

1 **ENGROSSED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **H. B. 4555**

5 (By Delegates Caputo, Longstreth, Manchin, Fleischauer,  
6 Marshall, Perry, M. Poling, White, Williams, Boggs and Fragale)

7 (Originating in the House Committee on Finance)

8  
9 [February 20, 2014]

10  
11 A BILL to amend and reenact §18A-2-2 and §18A-2-6a of the Code of  
12 West Virginia, 1931, as amended, all relating to requiring  
13 county boards of education to provide released time for  
14 professional educators and service personnel when serving in  
15 a part-time elected municipal or county office.

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

17 That §18-7A-17 and §18-7B-11 of the Code of West Virginia,  
18 1931, as amended, be amended and reenacted; and to amend and  
19 reenact §18A-2-2 and §18A-2-6a of said code, all to read as  
20 follows:

21 **CHAPTER 18. EDUCATION.**

22 **ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.**

23 **§18-7A-17. Statement and computation of teachers' service;**  
24 **qualified military service.**

1           (a) Under rules adopted by the retirement board, each teacher  
2 and nonteaching member shall file a detailed statement of his or  
3 her length of service as a teacher or nonteacher for which he or  
4 she claims credit. The Retirement Board shall determine what part  
5 of a year is the equivalent of a year of service. In computing the  
6 service, however, it shall credit no period of more than a month's  
7 duration during which a member was absent without pay, nor shall it  
8 credit for more than one year of service performed in any calendar  
9 year.

10           (b) For the purpose of this article, the retirement board  
11 shall grant prior service credit to members of the retirement  
12 system who were honorably discharged from active duty service in  
13 any of the Armed Forces of the United States in any period of  
14 national emergency within which a federal Selective Service Act was  
15 in effect. For purposes of this section, "Armed Forces" includes  
16 Women's Army Corps, women's appointed volunteers for emergency  
17 service, Army Nurse Corps, SPARS, Women's Reserve and other similar  
18 units officially parts of the military service of the United  
19 States. The military service is considered equivalent to public  
20 school teaching, and the salary equivalent for each year of that  
21 service is the actual salary of the member as a teacher for his or  
22 her first year of teaching after discharge from military service.  
23 Prior service credit for military service shall not exceed ten  
24 years for any one member, nor shall it exceed twenty-five percent

1 of total service at the time of retirement. Notwithstanding the  
2 preceding provisions of this subsection, contributions, benefits  
3 and service credit with respect to qualified military service shall  
4 be provided in accordance with Section 414(u) of the Internal  
5 Revenue Code. For purposes of this section, "qualified military  
6 service" has the same meaning as in Section 414(u) of the Internal  
7 Revenue Code. The Retirement Board is authorized to determine all  
8 questions and make all decisions relating to this section and,  
9 pursuant to the authority granted to the retirement board in  
10 section one, article ten-d, chapter five of this code, may  
11 promulgate rules relating to contributions, benefits and service  
12 credit to comply with Section 414(u) of the Internal Revenue Code.  
13 No military service credit may be used in more than one retirement  
14 system administered by the Consolidated Public Retirement Board.

15 (c) For service as a teacher in the employment of the federal  
16 government, or a state or territory of the United States, or a  
17 governmental subdivision of that state or territory, the retirement  
18 board shall grant credit to the member: *Provided*, That the member  
19 shall pay to the system twelve percent of that member's gross  
20 salary earned during the first full year of current employment  
21 whether a member of the Teachers' Retirement System or the  
22 Teachers' Defined Contribution Retirement System, times the number  
23 of years for which credit is granted, plus interest at a rate to be  
24 determined by the retirement board. The interest shall be deposited

1 in the reserve fund and service credit granted at the time of  
2 retirement shall not exceed the lesser of ten years or fifty  
3 percent of the member's total service as a teacher in West  
4 Virginia. Any purchase of out-of-state service, as provided in this  
5 article, shall not be used to establish eligibility for a  
6 retirement allowance and the retirement board shall grant credit  
7 for the purchased service as additional service only: *Provided,*  
8 *however,* That a purchase of out-of-state service is prohibited if  
9 the service is used to obtain a retirement benefit from another  
10 retirement system: *Provided further,* That salaries paid to members  
11 for service prior to entrance into the retirement system shall not  
12 be used to compute the average final salary of the member under the  
13 retirement system.

