

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2431

FISCAL
NOTE

BY DELEGATES KUMP AND HOUSEHOLDER

[Introduced January 15, 2019; Referred
to the Committee on Pensions and Retirement then
the Judiciary.]

1 A BILL to amend and reenact §5-10-2 and §5-10-17 of the Code of West Virginia, 1931, as
 2 amended, all relating to eliminating eligibility for participation in the Public Employees
 3 Retirement System for those newly elected or appointed as members of the State
 4 Legislature after the year 2020.

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 are employees receiving one year of service credit for
58 each one-year term served and prorated service credit for any partial term served, anything
59 contained in this article to the contrary notwithstanding: *Provided further*, That only a
60 compensated board member of a participating public employer appointed to a board of a
61 nonlegislative body for the first time on or after July 1, 2014, who normally is required to work 12
62 months per year and 1,040 hours of service per year is an employee: *And provided further*, That
63 notwithstanding any other provision of this code enacted before the reenactment of this section
64 in the regular session of the Legislature, 2019, a person newly elected or appointed as a member
65 of the State Legislature after 2020 is not an employee for purposes of determining eligibility for
66 pension benefits. In any case of doubt as to who is an employee within the meaning of this article,
67 the Board of Trustees shall decide the question;

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

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

74 (13) "Final average salary" means either of the following: *Provided*, That salaries for
75 determining benefits during any determination period may not exceed the maximum
76 compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and
77 Section 401 (a) (17) of the Internal Revenue Code: *Provided, however*, That the provisions of §5-
78 10-22h of this code are not applicable to the amendments made to this subdivision during the
79 2011 regular session of the Legislature;

80 (A) The average of the highest annual compensation received by a member, including a
81 member of the Legislature who participates in the retirement system in the year 1971 or thereafter,
82 during any period of three consecutive years of credited service contained within the member's
83 fifteen years of credited service immediately preceding the date his or her employment with a
84 participating public employer last terminated: *Provided*, That for persons who were first hired on
85 or after July 1, 2015, any period of five consecutive years of contributing service contained within
86 the member's 15 years of credited service immediately preceding the date his or her employment
87 with a participating public employer last terminated; or

88 (B) If the member has less than five years of credited service, the average of the annual
89 rate of compensation received by the member during his or her total years of credited service;
90 and in determining the annual compensation, under §5-10-2(13)(A) or §5-10-2(13)(B) of this code,
91 of a member of the Legislature who participates in the retirement system as a member of the
92 Legislature in the year 1971, or in any year thereafter, his or her actual legislative compensation
93 (the total of all compensation paid under §4-2A-2, §4-2A-3, §4-2A-4, and §4-2A-5 of this code),
94 in the year 1971, or in any year thereafter, plus any other compensation he or she receives in any
95 year from any other participating public employer including the State of West Virginia, without any
96 multiple in excess of one times his or her actual legislative compensation and other compensation,
97 shall be used: *Provided*, That final average salary for any former member of the Legislature or for

98 any member of the Legislature in the year 1971 who, in either event, was a member of the
99 Legislature on November 30, 1968, or November 30, 1969, or November 30, 1970, or on
100 November 30 in any one or more of those three years and who participated in the retirement
101 system as a member of the Legislature in any one or more of those years means: (i) Either,
102 notwithstanding the provisions of this subdivision preceding this proviso, \$1,500 multiplied by
103 eight, plus the highest other compensation the former member or member received in any one of
104 the three years from any other participating public employer including the State of West Virginia;
105 or (ii) final average salary determined in accordance with §5-10-2(13)(A) or §5-10-2(13)(B) of this
106 code, whichever computation produces the higher final average salary, and in determining the
107 annual compensation under subparagraph (ii) of this paragraph, the legislative compensation of
108 the former member shall be computed on the basis of \$1,500 multiplied by eight, and the
109 legislative compensation of the member shall be computed on the basis set forth in the provisions
110 of this subdivision immediately preceding this paragraph or on the basis of \$1,500 multiplied by
111 eight, whichever computation as to the member produces the higher annual compensation;

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

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

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

122 (17) "Participating public employer" means the State of West Virginia, any board,
123 commission, department, institution or spending unit and includes any agency created by rule of

124 the Supreme Court of Appeals having full-time employees, which for the purposes of this article
125 is considered a department of state government; and any political subdivision in the state which
126 has elected to cover its employees, as defined in this article, under the West Virginia Public
127 Employees Retirement System;

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

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

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

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

147 (22) "Required beginning date" means April 1 of the calendar year following the later of:
148 (A) The calendar year in which the member attains age 70 ½ of age; or (B) the calendar year in
149 which a member who has attained the age 70 ½ of age and who ceases providing service covered

150 under this system to a participating employer;

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

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

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

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

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

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

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

§5-10-17. Retirement system membership.

