

Senate Bill No. 305

(By Senators Gaunch and Trump)

[Introduced January 26, 2015; referred to the Committee on Pensions; and then to the Committee
on Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §5-10-17 of the Code of West Virginia, 1931, as amended; to amend
and reenact §7-14D-5 of said code; to amend and reenact §8-22A-6 of said code; to amend
and reenact §15-2A-3 of said code; to amend and reenact §16-5V-6 of said code; and to
amend and reenact §18-7A-13 of said code, all relating to retirement system participation and
concurrent employment provisions; clarifying that members first employed in covered
employment in the West Virginia Deputy Sheriffs Retirement System, West Virginia
Municipal Police Officers and Firefighters Retirement System or the West Virginia
Emergency Medical Services Retirement System shall participate in only one retirement
system administered by the Consolidated Public Retirement Board in which the member has
the earliest date of hire; and specifying that members of the Public Employees Retirement
System, the State Police Retirement System and the Teachers' Retirement System who are
employed in an additional job that requires membership in the West Virginia Deputy Sheriff

1 Retirement System, the West Virginia Municipal Police Officers and Firefighters Retirement
2 System or the West Virginia Emergency Medical Services Retirement System shall abide by
3 the concurrent employment provisions of said system and participate in only one system
4 administered by the Consolidated Public Retirement Board.

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

6 That §5-10-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted;
7 that §7-14D-5 of said code be amended and reenacted; that §8-22A-6 of said code be amended and
8 reenacted; that §15-2A-3 of said code be amended and reenacted; that §16-5V-6 of said code be
9 amended and reenacted; and that §18-7A-13 of said code be amended and reenacted, all to read as
10 follows:

11 **CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR,**
12 **SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;**
13 **MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.**
14 **ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.**

15 **§5-10-17. Retirement system membership.**

16 The membership of the retirement system consists of the following persons:

17 (a) All employees, as defined in section two of this article, who are in the employ of a
18 political subdivision the day preceding the date it becomes a participating public employer and who
19 continue in the employ of the participating public employer on and after that date shall become
20 members of the retirement system; and all persons who become employees of a participating public
21 employer on or after that date shall thereupon become members of the system; except as provided

1 in subdivisions (b), ~~and~~ (c) and (d) of this section.

2 (b) The membership of the Public Employees Retirement System shall not include any person
3 who is an active contributing member of, or who has been retired by, any of the State Teachers
4 retirement systems, the Judges Retirement System, any Retirement System of the West Virginia State
5 Police, the Deputy Sheriff Retirement System or any municipal retirement system for either, or both,
6 police or firefighter; and the Bureau of Employment Programs, by the Commissioner of the Bureau,
7 may elect whether its employees will accept coverage under this article or be covered under the
8 authorization of a separate enactment: *Provided*, That the exclusions of membership do not apply
9 to any member of the State Legislature, the Clerk of the House of Delegates, the Clerk of the State
10 Senate or to any member of the legislative body of any political subdivision provided he or she once
11 becomes a contributing member of the retirement system: *Provided, however*, That any retired
12 member of the State Police Death, Disability and Retirement Fund, the West Virginia State Police
13 Retirement System, the Deputy Sheriff Retirement System and any retired member of any municipal
14 retirement system for either, or both, police or firefighter may on and after the effective date of this
15 section become a member of the retirement system as provided in this article, without receiving
16 credit for prior service as a municipal police officer or firefighter or as a member of the State Police
17 Death, Disability and Retirement Fund, the West Virginia State Police Retirement System or the
18 Deputy Sheriff Retirement System: *Provided further*, That any retired member of the State Police
19 Death, Disability and Retirement Fund, the West Virginia State Police Retirement System, the
20 Deputy Sheriff Retirement System and any retired member of any municipal retirement system for
21 either, or both, police or firefighters, who begins participation in the retirement system established

