

WEST VIRGINIA LEGISLATURE
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ENROLLED

Senate Bill No. 444

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



[PASSED FEBRUARY 20, 2014; IN EFFECT FROM PASSAGE.]

E N R O L L E D

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(BY SENATORS KIRKENDOLL, CANN, EDGELL, CARMICHAEL
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[Passed February 20, 2014; in effect from passage.]

AN ACT 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 amount
10 of all benefits paid to or on behalf of a retired member;

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

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

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

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

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

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

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

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

65 (11) "Employee" means any person who serves regularly
66 as an officer or employee, full time, on a salary basis, whose

67 tenure is not restricted as to temporary or provisional
68 appointment, in the service of, and whose compensation is
69 payable, in whole or in part, by any political subdivision, or
70 an officer or employee whose compensation is calculated on
71 a daily basis and paid monthly or on completion of
72 assignment, including technicians and other personnel
73 employed by the West Virginia National Guard whose
74 compensation, in whole or in part, is paid by the federal
75 government: *Provided*, That an employee of the Legislature
76 whose term of employment is otherwise classified as
77 temporary and who is employed to perform services required
78 by the Legislature for its regular sessions or during the
79 interim between regular sessions and who has been or is
80 employed during regular sessions or during the interim
81 between regular sessions in seven or more consecutive
82 calendar years, as certified by the clerk of the house in which
83 the employee served, is an employee, any provision to the
84 contrary in this article notwithstanding, and is entitled to
85 credited service in accordance with provisions of section
86 fourteen, article ten, chapter five of this code and: *Provided*,
87 *however*, That members of the legislative body of any
88 political subdivision and judges of the State Court of Claims
89 are employees receiving one year of service credit for each
90 one-year term served and pro rated service credit for any
91 partial term served, anything contained in this article to the
92 contrary notwithstanding: *Provided further*, That only a
93 compensated board member of a participating public
94 employer appointed to a board of a nonlegislative body for
95 the first time on or after July 1, 2014, who normally is
96 required to work twelve months per year and one thousand
97 forty hours of service per year is an employee. In any case of
98 doubt as to who is an employee within the meaning of this
99 article, the Board of Trustees shall decide the question;

100 (12) “Employer error” means an omission,
101 misrepresentation, or violation of relevant provisions of the

102 West Virginia Code or of the West Virginia Code of State
103 Regulations or the relevant provisions of both the West
104 Virginia Code and of the West Virginia Code of State
105 Regulations by the participating public employer that has
106 resulted in an underpayment or overpayment of contributions
107 required. A deliberate act contrary to the provisions of this
108 section by a participating public employer does not constitute
109 employer error.

110 (13) “Final average salary” means either of the following:
111 *Provided*, That salaries for determining benefits during any
112 determination period may not exceed the maximum
113 compensation allowed as adjusted for cost of living in
114 accordance with section seven, article ten-d, chapter five of
115 this code and Section 401(a)(17) of the Internal Revenue
116 Code: *Provided, however*, That the provisions of section
117 twenty-two-h of this article are not applicable to the
118 amendments made to this subdivision during the 2011
119 Regular Session of the Legislature.

120 (A) The average of the highest annual compensation
121 received by a member (including a member of the Legislature
122 who participates in the retirement system in the year 1971 or
123 thereafter), during any period of three consecutive years of
124 credited service contained within the member’s fifteen years
125 of credited service immediately preceding the date his or her
126 employment with a participating public employer last
127 terminated; or

128 (B) If the member has less than five years of credited
129 service, the average of the annual rate of compensation
130 received by the member during his or her total years of
131 credited service; and in determining the annual compensation,
132 under either paragraph (A) or (B) of this subdivision, of a
133 member of the Legislature who participates in the retirement
134 system as a member of the Legislature in the year 1971, or in

135 any year thereafter, his or her actual legislative compensation
136 (the total of all compensation paid under sections two, three,
137 four and five, article two-a, chapter four of this code), in the
138 year 1971, or in any year thereafter, plus any other
139 compensation he or she receives in any year from any other
140 participating public employer including the State of West
141 Virginia, without any multiple in excess of one times his or her
142 actual legislative compensation and other compensation, shall
143 be used: *Provided*, That “final average salary” for any former
144 member of the Legislature or for any member of the Legislature
145 in the year 1971, who, in either event, was a member of the
146 Legislature on November 30, 1968, or November 30, 1969, or
147 November 30, 1970, or on November 30 in any one or more of
148 those three years and who participated in the retirement system
149 as a member of the Legislature in any one or more of those
150 years means: (i) Either (notwithstanding the provisions of this
151 subdivision preceding this proviso) \$1,500 multiplied by eight,
152 plus the highest other compensation the former member or
153 member received in any one of the three years from any other
154 participating public employer including the State of West
155 Virginia; or (ii) “final average salary” determined in
156 accordance with paragraph (A) or (B) of this subdivision,
157 whichever computation produces the higher final average salary
158 (and in determining the annual compensation under
159 subparagraph (ii) of this proviso, the legislative compensation
160 of the former member shall be computed on the basis of \$1,500
161 multiplied by eight, and the legislative compensation of the
162 member shall be computed on the basis set forth in the
163 provisions of this subdivision immediately preceding this
164 proviso or on the basis of \$1,500 multiplied by eight,
165 whichever computation as to the member produces the higher
166 annual compensation);

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

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

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

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

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

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

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

218 (20) "Prior service" means service rendered prior to July
219 1, 1961, to the extent credited a member as provided in this
220 article;

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

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

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

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

236 (25) "Retirement system" or "system" means the West
237 Virginia Public Employees Retirement System created and
238 established by this article;

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

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

252 (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 is the fund in which shall be accumulated the
3 contributions made by the participating public employers to
4 the retirement system, and from which transfers shall be made
5 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, shall be a percent of the members'
10 total annual compensation related to benefits under this
11 retirement system. In determining the amount, the board
12 shall give consideration to setting the amount at a sum equal
13 to an amount which, if paid annually by the participating
14 public employers, will be sufficient to provide for the total
15 normal cost of the benefits expected to become payable to all
16 members and to amortize any unfunded liability found by
17 application of the actuarial funding method chosen for that
18 purpose by the Consolidated Public Retirement Board, over
19 a period of years determined actuarially appropriate.

**§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 of
41 the Legislature who has been reemployed on a per diem basis
42 not to exceed one hundred seventy-five days per calendar
43 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 an
51 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 a
73 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.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....
Chairman Senate Committee

.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

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Clerk of the Senate

.....
Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the

Day of, 2014.

.....
Governor