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H. B. 2620

(By Delegates E. Nelson, Howell, Miller, Border, Shott, Kurcaba,
Moffatt, Westfall, McCuskey, Gearheart and Espinosa)

[Introduced February 5, 2015; referred to the
Committee on Pensions and Retirement then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §5-10-2 of the Code of West Virginia, 1931, as amended, relating to definitions used in the Public Employees Retirement System; redefining the term final average salary for new enrollees to the average salary received in the highest ten years of service, rather than the current three.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-2. Definitions.

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

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

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

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

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

11 (5) "Annuity reserve" means the present value of all payments to be made to a retirant or
12 beneficiary of a retirant on account of any annuity, computed upon the basis of mortality and other
13 tables of experience, and regular interest, adopted by the board of trustees from time to time;

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

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

18 (8) "Compensation" means the remuneration paid a member by a participating public
19 employer for personal services rendered by the member to the participating public employer. In the
20 event a member's remuneration is not all paid in money, his or her participating public employer
21 shall fix the value of the portion of the remuneration which is not paid in money: *Provided*, That
22 members hired in a position for the first time on or after July 1, 2015, who receive nonmonetary

1 remuneration shall not have nonmonetary remuneration included in compensation for retirement
2 purposes and nonmonetary remuneration may not be used in calculating a member's final average
3 salary. Any lump sum or other payments paid to members that do not constitute regular salary or
4 wage payments are not considered compensation for the purpose of withholding contributions for
5 the system or for the purpose of calculating a member's final average salary. These payments
6 include, but are not limited to, attendance or performance bonuses, one-time flat fee or lump sum
7 payments, payments paid as a result of excess budget or employee recognition payments. The board
8 shall have final power to decide whether the payments shall be considered compensation for
9 purposes of this article;

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

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

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

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

15 (12) "Employer error" means an omission, misrepresentation, or violation of relevant
16 provisions of the West Virginia Code or of the West Virginia Code of State ~~Regulations~~ Rules or
17 the relevant provisions of both the West Virginia Code and of the West Virginia Code of State
18 ~~Regulations~~ Rules by the participating public employer that has resulted in an underpayment or
19 overpayment of contributions required. A deliberate act contrary to the provisions of this section by
20 a participating public employer does not constitute employer error.

21 (13) "Final average salary" means either of the following: *Provided,* That salaries for
22 determining benefits during any determination period may not exceed the maximum compensation

1 allowed as adjusted for cost of living in accordance with section seven, article ten-d, chapter five of
2 this code and Section 401(a)(17) of the Internal Revenue Code: *Provided, however,* That the
3 provisions of section twenty-two-h of this article are not applicable to the amendments made to this
4 subdivision during the 2011 Regular Session of the Legislature.

5 (A) The average of the highest annual compensation received by a member (including a
6 member of the Legislature who participates in the retirement system in the year 1971 or thereafter),
7 during any period of three consecutive years of credited service contained within the member's
8 fifteen years of credited service immediately preceding the date his or her employment with a
9 participating public employer last terminated: *Provided, That for new members whose date of first*
10 *employment is after July 1, 2015, the final average salary means the average of the highest annual*
11 *compensation received by a member (including a member of the Legislature who participates in the*
12 *retirement system in the year 1971 or thereafter) during any period of ten consecutive years of*
13 *credited service contained within the member's fifteen years of credited service immediately*
14 *preceding the date his or her employment with a participating public employer last terminated; or*

15 (B) If the member has less than five years of credited service, the average of the annual rate
16 of compensation received by the member during his or her total years of credited service; and in
17 determining the annual compensation, under either paragraph (A) or (B) of this subdivision, of a
18 member of the Legislature who participates in the retirement system as a member of the Legislature
19 in the year 1971, or in any year thereafter, his or her actual legislative compensation (the total of all
20 compensation paid under sections two, three, four and five, article two-a, chapter four of this code),
21 in the year 1971, or in any year thereafter, plus any other compensation he or she receives in any year
22 from any other participating public employer including the State of West Virginia, without any

1 multiple in excess of one times his or her actual legislative compensation and other compensation,
2 shall be used: *Provided*, That "final average salary" for any former member of the Legislature or for
3 any member of the Legislature in the year 1971, who, in either event, was a member of the
4 Legislature on November 30, 1968, or November 30, 1969, or November 30, 1970, or on November
5 30 in any one or more of those three years and who participated in the retirement system as a member
6 of the Legislature in any one or more of those years means: (i) Either (notwithstanding the provisions
7 of this subdivision preceding this proviso) \$1,500 multiplied by eight, plus the highest other
8 compensation the former member or member received in any one of the three years from any other
9 participating public employer including the State of West Virginia; or (ii) "final average salary"
10 determined in accordance with paragraph (A) or (B) of this subdivision, whichever computation
11 produces the higher final average salary (and in determining the annual compensation under
12 subparagraph (ii) of this proviso, the legislative compensation of the former member shall be
13 computed on the basis of \$1,500 multiplied by eight, and the legislative compensation of the member
14 shall be computed on the basis set forth in the provisions of this subdivision immediately preceding
15 this proviso or on the basis of \$1,500 multiplied by eight, whichever computation as to the member
16 produces the higher annual compensation);

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

19 (15) "Limited credited service" means service by employees of the West Virginia Educational
20 Broadcasting Authority, in the employment of West Virginia University, during a period when the
21 employee made contributions to another retirement system, as required by West Virginia University,
22 and did not make contributions to the Public Employees Retirement System: *Provided*, That while

1 limited credited service can be used for the formula set forth in subsection (e), section twenty-one
2 of this article, it may not be used to increase benefits calculated under section twenty- two of this
3 article;

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

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

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

13 (19) "Political subdivision" means the State of West Virginia, a county, city or town in the
14 state; a school corporation or corporate unit; any separate corporation or instrumentality established
15 by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality
16 supported in most part by counties, cities or towns; and any public corporation charged by law with
17 the performance of a governmental function and whose jurisdiction is coextensive with one or more
18 counties, cities or towns: *Provided*, That any mental health agency participating in the Public
19 Employees Retirement System before July 1, 1997, is considered a political subdivision solely for
20 the purpose of permitting those employees who are members of the Public Employees Retirement
21 System to remain members and continue to participate in the retirement system at their option after
22 July 1, 1997: *Provided, however*, That the Regional Community Policing Institute which participated

1 in the Public Employees Retirement System before July 1, 2000, is considered a political subdivision
2 solely for the purpose of permitting those employees who are members of the Public Employees
3 Retirement System to remain members and continue to participate in the Public Employees
4 Retirement System after July 1, 2000;

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

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

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

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

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

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

19 (26) "Retroactive service" means: ~~(1)~~ (A) Service between July 1, 1961, and the date an
20 employer decides to become a participating member of the Public Employees Retirement System;
21 ~~(2)~~ (B) service prior to July 1, 1961, for which the employee is not entitled to prior service at no cost
22 in accordance with 162 CSR 5.13; and ~~(3)~~ (C) service of any member of a legislative body or

1 employees of the State Legislature whose term of employment is otherwise classified as temporary
2 for which the employee is eligible, but for which the employee did not elect to participate at that
3 time;

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

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

NOTE: The purpose of this bill is to redefine the term final average salary for new enrollees to be the average salary received in the highest ten years of service, rather than the current three.

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