14 (d) No members shall be considered absent from service while  
15 serving as a member or employee of the Legislature of the State of  
16 West Virginia during any duly constituted session of that body, ~~or~~  
17 while serving as an elected member of a county commission or any  
18 other appointed or elected part-time public office during any duly  
19 constituted session of that body.

20 (e) No member shall be considered absent from service as a  
21 teacher or nonteacher while serving as an officer with a statewide  
22 professional teaching association, or who has served in that  
23 capacity, and no retirant, who served in that capacity while a  
24 member, shall be considered to have been absent from service as a

1 teacher by reason of that service: *Provided*, That the period of  
2 service credit granted for that service shall not exceed ten years:  
3 *Provided, however*, That a member or retirant who is serving or has  
4 served as an officer of a statewide professional teaching  
5 association shall make deposits to the Teachers Retirement System,  
6 for the time of any absence, in an amount double the amount which  
7 he or she would have contributed in his or her regular assignment  
8 for a like period of time.

9 (f) The Teachers Retirement System shall grant service credit  
10 to any former or present member of the West Virginia Public  
11 Employees Retirement System who has been a contributing member of  
12 the Teachers' Retirement System for more than three years, for  
13 service previously credited by the Public Employees Retirement  
14 System upon his or her written request and: (1) Shall require the  
15 transfer of the member's Public Employees Retirement System  
16 accumulated contributions to the Teachers Retirement System; or (2)  
17 shall require a repayment of the amount withdrawn from the Public  
18 Employees Retirement System, plus interest at a rate to be  
19 determined by the retirement board, compounded annually from the  
20 date of withdrawal to the date of payment, any time prior to the  
21 member's effective retirement date: *Provided*, That there shall be  
22 added by the member to the amounts transferred or repaid under this  
23 subsection an amount which shall be sufficient to equal the  
24 contributions he or she would have made had the member been under

1 the Teachers Retirement System during the period of his or her  
2 membership in the Public Employees Retirement System. All interest  
3 paid or transferred shall be deposited in the reserve fund.

4 (g) For service as a teacher in an elementary or secondary  
5 parochial school, located within this state and fully accredited by  
6 the West Virginia Department of Education, the retirement board  
7 shall grant credit to the member: *Provided*, That the member shall  
8 pay to the system twelve percent of that member's gross salary  
9 earned during the first full year of current employment whether a  
10 member of the Teachers' Retirement System or the Teachers' Defined  
11 Contribution Retirement System, times the number of years for which  
12 credit is granted, plus interest at a rate to be determined by the  
13 retirement board. The interest shall be deposited in the reserve  
14 fund and service granted at the time of retirement shall not exceed  
15 the lesser of ten years or fifty percent of the member's total  
16 service as a teacher in the West Virginia public school system. Any  
17 transfer of parochial school service, as provided in this section,  
18 may not be used to establish eligibility for a retirement allowance  
19 and retirement board shall grant credit for the transfer as  
20 additional service only: *Provided, however*, That a transfer of  
21 parochial school service is prohibited if the service is used to  
22 obtain a retirement benefit from another retirement system.

23 (h) Active members who previously worked in CETA  
24 (Comprehensive Employment and Training Act) may receive service

1 credit for time served in that capacity: *Provided*, That in order to  
2 receive service credit under the provisions of this subsection the  
3 following conditions must be met: (1) The member must have moved  
4 from temporary employment with the participating employer to  
5 permanent full-time employment with the participating employer  
6 within one hundred twenty days following the termination of the  
7 member's CETA employment; (2) the retirement board must receive  
8 evidence that establishes to a reasonable degree of certainty as  
9 determined by the retirement board that the member previously  
10 worked in CETA; and (3) the member shall pay to the retirement  
11 board an amount equal to the employer and employee contribution  
12 plus interest at the amount set by the retirement board for the  
13 amount of service credit sought pursuant to this subsection:  
14 *Provided, however*, That the maximum service credit that may be  
15 obtained under the provisions of this subsection is two years:  
16 *Provided further*, That a member must apply and pay for the service  
17 credit allowed under this subsection and provide all necessary  
18 documentation by March 31, 2003: *And provided further*, That the  
19 retirement board shall exercise due diligence to notify affected  
20 employees of the provisions of this subsection.

