

92998
\$8636
YETO

Veto

FILED

2004 APR -6 P 6:51

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2004

ENROLLED

SENATE BILL NO. 636

(By Senator Plymale)

PASSED March 13, 2004

In Effect ninety days from Passage

FILED

2004 APR -6 P 6: 51

OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED
Senate Bill No. 636

(BY SENATOR PLYMALE)

[Passed March 13, 2004; in effect ninety days from passage.]

AN ACT to amend and reenact §18-7A-13a and §18-7A-17 of the code of West Virginia, 1931, as amended, all relating to employment of members of the teachers defined benefit retirement system by institutions of higher education following the retirement of the member; and including certain compensation of certain members in determination of benefits if certain conditions are met.

Be it enacted by the Legislature of West Virginia:

That §18-7A-13a and §18-7A-17 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-13a. Resumption of service by retired teachers.

- 1 (a) For the purpose of this section, reemployment of a
- 2 former or retired teacher as a teacher shall in no way

3 impair that teacher's eligibility for a prior service pension
4 or any other benefit provided by this article.

5 (b) Retired teachers, who qualified for an annuity
6 because of age or service, may not receive prior service
7 allowance from the retirement board when employed as a
8 teacher and when regularly employed by the state of West
9 Virginia. The payment of the allowance shall be discontin-
10 ued on the first day of the month within which employ-
11 ment begins and shall be resumed on the first day of the
12 month succeeding the month within which employment
13 ceases. The annuity paid the teacher on first retirement
14 resulting from the teachers' accumulation fund and the
15 employers' accumulation fund shall continue throughout
16 the governmental service and thereafter according to the
17 option selected by the teacher upon first retirement.

18 (c) Retired teachers, who qualified for an annuity
19 because of disability, shall receive no further retirement
20 payments if the retirement board finds that the disability
21 of the teacher no longer exists; payment shall be discontin-
22 ued on the first day of the month within which the finding
23 is made. If the retired teacher returns to service as a
24 teacher, he or she shall contribute to the teachers' accumu-
25 lation fund as a member of the system. His or her prior
26 service eligibility, if any, shall not be impaired because of
27 his or her disability retirement. His or her accumulated
28 contributions and interest which were transferred to the
29 benefit fund upon his or her retirement shall be returned
30 to his or her individual account in the teachers' accumula-
31 tion fund, minus retirement payments received which were
32 not supported by the contributions and interest. Upon
33 subsequent retirement, he or she shall receive credit for all
34 of his or her contributory experience, anything to the
35 contrary in this article notwithstanding.

36 (d) Notwithstanding any provision of this code to the
37 contrary, a person who retires under the system provided
38 by this article may subsequently become employed on
39 either a full-time, part-time basis or contract basis by any

40 institution of higher education. Any such employment
41 after the effective date of the enactment of this section in
42 two thousand four shall be without any loss of retirement
43 annuity or retirement benefits if the person's retirement
44 commences between the first day of January, one thousand
45 nine hundred ninety-five, and the thirty-first day of
46 December, two thousand three: *Provided*, That the person
47 shall not be eligible to participate in any other state
48 retirement system provided by this code.

49 (e) The retirement board is authorized to require of the
50 retired teachers and their employers such reports as it
51 considers necessary to effectuate the provisions of this
52 section.

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

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

10 (b) For the purpose of this article, the retirement board
11 shall grant prior service credit to new entrants and other
12 members of the retirement system for service in any of the
13 armed forces of the United States in any period of national
14 emergency within which a federal Selective Service Act
15 was in effect. For purposes of this section, "armed forces"
16 includes women's army corps, women's appointed volun-
17 teers for emergency service, army nurse corps, spars,
18 women's reserve and other similar units officially parts of
19 the military service of the United States. The military
20 service is considered equivalent to public school teaching
21 and the salary equivalent for each year of that service is

22 the actual salary of the member as a teacher for his or her
23 first year of teaching after discharge from military service.
24 Prior service credit for military service shall not exceed
25 ten years for any one member, nor shall it exceed
26 twenty-five percent of total service at the time of retire-
27 ment. Notwithstanding the preceding provisions of this
28 subsection, contributions, benefits and service credit with
29 respect to qualified military service shall be provided in
30 accordance with Section 414(u) of the Internal Revenue
31 Code. For purposes of this section, "qualified military
32 service" has the same meaning as in Section 414(u) of the
33 Internal Revenue Code. The retirement board is autho-
34 rized to determine all questions and make all decisions
35 relating to this section and, pursuant to the authority
36 granted to the retirement board in section one, article ten-
37 d, chapter five of this code, may promulgate rules relating
38 to contributions, benefits and service credit to comply with
39 Section 414(u) of the Internal Revenue Code.

