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
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.
§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)(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
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 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 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 house 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.

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

(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 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 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: \textit{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: \textit{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.

\textbf{(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 employment prior to the passage of this section, including any periods of legislative employment occurring before the seven consecutive and thirteen consecutive calendar years referenced in this section: \textit{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.

\textbf{(2)} The requirement of seven consecutive years and the requirement of thirteen consecutive years apply retroactively to all legislative employment prior to the effective date of the two thousand six amendments to this section.

\textbf{(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
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, excluding contributions on
lump sum payment for annual leave, 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.

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

1 (a) Any member of the retirement system who has
previously been employed in public employment in any other
state of the United States is entitled to receive credited
service for the time of public employment in that state, not to
exceed five years, if the member substantiates by appropriate
documentation or evidence his or her public employment in
another state and makes contributions as required: Provided,
That the member is not entitled to receive the credited service
if the employee is vested or entitled to be vested in a
retirement system of the state in which the employment credit
was earned and the member is entitled to service credit in that
retirement system for the employment period for which the
applicant seeks credited service in West Virginia: Provided,
however, That the service credit from the other state may not
be used to meet West Virginia's eligibility requirements for
retirement or vesting.
Members entitled to out-of-state service credit under the provisions of this section shall make additional contribution to the retirement system equal to the actuarial equivalent of the amount which would have been contributed, together with earnings thereon, by the member and the employer, had the member been covered during the period of the retroactive service credit.

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

§5-10-27c. Direct rollovers.

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

(1) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any of the following: (i) Any distribution that is one of a series of substantially equal periodic payments not less frequently than annually made for the life or life expectancy of the distributee or the joint lives or the joint life expectancies of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; (ii) any distribution to the extent the distribution is
required under Section 401(a)(9) of the Internal Revenue Code; (iii) the portion of any distribution that is not includable in gross income determined without regard to the exclusion for net unrealized appreciation with respect to employer securities; and (iv) any hardship distribution described in Section 401(k)(2)(B)(i)(iv) of the Internal Revenue Code.; For distributions after the thirty-first day of December, two thousand one, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includable in gross income. However, this portion may be paid only to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Internal Revenue Code that agrees to separately account for amounts transferred, including separately accounting for the portion of the distribution which is includable in gross income and the portion of the distribution which is not includable.

(2) "Eligible retirement plan" means an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code or a qualified plan described in Section 401(a) of the Internal Revenue Code that accepts the distributee's eligible rollover distribution: Provided, That in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity. For distributions after the thirty-first day of December, two thousand one, an eligible retirement plan also means an annuity contract described in Section 403(b) of the Internal Revenue Code and an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a
state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into the plan from this system.

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

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

(b) Nothing in this section may be construed as permitting rollovers into this system or any other system administered by the retirement board.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Candy White
Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Douglas J. Appel
Clerk of the Senate

Eugene L. General
Clerk of the House of Delegates

Earl Ray Tomblin
President of the Senate

Speaker of the House of Delegates

The within is appended this the 27th
day of March, 2008.

Robert F. Macchiaroli
Governor