21 (i) If a member is not eligible for prior service credit or  
22 pension as provided in this article, then his or her prior service  
23 shall not be considered a part of his or her total service.

24 (j) A member who withdrew from membership may regain his or

1 her former membership rights as specified in section thirteen of  
2 this article only in case he or she has served two years since his  
3 or her last withdrawal.

4 (k) Subject to the provisions of subsections (a) through (l),  
5 inclusive, of this section, the retirement board shall verify as  
6 soon as practicable the statements of service submitted. The  
7 retirement board shall issue prior service certificates to all  
8 persons eligible for the certificates under the provisions of this  
9 article. The certificates shall state the length of the prior  
10 service credit, but in no case shall the prior service credit  
11 exceed forty years.

12 (l) Notwithstanding any provision of this article to the  
13 contrary, when a member is or has been elected to serve as a member  
14 of the Legislature or any elected or appointed part-time public  
15 office, and the proper discharge of his or her duties of public  
16 office require that member to be absent from his or her teaching or  
17 administrative duties, the time served in discharge of his or her  
18 duties of the ~~legislative~~ office are credited as time served for  
19 purposes of computing service credit: *Provided*, That the retirement  
20 board may not require any additional contributions from that member  
21 in order for the retirement board to credit him or her with the  
22 contributing service credit earned while discharging official  
23 ~~legislative~~ duties: *Provided, however*, That nothing in this section  
24 may be construed to relieve the employer from making the employer

1 contribution at the member's regular salary rate or rate of pay  
2 from that employer on the contributing service credit earned while  
3 the member is discharging his or her official ~~legislative~~ duties.  
4 These employer payments shall commence as of June 1,2000: *Provided*  
5 *further*, That any member to which the provisions of this subsection  
6 apply may elect to pay to the retirement board an amount equal to  
7 what his or her contribution would have been for those periods of  
8 time he or she was serving in the public office ~~legislature~~. The  
9 periods of time upon which the member paid his or her contribution  
10 shall then be included for purposes of determining his or her final  
11 average salary as well as for determining years of service: *And*  
12 *provided further*, That a member using the provisions of this  
13 subsection is not required to pay interest on any contributions he  
14 or she may decide to make.

15 (m) The Teachers Retirement System shall grant service credit  
16 to any former member of the State Police Death, Disability and  
17 Retirement System who has been a contributing member for more than  
18 three years, for service previously credited by the State Police  
19 Death, Disability and Retirement System; and: (1) Shall require the  
20 transfer of the member's contributions to the Teachers Retirement  
21 System; or (2) shall require a repayment of the amount withdrawn  
22 any time prior to the member's retirement: *Provided*, That the  
23 member shall add to the amounts transferred or repaid under this  
24 paragraph an amount which is sufficient to equal the contributions

1 he or she would have made had the member been under the Teachers  
2 Retirement System during the period of his or her membership in the  
3 State Police Death, Disability and Retirement System plus interest  
4 at a rate to be determined by the retirement board compounded  
5 annually from the date of withdrawal to the date of payment. The  
6 interest paid shall be deposited in the reserve fund.

7 **ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.**

8 **§18-7B-11. Termination of membership.**

9 (a) Any member whose employment with a participating employer  
10 terminates after the completion of six complete years of employment  
11 service is eligible to terminate his or her annuity account and  
12 receive a distribution from the member's annuity account, in an  
13 amount equal to the member's contribution plus one third of the  
14 employer contributions and any earnings thereon. Any member whose  
15 employment with a participating employer terminates after the  
16 completion of nine complete years of employment service is eligible  
17 to terminate his or her annuity account and receive a distribution  
18 from the member's annuity account, in an amount equal to the  
19 member's contribution plus two thirds of the employer's  
20 contributions and any earnings thereon. Any member whose  
21 employment with a participating employer terminates after the  
22 completion of twelve complete years of employment service is  
23 eligible to terminate his or her annuity account and receive a  
24 distribution of all funds contributed and accumulated in his or her

1 annuity account. Any member whose employment with a participating  
2 employer terminates prior to the completion of six complete years  
3 of employment service is eligible to terminate his or her annuity  
4 account and receive a distribution from the member's annuity  
5 account, in an amount equal to the member's contribution plus any  
6 earnings thereon: *Provided*, That on the death or permanent, total  
7 disability of any member, that member is eligible to terminate his  
8 or her annuity account and receive all funds contributed to or  
9 accumulated in his or her annuity account.

