

1 **ENROLLED**

2 **Senate Bill No. 444**

3 (BY SENATORS KIRKENDOLL, CANN, EDGELL, CARMICHAEL AND PLYMALE)

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6 [Passed February 19, 2014; in effect from passage.]
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10 AN ACT to amend and reenact §5-10-2, §5-10-31 and §5-10-48 of the
11 Code of West Virginia, 1931, as amended, all relating to the
12 Public Employees Retirement System; defining "compensation"
13 and "employee" in this article; removing the requirement to
14 set employer contribution rate by legislative rule; and
15 allowing employee and employer retirement contributions to be
16 credited to the participating public employer when a retirant
17 is reemployed for less than one year.

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

19 That §5-10-2, §5-10-31 and §5-10-48 of the Code of West
20 Virginia, 1931, as amended, be amended and reenacted, all to read
21 as follows:

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

23 **§5-10-2. Definitions.**

1 Unless a different meaning is clearly indicated by the
2 context, the following words and phrases as used in this article
3 have the following meanings:

4 (1) "Accumulated contributions" means the sum of all amounts
5 deducted from the compensations of a member and credited to his or
6 her individual account in the members' deposit fund, together with
7 regular interest on the contributions;

8 (2) "Accumulated net benefit" means the aggregate amount of
9 all benefits paid to or on behalf of a retired member;

10 (3) "Actuarial equivalent" means a benefit of equal value
11 computed upon the basis of a mortality table and regular interest
12 adopted by the board of trustees from time to time: *Provided*, That
13 when used in the context of compliance with the federal maximum
14 benefit requirements of Section 415 of the Internal Revenue Code,
15 "actuarial equivalent" shall be computed using the mortality tables
16 and interest rates required to comply with those requirements;

17 (4) "Annuity" means an annual amount payable by the retirement
18 system throughout the life of a person. All annuities shall be
19 paid in equal monthly installments, rounding to the upper cent for
20 any fraction of a cent;

21 (5) "Annuity reserve" means the present value of all payments
22 to be made to a retirant or beneficiary of a retirant on account of
23 any annuity, computed upon the basis of mortality and other tables

1 of experience, and regular interest, adopted by the board of
2 trustees from time to time;

3 (6) "Beneficiary" means any person, except a retirant, who is
4 entitled to, or will be entitled to, an annuity or other benefit
5 payable by the retirement system;

6 (7) "Board of Trustees" or "board" means the Board of Trustees
7 of the West Virginia Consolidated Public Retirement System;

8 (8) "Compensation" means the remuneration paid a member by a
9 participating public employer for personal services rendered by the
10 member to the participating public employer. In the event a
11 member's remuneration is not all paid in money, his or her
12 participating public employer shall fix the value of the portion of
13 the remuneration which is not paid in money: *Provided*, That members
14 hired in a position for the first time on or after July 1, 2014,
15 who receive nonmonetary remuneration shall not have nonmonetary
16 remuneration included in compensation for retirement purposes and
17 nonmonetary remuneration may not be used in calculating a member's
18 final average salary. Any lump sum or other payments paid to
19 members that do not constitute regular salary or wage payments are
20 not considered compensation for the purpose of withholding
21 contributions for the system or for the purpose of calculating a
22 member's final average salary. These payments include, but are not
23 limited to, attendance or performance bonuses, one-time flat fee or

1 lump sum payments, payments paid as a result of excess budget or
2 employee recognition payments. The board shall have final power to
3 decide whether the payments shall be considered compensation for
4 purposes of this article;

5 (9) "Contributing service" means service rendered by a member
6 within this state and for which the member made contributions to a
7 public retirement system account of this state, to the extent
8 credited him or her as provided by this article;

9 (10) "Credited service" means the sum of a member's prior
10 service credit, military service credit, workers' compensation
11 service credit and contributing service credit standing to his or
12 her credit as provided in this article;

13 (11) "Employee" means any person who serves regularly as an
14 officer or employee, full time, on a salary basis, whose tenure is
15 not restricted as to temporary or provisional appointment, in the
16 service of, and whose compensation is payable, in whole or in part,
17 by any political subdivision, or an officer or employee whose
18 compensation is calculated on a daily basis and paid monthly or on
19 completion of assignment, including technicians and other personnel
20 employed by the West Virginia National Guard whose compensation, in
21 whole or in part, is paid by the federal government: *Provided*, That
22 an employee of the Legislature whose term of employment is
23 otherwise classified as temporary and who is employed to perform