1 in this article on or after July1,2005, may not receive a combined retirement benefit in excess of one
2 hundred five percent of the member's highest annual salary earned while either a member of the
3 retirement system established in this article or while a member of the other retirement system or
4 systems from which he or she previously retired when adding the retirement benefit from the
5 retirement system created in this article to the retirement benefit received by that member from the
6 other retirement system or systems set forth herein from which he or she previously retired: *And*
7 *provided further*, That the membership of the retirement system does not include any person who
8 becomes employed by the Prestera Center for Mental Health Services, Valley Comprehensive Mental
9 Health Center, Westbrook Health Services or Eastern Panhandle Mental Health Center on or after
10 July1,1997, And provided further, That membership of the retirement system does not include any
11 person who becomes a member of the federal Railroad Retirement Act on or after July1, 2000.

12 (c) Any member of the State Legislature, the Clerk of the House of Delegates, the Clerk of
13 the State Senate and any employee of the State Legislature whose employment is otherwise classified
14 as temporary and who is employed to perform services required by the Legislature for its regular
15 sessions or during the interim between regular sessions and who has been or is employed during
16 regular sessions or during the interim between sessions in seven consecutive calendar years, as
17 certified by the Clerk of the House in which the employee served, or any member of the legislative
18 body of any other political subdivision shall become a member of the retirement system provided
19 he or she notifies the retirement system in writing of his or her intention to be a member of the
20 system and files a membership enrollment form as prescribed by the Board of Trustees, and each
21 person, upon filing his or her written notice to participate in the retirement system, shall by that act

1 authorize the Clerk of the House of Delegates or the Clerk of the State Senate or such person or
 2 legislative agency as the legislative body of any other political subdivision shall designate to deduct
 3 the member's contribution, as provided in subsection (b), section twenty-nine of this article, and after
 4 the deductions have been made from the member's compensation, the deductions shall be forwarded
 5 to the retirement system.

6 (d) Any employee, as defined in section two of this article, who has concurrent employment
 7 in an additional job or jobs which would require the employee to be a member of the West Virginia
 8 Deputy Sheriff Retirement System, the West Virginia Municipal Police Officers and Firefighters
 9 Retirement System or the West Virginia Emergency Medical Services Retirement System shall abide
 10 by the concurrent employment statutory provisions of said retirement system and shall participate
 11 in only one retirement system administered by the board.

12 ~~(d)~~ (e) If question arises regarding the membership status of any employee, the Board of
 13 Trustees has the final power to decide the question.

14 ~~(e)~~ (f) Any individual who is a leased employee is not eligible to participate in the system.
 15 For the purposes of this article, the term "leased employee" means any individual who performs
 16 services as an independent contractor or pursuant to an agreement with an employee leasing
 17 organization or other similar organization. If a question arises regarding the status of an individual
 18 as a leased employee, the board has final authority to decide the question.

19 **CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

20 **ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.**

21 **§7-14D-5. Members.**

1 (a) Any deputy sheriff first employed by a county in covered employment after the effective
2 date of this article shall be a member of this retirement system and does not qualify for membership
3 in any other retirement system administered by the board, so long as he or she remains employed in
4 covered employment: Provided, That any deputy sheriff who has concurrent employment in an
5 additional job or jobs which would require the deputy sheriff to be a member of the West Virginia
6 Municipal Police Officers and Firefighters Retirement System or the West Virginia Emergency
7 Medical Services Retirement System shall participate in only one retirement system administered
8 by the board, and the retirement system applicable to the concurrent employment for which the
9 employee has the earliest date of hire shall prevail. The membership of any person in the plan
10 ceases: (1) Upon the withdrawal of accumulated contributions after the cessation of service; (2)
11 upon retirement; (3) at death; or (4) upon the date, if any, when after the cessation of service, the
12 outstanding balance of any loan obtained by the member pursuant to section twenty-three of the
13 article, plus accrued interest, equals or exceeds the accumulated contributions of the member.