10 (b) (1) Upon termination of employment, regardless of whether  
11 the member has taken a distribution of all or a portion of his or  
12 her vested account, the remaining balance, if any, in the member's  
13 employer account that is not vested shall be remitted and paid into  
14 a suspension account to be administered by the board. The Board  
15 shall propose rules for legislative approval in accordance with  
16 article three, chapter twenty-nine-a of this code regarding the  
17 distribution of any balance in the special account created by this  
18 section: *Provided*, That any funds in the account shall be used  
19 solely for the purpose of reducing employer contributions in future  
20 years.

21 (2) Any account balances remitted to the suspension account  
22 herein shall be maintained by the board in the suspension account  
23 in the name of the terminated employee for a period of five years  
24 following the member's termination of employment. For each

1 terminated employee at the culmination of the five-year period, the  
2 board shall certify in writing to each contributing employer the  
3 amount of the account balance plus earnings thereon attributable to  
4 each separate contributing employer's previously terminated  
5 employee's account which has been irrevocably forfeited due to the  
6 elapse of a five-year period since termination pursuant to section  
7 sixteen of this article.

8 (c) Upon certification to the several contributing employers  
9 of the aggregate account balances plus earnings thereon which have  
10 been irrevocably forfeited pursuant to this section, the several  
11 contributing employers shall be permitted in the next succeeding  
12 fiscal year or years to reduce their total aggregate contribution  
13 requirements pursuant to section seventeen of this article, for the  
14 then current fiscal year by an amount equal to the aggregate  
15 amounts irrevocably forfeited and certified as such to each  
16 contributing employer: *Provided*, That should the participating  
17 employer no longer be contributing to the Defined Contribution  
18 System, any funds in the account shall be paid directly to the  
19 employer.

20 (d) Upon the use of the amounts irrevocably forfeited to any  
21 contributing employer as a reduction in the then current fiscal  
22 year contribution obligation and upon notification provided by the  
23 several contributing employers to the board of their intention to  
24 use irrevocably forfeited amounts, the board shall direct the

1 distribution of the irrevocably forfeited amounts from the  
2 suspension account to be deposited on behalf of the contributing  
3 employer to the member annuity accounts of its then current  
4 employees pursuant to section seventeen of this article: *Provided,*  
5 That notwithstanding any provision of this article to the contrary,  
6 when a member is or has been elected to serve as a member of the  
7 Legislature, or has been elected or appointed to any other part-  
8 time public office, and the proper discharge of his or her duties  
9 of public office requires that member to be absent from his or her  
10 teaching, nonteaching or administrative duties, the time served in  
11 discharge of his or her duties of the ~~legislative~~ office are  
12 credited as time served for purposes of computing service credit,  
13 regardless when this time was served: *Provided, however,* That the  
14 board may not require any additional contributions from that member  
15 in order for the board to credit him or her with the contributing  
16 service credit earned while discharging official ~~legislative~~  
17 duties: *Provided further,* That nothing herein may be construed to  
18 relieve the employer from making the employer contribution at the  
19 member's regular salary rate or rate of pay from that employer on  
20 the contributing service credit earned while the member is  
21 discharging his or her official ~~legislative~~ duties. These employer  
22 payments shall commence as of July 1, 2003: *And provided further,*  
23 That any member to which the provisions of this subsection apply  
24 may elect to pay to the board an amount equal to what his or her

1 contribution would have been for those periods of time he or she  
2 was serving in the Legislature or any other appointed or elected  
3 public office.