40 (c) For service as a teacher in the employment of the
41 federal government, or a state or territory of the United
42 States, or a governmental subdivision of that state or
43 territory, the retirement board shall grant credit to the
44 member: *Provided*, That the member shall pay to the
45 system double the amount he or she contributed during the
46 first full year of current employment, times the number of
47 years for which credit is granted, plus interest at a rate to
48 be determined by the retirement board. The interest shall
49 be deposited in the reserve fund and service credit granted
50 at the time of retirement shall not exceed the lesser of ten
51 years or fifty percent of the member's total service as a
52 teacher in West Virginia. Any transfer of out-of-state
53 service, as provided in this article, shall not be used to
54 establish eligibility for a retirement allowance and the
55 retirement board shall grant credit for the transferred
56 service as additional service only: *Provided, however*, That
57 a transfer of out-of-state service is prohibited if the service
58 is used to obtain a retirement benefit from another retire-
59 ment system: *Provided further*, That salaries paid to

60 members for service prior to entrance into the retirement
61 system shall not be used to compute the average final
62 salary of the member under the retirement system.

63 (d) Service credit for members or retired members shall
64 not be denied on the basis of minimum income rules
65 promulgated by the teachers retirement board: *Provided*,
66 That the member or retired member shall pay to the
67 system the amount he or she would have contributed
68 during the year or years of public school service for which
69 credit was denied as a result of the minimum income rules
70 of the teachers retirement board.

71 (e) No members shall be considered absent from service
72 while serving as a member or employee of the Legislature
73 of the state of West Virginia during any duly constituted
74 session of that body or while serving as an elected member
75 of a county commission during any duly constituted
76 session of that body.

77 (f) No member shall be considered absent from service as
78 a teacher while serving as an officer with a statewide
79 professional teaching association, or who has served in
80 that capacity, and no retired teacher, who served in that
81 capacity while a member, shall be considered to have been
82 absent from service as a teacher by reason of that service:
83 *Provided*, That the period of service credit granted for that
84 service shall not exceed ten years: *Provided, however*, That
85 a member or retired teacher who is serving or has served
86 as an officer of a statewide professional teaching associa-
87 tion shall make deposits to the teachers retirement board,
88 for the time of any absence, in an amount double the
89 amount which he or she would have contributed in his or
90 her regular assignment for a like period of time.

91 (g) The teachers retirement board shall grant service
92 credit to any former or present member of the West
93 Virginia public employees retirement system who has been
94 a contributing member for more than three years for
95 service previously credited by the public employees

96 retirement system and: (1) Shall require the transfer of the
97 member's contributions to the teachers retirement system;
98 or (2) shall require a repayment of the amount withdrawn
99 any time prior to the member's retirement: *Provided*, That
100 there shall be added by the member to the amounts
101 transferred or repaid under this subsection an amount
102 which shall be sufficient to equal the contributions he or
103 she would have made had the member been under the
104 teachers retirement system during the period of his or her
105 membership in the public employees retirement system
106 plus interest at a rate to be determined by the board
107 compounded annually from the date of withdrawal to the
108 date of payment. The interest paid shall be deposited in
109 the reserve fund.

110 (h) For service as a teacher in an elementary or second-
111 ary parochial school, located within this state and fully
112 accredited by the West Virginia department of education,
113 the retirement board shall grant credit to the member:
114 *Provided*, That the member shall pay to the system double
115 the amount contributed during the first full year of current
116 employment, times the number of years for which credit is
117 granted, plus interest at a rate to be determined by the
118 retirement board. The interest shall be deposited in the
119 reserve fund and service granted at the time of retirement
120 shall not exceed the lesser of ten years or fifty percent of
121 the member's total service as a teacher in the West Vir-
122 ginia public school system. Any transfer of parochial
123 school service, as provided in this section, may not be used
124 to establish eligibility for a retirement allowance and the
125 board shall grant credit for the transfer as additional
126 service only: *Provided, however*, That a transfer of paro-
127 chial school service is prohibited if the service is used to
128 obtain a retirement benefit from another retirement
129 system.

