

1 **H. B. 4364**

2  
3 (By Delegates Pethtel, Jones, Canterbury,  
4 Kump, Craig, Lynch and Ellem)

5 (Requested by the Consolidated Public Retirement Board)

6 [Introduced January 28, 2014; referred to the  
7 Committee on Pensions & Retirement then Finance.]

**FISCAL  
NOTE**

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9  
10 A BILL 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 and  
13 employee in this article; removing the requirement to set  
14 employer contribution rate by legislative rule; and allowing  
15 employee and employer retirement contributions to be credited  
16 to the participating public employer when a retirant is  
17 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 paid  
19 in equal monthly installments, rounding to the upper cent for any  
20 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  
14 members hired in a position for the first time on or after July 1,  
15 2014 who receive nonmonetary remuneration shall not have  
16 nonmonetary remuneration included in compensation for retirement  
17 purposes and nonmonetary remuneration may not be used in  
18 calculating a member's final average salary. Any lump sum or other  
19 payments paid to members that do not constitute regular salary or  
20 wage payments are not considered compensation for the purpose of  
21 withholding contributions for the system or for the purpose of  
22 calculating a member's final average salary. These payments  
23 include, but are not limited to, attendance or performance bonuses,

1 one-time flat fee or lump sum payments, payments paid as a result  
2 of excess budget, or employee recognition payments. The board shall  
3 have final power to decide whether the payments shall be considered  
4 compensation for 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 and 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 ~~shall be~~ is the fund in which shall be accumulated the  
3 contributions made by the participating public employers to the  
4 retirement system, and from which transfers shall be made as  
5 provided in this section.

6 (b) Based upon the provisions of section thirteen of this  
7 article, the participating public employers' contributions to the  
8 retirement system, as determined by the Consolidated Public  
9 Retirement Board ~~by legislative rule promulgated in accordance with~~  
10 ~~the provisions of article three, chapter twenty-nine-a of this~~  
11 ~~code~~, shall be a percent of the members' total annual compensation  
12 related to benefits under this retirement system. In determining  
13 the amount, the board shall give consideration to setting the  
14 amount at a sum equal to an amount which, if paid annually by the  
15 participating public employers, will be sufficient to provide for  
16 the total normal cost of the benefits expected to become payable to  
17 all members and to amortize any unfunded liability found by  
18 application of the actuarial funding method chosen for that purpose  
19 by the Consolidated Public Retirement Board, over a period of years  
20 determined actuarially appropriate. ~~When proposing a rule for~~  
21 ~~promulgation which relates to the amount of employer contribution,~~  
22 ~~the Board may promulgate emergency rules pursuant to the provisions~~  
23 ~~of article three, chapter twenty-nine-a of this code, if the~~

~~1 inability of the board to increase employer contributions will  
2 detrimentally affect the actuarial soundness of the retirement  
3 system. A signed statement from the state actuary shall accompany  
4 the statement of facts and circumstances constituting an emergency  
5 which shall be filed in the State Register. For purposes of this  
6 section, subdivision (2), subsection (b), section fifteen a,  
7 article three, chapter twenty-nine a of this code is not applicable  
8 to the Secretary of State's determination of whether an emergency  
9 rule should be approved.~~

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

12 (a) The Legislature finds that a compelling state interest  
13 exists in maintaining an actuarially sound retirement system and  
14 that this interest necessitates that certain limitations be placed  
15 upon an individual's ability to retire from the system and to then  
16 later return to state employment as an employee with a  
17 participating public employer while contemporaneously drawing an  
18 annuity from the system. The Legislature hereby further finds and  
19 declares that the interests of the public are served when persons  
20 having retired from public employment are permitted, within certain  
21 limitations, to render post-retirement employment in positions of  
22 public service, either in elected or appointed capacities. The  
23 Legislature further finds and declares that it has the need for

1 qualified employees and that in many cases an employee of the  
2 Legislature will retire and be available to return to work for the  
3 Legislature as a per diem employee. The Legislature further finds  
4 and declares that in many instances these employees have  
5 particularly valuable expertise which the Legislature cannot find  
6 elsewhere. The Legislature further finds and declares that  
7 reemploying these persons on a limited per diem basis after they  
8 have retired is not only in the best interests of this state, but  
9 has no adverse effect whatsoever upon the actuarial soundness of  
10 this particular retirement system.