4 **CHAPTER 18A. SCHOOL PERSONNEL**

5 **ARTICLE 2. SCHOOL PERSONNEL.**

6 **§18A-2-2. Employment of teachers; contracts; continuing contract**  
7 **status; how terminated; dismissal for lack of need;**  
8 **released time; failure of teacher to perform contract**  
9 **or violation thereof; written notice bonus for**  
10 **teachers and professional personnel.**

11 (a) Before entering upon their duties, all teachers shall  
12 execute a contract with their county boards, which shall state the  
13 salary to be paid and shall be in the form prescribed by the State  
14 Superintendent. Each contract shall be signed by the teacher and  
15 by the president and secretary of the county board and shall be  
16 filed, together with the certificate of the teacher, by the  
17 secretary of the office of the county board: *Provided*, That when  
18 necessary to facilitate the employment of employable professional  
19 personnel and prospective and recent graduates of teacher education  
20 programs who have not yet attained certification, the contract may  
21 be signed upon the condition that the certificate is issued to the  
22 employee prior to the beginning of the employment term in which the  
23 employee enters upon his or her duties.

1 (b) Each teacher's contract, under this section, shall be  
2 designated as a probationary or continuing contract. A  
3 probationary teacher's contract shall be for a term of not less  
4 than one nor more than three years, one of which shall be for  
5 completion of a beginning teacher internship pursuant to the  
6 provisions of section two-b, article three of this chapter, if  
7 applicable. If, after three years of such employment, the teacher  
8 who holds a professional certificate, based on at least a  
9 bachelor's degree, has met the qualifications for a bachelor's  
10 degree and the county board enter into a new contract of  
11 employment, it shall be a continuing contract, subject to the  
12 following:

13 (1) Any teacher holding a valid certificate with less than a  
14 bachelor's degree who is employed in a county beyond the three-year  
15 probationary period shall upon qualifying for the professional  
16 certificate based upon a bachelor's degree, if reemployed, be  
17 granted continuing contract status; and

18 (2) A teacher holding continuing contract status with one  
19 county shall be granted continuing contract status with any other  
20 county upon completion of one year of acceptable employment if the  
21 employment is during the next succeeding school year or immediately  
22 following an approved leave of absence extending no more than one  
23 year.

24 (c) The continuing contract of any teacher shall remain in

1 full force and effect except as modified by mutual consent of the  
2 school board and the teacher, unless and until terminated, subject  
3 to the following:

4 (1) A continuing contract may not be terminated except:

5 (A) By a majority vote of the full membership of the county  
6 board on or before March 1 of the then current year, after written  
7 notice, served upon the teacher, return receipt requested, stating  
8 cause or causes and an opportunity to be heard at a meeting of the  
9 board prior to the board's action on the termination issue; or

10 (B) By written resignation of the teacher on or before March  
11 1 to initiate termination of a continuing contract;

12 (2) The termination shall take effect at the close of the  
13 school year in which the contract is terminated;

14 (3) The contract may be terminated at any time by mutual  
15 consent of the school board and the teacher;

16 (4) This section does not affect the powers of the school  
17 board to suspend or dismiss a principal or teacher pursuant to  
18 section eight of this article;

19 (5) A continuing contract for any teacher holding a  
20 certificate valid for more than one year and in full force and  
21 effect during the school year 1984-1985 shall remain in full force  
22 and effect;

23 (6) A continuing contract does not operate to prevent a  
24 teacher's dismissal based upon the lack of need for the teacher's

1 services pursuant to the provisions of law relating to the  
2 allocation to teachers and pupil-teacher ratios. The written  
3 notification of teachers being considered for dismissal for lack of  
4 need shall be limited to only those teachers whose consideration  
5 for dismissal is based upon known or expected circumstances which  
6 will require dismissal for lack of need. An employee who was not  
7 provided notice and an opportunity for a hearing pursuant to this  
8 subsection may not be included on the list. In case of dismissal  
9 for lack of need, a dismissed teacher shall be placed upon a  
10 preferred list in the order of their length of service with that  
11 board. No teacher may be employed by the board until each  
12 qualified teacher upon the preferred list, in order, has been  
13 offered the opportunity for reemployment in a position for which he  
14 or she is qualified, not including a teacher who has accepted a  
15 teaching position elsewhere. The reemployment shall be upon a  
16 teacher's preexisting continuing contract and has the same effect  
17 as though the contract had been suspended during the time the  
18 teacher was not employed.