1 services required by the Legislature for its regular sessions or
2 during the interim between regular sessions and who has been or is
3 employed during regular sessions or during the interim between
4 regular sessions in seven or more consecutive calendar years, as
5 certified by the clerk of the house in which the employee served,
6 is an employee, any provision to the contrary in this article
7 notwithstanding, and is entitled to credited service in accordance
8 with provisions of section fourteen, article ten, chapter five of
9 this code and: *Provided, however,* That members of the legislative
10 body of any political subdivision and judges of the State Court of
11 Claims are employees receiving one year of service credit for each
12 one-year term served and pro rated service credit for any partial
13 term served, anything contained in this article to the contrary
14 notwithstanding: *Provided further,* That only a compensated board
15 member of a participating public employer appointed to a board of
16 a nonlegislative body for the first time on or after July 1, 2014,
17 who normally is required to work twelve months per year and one
18 thousand forty hours of service per year is an employee. In any
19 case of doubt as to who is an employee within the meaning of this
20 article, the Board of Trustees shall decide the question;

21 (12) "Employer error" means an omission, misrepresentation, or
22 violation of relevant provisions of the West Virginia Code or of
23 the West Virginia Code of State Regulations or the relevant

1 provisions of both the West Virginia Code and of the West Virginia
2 Code of State Regulations by the participating public employer that
3 has resulted in an underpayment or overpayment of contributions
4 required. A deliberate act contrary to the provisions of this
5 section by a participating public employer does not constitute
6 employer error.

7 (13) "Final average salary" means either of the following:
8 *Provided*, That salaries for determining benefits during any
9 determination period may not exceed the maximum compensation
10 allowed as adjusted for cost of living in accordance with section
11 seven, article ten-d, chapter five of this code and Section
12 401(a)(17) of the Internal Revenue Code: *Provided, however*, That
13 the provisions of section twenty-two-h of this article are not
14 applicable to the amendments made to this subdivision during the
15 2011 Regular Session of the Legislature.

16 (A) The average of the highest annual compensation received by
17 a member (including a member of the Legislature who participates in
18 the retirement system in the year 1971 or thereafter), during any
19 period of three consecutive years of credited service contained
20 within the member's fifteen years of credited service immediately
21 preceding the date his or her employment with a participating
22 public employer last terminated; or

23 (B) If the member has less than five years of credited

1 service, the average of the annual rate of compensation received by
2 the member during his or her total years of credited service; and
3 in determining the annual compensation, under either paragraph (A)
4 or (B) of this subdivision, of a member of the Legislature who
5 participates in the retirement system as a member of the
6 Legislature in the year 1971, or in any year thereafter, his or her
7 actual legislative compensation (the total of all compensation paid
8 under sections two, three, four and five, article two-a, chapter
9 four of this code), in the year 1971, or in any year thereafter,
10 plus any other compensation he or she receives in any year from any
11 other participating public employer including the State of West
12 Virginia, without any multiple in excess of one times his or her
13 actual legislative compensation and other compensation, shall be
14 used: *Provided*, That "final average salary" for any former member
15 of the Legislature or for any member of the Legislature in the year
16 1971, who, in either event, was a member of the Legislature on
17 November 30, 1968, or November 30, 1969, or November 30, 1970, or
18 on November 30 in any one or more of those three years and who
19 participated in the retirement system as a member of the
20 Legislature in any one or more of those years means: (I) Either
21 (notwithstanding the provisions of this subdivision preceding this
22 proviso) \$1,500 multiplied by eight, plus the highest other
23 compensation the former member or member received in any one of the

1 three years from any other participating public employer including
2 the State of West Virginia; or (ii) "final average salary"
3 determined in accordance with paragraph (A) or (B) of this
4 subdivision, whichever computation produces the higher final
5 average salary (and in determining the annual compensation under
6 subparagraph (ii) of this proviso, the legislative compensation of
7 the former member shall be computed on the basis of \$1,500
8 multiplied by eight, and the legislative compensation of the member
9 shall be computed on the basis set forth in the provisions of this
10 subdivision immediately preceding this proviso or on the basis of
11 \$1,500 multiplied by eight, whichever computation as to the member
12 produces the higher annual compensation);

13 (14) "Internal Revenue Code" means the Internal Revenue Code
14 of 1986, as amended, codified at Title 26 of the United States
15 Code;

16 (15) "Limited credited service" means service by employees of
17 the West Virginia Educational Broadcasting Authority, in the
18 employment of West Virginia University, during a period when the
19 employee made contributions to another retirement system, as
20 required by West Virginia University, and did not make
21 contributions to the Public Employees Retirement System: *Provided,*
22 That while limited credited service can be used for the formula set
23 forth in subsection (e), section twenty-one of this article, it may

1 not be used to increase benefits calculated under section twenty-
2 two of this article;

3 (16) "Member" means any person who has accumulated
4 contributions standing to his or her credit in the members' deposit
5 fund;

6 (17) "Participating public employer" means the State of West
7 Virginia, any board, commission, department, institution or
8 spending unit, and includes any agency created by rule of the
9 Supreme Court of Appeals having full-time employees, which for the
10 purposes of this article is considered a department of state
11 government; and any political subdivision in the state which has
12 elected to cover its employees, as defined in this article, under
13 the West Virginia Public Employees Retirement System;

