

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 3087

FISCAL
NOTE

BY DELEGATES G. WARD AND HIGGINBOTHAM

[Introduced March 12, 2021; Referred to the
Committee on Education then Finance]

1 A BILL to amend and reenact §18-7A-25, §18-7A-25b, and §18-7A-38 of the Code of West
2 Virginia, 1931, as amended, relating to retirement of public school teachers; allowing
3 public school teachers to receive five years of credited service if they accept subsequent
4 employment in a public charter school; allowing public charter school employment for
5 retired members without penalty.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-25. Eligibility for retirement allowance.

1 (a) Except for a person who first becomes a member of the retirement system on or after
2 July 1, 2015, any actively contributing member who has attained the age of 60 years or any
3 member who has 35 years of total service as a teacher or nonteaching member in West Virginia,
4 regardless of age, is eligible for an annuity. No new entrant nor present member is eligible for an
5 annuity, however, if either has less than five years of service to his or her credit: *Provided*, That
6 on and after July 1, 2013, any person who becomes a new member of this retirement system
7 shall, in qualifying for retirement under this section, have five or more years of contributory service,
8 all of which shall be actual, contributory ones.

9 (b) Except for a person who first becomes a member of the retirement system on or after
10 July 1, 2015, any member who has attained the age of 55 years and who has served 30 years as
11 a teacher or nonteaching member in West Virginia is eligible for an annuity.

12 (c) Except for a person who first becomes a member of the retirement system on or after
13 July 1, 2015, any member who has served at least 30 but less than 35 years as a teacher or
14 nonteaching member in West Virginia and is less than 55 years of age is eligible for an annuity,
15 but the annuity shall be the reduced actuarial equivalent of the annuity the member would have
16 received if the member were age 55 at the time the annuity was applied for.

17 (d) Any member who is otherwise eligible for an annuity under subsections (a), (b), or (c)
18 of this section may be credited for five years of service if that member is to be subsequently

19 employed as a teacher by a public charter school in the State of West Virginia: *Provided*, That
20 subsequent public charter school service must continue a minimum of five years or the member
21 will revert to their earned service prior to the credit and their annuity shall reflect such reversion.

22 ~~(d)~~ (e) The request for any annuity shall be made by the member in writing to the retirement
23 board, but in case of retirement for disability, the written request may be made by either the
24 member or the employer.

25 ~~(e)~~ (f) A member is eligible for annuity for disability if he or she satisfies the conditions in
26 either subdivision (1) or (2) of this subsection and meets the conditions of subdivision (3) of this
27 subsection as follows:

28 (1) His or her service as a teacher or nonteaching member in West Virginia must total at
29 least 10 years and service as a teacher or nonteaching member must have been terminated
30 because of disability, which disability must have caused absence from service for at least six
31 months before his or her application for disability annuity is approved.

32 (2) His or her service as a teacher or nonteaching member in West Virginia must total at
33 least five years and service as a teacher or nonteaching member must have been terminated
34 because of disability, which disability must have caused absence from service for at least six
35 months before his or her application for disability annuity is approved and the disability is a direct
36 and total result of an act of student violence directed toward the member.

37 (3) An examination by a physician or physicians selected by the retirement board must
38 show that the member is at the time mentally or physically incapacitated for service as a teacher
39 or nonteaching member, that for that service the disability is total and likely to be permanent and
40 that he or she should be retired in consequence of the disability.

41 ~~(f)~~ (g) Continuance of the disability of the retirant shall be established by medical
42 examination, as prescribed in subdivision (3), subsection ~~(e)~~ (f) of this section, annually for five
43 years after retirement, and thereafter at such times required by the retirement board. Effective
44 July 1, 1998, a member who has retired because of a disability may select an option of payment

45 under the provisions of section twenty-eight of this article: *Provided*, That any option selected
46 under the provisions of section twenty-eight of this article shall be in all respects the actuarial
47 equivalent of the straight life annuity benefit the disability retirant receives or would receive if the
48 options under said section were not available and that no beneficiary or beneficiaries of the
49 disability retirant may receive a greater benefit, nor receive any benefit for a greater length of
50 time, than the beneficiary or beneficiaries would have received had the disability retirant not made
51 any election of the options available under said section. In determining the actuarial equivalence,
52 the retirement board shall take into account the life expectancies of the member and the
53 beneficiary: *Provided, however*, That the life expectancies may at the discretion of the retirement
54 board be established by an underwriting medical director of a competent insurance company
55 offering annuities. Payment of the disability annuity provided in this article shall cease immediately
56 if the retirement board finds that the disability of the retirant no longer exists, or if the retirant
57 refuses to submit to medical examination as required by this section.

**§18-7A-25b. Withdrawal and eligibility for retirement allowance for a person who first
becomes a member of the retirement system on or after July 1, 2015.**

1 (a) A person who first becomes a member of the retirement system on or after July 1,
2 2015, who has 10 or more years of contributing service, and attains or has attained the age of 62
3 years, may retire upon his or her written application filed with the board of trustees setting forth
4 the date on which the member desires to be retired. Upon retirement, the member shall receive
5 an annuity provided in §18-7A-26 of this article.

