

Senate Bill No. 302

(By Senators Gaunch and Trump)

[Introduced January 26, 2015; referred to the Committee on Pensions; and then to the Committee on the Judiciary.]

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

Be it enacted by the Legislature of West Virginia:

That §5-10A-2 and §5-10A-6 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 this
4 chapter; each municipal employees retirement plan pursuant to
5 article twenty-two, chapter eight of this code; each policemen’s
6 and firemen’s pension and relief fund pursuant to article
7 twenty-two, chapter eight of this code; the West Virginia
8 Municipal Police Officers and Firefighters Retirement System
9 pursuant to article twenty-two-a, chapter eight of this code; the
10 West Virginia State Police Death, Disability and Retirement
11 Fund pursuant to article two, chapter fifteen of this code; the
12 West Virginia State Police Retirement System pursuant to
13 article two-a, chapter fifteen of this code; the State Teachers

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

31 (b) "Beneficiary" means any person eligible for or
32 receiving benefits on account of the service for a public

33 employer by a participant or former participant in a
34 retirement plan.

35 (c) “Benefits” means pension, annuity, disability or any
36 other benefits granted pursuant to a retirement plan.

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

43 (e) “Former participant” means any person who is no
44 longer eligible to receive any benefit under a retirement plan
45 because full distribution has occurred.

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

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

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

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

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

68 (g) "Participant" means any person eligible for or
69 receiving any benefit under a retirement plan on account of

70 his or her service as an officer or employee for a public
71 employer.

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

75 (I) "Supervisory board" or "board" means the
76 Consolidated Public Retirement Board; the board of trustees
77 of any municipal retirement fund; the board of trustees of any
78 policemen's or firemen's retirement plan; the governing
79 board of any supplemental retirement plan instituted pursuant
80 to authority granted by the previous provisions of section
81 four-a, article twenty-three, chapter eighteen of this code; and
82 any other board, commission or public body having the duty
83 to supervise and operate any retirement plan.

§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 this
3 article the contributions of the participant in the same manner
4 and with the same interest as provided to those participants

5 or beneficiaries otherwise eligible to withdraw the
6 participant's contributions under the retirement plan, less the
7 amount of any benefits which the participant or his or her
8 beneficiaries have previously received: *Provided*, That a
9 member of the Teachers' Defined Contribution Retirement
10 System whose benefits have been terminated pursuant to
11 section five of this article shall be refunded only his or her
12 employee contributions and the earnings on those
13 contributions; ~~Any~~ and any vested employer contributions
14 shall remain in the Teachers' Defined Contribution
15 Retirement System and be used to offset future employer
16 contributions for each contributing employer: *Provided*,
17 however, That any former member of the Teachers' Defined
18 Contribution Retirement System who affirmatively elected to
19 transfer to the State Teachers' Retirement System pursuant to
20 article seven-d, chapter eighteen of this code and whose
21 benefits have been terminated pursuant to section five of this
22 article shall be refunded only his or her employee
23 contributions and the earnings on those contributions; and

- 24 any vested employer contributions from the Teachers'
25 Defined Contribution Retirement System shall remain in the
26 State Teachers Retirement System to be used to offset future
27 employer contributions for each contributing employer.

(NOTE: The purpose of this bill is to add WVMPPFRS 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.)