WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2008

COMMITTEE SUBSTITUTE
FOR
COMMITTEE SUBSTITUTE
FOR
ENROLLED
Senate Bill No. 201

(Senator Foster, original sponsor)

[Passed March 8, 2008; in effect ninety days from passage.]
AN ACT to amend and reenact §5-10A-2, §5-10A-3, §5-10A-4, §5-10A-5, §5-10A-6, §5-10A-7 and §5-10A-8 of the Code of West Virginia, 1931, as amended, all relating to disqualification for public retirement benefits; adding the definition of "former participant"; providing for
termination of retirement benefits in all public retirement plans of former and present participants who have rendered less than honorable service; and providing for retention of vested employer contributions for members of the Teachers' Defined Contribution Retirement System whose benefits are terminated for less than honorable service.

Be it enacted by the Legislature of West Virginia:

That §5-10A-2, §5-10A-3, §5-10A-4, §5-10A-5, §5-10A-6, §5-10A-7 and §5-10A-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 10A. DISQUALIFICATION FOR PUBLIC RETIREMENT PLAN BENEFITS.

§5-10A-2. Definitions.

1 As used in this article:

2 (a) "Retirement plan" or "plan" means the Public Employees Retirement Act pursuant to article ten of this chapter; each municipal employees retirement plan pursuant to article twenty-two, chapter eight of this code; each policemen's and firemen's pension and relief fund pursuant to article twenty-two, chapter eight of this code; the West Virginia State Police Death, Disability and Retirement Fund pursuant to article two, chapter fifteen of this code; the West Virginia State Police Retirement System pursuant to article two-a, chapter fifteen of this code; the State Teachers Retirement System pursuant to article seven-a, chapter eighteen of this code; the Teachers' Defined Contribution Retirement System pursuant to article seven-b, chapter eighteen of this code; the Deputy
Sheriff Retirement System pursuant to article fourteen-d, chapter seven of this code; the higher education retirement plan and supplemental retirement plans pursuant to section four-a, article twenty-three, chapter eighteen of this code; the Judges’ Retirement System pursuant to article nine, chapter fifty-one of this code; the West Virginia Emergency Medical Services Retirement System pursuant to article five-v, chapter sixteen of this code; and any other plan established pursuant to this code for the payment of pension, annuity, disability or other benefits to any person by reason of his or her service as an officer or employee of this state or of any political subdivision, agency or instrumentality thereof, whenever the plan is supported, in whole or in part, by public funds.

(b) “Beneficiary” means any person eligible for or receiving benefits on account of the service for a public employer by a participant or former participant in a retirement plan.

(c) “Benefits” means pension, annuity, disability or any other benefits granted pursuant to a retirement plan.

(d) “Conviction” means a conviction on or after the effective date of this article in any federal or state court of record whether following a plea of guilty, not guilty or nolo contendere and whether or not the person convicted was serving as an officer or employee of a public employer at the time of the conviction.

(e) “Former participant” means any person who is no longer eligible to receive any benefit under a retirement plan because full distribution has occurred.
(f) "Less than honorable service" means:

(1) Impeachment and conviction of a participant or former participant under the provisions of section nine, article four of the Constitution of West Virginia, except for a misdemeanor;

(2) Conviction of a participant or former participant of a felony for conduct related to his or her office or employment which he or she committed while holding the office or during the employment; or

(3) Conduct of a participant or former participant which constitutes all of the elements of a crime described in either subdivision (1) or (2) of this subsection but for which the participant or former participant was not convicted because:

(i) Having been indicted or having been charged in an information for the crime, he or she made a plea bargaining agreement pursuant to which he or she pleaded guilty to or nolo contendere to a lesser crime: Provided, That the lesser crime is a felony containing all the elements described in subdivision (1) or (2) of this subsection; or

(ii) Having been indicted or having been charged in an information for the crime, he or she was granted immunity from prosecution for the crime.

(g) "Participant" means any person eligible for or receiving any benefit under a retirement plan on account of his or her service as an officer or employee for a public employer.
(h) "Public employer" means the State of West Virginia and any political subdivision, agency, or instrumentality thereof for which there is established a retirement plan.

(i) "Supervisory board" or "board" means the Consolidated Public Retirement Board; the board of trustees of any municipal retirement fund; the board of trustees of any policemen's or firemen's retirement plan; the governing board of any supplemental retirement plan instituted pursuant to authority granted by section four-a, article twenty-three, chapter eighteen of this code; and any other board, commission or public body having the duty to supervise and operate any retirement plan.

§5-10A-3. Notice of intention to terminate benefits; waiver; failure to reply.

(a) Whenever a supervisory board, upon receipt of a verified complaint or otherwise, has reasonable cause to believe that a participant or former participant rendered less than honorable service as defined in section two of this article, it shall notify the affected participant, former participant or beneficiary that it believes that the participant or former participant rendered less than honorable service and that the participant, former participant or beneficiary is thereby ineligible to receive benefits. A supervisory board may not issue a notice:

(1) If more than two years have elapsed since the judgment of conviction upon which the notice is based became final; or
(2) In cases described in subdivision (3), subsection (f), section two of this article, if more than two years have elapsed since, as the case may be: The plea bargaining agreement or the grant of immunity; or

(3) With respect to conduct which occurred prior to the effective date of this article.