6 (b) Any person who first becomes a member of the retirement system on or after July 1,
7 2015, who has 10 or more years of contributing service and who leaves the employ of a
8 participating public employer prior to attaining age 62 years for any reason except his or her
9 disability or death, is entitled to an annuity computed according to §18-7A-22 of this article:
10 *Provided*, That he or she does not withdraw his or her accumulated contributions from the
11 members' deposit fund. His or her annuity shall begin the first day of the calendar month next

12 following the month in which his or her application for same is filed with the board of trustees on
13 or after his or her attaining age 64 years.

14 (c) Any member who qualifies for deferred retirement benefits in accordance with
15 subsections (a) and (b) of this section and has 20 or more years of contributing service in force is
16 entitled to an annuity computed as in subsection (a) of this section: *Provided*, That he or she does
17 not withdraw his or her accumulated contributions from the members' deposit fund: *Provided*,
18 *however*, That his or her annuity shall begin the first day of the calendar month next following the
19 month in which his or her application for same is filed with the board of trustees on or after his or
20 her attaining age 63.

21 (d) Notwithstanding any of the other provisions of this section or of this article, except §18-
22 7A-28a and §18-7A-28b of this article, and pursuant to rules promulgated by the board, any
23 member who first becomes a member of the retirement system on or after July 1, 2015, and has
24 10 or more years of contributing service in force, is currently employed by a participating public
25 employer and who elects to take early retirement, which for the purposes of this subsection means
26 retirement following attainment of age 60 but prior to attaining age 62, is entitled to the full
27 computation of annuity according to §18-7A-22 of this article but with the reduced actuarial
28 equivalent of the annuity the member would have received if his or her benefit had commenced
29 at age 62 when he or she would have been entitled to full computation of benefit without any
30 reduction: *Provided*, That his or her annuity shall begin the first day of the calendar month next
31 following the month in which his or her application for same is filed with the board of trustees on
32 or after his or her attaining age 60.

33 (e) Any member who first becomes a member of the retirement system on or after July 1,
34 2015, and has 20 or more years of contributing service in force, is currently employed by a
35 participating public employer and who elects to take early retirement, which for the purposes of
36 this subsection means retirement following attainment of age fifty-seven but prior to attaining age
37 62, is entitled to the full computation of annuity according to section twenty-two of this article but

38 with the reduced actuarial equivalent of the annuity the member would have received if his or her
39 benefit had commenced at age 62 when he or she would have been entitled to full computation
40 of benefit without any reduction: *Provided*, That his or her annuity shall begin the first day of the
41 calendar month next following the month in which his or her application for same is filed with the
42 board of trustees on or after his or her attaining age 57.

43 (f) Any member who first becomes a member of the retirement system on or after July 1,
44 2015, and has 30 or more years of contributing service in force, is currently employed by a
45 participating public employer and who elects to take early retirement, which for the purposes of
46 this subsection means retirement following attainment of age 55 but prior to attaining age 62, is
47 entitled to the full computation of annuity according to section twenty-two of this article but with
48 the reduced actuarial equivalent of the annuity the member would have received if his or her
49 benefit had commenced at age 62 when he or she would have been entitled to full computation
50 of benefit without any reduction: *Provided*, That his or her annuity shall begin the first day of the
51 calendar month next following the month in which his or her application for same is filed with the
52 board of trustees on or after his or her attaining age 55.

53 (g) Any member who is otherwise eligible for an annuity under this section may be credited
54 for five years of service if that member is to be subsequently employed as a teacher by a public
55 charter school in the State of West Virginia: *Provided*, That subsequent public charter school
56 service must continue a minimum of five years or the member will revert to their earned service
57 prior to the credit and their annuity shall reflect such reversion.

**§18-7A-38. Maximum number of days a retired teacher may accept employment;
calculating days worked for retirants engaged in substitute teaching.**

58 (a) The Legislature finds that:

59 (1) The Consolidated Public Retirement Board has determined that retired substitute
60 teachers should not perform substitute teaching without limit;

61 (2) The Consolidated Public Retirement Board has established, by rule, a maximum

62 number of days in which a retired teacher may accept employment prior to having his or her
63 retirement benefit reduced; and

64 (3) There have been inconsistencies in the manner in which county boards calculate the
65 maximum number of days established by rule.

66 (b) The Consolidated Public Retirement Board may not set forth in rule a maximum
67 number of days in which a retired teacher may accept employment prior to having his or her
68 retirement benefit reduced that is less than 140 days.

69 (c) For the purpose of calculating whether a retired substitute teacher has exceeded the
70 maximum number of days in which a substitute teacher may accept employment without incurring
71 a reduction in his or her retirement benefit, the number of days worked shall be determined by:

72 (1) Totaling the number of hours worked; and

73 (2) Dividing by the standard number of hours that a full-time teacher works per day.

74 (d) Notwithstanding the provisions of this section, a member who retired under the
75 provisions of §18-7A-25 or §18-7A-25b of this code and took subsequent employment with a
76 public charter school in this state, such charter school employment shall not act to disqualify a
77 member from receipt of their full benefits under this article.

NOTE: The purpose of this bill is to allow teachers to retire five years early from the state public school system and to take employment in public charter school and to exempt charter school employment from disqualifying members from retirement 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.