service credit which is credited to him or
er 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)(1) 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 retroactively to all periods of legislative employ-
ment prior to the passage of this section, including any
periods of legislative employment occurring before the
seven consecutive and thirteen consecutive calendar years
referred to 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.

(2) The requirement of seven consecutive years and the
requirement of thirteen consecutive years apply retroac-
tively to all legislative employment prior to the effective
date of the two thousand six amendments to this section.

(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 contribut-
ing 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 with-
drawn 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 subsection an amount which shall be sufficient
to equal the contributions 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.

(i) The provisions of section twenty-two-h of this article are not applicable to the amendments made to this section during the two thousand six regular session.

§5-10-27. Preretirement death annuities.

(a) (1) Except as otherwise provided in this section, in the event any member who has ten or more years of credited service or any former member with ten or more years of credited service and who is entitled to a deferred annuity, pursuant to section twenty-one of this article, may at any time prior to the effective date of his or her retirement, by written declaration duly executed and filed with the board of trustees, in the same manner as if he or she were then retiring from the employ of a participating public employer, elect option A provided in section twenty-four of this article and nominate a beneficiary whom the board finds to have had an insurable interest in the life of the member. Prior to the effective date of his or her retirement, a member may revoke his or her election of option A and nomination of beneficiary and he or she may again prior to his or her retirement elect option A and nominate a beneficiary as provided in this subsection. Upon the death of a member who has an option A election in force, his or her beneficiary, if living, shall immediately receive an annuity computed in the same manner in all respects as if the same member had retired the day preceding the date of his or her death, notwithstanding that he or she might not have attained age sixty years, and elected the said option A. If at the time of his or her retirement a member has an option A election in force, his or her election of option A and nomination of beneficiary shall thereafter continue in force. As an alternative to annuity option A, a member or former member may elect to have the preretirement death benefit paid as a return of accu-
mulated contributions in a lump sum amount to any beneficiary or beneficiaries he or she chooses.

(2) In the event any member or former member, who first became a member of the Public Employees Retirement System after the effective date of amendments made to this section during the two thousand six regular legislative session and who has ten or more years of credited service and who is entitled to a deferred annuity, pursuant to section twenty-one of this article: Dies without leaving a surviving spouse; but leaves surviving him or her a child who is financially dependent on the member by virtue of a permanent mental or physical disability upon evidence satisfactory to the board; and has named the disabled child as sole beneficiary, the disabled child shall immediately receive an annuity computed in the same manner in all respects as if the member had: (A) Retired the day preceding the date of his or her death, notwithstanding that he or she might not have attained age sixty or sixty-two years, as the case may be; (B) elected option A provided in section twenty-four of this article; and (C) nominated his or her disabled child as beneficiary. A member or former member with ten or more years of credited service, who does not leave surviving him or her a spouse or a disabled child, may elect to have the preretirement death benefit paid as a return of accumulated contributions in a lump sum amount to any beneficiary or beneficiaries he or she chooses.

(b)(1) In the event any member who has ten or more years of credited service, or any former member with ten or more years of credited service and who is entitled to a deferred annuity, pursuant to section twenty-one of this article: Dies; and leaves a surviving spouse, the surviving spouse shall immediately receive an annuity computed in the same manner in all respects as if the member had: (A) Retired the day preceding the date of his or her death, notwithstanding that he or she might not have attained age sixty or sixty-two years, as the case may be; (B) elected
option A provided in section twenty-four of this article; and (C) nominated his or her surviving spouse as beneficiary. However, the surviving spouse shall have the right to waive the annuity provided in this section: Provided, That he or she executes a valid and notarized waiver on a form provided by the board and that the member or former member attests to the waiver. If the waiver is presented to and accepted by the board, the member or former member, may nominate a beneficiary who has an insurable interest in the member's or former member's life. As an alternative to annuity option A, the member or former member may elect to have the preretirement death benefit paid as a return of accumulated contributions in a lump sum amount to any beneficiary or beneficiaries he or she chooses in the event a waiver, as provided in this section, has been presented to and accepted by the board.

(2) Whenever any member or former member who first became a member of the retirement system after the effective date of the amendments to this section made during the two thousand six regular legislative session and who has ten or more years of credited service and who is entitled to a deferred annuity, pursuant to section twenty-one of this article: Dies; and leaves a surviving spouse, the surviving spouse shall immediately receive an annuity computed in the same manner in all respects as if the member had: (A) Retired the day preceding the date of his or her death, notwithstanding that he or she might not have attained age sixty or sixty-two years, as the case may be; (B) elected option A provided in section twenty-four of this article; and (C) nominated his or her surviving spouse as beneficiary. However, the surviving spouse shall have the right to waive the annuity provided in this section: Provided, That he or she executes a valid and notarized waiver on a form provided by the board and that the member or former member attests to the waiver. If the waiver is presented to and accepted by the Board, the member or former member may: (1) Elect to have the preretirement death benefit paid in a lump sum amount,
rather than annuity option A provided in section twenty-
four of this article, as a return of accumulated contribu-
tions to any beneficiary or beneficiaries he or she chooses;
or (2) may name his or her surviving child, who is finan-
cially dependent on the member by virtue of a permanent
mental or physical disability, as his or her sole beneficiary
to receive an annuity computed in the same manner in all
respects as if the member had: (A) Retired the day preced-
ing the date of his or her death, notwithstanding that he or
she might not have attained the age of sixty or sixty-two
as the case may be; (B) elected option A provided in section
twenty-four of this article; and (C) nominated his or her
disabled child as beneficiary.

(c) In the event any member who has ten or more years
of credited service or any former member with ten or more
years of credited service and who is entitled to a deferred
annuity, pursuant to section twenty-one of this article: (1)
Dies without leaving surviving him or her a spouse; but (2)
leaves surviving him or her an infant child or children; and
(3) does not have a beneficiary nominated as provided in
subsection (a) of this section, the infant child or children
are entitled to an annuity to be calculated as follows: The
annuity reserve shall be calculated as though the member
had retired as of the date of his or her decease and elected
a straight life annuity and the amount of the annuity
reserve shall be paid in equal monthly installments to the
member's infant child or children until the child or
children attain age twenty-one or sooner marry or become
emancipated; however, in no event shall any child or
children receive more than two hundred fifty dollars per
month each. The annuity payments shall be computed as
of the date of the death of the member and the amount of
the annuity shall remain constant during the period of
payment. The annual amount of the annuities payable by
this section shall not exceed sixty percent of the deceased
member's final average salary.

(d) In the event any member or former member does not
have ten or more years of credited service, no
§5-10-48. Reemployment after retirement; options for holder of elected public office.

(a) 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 basis 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.

(b) 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 employment with 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.

(c) 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 twenty thousand dollars.

(d) 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 (c) 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
titled 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 (c) of this section. Notwithstanding
the provisions of this subsection, a member who is partici-
pating 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 reap-
pointed 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 em-
ployee 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 further, That in no event may reemployment by
the Legislature of a per diem employee exceed one hun-
dred seventy-five days per calendar year.

(e) A member who is participating in the system simulta-
neously as both a regular, full-time employee of a partici-
pating 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 re-
quirements 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 addi-
tional service credit or benefits in the system related to the
continued service.

(f) 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 ac-
tively contributing to the system while receiving such in-
service distributions.

(g) The provisions of section twenty-two-h of this article
are not applicable to the amendments made to this section
during the two thousand six regular session.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

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 approved this the Day of April, 2006.

Governor
PRESENTED TO THE
GOVERNOR

MAR 31 2006

Time 10:30 AM