

# WEST VIRGINIA LEGISLATURE

## 2016 REGULAR SESSION

Introduced

### House Bill 2560

FISCAL  
NOTE

2015 Carryover

(BY DELEGATES CANTERBURY AND FOLK, WALTERS,  
HAMILTON, MARCUM AND HICKS )

[Introduced January 13, 2016; referred to the  
Committee on Pensions and Retirement then  
Finance.]

[By Request of the Consolidated Public Retirement  
Board]

1 A BILL to amend and reenact §5-10A-2 and §5-10A-6 of the Code of West Virginia, 1931, as  
 2 amended, all relating to disqualification for public retirement plan benefits when a  
 3 participant is determined to have rendered less than honorable service; adding the West  
 4 Virginia Municipal Police Officers and Firefighters Retirement System to the definition of  
 5 "retirement plan"; and specifying that former participants of the West Virginia Teachers'  
 6 Defined Contribution Retirement System who elected to transfer to the West Virginia  
 7 Teachers' Retirement System and whose benefits have been terminated for less than  
 8 honorable service shall not be refunded any transferred vested employer contributions.

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

1 That §5-10A-2 and §5-10A-6 of the Code of West Virginia, 1931, as amended, be  
 2 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  
 3 article ten of this chapter; each municipal employees retirement plan pursuant to article  
 4 twenty-two, chapter eight of this code; each Policemen's and Firemen's Pension and Relief Fund  
 5 pursuant to article twenty-two, chapter eight of this code; the West Virginia Municipal Police  
 6 Officers and Firefighters Retirement System pursuant to article twenty-two-a, chapter eight of  
 7 this code; the West Virginia State Police Death, Disability and Retirement Fund pursuant to article  
 8 two, chapter fifteen of this code; the West Virginia State Police Retirement System pursuant to  
 9 article two-a, chapter fifteen of this code; the State Teachers Retirement System pursuant to  
 10 article seven-a, chapter eighteen of this code; the Teachers' Defined Contribution Retirement  
 11 System pursuant to article seven-b, chapter eighteen of this code; the Deputy Sheriff Retirement

12 System pursuant to article fourteen-d, chapter seven of this code; the higher education retirement  
13 plan and supplemental retirement plans pursuant to section four-a, article twenty-three, chapter  
14 eighteen of this code; the Judges' Retirement System pursuant to article nine, chapter fifty-one of  
15 this code; the West Virginia Emergency Medical Services Retirement System pursuant to article  
16 five-v, chapter sixteen of this code; and any other plan established pursuant to this code for the  
17 payment of pension, annuity, disability or other benefits to any person by reason of his or her  
18 service as an officer or employee of this state or of any political subdivision, agency or  
19 instrumentality thereof, whenever the plan is supported, in whole or in part, by public funds.

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

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

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

28 (e) "Former participant" means any person who is no longer eligible to receive any benefit  
29 under a retirement plan because full distribution has occurred.

30 (f) "Less than honorable service" means:

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

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

36 (3) Conduct of a participant or former participant which constitutes all of the elements of a  
 37 crime described in either subdivision (1) or (2) of this subsection but for which the participant or  
 38 former participant was not convicted because: (i) Having been indicted or having been charged  
 39 in an information for the crime, he or she made a plea bargaining agreement pursuant to which  
 40 he or she pleaded guilty to or nolo contendere to a lesser crime: *Provided*, That the lesser crime  
 41 is a felony containing all the elements described in subdivision (1) or (2) of this subsection; or (ii)  
 42 having been indicted or having been charged in an information for the crime, he or she was  
 43 granted immunity from prosecution for the crime.

44 (g) "Participant" means any person eligible for or receiving any benefit under a retirement  
 45 plan on account of his or her service as an officer or employee for a public employer.

46 (h) "Public employer" means the State of West Virginia and any political subdivision,  
 47 agency, or instrumentality thereof for which there is established a retirement plan.

48 (i) "Supervisory board" or "board" means the Consolidated Public Retirement Board; the  
 49 Board of Trustees of any Municipal Retirement Fund; the Board of Trustees of any policemen's  
 50 or firemen's retirement plan; the governing board of any supplemental retirement plan instituted  
 51 pursuant to authority granted by the previous provisions of section four-a, article twenty-three,  
 52 chapter eighteen of this code; and any other board, commission or public body having the duty to  
 53 supervise and operate any retirement plan.

**§5-10A-6. Refund of contributions.**

1 The supervisory board shall refund to a participant or beneficiary terminated from benefits  
 2 by section five of this article the contributions of the participant in the same manner and with the  
 3 same interest as provided to those participants or beneficiaries otherwise eligible to withdraw the  
 4 participant's contributions under the retirement plan, less the amount of any benefits which the  
 5 participant or his or her beneficiaries have previously received: *Provided*, That a member of the

6 Teachers' Defined Contribution Retirement System whose benefits have been terminated  
7 pursuant to section five of this article shall be refunded only his or her employee contributions and  
8 the earnings on those contributions; ~~Any~~ and any vested employer contributions shall remain in  
9 the Teachers' Defined Contribution Retirement System and be used to offset future employer  
10 contributions for each contributing employer: Provided, however, That any former member of  
11 the Teachers' Defined Contribution Retirement System who affirmatively elected to transfer to the  
12 State Teachers' Retirement System pursuant to article seven-d, chapter eighteen of this code and  
13 whose benefits have been terminated pursuant to section five of this article shall be refunded only  
14 his or her employee contributions and the earnings on those contributions; and any vested  
15 employer contributions from the Teachers' Defined Contribution Retirement System shall remain  
16 in the State Teachers Retirement System to be used to offset future employer contributions for  
17 each contributing employer.

NOTE: The purpose of this bill is to add WVMPFRS to the definition of "retirement plan" as it relates to disqualification for public retirement plan benefits; and to specify that TRS participants who elected to transfer from the TDC Plan (§18-7D) and whose benefits have been terminated for less than honorable service shall not be refunded any vested employer contributions transferred.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.