14 (18) "Plan year" means the same as referenced in section
15 forty-two of this article;

16 (19) "Political subdivision" means the State of West Virginia,
17 a county, city or town in the state; a school corporation or
18 corporate unit; any separate corporation or instrumentality
19 established by one or more counties, cities or towns, as permitted
20 by law; any corporation or instrumentality supported in most part
21 by counties, cities or towns; and any public corporation charged by
22 law with the performance of a governmental function and whose
23 jurisdiction is coextensive with one or more counties, cities or

1 towns: *Provided*, That any mental health agency participating in the
2 Public Employees Retirement System before July 1, 1997, is
3 considered a political subdivision solely for the purpose of
4 permitting those employees who are members of the Public Employees
5 Retirement System to remain members and continue to participate in
6 the retirement system at their option after July 1, 1997: *Provided*,
7 *however*, That the Regional Community Policing Institute which
8 participated in the Public Employees Retirement System before July
9 1, 2000, is considered a political subdivision solely for the
10 purpose of permitting those employees who are members of the Public
11 Employees Retirement System to remain members and continue to
12 participate in the Public Employees Retirement System after July 1,
13 2000;

14 (20) "Prior service" means service rendered prior to July 1,
15 1961, to the extent credited a member as provided in this article;

16 (21) "Regular interest" means the rate or rates of interest
17 per annum, compounded annually, as the Board of Trustees adopts
18 from time to time;

19 (22) "Required beginning date" means April 1 of the calendar
20 year following the later of: (A) The calendar year in which the
21 member attains age seventy and one-half years of age; or (B) the
22 calendar year in which a member who has attained the age seventy
23 and one-half years of age and who ceases providing service covered

1 under this system to a participating employer;

2 (23) "Retirant" means any member who commences an annuity
3 payable by the retirement system;

4 (24) "Retirement" means a member's withdrawal from the employ
5 of a participating public employer and the commencement of an
6 annuity by the retirement system;

7 (25) "Retirement system" or "system" means the West Virginia
8 Public Employees Retirement System created and established by this
9 article;

10 (26) "Retroactive service" means: (1) Service between July 1,
11 1961, and the date an employer decides to become a participating
12 member of the Public Employees Retirement System; (2) service prior
13 to July 1, 1961, for which the employee is not entitled to prior
14 service at no cost in accordance with 162 CSR 5.13; and (3) service
15 of any member of a legislative body or employees of the State
16 Legislature whose term of employment is otherwise classified as
17 temporary for which the employee is eligible, but for which the
18 employee did not elect to participate at that time;

19 (27) "Service" means personal service rendered to a
20 participating public employer by an employee of a participating
21 public employer; and

22 (28) "State" means the State of West Virginia.

23 **§5-10-31. Employers Accumulation Fund; employers contributions.**

1 (a) The Employers Accumulation Fund is hereby continued. It
2 is the fund in which shall be accumulated the contributions made by
3 the participating public employers to the retirement system, and
4 from which transfers shall be made as provided in this section.

5 (b) Based upon the provisions of section thirteen of this
6 article, the participating public employers' contributions to the
7 retirement system, as determined by the Consolidated Public
8 Retirement Board, shall be a percent of the members' total annual
9 compensation related to benefits under this retirement system. In
10 determining the amount, the board shall give consideration to
11 setting the amount at a sum equal to an amount which, if paid
12 annually by the participating public employers, will be sufficient
13 to provide for the total normal cost of the benefits expected to
14 become payable to all members and to amortize any unfunded
15 liability found by application of the actuarial funding method
16 chosen for that purpose by the Consolidated Public Retirement
17 Board, over a period of years determined actuarially appropriate.

18 **§5-10-48. Reemployment after retirement; options for holder of**
19 **elected public office.**

20 (a) The Legislature finds that a compelling state interest
21 exists in maintaining an actuarially sound retirement system and
22 that this interest necessitates that certain limitations be placed
23 upon an individual's ability to retire from the system and to then

1 later return to state employment as an employee with a
2 participating public employer while contemporaneously drawing an
3 annuity from the system. The Legislature hereby further finds and
4 declares that the interests of the public are served when persons
5 having retired from public employment are permitted, within certain
6 limitations, to render post-retirement employment in positions of
7 public service, either in elected or appointed capacities. The
8 Legislature further finds and declares that it has the need for
9 qualified employees and that in many cases an employee of the
10 Legislature will retire and be available to return to work for the
11 Legislature as a per diem employee. The Legislature further finds
12 and declares that in many instances these employees have
13 particularly valuable expertise which the Legislature cannot find
14 elsewhere. The Legislature further finds and declares that
15 reemploying these persons on a limited per diem basis after they
16 have retired is not only in the best interests of this state, but
17 has no adverse effect whatsoever upon the actuarial soundness of
18 this particular retirement system.