11 (b) For the purposes of this section: (1) Regularly employed  
12 on a full-time basis means employment of an individual by a  
13 participating public employer, in a position other than as an  
14 elected or appointed public official, which normally requires  
15 twelve months per year service and at least one thousand forty  
16 hours of service per year in that position; (2) temporary full-time  
17 employment or temporary part-time employment means employment of an  
18 individual on a temporary or provisional basis by a participating  
19 public employer, other than as an elected or appointed public  
20 official, in a position which does not otherwise render the  
21 individual as regularly employed; (3) former employee of the  
22 Legislature means any person who has retired from employment with  
23 the Legislature and who has at least ten years' contributing

1 service with the Legislature; and (4) reemployed by the Legislature  
2 means a former employee of the Legislature who has been reemployed  
3 on a per diem basis not to exceed one hundred seventy-five days per  
4 calendar year.

5 (c) In the event a retirant becomes regularly employed on a  
6 full-time basis by a participating public employer, payment of his  
7 or her annuity shall be suspended during the period of his or her  
8 reemployment and he or she shall become a contributing member to  
9 the retirement system. If his or her reemployment is for a period  
10 of one year or longer, his or her annuity shall be recalculated and  
11 he or she shall be granted an increased annuity due to the  
12 additional employment, the annuity to be computed according to  
13 section twenty-two of this article. If his or her reemployment is  
14 for a period less than one year, he or she may request in writing  
15 that the employee and employer retirement contributions submitted  
16 during reemployment be credited to the participating public  
17 employer pursuant to section forty-four of this article, and his or  
18 her previous annuity shall be reinstated effective the first day of  
19 the month following termination of reemployment and the board's  
20 receipt of written notice thereof. A retirant may accept  
21 legislative per diem, temporary full-time or temporary part-time  
22 employment from a participating employer without suspending his or  
23 her retirement annuity so long as he or she does not receive annual

1 compensation in excess of \$20,000.

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

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

12 (2) Suspend the payment of his or her annuity and become a  
13 contributing member of the retirement system as provided in  
14 subsection (c) of this section. Notwithstanding the provisions of  
15 this subsection, a member who is participating in the system as an  
16 elected public official may not retire from his or her elected  
17 position and commence to receive an annuity from the system and  
18 then be elected or reappointed to the same position unless and  
19 until a continuous twelve-month period has passed since his or her  
20 retirement from the position: *Provided*, That a former employee of  
21 the Legislature may not be reemployed by the Legislature on a per  
22 diem basis until at least sixty days after the employee has  
23 retired: *Provided, however*, That the limitation on compensation

1 provided by subsection (c) of this section does not apply to the  
2 reemployed former employee: *Provided further*, That in no event may  
3 reemployment by the Legislature of a per diem employee exceed one  
4 hundred seventy-five days per calendar year.

5 (e) A member who is participating in the system simultaneously  
6 as both a regular, full-time employee of a participating public  
7 employer and as an elected or appointed member of the legislative  
8 body of the state or any political subdivision may, upon meeting  
9 the age and service requirements of this article, elect to retire  
10 from his or her regular full-time state employment and may commence  
11 to receive an annuity from the system without terminating his or  
12 her position as a member of the legislative body of the state or  
13 political subdivision: *Provided*, That the retired member shall not,  
14 during the term of his or her retirement and continued service as  
15 a member of the legislative body of a political subdivision, be  
16 eligible to continue his or her participation as a contributing  
17 member of the system and shall not continue to accrue any  
18 additional service credit or benefits in the system related to the  
19 continued service.

20 (f) Notwithstanding the provisions of section twenty-seven-b  
21 of this article, any publicly elected member of the legislative  
22 body of any political subdivision or of the State Legislature, the  
23 Clerk of the House of Delegates and the Clerk of the Senate may

1 elect to commence receiving in-service retirement distributions  
2 from this system upon attaining the age of seventy and one-half  
3 years: *Provided*, That the member is eligible to retire under the  
4 provisions of section twenty or twenty-one of this article:  
5 *Provided, however*, That the member elects to stop actively  
6 contributing to the system while receiving the in-service  
7 distributions.

8 (g) The provisions of section twenty-two-h of this article are  
9 not applicable to the amendments made to this section during the  
10 2006 Regular Session.

NOTE: The purpose of this bill is to specify that nonmonetary compensation is not included in calculating a member's final average salary; to clarify which compensated board members of a participating public employer shall be considered an employee; to remove the requirement for the Consolidated Public Retirement Board to set the employer contribution rate by legislative rule; to permit participating public employers to be credited with employee and employer retirement contributions when a retirant is reemployed for less than one year; and to make technical corrections in §5-10-31.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.