14 (b) Any deputy sheriff employed in covered employment on the effective date of this article
15 shall within six months of that effective date notify in writing both the county commission in the
16 county in which he or she is employed and the board, of his or her desire to become a member of the
17 plan: *Provided, That this time period is extended to January 30, 1999, in accordance with the*
18 *decision of the Supreme Court of Appeals in West Virginia Deputy Sheriffs' Association, et al v.*
19 *James L. Sims, et al, No. 25212: Provided, however, That any deputy sheriff employed in covered*
20 *employment on the effective date of this article has an additional time period consisting of the*
21 *ten-day period following the day after which the amended provisions of this section become law to*

1 notify in writing both the county commission in the county in which he or she is employed and the
2 board of his or her desire to become a member of the plan. Any deputy sheriff who elects to become
3 a member of the plan ceases to be a member or have any credit for covered employment in any other
4 retirement system administered by the board and shall continue to be ineligible for membership in
5 any other retirement system administered by the board so long as the deputy sheriff remains
6 employed in covered employment in this plan: *Provided further*, That any deputy sheriff who elects
7 during the time period from July 1, 1998 to January 30, 1999 or who so elects during the ten-day
8 time period occurring immediately following the day after the day the amendments made during the
9 1999 legislative session become law, to transfer from the Public Employees Retirement System to
10 the plan created in this article shall contribute to the plan created in this article at the rate set forth
11 in section seven of this article retroactive to July 1, 1998. Any deputy sheriff who does not
12 affirmatively elect to become a member of the plan continues to be eligible for any other retirement
13 system as is from time to time offered to other county employees but is ineligible for this plan
14 regardless of any subsequent termination of employment and rehire.

15 (c) Any deputy sheriff employed in covered employment on the effective date of this article
16 who has timely elected to transfer into this plan as provided in subsection (b) of this section shall be
17 given credited service at the time of transfer for all credited service then standing to the deputy
18 sheriff's service credit in the Public Employees Retirement System regardless of whether the credited
19 service (as that term is defined in section two, article ten, chapter five of this code) was earned as
20 a deputy sheriff. All the credited service standing to the transferring deputy sheriff's credit in the
21 Public Employees Retirement Fund System at the time of transfer into this plan shall be transferred

1 into the plan created by this article, and the transferring deputy sheriff shall be given the same credit
2 for the purposes of this article for all service transferred from the Public Employees Retirement
3 System as that transferring deputy sheriff would have received from the Public Employees
4 Retirement System as if the transfer had not occurred. In connection with each transferring deputy
5 sheriff receiving credit for prior employment as provided in this subsection, a transfer from the
6 Public Employees Retirement System to this plan shall be made pursuant to the procedures described
7 in section eight of this article: *Provided*, That a member of this plan who has elected to transfer from
8 the Public Employees Retirement System into this plan pursuant to subsection (b) of this section may
9 not, after having transferred into and become an active member of this plan, reinstate to his or her
10 credit in this plan any service credit relating to periods of nondeputy sheriff service which were
11 withdrawn from the Public Employees Retirement System prior to his or her elective transfer into
12 this plan.

13 (d) Any deputy sheriff who was employed as a deputy sheriff prior to the effective date of
14 this article, but was not employed as a deputy sheriff on the effective date of this article, shall
15 become a member upon rehire as a deputy sheriff. For purposes of this subsection, the member's
16 years of service and credited service in the Public Employees Retirement System prior to the
17 effective date of this article shall not be counted for any purposes under this plan unless: (1) The
18 deputy sheriff has not received the return of his or her accumulated contributions in the Public
19 Employees Retirement System pursuant to section thirty, article ten, chapter five of this code; or (2)
20 the accumulated contributions returned to the member from the Public Employees Retirement
21 System have been repaid pursuant to section thirteen of this article. If the conditions of subdivision

1 (1) or (2) of this subsection are met, all years of the deputy sheriff's covered employment shall be
2 counted as years of service for the purposes of this article.

3 (e) Once made, the election provided in this section is irrevocable. All deputy sheriffs first
4 employed after the effective date and deputy sheriffs electing to become members as described in
5 this section shall be members as a condition of employment and shall make the contributions
6 required by section seven of this article.

