

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 469**

4 (By Senators Jenkins, Kessler (Mr. President), Chafin, McCabe and
5 Plymale)

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7 [Originating in the Committee on Finance;
8 reported March 22, 2013.]

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12 A BILL to amend and reenact §5-10-14 and §5-10-18 of the Code of
13 West Virginia, 1931, as amended, all relating to service
14 credit; retroactive service credit; and reinstatement interest
15 in the Public Employees Retirement System.

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

17 That §5-10-14 and §5-10-18 of the Code of West Virginia, 1931,
18 as amended, be amended and reenacted, all to read as follows:

19 **ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.**

20 **§5-10-14. Service credit; retroactive provisions.**

21 (a) The Board of Trustees shall credit each member with the
22 prior service and contributing service to which he or she is
23 entitled based upon rules adopted by the Board of Trustees and
24 based upon the following:

25 (1) In no event may less than ten days of service rendered by

1 a member in any calendar month be credited as a month of service:
2 *Provided*, That for employees of the State Legislature whose term of
3 employment is otherwise classified as temporary and who are
4 employed to perform services required by the Legislature for its
5 regular sessions or during the interim between regular sessions and
6 who have been or are ~~so~~ employed during regular sessions or during
7 the interim between regular sessions in seven consecutive calendar
8 years, service credit of one month shall be awarded for each ten
9 days employed in the interim between regular sessions, which
10 interim days shall be cumulatively calculated so that any ten days,
11 regardless of calendar month or year, shall be calculated toward
12 any award of one month of service credit;

13 (2) Except for hourly employees, ten or more months of service
14 credit earned in any calendar year shall be credited as a year of
15 service: *Provided*, That no more than one year of service may be
16 credited to any member for all service rendered by him or her in
17 any calendar year and no days may be carried over by a member from
18 one calendar year to another calendar year where the member has
19 received a full-year credit for that year; and

20 (3) Service may be credited to a member who was employed by a
21 political subdivision if his or her employment occurred within a
22 period of thirty years immediately preceding the date the political
23 subdivision became a participating public employer.

24 (b) The Board of Trustees shall grant service credit to
25 employees of boards of health, the Clerk of the House of Delegates
26 and the Clerk of the State Senate or to any former and present

1 member of the State Teachers Retirement System who have been
2 contributing members in the Public Employees Retirement System for
3 more than three years, for service previously credited by the State
4 Teachers Retirement System and shall require the transfer of the
5 member's accumulated contributions to the system and shall also
6 require a deposit, with reinstatement interest as set forth in the
7 Board's Rule, Refund, Reinstatement, Retroactive Service, Loan And
8 Employer Error Interest Factors, 162 C. S. R. 7, of any withdrawals
9 of contributions any time prior to the member's retirement.
10 Repayment of withdrawals shall be as directed by the Board of
11 Trustees.

12 (c) Court reporters who are acting in an official capacity,
13 although paid by funds other than the county commission or State
14 Auditor, may receive prior service credit for time served in that
15 capacity.

16 (d) Active members who previously worked in CETA
17 (Comprehensive Employment and Training Act) may receive service
18 credit for time served in that capacity: *Provided*, That in order to
19 receive service credit under the provisions of this subsection the
20 following conditions must be met: (1) The member must have moved
21 from temporary employment with the participating employer to
22 permanent full-time employment with the participating employer
23 within one hundred twenty days following the termination of the
24 member's CETA employment; (2) the board must receive evidence that
25 establishes to a reasonable degree of certainty as determined by
26 the board that the member previously worked in CETA; and (3) the

1 member shall pay to the board an amount equal to the employer and
2 employee contribution plus interest at the amount set by the board
3 for the amount of service credit sought pursuant to this
4 subsection: *Provided, however,* That the maximum service credit that
5 may be obtained under the provisions of this subsection is two
6 years: *Provided further,* That a member must apply and pay for the
7 service credit allowed under this subsection and provide all
8 necessary documentation by March 31, 2003: *And provided further,*
9 That the board shall exercise due diligence to notify affected
10 employees of the provisions of this subsection.