(b) The notice shall contain a concise statement of the reasons why the board believes that the participant or former participant rendered less than honorable service and shall be made either by personal service or by certified mail, return receipt requested, to the address which the participant, former participant or beneficiary maintains for purposes of corresponding with the board. If notice is made by certified mail, service shall be considered complete upon mailing and a completed receipt constitutes proof of the receipt of the notice. The notice shall inform the participant, former participant or beneficiary that he or she has the right to demand that the board seek a determination in circuit court of his or her eligibility for benefits and membership in the retirement plan by notifying the board of the demand within forty days. The notice shall also inform the participant, former participant or beneficiary that the board will terminate the benefits in accordance with section four of this article and refund the participant’s or former participant’s contributions with interest, less benefits previously paid as provided in section six of this article if the participant, former participant or beneficiary either waives the right to demand that the board take the matter before the circuit court or fails to respond to the board’s notice within forty days after service.
§5-10A-4. Determination by circuit court of ineligibility; jurisdiction; appeal.

(a) If a participant, former participant or beneficiary informs the supervisory board within forty days after service of the notice as provided in section three of this article that he or she demands that the board seek a determination in circuit court, the board shall immediately file a petition in the circuit court in the county in which the board is located or in which the participant, former participant or beneficiary resides seeking that the court determine that the participant or former participant rendered less than honorable service as defined in section two of this article and that the affected participant, former participant or beneficiary is thereby ineligible to receive benefits. The circuit courts have jurisdiction to make the determinations.

(b) Upon the filing of a petition by a supervisory board, the circuit court shall give to the affected parties notice and an opportunity to be heard consistent with the demands of due process and necessary for a fair determination of the matter. Upon completion of its hearings the court shall make such findings of fact and conclusions of law as are appropriate. Except in the case of exigent circumstances, the court shall make its determination within sixty days of the filing of the petition by the board.

(c) A determination of the circuit court shall be a final order which may be appealed to the Supreme Court of Appeals in the same manner as decisions in other civil actions.

§5-10A-5. Termination of benefits.
(a) The board shall terminate a participant's, former participant's or beneficiary's membership in any and all plans in which he or she is or has been a member and shall not thereafter pay any benefits to the participant, former participant or his or her beneficiaries if an affected participant, former participant or beneficiary either waives the right to demand that the board seek a determination of eligibility in circuit court as set forth in section three of this article or fails to respond to the notice within forty days after service thereof as set forth in said section or if a circuit court has determined that the participant or former participant rendered less than honorable service in accordance with section four of this article: Provided, That this article does not authorize the termination of benefits received by a beneficiary that are received as a result of the beneficiary's own membership in a plan or the beneficiary's status as a beneficiary of a member other than the participant or former participant.

(b) If the participant or former participant is deceased and there are two or more beneficiaries at least one of whom has given the board timely notice that he or she wishes to exercise the right to demand that the board seek a determination of eligibility in circuit court, the board shall take the action as provided in this section with respect to all the beneficiaries only upon a determination by the court that the participant or former participant has rendered less than honorable service.

§5-10A-6. Refund of contributions.

The supervisory board shall refund to a participant or beneficiary terminated from benefits by section five of
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this article the contributions of the participant in the
same manner and with the same interest as provided to
those participants or beneficiaries otherwise eligible to
withdraw the participant's contributions under the
retirement plan, less the amount of any benefits which
the participant or his or her beneficiaries have
previously received: Provided, That a member of the
Teachers' Defined Contribution Retirement System
whose benefits have been terminated pursuant to
section five of this article shall be refunded only his or
her employee contributions and the earnings on those
ccontributions. Any vested employer contributions shall
remain in the Teachers' Defined Contribution
Retirement System and be used to offset future
employer contributions for each contributing employer.

§5-10A-7. Eligibility for new participation upon
rehabilitation.

Nothing in this article prohibits a participant or
former participant made ineligible for benefits by
virtue of conviction of a crime under this article and
who has paid the full penalty imposed by law for the
crime from accepting a position as an officer or
employee of the same or different public employer and
joining a retirement plan as a new member; but the new
member and his or her beneficiaries shall remain
forever ineligible for any benefits arising from the new
member's former participation in a retirement plan.

§5-10A-8. Setoff; unpaid benefits subject to execution,
freezing of account upon finding of probable
cause.

(a) The State of West Virginia or any of its political
subdivisions shall have the right of setoff against any
unpaid benefits which have accrued or may thereafter
accrue under the plan, including any contributions by
the participant or former participant for any claim
caused by less than honorable service by the participant
or former participant.

(b) Notwithstanding any provision of this article to
the contrary, upon being notified by an agency of the
State of West Virginia or any of its political
subdivisions that an employee has been charged by
criminal complaint, indictment or information with an
offense which constitutes less than honorable service
and larceny of funds or property from a state agency or
political subdivision, the retirement board shall
withhold payment or refunding of any participant's or
former participant's contributions until it receives an
order from a court of competent jurisdiction reflecting
that the charge has been dismissed, reflecting that the
participant or former participant is found not guilty,
ordering the release of all or part of the funds or
directing restitution to the state or political subdivision.

(c) Notwithstanding any provision of the law to the
contrary, any unpaid benefits which have accrued or
may thereafter accrue are subject to execution,
garnishment, attachment or any other legal process for
collection of a judgment for the recovery of loss or
damages incurred by the state or its political
subdivision caused by the participant's or former
participant's less than honorable service.
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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 28th Day of March, 2008.

Governor
PRESENTED TO THE GOVERNOR

MAR 21 2008

Time [Signature]