7 (f) Notwithstanding any other provisions of this article, any individual who is a leased
8 employee is not eligible to participate in the plan. For purposes of this plan, a "leased employee"
9 means any individual who performs services as an independent contractor or pursuant to an
10 agreement with an employee leasing organization or similar organization. If a question arises
11 regarding the status of an individual as a leased employee, the board has final power to decide the
12 question.

13 **CHAPTER 8. MUNICIPAL CORPORATIONS.**

14 **ARTICLE 22A. WEST VIRGINIA MUNICIPAL POLICE OFFICERS AND** 15 **FIREFIGHTERS RETIREMENT SYSTEM.**

16 **§8-22A-6. Members.**

17 (a) A police officer or firefighter first employed in covered employment after the effective
18 date of this article by a municipality or municipal subdivision which has established and maintained
19 a policemen's pension and relief fund or a firemen's pension and relief fund pursuant to section
20 sixteen, article twenty-two of this chapter and which is a participating employer, shall be a member
21 of this retirement plan: Provided, That any police officer or firefighter who has concurrent

1 employment in an additional job or jobs which would require the police officer or firefighter to be
2 a member of the West Virginia Deputy Sheriff Retirement System or the West Virginia Emergency
3 Medical Services Retirement System shall participate in only one retirement system administered
4 by the board, and the retirement system applicable to the concurrent employment for which the
5 employee has the earliest date of hire shall prevail.

6 (b) Except as provided in section thirty-two of this article, a police officer or firefighter who
7 is a member of the Municipal Police Officers and Firefighters Retirement System may not have
8 credit for covered employment in any other retirement system applied as service credit in the
9 Municipal Police Officers and Firefighters Retirement System.

10 (c) Notwithstanding any other provisions of this article, any individual who is a leased
11 employee is not eligible to participate in the plan. For purposes of this plan, a "leased employee"
12 means any individual who performs services as an independent contractor or pursuant to an
13 agreement with an employee leasing organization or similar organization. If a question arises
14 regarding the status of an individual as a leased employee, the board has final power to decide the
15 question.

16 **CHAPTER 15. PUBLIC SAFETY.**

17 **ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.**

18 **§15-2A-3. Continuation and administration of West Virginia State Police Retirement System;** 19 **leased employees; federal qualification requirements.**

20 (a) The West Virginia State Police Retirement System is continued. It is contemplated that
21 substantially all of the members of the retirement system shall be qualified public safety employees

1 as defined in section two of this article. Any West Virginia state trooper employed by the agency
2 on or after the effective date of this article shall be a member of this retirement system and may not
3 qualify for membership in any other retirement system administered by the board so long as he or
4 she remains employed by the State Police: Provided, That any state trooper who has concurrent
5 employment in an additional job or jobs which would require the state trooper to be a member of the
6 West Virginia Deputy Sheriff Retirement System, the West Virginia Municipal Police Officers and
7 Firefighters Retirement System or the West Virginia Emergency Medical Services Retirement
8 System shall abide by the statutory provisions of said retirement system related to concurrent
9 employment and participate in only one retirement system administered by the board.

10 (b) Any individual who is a leased employee shall not be eligible to participate in the system.
11 For purposes of this system, a "leased employee" means any individual who performs services as an
12 independent contractor or pursuant to an agreement with an employee leasing organization or other
13 similar organization. If a question arises regarding the status of an individual as a leased employee,
14 the board has final power to decide the question.

15 (c) The board created pursuant to article ten-d, chapter five of this code shall administer the
16 retirement system. The board may sue and be sued, contract and be contracted with and conduct all
17 the business of the system in the name of the West Virginia State Police Retirement System.

18 (d) This fund is intended to meet the federal qualification requirements of Section 401(a) and
19 related sections of the Internal Revenue Code as applicable to governmental plans. Notwithstanding
20 any other provision of state law, the board shall administer the retirement system to fulfill this intent
21 for the exclusive benefit of the employees, members, retirants and their beneficiaries. Any provision

1 of this article referencing or relating to these federal qualification requirements shall be effective as
2 of the date required by federal law. The board may promulgate rules and amend or repeal conflicting
3 rules in accordance with the authority granted to the board pursuant to section one, article ten-d,
4 chapter five of this code to assure compliance with this section.

