

Senate Bill No. 444

(By Senators Kirkendoll, Cann, Edgell, Carmichael and Plymale)

[Introduced January 28, 2014; referred to the Committee on Pensions; and then to the Committee on Finance.]

A BILL to amend and reenact §5-10-2, §5-10-31 and §5-10-48 of the Code of West Virginia, 1931, as amended, all relating to the Public Employees Retirement System; defining “compensation” and “employee” in this article; removing the requirement to set employer contribution rate by legislative rule; and allowing employee and employer retirement contributions to be credited to the participating public employer when a retirant is reemployed for less than one year.

Be it enacted by the Legislature of West Virginia:

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

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

§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
3 article have the following meanings:

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

9 (2) “Accumulated net benefit” means the aggregate
10 amount of all benefits paid to or on behalf of a retired
11 member;

12 (3) “Actuarial equivalent” means a benefit of equal value
13 computed upon the basis of a mortality table and regular
14 interest adopted by the board of trustees from time to time:
15 *Provided*, That when used in the context of compliance with
16 the federal maximum benefit requirements of Section 415 of

17 the Internal Revenue Code, “actuarial equivalent” shall be
18 computed using the mortality tables and interest rates
19 required to comply with those requirements;

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

24 (5) “Annuity reserve” means the present value of all
25 payments to be made to a retirant or beneficiary of a retirant
26 on account of any annuity, computed upon the basis of
27 mortality and other tables of experience, and regular interest,
28 adopted by the board of trustees from time to time;

29 (6) “Beneficiary” means any person, except a retirant,
30 who is entitled to, or will be entitled to, an annuity or other
31 benefit payable by the retirement system;

32 (7) “Board of Trustees” or “board” means the Board of
33 Trustees of the West Virginia Consolidated Public
34 Retirement System;

35 (8) "Compensation" means the remuneration paid a
36 member by a participating public employer for personal
37 services rendered by the member to the participating public
38 employer. In the event a member's remuneration is not all
39 paid in money, his or her participating public employer shall
40 fix the value of the portion of the remuneration which is not
41 paid in money: Provided, That members hired in a position
42 for the first time on or after July 1, 2014, who receive
43 nonmonetary remuneration shall not have nonmonetary
44 remuneration included in compensation for retirement
45 purposes and nonmonetary remuneration may not be used in
46 calculating a member's final average salary. Any lump sum
47 or other payments paid to members that do not constitute
48 regular salary or wage payments are not considered
49 compensation for the purpose of withholding contributions
50 for the system or for the purpose of calculating a member's
51 final average salary. These payments include, but are not
52 limited to, attendance or performance bonuses, one-time flat
53 fee or lump sum payments, payments paid as a result of

54 excess budget or employee recognition payments. The board
55 shall have final power to decide whether the payments shall
56 be considered compensation for purposes of this article;

57 (9) “Contributing service” means service rendered by a
58 member within this state and for which the member made
59 contributions to a public retirement system account of this
60 state, to the extent credited him or her as provided by this
61 article;

62 (10) “Credited service” means the sum of a member’s
63 prior service credit, military service credit, workers’
64 compensation service credit and contributing service credit
65 standing to his or her credit as provided in this article;

66 (11) “Employee” means any person who serves regularly
67 as an officer or employee, full time, on a salary basis, whose
68 tenure is not restricted as to temporary or provisional
69 appointment, in the service of, and whose compensation is
70 payable, in whole or in part, by any political subdivision, or
71 an officer or employee whose compensation is calculated on
72 a daily basis and paid monthly or on completion of

73 assignment, including technicians and other personnel
74 employed by the West Virginia National Guard whose
75 compensation, in whole or in part, is paid by the federal
76 government: *Provided*, That an employee of the Legislature
77 whose term of employment is otherwise classified as
78 temporary and who is employed to perform services required
79 by the Legislature for its regular sessions or during the
80 interim between regular sessions and who has been or is
81 employed during regular sessions or during the interim
82 between regular sessions in seven or more consecutive
83 calendar years, as certified by the clerk of the house in which
84 the employee served, is an employee, any provision to the
85 contrary in this article notwithstanding, and is entitled to
86 credited service in accordance with provisions of section
87 fourteen, article ten, chapter five of this code and: *Provided*,
88 *however*, That members of the legislative body of any
89 political subdivision and judges of the State Court of Claims
90 are employees receiving one year of service credit for each
91 one-year term served and pro rated service credit for any

