

# WEST VIRGINIA LEGISLATURE

## 2018 REGULAR SESSION

Introduced

### Senate Bill 76

FISCAL  
NOTE

BY SENATOR FERNS

[Introduced January 10, 2018; Referred  
to the Committee on Pensions; and then to the Committee  
on Finance]

1 A BILL to amend and reenact §5-10-2 and §5-10-52 of the Code of West Virginia, 1931, as  
2 amended, all relating to the manner of computing retirement benefits for certain members  
3 of the Legislature under the West Virginia Public Employees Retirement Act; and requiring  
4 that the final average salary for members of the Legislature taking office after June 30,  
5 2018, and thereafter participating in the retirement system as a member of the Legislature  
6 be the average of the member's annual rate of compensation during his or her total years  
7 of credited service.

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

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

### **§5-10-2. Definitions.**

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

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

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

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

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

16 (5) "Annuity reserve" means the present value of all payments to be made to a retirant or

17 beneficiary of a retirant on account of any annuity, computed upon the basis of mortality and other  
18 tables of experience, and regular interest, adopted by the board of trustees from time to time;

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

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

23 (8) "Compensation" means the remuneration paid a member by a participating public  
24 employer for personal services rendered by the member to the participating public employer. In  
25 the event a member's remuneration is not all paid in money, his or her participating public  
26 employer shall fix the value of the portion of the remuneration which is not paid in money:  
27 *Provided*, That members hired in a position for the first time on or after July 1, 2014, who receive  
28 nonmonetary remuneration shall not have nonmonetary remuneration included in compensation  
29 for retirement purposes and nonmonetary remuneration may not be used in calculating a  
30 member's final average salary. Any lump sum or other payments paid to members that do not  
31 constitute regular salary or wage payments are not considered compensation for the purpose of  
32 withholding contributions for the system or for the purpose of calculating a member's final average  
33 salary. These payments include, but are not limited to, attendance or performance bonuses, one-  
34 time flat fee or lump sum payments, payments paid as a result of excess budget, or employee  
35 recognition payments. The board shall have final power to decide whether the payments shall be  
36 considered compensation for purposes of this article;

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

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

43 (11) "Employee" means any person who serves regularly as an officer or employee, full  
44 time, on a salary basis, whose tenure is not restricted as to temporary or provisional appointment,  
45 in the service of, and whose compensation is payable, in whole or in part, by any political  
46 subdivision, or an officer or employee whose compensation is calculated on a daily basis and  
47 paid monthly or on completion of assignment, including technicians and other personnel  
48 employed by the West Virginia National Guard whose compensation, in whole or in part, is paid  
49 by the federal government: *Provided*, That an employee of the Legislature whose term of  
50 employment is otherwise classified as temporary and who is employed to perform services  
51 required by the Legislature for its regular sessions or during the interim between regular sessions  
52 and who has been or is employed during regular sessions or during the interim between regular  
53 sessions in seven or more consecutive calendar years, as certified by the clerk of the house in  
54 which the employee served, is an employee, any provision to the contrary in this article  
55 notwithstanding, and is entitled to credited service in accordance with provisions of §5-10-14 of  
56 this code: *Provided, however*, That members of the legislative body of any political subdivision  
57 and ~~judges of the state Court of Claims~~ commissioners of the West Virginia Legislative Claims  
58 Commission are employees receiving one year of service credit for each one-year term served  
59 and prorated service credit for any partial term served, anything contained in this article to the  
60 contrary notwithstanding: *Provided further*, That only a compensated board member of a  
61 participating public employer appointed to a board of a nonlegislative body for the first time on or  
62 after July 1, 2014, who normally is required to work twelve months per year and one thousand  
63 forty hours of service per year is an employee. In any case of doubt as to who is an employee  
64 within the meaning of this article, the board of trustees shall decide the question;

65 (12) "Employer error" means an omission, misrepresentation or violation of relevant  
66 provisions of the West Virginia Code or of the West Virginia Code of State Regulations or the  
67 relevant provisions of both the West Virginia Code and of the West Virginia Code of State  
68 Regulations by the participating public employer that has resulted in an underpayment or

69 overpayment of contributions required. A deliberate act contrary to the provisions of this section  
70 by a participating public employer does not constitute employer error;

71 (13) "Final average salary" means either of the following: *Provided*, That salaries for  
72 determining benefits during any determination period may not exceed the maximum  
73 compensation allowed as adjusted for cost of living in accordance with §5-10D- 7 of this code and  
74 Section 401 (a) (17) of the Internal Revenue Code: *Provided, however*, That the provisions of §5-  
75 10-22h of this code are not applicable to the amendments made to this subdivision during the  
76 2011 regular session of the Legislature;

77 (A) The average of the highest annual compensation received by a member, including a  
78 member of the Legislature who participates in the retirement system in the year 1971 or thereafter,  
79 during any period of three consecutive years of credited service contained within the member's  
80 fifteen years of credited service immediately preceding the date his or her employment with a  
81 participating public employer last terminated: *Provided*, That for persons who were first hired on  
82 or after July 1, 2015, any period of five consecutive years of contributing service contained within  
83 the member's fifteen years of credited service immediately preceding the date his or her  
84 employment with a participating public employer last terminated: *Provided, however, That for a*  
85 *member of the Legislature who made his or her first contribution to the members' deposit fund*  
86 *after June 30, 2018, final average salary is computed as provided in §5-10-52 of this code;* or