11 (e) (1) Employees of the State Legislature whose terms of
12 employment are otherwise classified as temporary and who are
13 employed to perform services required by the Legislature for its
14 regular sessions or during the interim time between regular
15 sessions shall receive service credit for the time served in that
16 capacity in accordance with the following. For purposes of this
17 section, the term "regular session" means day one through day sixty
18 of a sixty-day legislative session or day one through day thirty of
19 a thirty-day legislative session. Employees of the State
20 Legislature whose term of employment is otherwise classified as
21 temporary and who are employed to perform services required by the
22 Legislature for its regular sessions or during the interim time
23 between regular sessions and who have been or are employed during
24 regular sessions or during the interim time between regular
25 sessions in seven consecutive calendar years, as certified by the
26 clerk of the house in which the employee served, shall receive

1 service credit of six months for all regular sessions served, as
2 certified by the clerk of the house in which the employee served,
3 or shall receive service credit of three months for each regular
4 thirty-day session served prior to 1971: *Provided*, That employees
5 of the State Legislature whose term of employment is otherwise
6 classified as temporary and who are employed to perform services
7 required by the Legislature for its regular sessions and who have
8 been or are employed during the regular sessions in thirteen
9 consecutive calendar years as either temporary employees or full-
10 time employees or a combination thereof, as certified by the clerk
11 of the house in which the employee served, shall receive a service
12 credit of twelve months for each regular session served, as
13 certified by the clerk of the house in which the employee served:
14 *Provided, however*, That the amendments made to this subsection
15 during the 2002 regular session of the Legislature only apply to
16 employees of the Legislature who are employed by the Legislature as
17 either temporary employees or full-time employees as of January 1,
18 2002, or who become employed by the Legislature as temporary or
19 full-time employees for the first time after January 1, 2002.
20 Employees of the State Legislature whose terms of employment are
21 otherwise classified as temporary and who are employed to perform
22 services required by the Legislature during the interim time
23 between regular sessions shall receive service credit of one month
24 for each ten days served during the interim between regular
25 sessions, which interim days shall be cumulatively calculated so
26 that any ten days, regardless of calendar month or year, shall be

1 calculated toward any award of one month of service credit:
2 *Provided further,* That no more than one year of service may be
3 credited to any temporary legislative employee for all service
4 rendered by that employee in any calendar year and no days may be
5 carried over by a temporary legislative employee from one calendar
6 year to another calendar year where the member has received a full
7 year credit for that year. Service credit awarded for legislative
8 employment pursuant to this section shall be used for the purpose
9 of calculating that member's retirement annuity, pursuant to
10 section twenty-two of this article, and determining eligibility as
11 it relates to credited service, notwithstanding any other provision
12 of this section. Certification of employment for a complete
13 legislative session and for interim days shall be determined by the
14 clerk of the house in which the employee served, based upon
15 employment records. Service of fifty-five days of a regular session
16 constitutes an absolute presumption of service for a complete
17 legislative session and service of twenty-seven days of a thirty-
18 day regular session occurring prior to 1971 constitutes an absolute
19 presumption of service for a complete legislative session. Once a
20 legislative employee has been employed during regular sessions for
21 seven consecutive years or has become a full-time employee of the
22 Legislature, that employee shall receive the service credit
23 provided in this section for all regular and interim sessions and
24 interim days worked by that employee, as certified by the clerk of
25 the house in which the employee served, regardless of when the
26 session or interim legislative employment occurred: *And provided*

1 further, That regular session legislative employment for seven
2 consecutive years may be served in either or both houses of the
3 Legislature.

4 (2) For purposes of this section, employees of the Joint
5 Committee on Government and Finance are entitled to the same
6 benefits as employees of the House of Delegates or the Senate:
7 *Provided*, That for joint committee employees whose terms of
8 employment are otherwise classified as temporary, employment in
9 preparation for regular sessions, certified by the legislative
10 manager as required by the Legislature for its regular sessions,
11 shall be considered the same as employment during regular sessions
12 to meet service credit requirements for sessions served.