92 partial term served, anything contained in this article to the
93 contrary notwithstanding: Provided further, That only a
94 compensated board member of a participating public
95 employer appointed to a board of a nonlegislative body for
96 the first time on or after July 1, 2014, who normally is
97 required to work twelve months per year and one thousand
98 forty hours of service per year is an employee. In any case of
99 doubt as to who is an employee within the meaning of this
100 article, the Board of Trustees shall decide the question;

101 (12) “Employer error” means an omission,
102 misrepresentation, or violation of relevant provisions of the
103 West Virginia Code or of the West Virginia Code of State
104 Regulations or the relevant provisions of both the West
105 Virginia Code and of the West Virginia Code of State
106 Regulations by the participating public employer that has
107 resulted in an underpayment or overpayment of contributions
108 required. A deliberate act contrary to the provisions of this
109 section by a participating public employer does not constitute
110 employer error.

111 (13) “Final average salary” means either of the following:

112 *Provided*, That salaries for determining benefits during any

113 determination period may not exceed the maximum

114 compensation allowed as adjusted for cost of living in

115 accordance with section seven, article ten-d, chapter five of

116 this code and Section 401(a)(17) of the Internal Revenue

117 Code: *Provided, however*, That the provisions of section

118 twenty-two-h of this article are not applicable to the

119 amendments made to this subdivision during the 2011

120 Regular Session of the Legislature.

121 (A) The average of the highest annual compensation

122 received by a member (including a member of the Legislature

123 who participates in the retirement system in the year 1971 or

124 thereafter), during any period of three consecutive years of

125 credited service contained within the member’s fifteen years

126 of credited service immediately preceding the date his or her

127 employment with a participating public employer last

128 terminated; or

129 (B) If the member has less than five years of credited
130 service, the average of the annual rate of compensation
131 received by the member during his or her total years of
132 credited service; and in determining the annual
133 compensation, under either paragraph (A) or (B) of this
134 subdivision, of a member of the Legislature who participates
135 in the retirement system as a member of the Legislature in the
136 year 1971, or in any year thereafter, his or her actual
137 legislative compensation (the total of all compensation paid
138 under sections two, three, four and five, article two-a, chapter
139 four of this code), in the year 1971, or in any year thereafter,
140 plus any other compensation he or she receives in any year
141 from any other participating public employer including the
142 State of West Virginia, without any multiple in excess of one
143 times his or her actual legislative compensation and other
144 compensation, shall be used: *Provided*, That “final average
145 salary” for any former member of the Legislature or for any
146 member of the Legislature in the year 1971, who, in either
147 event, was a member of the Legislature on November 30,

148 1968, or November 30, 1969, or November 30, 1970, or on
149 November 30 in any one or more of those three years and
150 who participated in the retirement system as a member of the
151 Legislature in any one or more of those years means: (i)
152 Either (notwithstanding the provisions of this subdivision
153 preceding this proviso) \$1,500 multiplied by eight, plus the
154 highest other compensation the former member or member
155 received in any one of the three years from any other
156 participating public employer including the State of West
157 Virginia; or (ii) “final average salary” determined in
158 accordance with paragraph (A) or (B) of this subdivision,
159 whichever computation produces the higher final average
160 salary (and in determining the annual compensation under
161 subparagraph (ii) of this proviso, the legislative
162 compensation of the former member shall be computed on
163 the basis of \$1,500 multiplied by eight, and the legislative
164 compensation of the member shall be computed on the basis
165 set forth in the provisions of this subdivision immediately
166 preceding this proviso or on the basis of \$1,500 multiplied by

167 eight, whichever computation as to the member produces the
168 higher annual compensation);

169 (14) “Internal Revenue Code” means the Internal
170 Revenue Code of 1986, as amended, codified at Title 26 of
171 the United States Code;

172 (15) “Limited credited service” means service by
173 employees of the West Virginia Educational Broadcasting
174 Authority, in the employment of West Virginia University,
175 during a period when the employee made contributions to
176 another retirement system, as required by West Virginia
177 University, and did not make contributions to the Public
178 Employees Retirement System: *Provided*, That while limited
179 credited service can be used for the formula set forth in
180 subsection (e), section twenty-one of this article, it may not
181 be used to increase benefits calculated under section twenty-
182 two of this article;

183 (16) “Member” means any person who has accumulated
184 contributions standing to his or her credit in the members’
185 deposit fund;

