

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

**Introduced**

### **House Bill 4861**

BY DELEGATE SHOTT

[Introduced February 11, 2020; Referred to the Committee  
on the Judiciary]

1 A BILL to amend and reenact §5-10A-2 of the Code of West Virginia, 1931, as amended, relating  
 2 generally to disqualification for public service retirement plan benefits, modifying the  
 3 definition of less than honorable service, removing the exception of a misdemeanor from  
 4 that aspect of less than honorable service involving impeachment and conviction;  
 5 removing the requirement that the participant or former participant plead guilty or nolo  
 6 contendere to felony criminal conduct to constitute less than honorable service; and  
 7 providing that conviction of specified misdemeanor conduct related to the participant's  
 8 term in office or participant's term of employment in public service constitutes less than  
 9 honorable service.

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

**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 §5-10-1 *et seq.* of this chapter; each municipal employees retirement plan pursuant to § 8-22-1  
 4 *et seq.* of this code; each policemen's and firemen's pension and relief fund pursuant to §8-22-1  
 5 *et seq.* of this code; the West Virginia Municipal Police Officers and Firefighters Retirement  
 6 System pursuant to §8-22A-1 *et seq.* of this code; the West Virginia State Police Death, Disability  
 7 and Retirement Fund pursuant to §15-2-1 *et seq.* of this code; the West Virginia State Police  
 8 Retirement System pursuant to §15-2A-1 *et seq.* of this code; the State Teachers Retirement  
 9 System pursuant to §18-7A-1 *et seq.* of this code; the Teachers' Defined Contribution Retirement  
 10 System pursuant to §18-7B-1 *et seq.* of this code; the Deputy Sheriff Retirement System pursuant  
 11 to §7-14D-1 *et seq.* of this code; the higher education retirement plan and supplemental retirement  
 12 plans pursuant to §18-23-4a of this code; the Judges' Retirement System pursuant to §51-9-1 *et*  
 13 *seq.* of this code; the West Virginia Emergency Medical Services Retirement System pursuant to  
 14 §16-5V-1 *et seq.* of this code; and any other plan established pursuant to this code for the

15 payment of pension, annuity, disability or other benefits to any person by reason of his or her  
16 service as an officer or employee of this state or of any political subdivision, agency or  
17 instrumentality thereof, whenever the plan is supported, in whole or in part, by public funds.

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

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

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

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

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

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

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

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

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

41           ~~(ii)~~ (B) Having been indicted or having been charged in an information for the crime, he or  
42 she was granted immunity from prosecution for the crime; or

43           (C) Conviction of a participant or former participant for the misdemeanor offenses provided  
44 in the following sections of this code related to his or her office or employment which he or she  
45 committed while holding the office or during the employment:

46           (i) §61-3-13, §61-3-14, and §61-3-20 of this code;

47           (ii) §61-5-2, §61-5-6, §61-5-21, §61-5-22, §61-5-23, and §61-5-24 of this code; and

48           (iii) §61-5A-4, §61-5A-5, §61-5A-6, and §61-5A-7 of this code.

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

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

53           (i) "Supervisory board" or "board" means the Consolidated Public Retirement Board; the  
54 board of trustees of any municipal retirement fund; the board of trustees of any policemen's or  
55 firemen's retirement plan; the governing board of any supplemental retirement plan instituted  
56 pursuant to authority granted by the previous provisions of §18-23-4a of this code; and any other  
57 board, commission or public body having the duty to supervise and operate any retirement plan.

NOTE: The purpose of this bill is to redefine the term "less than honorable service" to include certain misdemeanors for disqualification for public retirement plan benefits.

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