

HB 4082

2008 MAR 27 PM 5:00

**WEST VIRGINIA LEGISLATURE**  
SECOND REGULAR SESSION, 2008

—●—  
**ENROLLED**

COMMITTEE SUBSTITUTE  
FOR  
**House Bill No. 4082**

(By Delegates Spencer)

—●—  
Passed March 6, 2008

In Effect Ninety Days from Passage

# ENROLLED

COMMITTEE SUBSTITUTE

FOR

## H. B. 4082

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(BY DELEGATE SPENCER)

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[Passed March 6, 2008; in effect ninety days from passage.]

AN ACT to amend and reenact §5-10-14, §5-10-15b and §5-10-27c of the Code of West Virginia, 1931, as amended, all relating to the Public Employees Retirement System; clarifying transfer of retroactive service credit in the Public Employees Retirement System for certain members of the State Police Death, Disability and Retirement Fund; making technical changes by substituting the term “member” for “employee”; and permitting direct rollovers in any amount from the Public Employees Retirement System.

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

That §5-10-14, §5-10-15b and §5-10-27c 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.**

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SEAL OF THE  
STATE OF WEST VIRGINIA

**§5-10-14. Service credit; retroactive provisions.**

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

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

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

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

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

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

48 (d) Active members who previously worked in CETA  
49 (Comprehensive Employment and Training Act) may receive  
50 service credit for time served in that capacity: *Provided*,  
51 That in order to receive service credit under the provisions of  
52 this subsection the following conditions must be met: (1)  
53 The member must have moved from temporary employment  
54 with the participating employer to permanent full-time  
55 employment with the participating employer within one  
56 hundred twenty days following the termination of the  
57 member's CETA employment; (2) the board must receive  
58 evidence that establishes to a reasonable degree of certainty  
59 as determined by the board that the member previously  
60 worked in CETA; and (3) the member shall pay to the board  
61 an amount equal to the employer and employee contribution  
62 plus interest at the amount set by the board for the amount of  
63 service credit sought pursuant to this subsection: *Provided*,  
64 *however*, That the maximum service credit that may be  
65 obtained under the provisions of this subsection is two years:  
66 *Provided further*, That a member must apply and pay for the

67 service credit allowed under this subsection and provide all  
68 necessary documentation by the thirty-first day of March,  
69 two thousand three: *And provided further*, That the board  
70 shall exercise due diligence to notify affected employees of  
71 the provisions of this subsection.

72 (e)(1) Employees of the state Legislature whose terms of  
73 employment are otherwise classified as temporary and who  
74 are employed to perform services required by the Legislature  
75 for its regular sessions or during the interim time between  
76 regular sessions shall receive service credit for the time  
77 served in that capacity in accordance with the following. For  
78 purposes of this section, the term "regular session" means day  
79 one through day sixty of a sixty-day legislative session or day  
80 one through day thirty of a thirty-day legislative session.  
81 Employees of the state Legislature whose term of  
82 employment is otherwise classified as temporary and who are  
83 employed to perform services required by the Legislature for  
84 its regular sessions or during the interim time between  
85 regular sessions and who have been or are employed during  
86 regular sessions or during the interim time between regular  
87 sessions in seven consecutive calendar years, as certified by  
88 the clerk of the house in which the employee served, shall  
89 receive service credit of six months for all regular sessions  
90 served, as certified by the clerk of the house in which the  
91 employee served, or shall receive service credit of three  
92 months for each regular thirty-day session served prior to one  
93 thousand nine hundred seventy-one: *Provided*, That  
94 employees of the state Legislature whose term of  
95 employment is otherwise classified as temporary and who are  
96 employed to perform services required by the Legislature for  
97 its regular sessions and who have been or are employed  
98 during the regular sessions in thirteen consecutive calendar  
99 years as either temporary employees or full-time employees  
100 or a combination thereof, as certified by the clerk of the  
101 house in which the employee served, shall receive a service