186 (17) “Participating public employer” means the State of
187 West Virginia, any board, commission, department,
188 institution or spending unit, and includes any agency created
189 by rule of the Supreme Court of Appeals having full-time
190 employees, which for the purposes of this article is
191 considered a department of state government; and any
192 political subdivision in the state which has elected to cover
193 its employees, as defined in this article, under the West
194 Virginia Public Employees Retirement System;

195 (18) “Plan year” means the same as referenced in section
196 forty-two of this article;

197 (19) “Political subdivision” means the State of West
198 Virginia, a county, city or town in the state; a school
199 corporation or corporate unit; any separate corporation or
200 instrumentality established by one or more counties, cities or
201 towns, as permitted by law; any corporation or
202 instrumentality supported in most part by counties, cities or
203 towns; and any public corporation charged by law with the
204 performance of a governmental function and whose

205 jurisdiction is coextensive with one or more counties, cities
206 or towns: *Provided*, That any mental health agency
207 participating in the Public Employees Retirement System
208 before July 1, 1997, is considered a political subdivision
209 solely for the purpose of permitting those employees who are
210 members of the Public Employees Retirement System to
211 remain members and continue to participate in the retirement
212 system at their option after July 1, 1997: *Provided, however*,
213 That the Regional Community Policing Institute which
214 participated in the Public Employees Retirement System
215 before July 1, 2000, is considered a political subdivision
216 solely for the purpose of permitting those employees who are
217 members of the Public Employees Retirement System to
218 remain members and continue to participate in the Public
219 Employees Retirement System after July 1, 2000;

220 (20) “Prior service” means service rendered prior to July
221 1, 1961, to the extent credited a member as provided in this
222 article;

223 (21) “Regular interest” means the rate or rates of interest
224 per annum, compounded annually, as the Board of Trustees
225 adopts from time to time;

226 (22) “Required beginning date” means April 1 of the
227 calendar year following the later of: (A) The calendar year in
228 which the member attains age seventy and one-half years of
229 age; or (B) the calendar year in which a member who has
230 attained the age seventy and one-half years of age and who
231 ceases providing service covered under this system to a
232 participating employer;

233 (23) “Retirant” means any member who commences an
234 annuity payable by the retirement system;

235 (24) “Retirement” means a member’s withdrawal from
236 the employ of a participating public employer and the
237 commencement of an annuity by the retirement system;

238 (25) “Retirement system” or “system” means the West
239 Virginia Public Employees Retirement System created and
240 established by this article;

241 (26) "Retroactive service" means: (1) Service between
242 July 1, 1961, and the date an employer decides to become a
243 participating member of the Public Employees Retirement
244 System; (2) service prior to July 1, 1961, for which the
245 employee is not entitled to prior service at no cost in
246 accordance with 162 CSR 5.13; and (3) service of any
247 member of a legislative body or employees of the State
248 Legislature whose term of employment is otherwise classified
249 as temporary for which the employee is eligible, but for
250 which the employee did not elect to participate at that time;

251 (27) "Service" means personal service rendered to a
252 participating public employer by an employee of a
253 participating public employer; and

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

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

1 (a) The Employers Accumulation Fund is hereby
2 continued. It ~~shall be~~ is the fund in which shall be
3 accumulated the contributions made by the participating

4 public employers to the retirement system, and from which
5 transfers shall be made as provided in this section.

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

23 amount of employer contribution, the Board may promulgate
24 emergency rules pursuant to the provisions of article three,
25 chapter twenty-nine-a of this code, if the inability of the
26 board to increase employer contributions will detrimentally
27 affect the actuarial soundness of the retirement system. A
28 signed statement from the state actuary shall accompany the
29 statement of facts and circumstances constituting an
30 emergency which shall be filed in the State Register. For
31 purposes of this section, subdivision (2), subsection (b);
32 section fifteen-a, article three, chapter twenty-nine-a of this
33 code is not applicable to the Secretary of State's
34 determination of whether an emergency rule should be
35 approved.