5 **CHAPTER 16. PUBLIC HEALTH.**

6 **ARTICLE 5V. EMERGENCY MEDICAL SERVICES RETIREMENT SYSTEM ACT.**

7 **§16-5V-6. Members.**

8 (a) Any emergency medical services officer first employed by a county or political
9 subdivision in covered employment after the effective date of this article shall be a member of this
10 retirement plan as a condition of employment and upon membership does not qualify for
11 membership in any other retirement system administered by the board, so long as he or she remains
12 employed in covered employment: Provided, That any emergency medical services officer who has
13 concurrent employment in an additional job or jobs which would require the emergency medical
14 services officer to be a member of the West Virginia Deputy Sheriff Retirement System or the West
15 Virginia Municipal Police Officers and Firefighters Retirement System shall participate in only one
16 retirement system administered by the board, and the retirement system applicable to the concurrent
17 employment for which the employee has the earliest date of hire shall prevail.

18 (b) Any emergency medical services officer employed in covered employment by an
19 employer which is currently a participating public employer of the Public Employees Retirement
20 System shall notify in writing both the county commission in the county or officials in the political
21 subdivision in which he or she is employed and the board of his or her desire to become a member

1 of the plan by December 31, 2007. Any emergency medical services officer who elects to become
2 a member of the plan ceases to be a member or have any credit for covered employment in any other
3 retirement system administered by the board and shall continue to be ineligible for membership in
4 any other retirement system administered by the board so long as the emergency medical services
5 officer remains employed in covered employment by an employer which is currently a participating
6 public employer of this plan: *Provided*, That any emergency medical services officer who does not
7 affirmatively elect to become a member of the plan continues to be eligible for any other retirement
8 system as is, from time to time, offered to other county employees but is ineligible for this plan
9 regardless of any subsequent termination of employment and rehire.

10 (c) Any emergency medical services officer who was employed as an emergency medical
11 services officer prior to the effective date, but was not employed on the effective date of this article,
12 shall become a member upon rehire as an emergency medical services officer. For purposes of this
13 section, the member's years of service and credited service prior to the effective date shall not be
14 counted for any purposes under this plan unless the emergency medical services officer has not
15 received the return of his or her accumulated contributions in the Public Employees Retirement
16 System pursuant to section thirty, article ten, chapter five of this code. The member may request in
17 writing to have his or her accumulated contributions and employer contributions from covered
18 employment in the Public Employees Retirement System transferred to the plan. If the conditions
19 of this subsection are met, all years of the emergency medical services officer's covered employment
20 shall be counted as years of service for the purposes of this article.

21 (d) Any emergency medical services officer employed in covered employment on the

1 effective date of this article who has timely elected to transfer into this plan as provided in subsection
2 (b) of this section shall be given credited service at the time of transfer for all credited service then
3 standing to the emergency medical services officer's service credit in the Public Employees
4 Retirement System regardless of whether the credited service (as that term is defined in section two,
5 article ten, chapter five of this code) was earned as an emergency medical services officer. All
6 credited service standing to the transferring emergency medical services officer's credit in the Public
7 Employees Retirement System at the time of transfer into this plan shall be transferred into the plan
8 created by this article and the transferring emergency medical services officer shall be given the same
9 credit for the purposes of this article for all service transferred from the Public Employees
10 Retirement System as that transferring emergency medical services officer would have received from
11 the Public Employees Retirement System as if the transfer had not occurred. In connection with each
12 transferring emergency medical services officer receiving credit for prior employment as provided
13 in this subsection, a transfer from the Public Employees Retirement System to this plan shall be
14 made pursuant to the procedures described in this article: *Provided*, That any member of this plan
15 who has elected to transfer from the Public Employees Retirement System into this plan pursuant
16 to subsection (b) of this section may not, after having transferred into and becoming an active
17 member of this plan, reinstate to his or her credit in this plan any service credit relating to periods
18 in which the member was not in covered employment as an emergency medical services officer and
19 which service was withdrawn from the Public Employees Retirement System prior to his or her
20 elective transfer into this plan.