102 credit of twelve months for each regular session served, as  
103 certified by the clerk of the house in which the employee  
104 served: *Provided, however,* That the amendments made to  
105 this subsection during the two thousand two regular session  
106 of the Legislature only apply to employees of the Legislature  
107 who are employed by the Legislature as either temporary  
108 employees or full-time employees as of the first day of  
109 January, two thousand two, or who become employed by the  
110 Legislature as temporary or full-time employees for the first  
111 time after the first day of January, two thousand two.  
112 Employees of the state Legislature whose terms of  
113 employment are otherwise classified as temporary and who  
114 are employed to perform services required by the Legislature  
115 during the interim time between regular sessions shall receive  
116 service credit of one month for each ten days served during  
117 the interim between regular sessions, which interim days  
118 shall be cumulatively calculated so that any ten days,  
119 regardless of calendar month or year, shall be calculated  
120 toward any award of one month of service credit: *Provided*  
121 *further,* That no more than one year of service may be  
122 credited to any temporary legislative employee for all service  
123 rendered by that employee in any calendar year and no days  
124 may be carried over by a temporary legislative employee  
125 from one calendar year to another calendar year where the  
126 member has received a full year credit for that year. Service  
127 credit awarded for legislative employment pursuant to this  
128 section shall be used for the purpose of calculating that  
129 member's retirement annuity, pursuant to section twenty-two  
130 of this article, and determining eligibility as it relates to  
131 credited service, notwithstanding any other provision of this  
132 section. Certification of employment for a complete  
133 legislative session and for interim days shall be determined  
134 by the clerk of the house in which the employee served,  
135 based upon employment records. Service of fifty-five days of  
136 a regular session constitutes an absolute presumption of  
137 service for a complete legislative session and service of

138 twenty-seven days of a thirty-day regular session occurring  
139 prior to one thousand nine hundred seventy-one constitutes  
140 an absolute presumption of service for a complete legislative  
141 session. Once a legislative employee has been employed  
142 during regular sessions for seven consecutive years or has  
143 become a full-time employee of the Legislature, that  
144 employee shall receive the service credit provided in this  
145 section for all regular and interim sessions and interim days  
146 worked by that employee, as certified by the clerk of the  
147 house in which the employee served, regardless of when the  
148 session or interim legislative employment occurred: *And*  
149 *provided further*, That regular session legislative employment  
150 for seven consecutive years may be served in either or both  
151 houses of the Legislature.

152 (2) For purposes of this section, employees of the Joint  
153 Committee on Government and Finance are entitled to the  
154 same benefits as employees of the House of Delegates or the  
155 Senate: *Provided*, That for joint committee employees  
156 whose terms of employment are otherwise classified as  
157 temporary, employment in preparation for regular sessions,  
158 certified by the legislative manager as required by the  
159 Legislature for its regular sessions, shall be considered the  
160 same as employment during regular sessions to meet service  
161 credit requirements for sessions served.

162 (f) Any employee may purchase retroactive service credit  
163 for periods of employment in which contributions were not  
164 deducted from the employee's pay. In the purchase of service  
165 credit for employment prior to the year one thousand nine  
166 hundred eighty-nine in any department, including the  
167 Legislature, which operated from the General Revenue Fund  
168 and which was not expressly excluded from budget  
169 appropriations in which blanket appropriations were made for  
170 the state's share of public employees' retirement coverage in  
171 the years prior to the year one thousand nine hundred eighty-

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

208 employee member's retirement annuity: *And provided*  
209 *further*, That no legislative employee may be required to pay  
210 for any service credit beyond the actual time he or she  
211 worked regardless of the service credit which is credited to  
212 him or her pursuant to this section: *And provided further*,  
213 That any legislative employee may request a recalculation of  
214 his or her credited service to comply with the provisions of  
215 this section at any time.