87 (B) If the member has less than five years of credited service, the average of the annual  
88 rate of compensation received by the member during his or her total years of credited service;  
89 and in determining the annual compensation, under either paragraph (A) or (B) of this subdivision,  
90 of a member of the Legislature who participates in the retirement system as a member of the  
91 Legislature in the year 1971, or in any year thereafter, his or her actual legislative compensation  
92 (the total of all compensation paid under §4-2A-2, §4-2A-3, §4-2A-4 and §4-2A-5 of this code), in  
93 the year 1971, or in any year thereafter, plus any other compensation he or she receives in any  
94 year from any other participating public employer including the State of West Virginia, without any

95 multiple in excess of one times his or her actual legislative compensation and other compensation,  
96 shall be used: *Provided*, That final average salary for any former member of the Legislature or for  
97 any member of the Legislature in the year 1971 who, in either event, was a member of the  
98 Legislature on November 30, 1968, or November 30, 1969, or November 30, 1970, or on  
99 November 30 in any one or more of those three years and who participated in the retirement  
100 system as a member of the Legislature in any one or more of those years means: (i) Either,  
101 notwithstanding the provisions of this subdivision preceding this proviso, \$1,500 multiplied by  
102 eight, plus the highest other compensation the former member or member received in any one of  
103 the three years from any other participating public employer including the State of West Virginia;  
104 or (ii) final average salary determined in accordance with paragraph (A) or (B) of this subdivision,  
105 whichever computation produces the higher final average salary, and in determining the annual  
106 compensation under subparagraph (ii) of this paragraph, the legislative compensation of the  
107 former member shall be computed on the basis of \$1,500 multiplied by eight, and the legislative  
108 compensation of the member shall be computed on the basis set forth in the provisions of this  
109 subdivision immediately preceding this paragraph or on the basis of \$1,500 multiplied by eight,  
110 whichever computation as to the member produces the higher annual compensation;

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

113 (15) "Limited credited service" means service by employees of the West Virginia  
114 Educational Broadcasting Authority, in the employment of West Virginia University, during a  
115 period when the employee made contributions to another retirement system, as required by West  
116 Virginia University, and did not make contributions to the Public Employees Retirement System:  
117 *Provided*, That while limited credited service can be used for the formula set forth in §5-10-21(e)  
118 of this code, it may not be used to increase benefits calculated under §5-10-22 of this code;

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

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

127 (18) "Plan year" means the same as referenced in §5-10-42 of this code;

128 (19) "Political subdivision" means the State of West Virginia, a county, city or town in the  
129 state; a school corporation or corporate unit; any separate corporation or instrumentality  
130 established by one or more counties, cities or towns, as permitted by law; any corporation or  
131 instrumentality supported in most part by counties, cities or towns; and any public corporation  
132 charged by law with the performance of a governmental function and whose jurisdiction is  
133 coextensive with one or more counties, cities or towns: *Provided*, That any mental health agency  
134 participating in the Public Employees Retirement System before July 1, 1997, is considered a  
135 political subdivision solely for the purpose of permitting those employees who are members of the  
136 Public Employees Retirement System to remain members and continue to participate in the  
137 retirement system at their option after July 1, 1997: *Provided, however*, That the Regional  
138 Community Policing Institute which participated in the Public Employees Retirement System  
139 before July 1, 2000, is considered a political subdivision solely for the purpose of permitting those  
140 employees who are members of the Public Employees Retirement System to remain members  
141 and continue to participate in the Public Employees Retirement System after July 1, 2000;

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

144 (21) "Regular interest" means the rate or rates of interest per annum, compounded  
145 annually, as the board of trustees adopts from time to time;

146 (22) "Required beginning date" means April 1 of the calendar year following the later of:

147 (A) The calendar year in which the member attains age seventy and one-half years of age; or (B)  
148 the calendar year in which a member who has attained the age seventy and one-half years of age  
149 and who ceases providing service covered under this system to a participating employer;

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

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

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

156 (26) "Retroactive service" means: (1) Service between July 1, 1961, and the date an  
157 employer decides to become a participating member of the Public Employees Retirement System;

158 (2) service prior to July 1, 1961, for which the employee is not entitled to prior service at no cost  
159 in accordance with 162 CSR 5.13; and (3) service of any member of a legislative body or  
160 employees of the State Legislature whose term of employment is otherwise classified as  
161 temporary for which the employee is eligible, but for which the employee did not elect to participate  
162 at that time;

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

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

**§5-10-52. Specific provisions relating to certain members of the Legislature and certain  
service by members of the Legislature.**

1 (a) The provisions of this article specifying that a Legislator may be a member of the  
2 retirement system and at the same time also a member of another state or political subdivision  
3 retirement program and may receive credit in the retirement system from two or more public  
4 employments simultaneously and authorizing automatic increases in the annuities of retired  
5 legislators based upon increases in compensation paid to members of the Legislature shall not



6 be applicable to any member of the Legislature who first becomes a member of the retirement  
7 system as a member of the Legislature during the year one thousand nine hundred seventy-one,  
8 or any year thereafter, nor shall such provisions be applicable to the computation of service,  
9 credited service or benefits for any period of service as a member of the Legislature for the year  
10 one thousand nine hundred seventy-one, or any year thereafter.

1 (b) Notwithstanding §5-10-14 of this code, "final average salary" means the average of the  
2 annual rate of compensation received by a member during his or her total years of credited service  
3 for any member meeting the following criteria:

4 (1) The member served as a member of the Legislature and, after June 30, 2018, made  
5 his or her first contribution to the members' deposit fund.

6 (2) The member thereafter claims retirement benefits under this article based, in whole or  
7 in part, on his or her years of contributing service as a member of the Legislature.

NOTE: The purpose of this bill is to require that for calculating retirement benefits under the West Virginia Public Employees Retirement Act, the final average salary for members of the Legislature taking office after June 30, 2018 and thereafter participating in the retirement system as a member of the Legislature be the average of the member's annual rate of compensation during his or her total years of credited service.

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