21 (e) Once made, the election made under this section is irrevocable. All emergency medical

1 services officers employed by an employer which is a participating public employer of the Public
 2 Employees Retirement System after the effective date and emergency medical services officers
 3 electing to become members as described in this section shall be members as a condition of
 4 employment and shall make the contributions required by this article.

5 (f) Notwithstanding any other provisions of this article, any individual who is a leased
 6 employee is not eligible to participate in the plan. For purposes of this plan, a "leased employee"
 7 means any individual who performs services as an independent contractor or pursuant to an
 8 agreement with an employee leasing organization or similar organization. If a question arises
 9 regarding the status of an individual as a leased employee, the board has final power to decide the
 10 question.

11 **CHAPTER 18. EDUCATION.**

12 **ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.**

13 **§18-7A-13. Membership in retirement system; cessation of membership; reinstatement of** 14 **withdrawn service.**

15 The membership of the retirement system shall consist of the following:

16 (a) New entrants, whose membership in the system is compulsory upon employment as
 17 teachers and nonteachers: Provided, That any teacher member or nonteaching member, as defined
 18 in section three of this article, who has concurrent employment in an additional job or jobs which
 19 would require the teacher member or nonteaching member to be a member of the West Virginia
 20 Deputy Sheriff Retirement System, the West Virginia Municipal Police Officers and Firefighters
 21 Retirement System or the West Virginia Emergency Medical Services Retirement System shall abide

1 by the concurrent employment statutory provisions of said retirement system and shall participate
2 in only one retirement system administered by the retirement board.

3 (b) The membership of the retirement system shall not include any person who is an active
4 member of or who has been retired by the West Virginia Public Employees Retirement System, the
5 judge's retirement system, or the retirement system of the West Virginia State Police or the
6 supplemental retirement system as provided in section four-a, article twenty-three of this chapter.
7 The membership of any person in the retirement system ceases: (1) Upon the withdrawal of
8 accumulated contributions after the cessation of service; (2) upon effective retirement date; (3) at
9 death; or (4) upon the date, if any, when after the cessation of service, the outstanding balance of any
10 loan obtained by the member pursuant to section thirty-four of this article or section five, article
11 seven-d of this chapter, plus accrued interest, equals or exceeds the member's accumulated
12 contributions.

13 (c) Any former member of the retirement system who has withdrawn accumulated
14 contributions but subsequently reenters the retirement system may repay to the retirement fund the
15 amount withdrawn, plus interest at a rate set by the board, compounded annually from the date of
16 withdrawal to the date of repayment: *Provided*, That no repayment may be made until the former
17 member has completed two years of contributory service after reentry; and the member shall be
18 accorded all the rights to prior service and experience as were held at the time of withdrawal of the
19 accumulated contributions: *Provided, however*, That no withdrawn service may be reinstated that
20 has been transferred to another retirement system from which the member is currently or will in the
21 future draw benefits based on the same service. The interest paid shall be deposited in the reserve

1 fund.

2 (d) No member is eligible for prior service credit unless he or she is eligible for prior service
3 pension, as prescribed by section twenty-two of this article; however, a new entrant who becomes
4 a present teacher as provided in this subdivision shall be considered eligible for prior service pension
5 upon retirement.

6 (e) Any individual who is a leased employee is not eligible to participate in the system. For
7 purposes of this system, a "leased employee" means any individual who performs services as an
8 independent contractor or pursuant to an agreement with an employee leasing organization or other
9 similar organization. If a question arises regarding the status of an individual as a leased employee,
10 the board has final power to decide the question.

NOTE: The purpose of this bill is to clarify that members of DSRS, MPFRS and EMSRS first employed in covered employment shall participate in only one retirement system administered by CPRB in which the member has the earliest hire date; and to specify that members of PERS, State Police (Plan B) and TRS employed in an additional job in DSRS, MPFRS or EMSRS shall participate in and abide by the concurrent employment provisions of said system administered by CPRB.

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