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

1 (a) The Legislature finds that a compelling state interest
2 exists in maintaining an actuarially sound retirement system
3 and that this interest necessitates that certain limitations be
4 placed upon an individual's ability to retire from the system

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

25 (b) For the purposes of this section: (1) “Regularly
26 employed on a full-time basis” means employment of an
27 individual by a participating public employer, in a position
28 other than as an elected or appointed public official, which
29 normally requires twelve months per year service and at least
30 one thousand forty hours of service per year in that position;
31 (2) “temporary full-time employment” or “temporary
32 part-time employment” means employment of an individual
33 on a temporary or provisional basis by a participating public
34 employer, other than as an elected or appointed public
35 official, in a position which does not otherwise render the
36 individual as regularly employed; (3) “former employee of
37 the Legislature” means any person who has retired from
38 employment with the Legislature and who has at least ten
39 years’ contributing service with the Legislature; and (4)
40 “reemployed by the Legislature” means a former employee
41 of the Legislature who has been reemployed on a per diem
42 basis not to exceed one hundred seventy-five days per
43 calendar year.

44 (c) In the event a retirant becomes regularly employed on
45 a full-time basis by a participating public employer, payment
46 of his or her annuity shall be suspended during the period of
47 his or her reemployment and he or she shall become a
48 contributing member to the retirement system. If his or her
49 reemployment is for a period of one year or longer, his or her
50 annuity shall be recalculated and he or she shall be granted
51 an increased annuity due to the additional employment, the
52 annuity to be computed according to section twenty-two of
53 this article. If his or her reemployment is for a period less
54 than one year, he or she may request in writing that the
55 employee and employer retirement contributions submitted
56 during reemployment be credited to the participating public
57 employer pursuant to section forty-four of this article, and his
58 or her previous annuity shall be reinstated effective the first
59 day of the month following termination of reemployment and
60 the board's receipt of written notice thereof. A retirant may
61 accept legislative per diem, temporary full-time or temporary
62 part-time employment from a participating employer without

63 suspending his or her retirement annuity so long as he or she
64 does not receive annual compensation in excess of \$20,000.

65 (d) In the event a member retires and is then subsequently
66 elected to a public office or is subsequently appointed to hold
67 an elected public office, or is a former employee of the
68 Legislature who has been reemployed by the Legislature, he
69 or she has the option, notwithstanding subsection (c) of this
70 section, to either:

71 (1) Continue to receive payment of his or her annuity
72 while holding public office or during any reemployment of
73 a former employee of the Legislature on a per diem basis, in
74 addition to the salary he or she may be entitled to as an office
75 holder or as a per diem reemployed former employee of the
76 Legislature; or

77 (2) Suspend the payment of his or her annuity and
78 become a contributing member of the retirement system as
79 provided in subsection (c) of this section. Notwithstanding
80 the provisions of this subsection, a member who is
81 participating in the system as an elected public official may

82 not retire from his or her elected position and commence to
83 receive an annuity from the system and then be elected or
84 reappointed to the same position unless and until a
85 continuous twelve-month period has passed since his or her
86 retirement from the position: *Provided*, That a former
87 employee of the Legislature may not be reemployed by the
88 Legislature on a per diem basis until at least sixty days after
89 the employee has retired: *Provided, however*, That the
90 limitation on compensation provided by subsection (c) of this
91 section does not apply to the reemployed former employee:
92 *Provided further*, That in no event may reemployment by the
93 Legislature of a per diem employee exceed one hundred
94 seventy-five days per calendar year.

95 (e) A member who is participating in the system
96 simultaneously as both a regular, full-time employee of a
97 participating public employer and as an elected or appointed
98 member of the legislative body of the state or any political
99 subdivision may, upon meeting the age and service
100 requirements of this article, elect to retire from his or her

101 regular full-time state employment and may commence to
102 receive an annuity from the system without terminating his or
103 her position as a member of the legislative body of the state
104 or political subdivision: *Provided*, That the retired member
105 shall not, during the term of his or her retirement and
106 continued service as a member of the legislative body of a
107 political subdivision, be eligible to continue his or her
108 participation as a contributing member of the system and
109 shall not continue to accrue any additional service credit or
110 benefits in the system related to the continued service.

111 (f) Notwithstanding the provisions of section
112 twenty-seven-b of this article, any publicly elected member
113 of the legislative body of any political subdivision or of the
114 State Legislature, the Clerk of the House of Delegates and the
115 Clerk of the Senate may elect to commence receiving
116 in-service retirement distributions from this system upon
117 attaining the age of seventy and one-half years: *Provided*,
118 That the member is eligible to retire under the provisions of
119 section twenty or twenty-one of this article: *Provided*,

120 *however*, That the member elects to stop actively contributing
121 to the system while receiving the in-service distributions.

122 (g) The provisions of section twenty-two-h of this article
123 are not applicable to the amendments made to this section
124 during the 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.)