13 (f) Any employee may purchase retroactive service credit for
14 periods of employment in which contributions were not deducted from
15 the employee's pay. In the purchase of service credit for
16 employment prior to the year 1989 in any department, including the
17 Legislature, which operated from the General Revenue Fund and which
18 was not expressly excluded from budget appropriations in which
19 blanket appropriations were made for the state's share of public
20 employees' retirement coverage in the years prior to the year 1989,
21 the employee shall pay the employee's share. Other employees shall
22 pay the state's share and the employee's share to purchase
23 retroactive service credit. Where an employee purchases service
24 credit for employment which occurred after the year 1988, that
25 employee shall pay for the employee's share and the employer shall
26 pay its share for the purchase of retroactive service credit:

1 *Provided*, That no legislative employee and no current or former
2 member of the Legislature may be required to pay any interest or
3 penalty upon the purchase of retroactive service credit in
4 accordance with the provisions of this section where the employee
5 was not eligible to become a member during the years for which he
6 or she is purchasing retroactive credit or had the employee
7 attempted to contribute to the system during the years for which he
8 or she is purchasing retroactive service credit and such the
9 contributions would have been refused by the board: *Provided*,
10 *however*, That a current legislative employee purchasing retroactive
11 credit under this section does so within twenty-four months of
12 ~~becoming a member of beginning contributions to the retirement~~
13 system or no later than December 31, ~~2008~~ 2013, whichever occurs
14 last: *Provided further*, That once a legislative employee becomes a
15 member of the retirement system, he or she may purchase retroactive
16 service credit for any time he or she was employed by the
17 Legislature and did not receive service credit. Any service credit
18 purchased shall be credited as six months for each sixty-day
19 session worked, three months for each thirty-day session worked or
20 twelve months for each sixty-day session for legislative employees
21 who have been employed during regular sessions in thirteen
22 consecutive calendar years, as certified by the clerk of the house
23 in which the employee served, and credit for interim employment as
24 provided in this subsection: *And provided further*, That this
25 legislative service credit shall also be used for months of service
26 in order to meet the sixty-month requirement for the payments of a

1 temporary legislative employee member's retirement annuity: And
2 provided further, That no legislative employee may be required to
3 pay for any service credit beyond the actual time he or she worked
4 regardless of the service credit which is credited to him or her
5 pursuant to this section: And provided further, That any
6 legislative employee may request a recalculation of his or her
7 credited service to comply with the provisions of this section at
8 any time.

9 (g) (1) Notwithstanding any provision to the contrary, the
10 seven consecutive calendar years requirement and the thirteen
11 consecutive calendar years requirement and the service credit
12 requirements set forth in this section shall be applied
13 retroactively to all periods of legislative employment prior to the
14 passage of this section, including any periods of legislative
15 employment occurring before the seven consecutive and thirteen
16 consecutive calendar years referenced in this section: *Provided,*
17 That the employee has not retired prior to the effective date of
18 the amendments made to this section in the 2002 regular session of
19 the Legislature.

20 (2) The requirement of seven consecutive years and the
21 requirement of thirteen consecutive years apply retroactively to
22 all legislative employment prior to the effective date of the 2006
23 amendments to this section.

24 (h) The Board of Trustees shall grant service credit to any
25 former or present member of the State Police Death, Disability and
26 Retirement Fund who has been a contributing member of this system

1 for more than three years for service previously credited by the
2 State Police Death, Disability and Retirement Fund if the member
3 transfers all of his or her contributions ~~to~~ from the State Police
4 Death, Disability and Retirement Fund to the system created in this
5 article, including repayment of any amounts withdrawn any time from
6 the State Police Death, Disability and Retirement Fund by the
7 member seeking the transfer allowed in this subsection: *Provided,*
8 That there shall be added by the member to the amounts transferred
9 or repaid under this subsection an amount which shall be sufficient
10 to equal the contributions he or she would have made had the member
11 been under the Public Employees Retirement System during the period
12 of his or her membership in the State Police Death, Disability and
13 Retirement Fund, excluding contributions on lump sum payment for
14 annual leave, plus interest at a rate determined by the board.

15 (i) The provisions of section twenty-two-h of this article are
16 not applicable to the amendments made to this section during the
17 2006 regular session.