19 (d) In the assignment of position or duties of a teacher under  
20 a continuing contract, the board may provide for released time of  
21 a teacher for any special professional or governmental assignment  
22 without jeopardizing the contractual rights of the teacher or any  
23 other rights, privileges or benefits under the provisions of this  
24 chapter. Released time shall be provided for any professional

1 educator while serving as a member of the Legislature or any  
2 elected or appointed part-time public office during any duly  
3 constituted session of that body and its interim and statutory  
4 committees and commissions, without jeopardizing his or her  
5 contractual rights or any other rights, privileges, benefits or  
6 accrual of experience for placement on the state minimum salary  
7 schedule in the following school year under the provisions of this  
8 chapter, board policy and law.

9 (e) Any teacher who fails to fulfill his or her contract with  
10 the board, unless prevented from doing so by personal illness or  
11 other just cause or unless released from his or her contract by the  
12 board, or who violates any lawful provision of the contract, is  
13 disqualified to teach in any other public school in the state for  
14 a period of the next ensuing school year and the State Department  
15 of Education or board may hold all papers and credentials of the  
16 teacher on file for a period of one year for the violation:  
17 *Provided*, That marriage of a teacher is not considered a failure to  
18 fulfill, or violation of, the contract.

19 (f) Any classroom teacher, as defined in section one, article  
20 one of this chapter, who desires to resign employment with a county  
21 board or request a leave of absence, the resignation or leave of  
22 absence to become effective on or before July 15 of the same year  
23 and after completion of the employment term, may do so at any time  
24 during the school year by written notification of the resignation

1 or leave of absence and any notification received by a county board  
2 shall automatically extend the teacher's public employee insurance  
3 coverage until August 31 of the same year.

4 (g) (1) A classroom teacher who gives written notice to the  
5 county board on or before January 15 of the school year of his or  
6 her retirement from employment with the board at the conclusion of  
7 the school year shall be paid \$500 from the Early Notification of  
8 Retirement line item established for the Department of Education  
9 for this purpose, subject to appropriation by the Legislature. If  
10 the appropriations to the Department of Education for this purpose  
11 are insufficient to compensate all applicable teachers, the  
12 Department of Education shall request a supplemental appropriation  
13 in an amount sufficient to compensate all such teachers.  
14 Additionally, if funds are still insufficient to compensate all  
15 applicable teachers, the priority of payment is for teachers who  
16 give written notice the earliest. This payment shall not be  
17 counted as part of the final average salary for the purpose of  
18 calculating retirement.

19 (2) The position of a classroom teacher providing written  
20 notice of retirement pursuant to this subsection may be considered  
21 vacant and the county board may immediately post the position as an  
22 opening to be filled at the conclusion of the school year. If a  
23 teacher has been hired to fill the position of a retiring classroom  
24 teacher prior to the start of the next school year, the retiring

1 classroom teacher is disqualified from continuing his or her  
2 employment in that position. However, the retiring classroom  
3 teacher may be permitted to continue his or her employment in that  
4 position and forfeit the early retirement notification payment if,  
5 after giving notice of retirement in accordance with this  
6 subsection, he or she becomes subject to a significant unforeseen  
7 financial hardship, including a hardship caused by the death or  
8 illness of an immediate family member or loss of employment of a  
9 spouse. Other significant unforeseen financial hardships shall be  
10 determined by the county superintendent on a case-by-case basis.  
11 This subsection does not prohibit a county school board from  
12 eliminating the position of a retiring classroom teacher.

13 **§18A-2-6a. Released time for service personnel.**

14 In the assignment of position or duties of a service person  
15 under a continuing contract, the board may provide for released  
16 time of a service person for any special professional or  
17 governmental assignment without jeopardizing the contractual rights  
18 of such service or any other rights, privileges or benefits under  
19 the provisions of this chapter. Released time shall be provided  
20 for any service person while serving as a member of the Legislature  
21 or any elected or appointed part-time public office during any duly  
22 constituted session of that body and its interim and statutory  
23 committees and commissions, without jeopardizing his or her  
24 contractual rights or any other rights, privileges, benefits or

1     accrual of experience for placement on the state minimum salary  
2     schedule in the following school year under the provisions of this  
3     chapter, board policy and law. For the purposes of this section,  
4     service person is the singular of service personnel as defined in  
5     section one, article one of this chapter.