19 (b) For the purposes of this section: (1) "Regularly employed
20 on a full-time basis" means employment of an individual by a
21 participating public employer, in a position other than as an
22 elected or appointed public official, which normally requires
23 twelve months per year service and at least one thousand forty

1 hours of service per year in that position; (2) "temporary
2 full-time employment" or "temporary part-time employment" means
3 employment of an individual on a temporary or provisional basis by
4 a participating public employer, other than as an elected or
5 appointed public official, in a position which does not otherwise
6 render the individual as regularly employed; (3) "former employee
7 of the Legislature" means any person who has retired from
8 employment with the Legislature and who has at least ten years'
9 contributing service with the Legislature; and (4) "reemployed by
10 the Legislature" means a former employee of the Legislature who has
11 been reemployed on a per diem basis not to exceed one hundred
12 seventy-five days per calendar year.

13 (c) In the event a retirant becomes regularly employed on a
14 full-time basis by a participating public employer, payment of his
15 or her annuity shall be suspended during the period of his or her
16 reemployment and he or she shall become a contributing member to
17 the retirement system. If his or her reemployment is for a period
18 of one year or longer, his or her annuity shall be recalculated and
19 he or she shall be granted an increased annuity due to the
20 additional employment, the annuity to be computed according to
21 section twenty-two of this article. If his or her reemployment is
22 for a period less than one year, he or she may request in writing
23 that the employee and employer retirement contributions submitted

1 during reemployment be credited to the participating public
2 employer pursuant to section forty-four of this article, and his or
3 her previous annuity shall be reinstated effective the first day of
4 the month following termination of reemployment and the board's
5 receipt of written notice thereof. A retirant may accept
6 legislative per diem, temporary full-time or temporary part-time
7 employment from a participating employer without suspending his or
8 her retirement annuity so long as he or she does not receive annual
9 compensation in excess of \$20,000.

10 (d) In the event a member retires and is then subsequently
11 elected to a public office or is subsequently appointed to hold an
12 elected public office, or is a former employee of the Legislature
13 who has been reemployed by the Legislature, he or she has the
14 option, notwithstanding subsection (c) of this section, to either:

15 (1) Continue to receive payment of his or her annuity while
16 holding public office or during any reemployment of a former
17 employee of the Legislature on a per diem basis, in addition to the
18 salary he or she may be entitled to as an office holder or as a per
19 diem reemployed former employee of the Legislature; or

20 (2) Suspend the payment of his or her annuity and become a
21 contributing member of the retirement system as provided in
22 subsection (c) of this section. Notwithstanding the provisions of
23 this subsection, a member who is participating in the system as an

1 elected public official may not retire from his or her elected
2 position and commence to receive an annuity from the system and
3 then be elected or reappointed to the same position unless and
4 until a continuous twelve-month period has passed since his or her
5 retirement from the position: *Provided*, That a former employee of
6 the Legislature may not be reemployed by the Legislature on a per
7 diem basis until at least sixty days after the employee has
8 retired: *Provided, however*, That the limitation on compensation
9 provided by subsection (c) of this section does not apply to the
10 reemployed former employee: *Provided further*, That in no event may
11 reemployment by the Legislature of a per diem employee exceed one
12 hundred seventy-five days per calendar year.

13 (e) A member who is participating in the system simultaneously
14 as both a regular, full-time employee of a participating public
15 employer and as an elected or appointed member of the legislative
16 body of the state or any political subdivision may, upon meeting
17 the age and service requirements of this article, elect to retire
18 from his or her regular full-time state employment and may commence
19 to receive an annuity from the system without terminating his or
20 her position as a member of the legislative body of the state or
21 political subdivision: *Provided*, That the retired member shall not,
22 during the term of his or her retirement and continued service as
23 a member of the legislative body of a political subdivision, be

1 eligible to continue his or her participation as a contributing
2 member of the system and shall not continue to accrue any
3 additional service credit or benefits in the system related to the
4 continued service.

5 (f) Notwithstanding the provisions of section twenty-seven-b
6 of this article, any publicly elected member of the legislative
7 body of any political subdivision or of the State Legislature, the
8 Clerk of the House of Delegates and the Clerk of the Senate may
9 elect to commence receiving in-service retirement distributions
10 from this system upon attaining the age of seventy and one-half
11 years: *Provided*, That the member is eligible to retire under the
12 provisions of section twenty or twenty-one of this article:
13 *Provided, however*, That the member elects to stop actively
14 contributing to the system while receiving the in-service
15 distributions.

16 (g) The provisions of section twenty-two-h of this article are
17 not applicable to the amendments made to this section during the
18 2006 Regular Session.