18 **§5-10-18. Termination of membership; reentry.**

19 (a) When a member of the retirement system retires, withdraws
20 his or her accumulated contributions, or dies, he or she ceases to
21 be a member. When a member leaves the employ of a participating
22 public employer for any reason other than retirement or death, and
23 withdraws his or her accumulated contributions from the system, he
24 or she ceases to be a member and forfeits service credited to him
25 or her at that time. If he or she becomes reemployed by a
26 participating public employer he or she shall be reinstated as a

1 member of the retirement system and his or her credited service
2 last forfeited by him or her shall be restored to his or her
3 credit: *Provided*, That he or she must be reemployed for a period of
4 one year or longer to have the service restored: *Provided, however*,
5 That he or she returns to the members' deposit fund the amount, if
6 any, he or she withdrew from the fund, together with ~~regular~~
7 reinstatement interest as set forth in the Board's Rule, Refund,
8 Reinstatement, Retroactive Service, Loan And Employer Error
9 Interest Factors, 162 C. S. R. 7, on the withdrawn amount from the
10 date of withdrawal to the date of repayment, and that the repayment
11 begins within two years of the return to employment and that the
12 full amount is repaid within five years of the return to
13 employment. Any failure to repay the full amount in accordance with
14 this section shall be treated as an overpayment or excess
15 contribution subject to section forty-four of this article.

16 (b) The Prestera Center for Mental Health Services, Valley
17 Comprehensive Mental Health Center, Westbrook Health Services and
18 Eastern Panhandle Mental Health Center, and their successors in
19 interest, shall provide for their employees a pension plan in lieu
20 of the Public Employees Retirement System during the existence of
21 the named mental health centers and their successors in interest.

22 (c) The administrative bodies of the Prestera Center for
23 Mental Health Services, Valley Comprehensive Mental Health Center,
24 Westbrook Health Services and Eastern Panhandle Mental Health
25 Center shall, on or before May 1, 1997, give written notice to each
26 employee who is a member of the Public Employees Retirement System

1 of the option to withdraw from or remain in the system. The notice
2 shall include a copy of this section and a statement explaining the
3 member's options regarding membership. The notice shall include a
4 statement in plain language giving a full explanation and actuarial
5 projection figures in support of the explanation regarding the
6 individual member's current account balance, vested and nonvested,
7 and his or her projected return upon remaining in the Public
8 Employees Retirement System until retirement, disability or death,
9 in comparison with the projected return upon withdrawing from the
10 Public Employees Retirement System and joining a private pension
11 plan provided by the Community Mental Health Center and remaining
12 therein in the private pension plan until retirement, disability or
13 death. The administrative bodies shall keep in their respective
14 records a permanent record of each employee's signature confirming
15 receipt of the notice.

16 (d) Effective March 1, 2003, and ending December 31, 2004, any
17 member may purchase credited service previously forfeited by him or
18 her and the credited service shall be restored to his or her
19 credit: *Provided*, That he or she returns to the members' deposit
20 fund the amount, if any, he or she withdrew from the fund, together
21 with interest on the withdrawn amount from the date of withdrawal
22 to the date of repayment at a rate to be determined by the board.
23 The repayment under this section may be made by lump sum or repaid
24 over a period of time not to exceed sixty months. Where the member
25 elects to repay the required amount other than by lump sum, the
26 member is required to pay interest at the rate determined by the

1 board until all sums are fully repaid.

2 (e) Effective July 1, 2005, and ending December 31, 2006, any
3 emergency services personnel may purchase service credit for the
4 time period beginning January 1, 1990, and ending December 31,
5 1995: *Provided*, That the person was employed as an emergency
6 service person in this state for that time period: *Provided*,
7 *however*, That any person obtaining service credit under this
8 subsection is required to pay the employee's share and the
9 employer's share upon his or her actual salary for the years in
10 question plus interest at the assumed actuarial rate of return for
11 the plan year being repurchased.

12 (f) Jobs for West Virginia's graduates and their successors in
13 interest shall provide a pension plan in lieu of the Public
14 Employees Retirement System for employees hired on or after July 1,
15 2005.

16 (g) Wetzel County Hospital and their successors in interest
17 shall provide a pension plan in lieu of the Public Employees
18 Retirement System for employees hired on or after July 1, 2005.