216 (g)(1) Notwithstanding any provision to the contrary, the  
217 seven consecutive calendar years requirement and the  
218 thirteen consecutive calendar years requirement and the  
219 service credit requirements set forth in this section shall be  
220 applied retroactively to all periods of legislative employment  
221 prior to the passage of this section, including any periods of  
222 legislative employment occurring before the seven  
223 consecutive and thirteen consecutive calendar years  
224 referenced in this section: *Provided*, That the employee has  
225 not retired prior to the effective date of the amendments made  
226 to this section in the two thousand two regular session of the  
227 Legislature.

228 (2) The requirement of seven consecutive years and the  
229 requirement of thirteen consecutive years apply retroactively  
230 to all legislative employment prior to the effective date of the  
231 two thousand six amendments to this section.

232 (h) The board of trustees shall grant service credit to any  
233 former or present member of the State Police Death,  
234 Disability and Retirement Fund who has been a contributing  
235 member of this system for more than three years for service  
236 previously credited by the State Police Death, Disability and  
237 Retirement Fund if the member transfers all of his or her  
238 contributions to the State Police Death, Disability and  
239 Retirement Fund to the system created in this article,  
240 including repayment of any amounts withdrawn any time

241 from the State Police Death, Disability and Retirement Fund  
242 by the member seeking the transfer allowed in this  
243 subsection: *Provided*, That there shall be added by the  
244 member to the amounts transferred or repaid under this  
245 subsection an amount which shall be sufficient to equal the  
246 contributions he or she would have made had the member  
247 been under the Public Employees Retirement System during  
248 the period of his or her membership in the State Police Death,  
249 Disability and Retirement Fund, excluding contributions on  
250 lump sum payment for annual leave, plus interest at a rate  
251 determined by the board.

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

**§5-10-15b. Credit for public employment in another state.**

1 (a) Any member of the retirement system who has  
2 previously been employed in public employment in any other  
3 state of the United States is entitled to receive credited  
4 service for the time of public employment in that state, not to  
5 exceed five years, if the member substantiates by appropriate  
6 documentation or evidence his or her public employment in  
7 another state and makes contributions as required: *Provided*,  
8 That the member is not entitled to receive the credited service  
9 if the employee is vested or entitled to be vested in a  
10 retirement system of the state in which the employment credit  
11 was earned and the member is entitled to service credit in that  
12 retirement system for the employment period for which the  
13 applicant seeks credited service in West Virginia: *Provided*,  
14 *however*, That the service credit from the other state may not  
15 be used to meet West Virginia's eligibility requirements for  
16 retirement or vesting.

17 Members entitled to out-of-state service credit under the  
18 provisions of this section shall make additional contribution  
19 to the retirement system equal to the actuarial equivalent of  
20 the amount which would have been contributed, together  
21 with earnings thereon, by the member and the employer, had  
22 the member been covered during the period of the retroactive  
23 service credit.

24 (b) In any case of doubt as to the period of service to be  
25 credited a member under the provisions of this section, the  
26 Board of Trustees has the final power to determine this  
27 period.

**§5-10-27c. Direct rollovers.**

1 (a) This section applies to distributions made on or after  
2 the first day of January, one thousand nine hundred ninety-  
3 three. Notwithstanding any provision of this article to the  
4 contrary that would otherwise limit a distributee's election  
5 under this system, a distributee may elect, at the time and in  
6 the manner prescribed by the board, to have any portion of an  
7 eligible rollover distribution paid directly to an eligible  
8 retirement plan specified by the distributee in a direct  
9 rollover. For purposes of this section, the following  
10 definitions apply:

11 (1) "Eligible rollover distribution" means any distribution  
12 of all or any portion of the balance to the credit of the  
13 distributee, except that an eligible rollover distribution does  
14 not include any of the following: (i) Any distribution that is  
15 one of a series of substantially equal periodic payments not  
16 less frequently than annually made for the life or life  
17 expectancy of the distributee or the joint lives or the joint life  
18 expectancies of the distributee and the distributee's  
19 designated beneficiary, or for a specified period of ten years  
20 or more; (ii) any distribution to the extent the distribution is

