

FILED

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**WEST VIRGINIA LEGISLATURE**

**SEVENTY-EIGHTH LEGISLATURE**

**REGULAR SESSION, 2008**

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

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COMMITTEE SUBSTITUTE

FOR

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**ENROLLED**

**Senate Bill No. 201**

(SENATOR FOSTER, *original sponsor*)

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[Passed March 8, 2008; in effect ninety days from passage.]

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**Senate Bill No. 201**

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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  
3 Employees Retirement Act pursuant to article ten of  
4 this chapter; each municipal employees retirement plan  
5 pursuant to article twenty-two, chapter eight of this  
6 code; each policemen's and firemen's pension and relief  
7 fund pursuant to article twenty-two, chapter eight of  
8 this code; the West Virginia State Police Death,  
9 Disability and Retirement Fund pursuant to article two,  
10 chapter fifteen of this code; the West Virginia State  
11 Police Retirement System pursuant to article two-a,  
12 chapter fifteen of this code; the State Teachers  
13 Retirement System pursuant to article seven-a, chapter  
14 eighteen of this code; the Teachers' Defined  
15 Contribution Retirement System pursuant to article  
16 seven-b, chapter eighteen of this code; the Deputy

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

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

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

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

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

48 (f) “Less than honorable service” means:

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

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

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

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

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

72 (g) “Participant” means any person eligible for or  
73 receiving any benefit under a retirement plan on  
74 account of his or her service as an officer or employee  
75 for a public employer.

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

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

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

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

12 (1) If more than two years have elapsed since the  
13 judgment of conviction upon which the notice is based  
14 became final; or

15 (2) In cases described in subdivision (3), subsection (f),  
16 section two of this article, if more than two years have  
17 elapsed since, as the case may be: The plea bargaining  
18 agreement or the grant of immunity; or

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

21 (b) The notice shall contain a concise statement of the  
22 reasons why the board believes that the participant or  
23 former participant rendered less than honorable service  
24 and shall be made either by personal service or by  
25 certified mail, return receipt requested, to the address  
26 which the participant, former participant or beneficiary  
27 maintains for purposes of corresponding with the  
28 board. If notice is made by certified mail, service shall  
29 be considered complete upon mailing and a completed  
30 receipt constitutes proof of the receipt of the notice.  
31 The notice shall inform the participant, former  
32 participant or beneficiary that he or she has the right to  
33 demand that the board seek a determination in circuit  
34 court of his or her eligibility for benefits and  
35 membership in the retirement plan by notifying the  
36 board of the demand within forty days. The notice shall  
37 also inform the participant, former participant or  
38 beneficiary that the board will terminate the benefits in  
39 accordance with section four of this article and refund  
40 the participant's or former participant's contributions  
41 with interest, less benefits previously paid as provided  
42 in section six of this article if the participant, former  
43 participant or beneficiary either waives the right to  
44 demand that the board take the matter before the  
45 circuit court or fails to respond to the board's notice  
46 within forty days after service.

**§5-10A-4. Determination by circuit court of ineligibility; jurisdiction; appeal.**

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

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

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

**§5-10A-5. Termination of benefits.**



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

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

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

1 The supervisory board shall refund to a participant or  
2 beneficiary terminated from benefits by section five of

3 this article the contributions of the participant in the  
4 same manner and with the same interest as provided to  
5 those participants or beneficiaries otherwise eligible to  
6 withdraw the participant's contributions under the  
7 retirement plan, less the amount of any benefits which  
8 the participant or his or her beneficiaries have  
9 previously received: *Provided*, That a member of the  
10 Teachers' Defined Contribution Retirement System  
11 whose benefits have been terminated pursuant to  
12 section five of this article shall be refunded only his or  
13 her employee contributions and the earnings on those  
14 contributions. Any vested employer contributions shall  
15 remain in the Teachers' Defined Contribution  
16 Retirement System and be used to offset future  
17 employer contributions for each contributing employer.

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

1 Nothing in this article prohibits a participant or  
2 former participant made ineligible for benefits by  
3 virtue of conviction of a crime under this article and  
4 who has paid the full penalty imposed by law for the  
5 crime from accepting a position as an officer or  
6 employee of the same or different public employer and  
7 joining a retirement plan as a new member; but the new  
8 member and his or her beneficiaries shall remain  
9 forever ineligible for any benefits arising from the new  
10 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.**

1 (a) The State of West Virginia or any of its political

2 subdivisions shall have the right of setoff against any  
3 unpaid benefits which have accrued or may thereafter  
4 accrue under the plan, including any contributions by  
5 the participant or former participant for any claim  
6 caused by less than honorable service by the participant  
7 or former participant.

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

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

11 [Enr. Com. Sub for Com. Sub. for S. B. No. 201

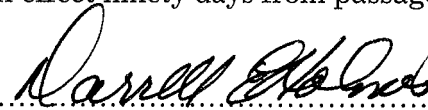
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
.....  
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 appeared* ..... this  
the *28th* Day of *March* ..... 2008.

  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 21 2008

Time 9:40am