130 (i) Active members who previously worked in CETA
131 (Comprehensive Employment and Training Act) may
132 receive service credit for time served in that capacity:

133 *Provided*, That in order to receive service credit under the
134 provisions of this subsection the following conditions must
135 be met: (1) The member must have moved from temporary
136 employment with the participating employer to permanent
137 full-time employment with the participating employer
138 within one hundred twenty days following the termination
139 of the member's CETA employment; (2) the board must
140 receive evidence that establishes to a reasonable degree of
141 certainty as determined by the board that the member
142 previously worked in CETA; and (3) the member shall pay
143 to the board an amount equal to the employer and em-
144 ployee contribution plus interest at the amount set by the
145 board for the amount of service credit sought pursuant to
146 this subsection: *Provided, however*, That the maximum
147 service credit that may be obtained under the provisions of
148 this subsection is two years: *Provided further*, That a
149 member must apply and pay for the service credit allowed
150 under this subsection and provide all necessary documen-
151 tation by the thirty-first day of March, two thousand
152 three: *And provided further*, That the board shall exercise
153 due diligence to notify affected employees of the provi-
154 sions of this subsection.

155 (j) If a member is not eligible for prior service credit or
156 pension as provided in this article, then his or her prior
157 service shall not be considered a part of his or her total
158 service.

159 (k) A member who withdrew from membership may
160 regain his or her former membership rights as specified in
161 section thirteen of this article only in case he or she has
162 served two years since his or her last withdrawal.

163 (l) Subject to the provisions of subsections (a) through (l),
164 inclusive, of this section, the board shall verify as soon as
165 practicable the statements of service submitted. The
166 retirement board shall issue prior service certificates to all
167 persons eligible for the certificates under the provisions of
168 this article. The certificates shall state the length of the

169 prior service credit, but in no case shall the prior service
170 credit exceed forty years.

171 (m) Notwithstanding any provision of this article to the
172 contrary, when a member is or has been elected to serve as
173 a member of the Legislature and the proper discharge of
174 his or her duties of public office require that member to be
175 absent from his or her teaching or administrative duties,
176 the time served in discharge of his or her duties of the
177 legislative office are credited as time served for purposes
178 of computing service credit: *Provided*, That the board may
179 not require any additional contributions from that member
180 in order for the board to credit him or her with the con-
181 tributing service credit earned while discharging official
182 legislative duties: *Provided, however*, That nothing herein
183 may be construed to relieve the employer from making the
184 employer contribution at the member's regular salary rate
185 or rate of pay from that employer on the contributing
186 service credit earned while the member is discharging his
187 or her official legislative duties. These employer payments
188 shall commence as of the first day of June, two thousand:
189 *Provided further*, That any member to which the provi-
190 sions of this subsection apply may elect to pay to the board
191 an amount equal to what his or her contribution would
192 have been and, for service after the effective date of the
193 amendment of this section in two thousand four, may also
194 elect to pay in addition both the employer and employee
195 share for legislative compensation for those periods of
196 time he or she was serving in the Legislature. The periods
197 of time upon which the member paid his or her contribu-
198 tion and, if applicable, the compensation for which he or
199 she paid both the employer and employee share, shall then
200 be included for purposes of determining his or her final
201 average salary as well as for determining years of service:
202 *And provided further*, That a member utilizing the provi-
203 sions of this subsection is not required to pay interest on
204 any contributions he or she may decide to make.

205 (n) The teachers retirement board shall grant service
206 credit to any former member of the state police death,

207 disability and retirement system who has been a contribut-
208 ing member for more than three years, for service previ-
209 ously credited by the state police death, disability and
210 retirement system; and: (1) Shall require the transfer of the
211 member's contributions to the teachers retirement system;
212 or (2) shall require a repayment of the amount withdrawn
213 any time prior to the member's retirement: *Provided*, That
214 the member shall add to the amounts transferred or repaid
215 under this paragraph an amount which is sufficient to
216 equal the contributions he or she would have made had the
217 member been under the teachers retirement system during
218 the period of his or her membership in the state police
219 death, disability and retirement system plus interest at a
220 rate of six percent compounded annually from the date of
221 withdrawal to the date of payment. The interest paid shall
222 be deposited in the reserve fund.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Handwritten Signature]
.....
Chairman Senate Committee

[Handwritten Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Handwritten Signature]
.....
Clerk of the Senate

[Handwritten Signature]
.....
Clerk of the House of Delegates

[Handwritten Signature]
.....
President of the Senate

[Handwritten Signature]
.....
Speaker House of Delegates

The within *is disapproved* this the *6th*
Day of *April*, 2004.

[Handwritten Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

DATE 3/22/04

TIME 9:45 AM