21 required under Section 401(a)(9) of the Internal Revenue  
22 Code; (iii) the portion of any distribution that is not  
23 includable in gross income determined without regard to the  
24 exclusion for net unrealized appreciation with respect to  
25 employer securities; and (iv) any hardship distribution  
26 described in Section 401(k)(2)(B)(i)(iv) of the Internal  
27 Revenue Code;. For distributions after the thirty-first day of  
28 December, two thousand one, a portion of a distribution shall  
29 not fail to be an eligible rollover distribution merely because  
30 the portion consists of after-tax employee contributions  
31 which are not includable in gross income. However, this  
32 portion may be paid only to an individual retirement account  
33 or annuity described in Section 408(a) or (b) of the Internal  
34 Revenue Code, or to a qualified defined contribution plan  
35 described in Section 401(a) or 403(a) of the Internal Revenue  
36 Code that agrees to separately account for amounts  
37 transferred, including separately accounting for the portion of  
38 the distribution which is includable in gross income and the  
39 portion of the distribution which is not includable.

40 (2) "Eligible retirement plan" means an individual  
41 retirement account described in Section 408(a) of the Internal  
42 Revenue Code, an individual retirement annuity described in  
43 Section 408(b) of the Internal Revenue Code, an annuity plan  
44 described in Section 403(a) of the Internal Revenue Code or  
45 a qualified plan described in Section 401(a) of the Internal  
46 Revenue Code that accepts the distributee's eligible rollover  
47 distribution: *Provided*, That in the case of an eligible  
48 rollover distribution to the surviving spouse, an eligible  
49 retirement plan is an individual retirement account or  
50 individual retirement annuity. For distributions after the  
51 thirty-first day of December, two thousand one, an eligible  
52 retirement plan also means an annuity contract described in  
53 Section 403(b) of the Internal Revenue Code and an eligible  
54 plan under Section 457(b) of the Internal Revenue Code  
55 which is maintained by a state, political subdivision of a

56 state, or any agency or instrumentality of a state or political  
57 subdivision of a state and which agrees to separately account  
58 for amounts transferred into the plan from this system.

59 (3) "Distributee" means an employee or former  
60 employee. In addition, the employee's or former employee's  
61 surviving spouse and the employee's or former employee's  
62 spouse or former spouse who is the alternate payee under a  
63 qualified domestic relations order, as defined in Section  
64 414(p) of the Internal Revenue Code with respect to  
65 governmental plans, are distributees with regard to the  
66 interest of the spouse or former spouse.

67 (4) "Direct rollover" means a payment by the retirement  
68 system to an eligible retirement plan.

69 (b) Nothing in this section may be construed as  
70 permitting rollovers into this system or any other system  
71 administered by the retirement board.

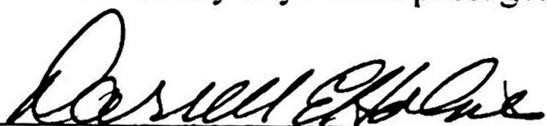
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
Chairman Senate Committee

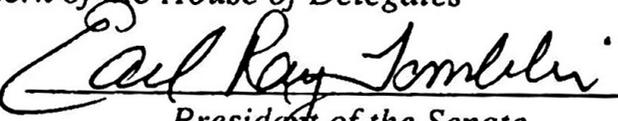
  
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

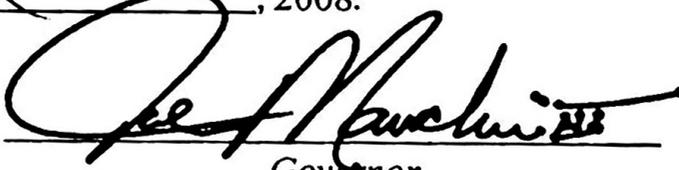
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within is approved this the 27<sup>th</sup>  
day of March, 2008.

  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 17 2008

Time

9:35 PM