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

168 (a) All employees, as defined in §5-10-2 of this code, who are in the employ of a political
169 subdivision the day preceding the date it becomes a participating public employer and who
170 continue in the employ of the participating public employer on and after that date shall become
171 members of the retirement system; and all persons who become employees of a participating
172 public employer on or after that date shall thereupon become members of the system; except as
173 provided in §5-10-17(b), §5-10-17(c), and §5-10-17(d) of this code.

174 (b) The membership of the Public Employees Retirement System shall not include any

175 person who is an active contributing member of, or who has been retired by, any of the state
176 teachers retirement systems, the Judges Retirement System, any Retirement System of the West
177 Virginia State Police, the Deputy Sheriff Retirement System or any municipal retirement system
178 for either, or both, police or firefighter; and the Bureau of Employment Programs, by the
179 Commissioner of the Bureau, may elect whether its employees will accept coverage under this
180 article or be covered under the authorization of a separate enactment: *Provided*, That the
181 exclusions of membership do not apply to any member of the State Legislature elected or
182 appointed before 2020, the Clerk of the House of Delegates, the Clerk of the State Senate or to
183 any member of the legislative body of any political subdivision provided he or she once becomes
184 a contributing member of the retirement system: *Provided, however*, That any retired member of
185 the State Police Death, Disability, and Retirement Fund, the West Virginia State Police Retirement
186 System, the Deputy Sheriff Retirement System and any retired member of any municipal
187 retirement system for either, or both, police or firefighter may on and after the effective date of
188 this section become a member of the retirement system as provided in this article, without
189 receiving credit for prior service as a municipal police officer or firefighter or as a member of the
190 State Police Death, Disability and Retirement Fund, the West Virginia State Police Retirement
191 System or the Deputy Sheriff Retirement System: *Provided further*, That any retired member of
192 the State Police Death, Disability and Retirement Fund, the West Virginia State Police Retirement
193 System, the Deputy Sheriff Retirement System and any retired member of any municipal
194 retirement system for either, or both, police or firefighters, who begins participation in the
195 retirement system established in this article on or after July 1, 2005, may not receive a combined
196 retirement benefit in excess of 105 percent of the member's highest annual salary earned while
197 either a member of the retirement system established in this article or while a member of the other
198 retirement system or systems from which he or she previously retired when adding the retirement
199 benefit from the retirement system created in this article to the retirement benefit received by that
200 member from the other retirement system or systems set forth herein from which he or she

201 previously retired: *And provided further*, That the membership of the retirement system does not
202 include any person who becomes employed by the Prester Center for Mental Health Services,
203 Valley Comprehensive Mental Health Center, Westbrook Health Services or Eastern Panhandle
204 Mental Health Center on or after July1,1997, *And provided further*, That membership of the
205 retirement system does not include any person who becomes a member of the federal Railroad
206 Retirement Act on or after July1, 2000.

207 (c) Any member of the State Legislature elected or appointed before 2020, the Clerk of
208 the House of Delegates, the Clerk of the State Senate and any employee of the State Legislature
209 whose employment is otherwise classified as temporary and who is employed to perform services
210 required by the Legislature for its regular sessions or during the interim between regular sessions
211 and who has been or is employed during regular sessions or during the interim between sessions
212 in seven consecutive calendar years, as certified by the Clerk of the House in which the employee
213 served, or any member of the legislative body of any other political subdivision shall become a
214 member of the retirement system provided he or she notifies the retirement system in writing of
215 his or her intention to be a member of the system and files a membership enrollment form as
216 prescribed by the Board of Trustees, and each person, upon filing his or her written notice to
217 participate in the retirement system, shall by that act authorize the Clerk of the House of Delegates
218 or the Clerk of the State Senate or such person or legislative agency as the legislative body of
219 any other political subdivision shall designate to deduct the member's contribution, as provided in
220 §5-10-29(b) of this code, and after the deductions have been made from the member's
221 compensation, the deductions shall be forwarded to the retirement system.

222 (d) Any employee, as defined in §5-10-2 of this code, who has concurrent employment in
223 an additional job or jobs which would require the employee to be a member of the West Virginia
224 Deputy Sheriff Retirement System, the West Virginia Municipal Police Officers and Firefighters
225 Retirement System or the West Virginia Emergency Medical Services Retirement System shall
226 abide by the concurrent employment statutory provisions of said retirement system and shall

227 participate in only one retirement system administered by the board.

228 (e) If question arises regarding the membership status of any employee, the Board of
229 Trustees has the final power to decide the question.

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

NOTE: The purpose of this bill is to provide that a person newly elected or appointed as a member of the State Legislature after 2020 will not be eligible for pension benefits based on legislative 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.