

# WEST VIRGINIA LEGISLATURE

## 2019 REGULAR SESSION

**Introduced**

### **House Bill 3030**

**FISCAL  
NOTE**

BY DELEGATE PYLES, LONGSTRETH, STAGGERS, DISERIO,

SWARTZMILLER, DOYLE, ROWAN AND C. THOMPSON

[Introduced February 12, 2019; Referred  
to the Committee on Pensions and Retirement then  
Finance.]

1 A BILL to amend and reenact §5-10-14 of the Code of West Virginia, 1931, as amended, relating  
 2 to the West Virginia Public Employees Retirement Act; and purchase of retroactive service  
 3 credit, for periods of employment in which contributions were not deducted from the  
 4 employee's pay, in installments rather than in a lump sum.

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

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

**§5-10-14. Service credit; retroactive provisions.**

1 (a) The board of trustees shall credit each member with the prior service and contributing  
 2 service to which he or she is entitled based upon rules adopted by the board of trustees and  
 3 based upon the following:

4 (1) In no event may less than 10 days of service rendered by a member in any calendar  
 5 month be credited as a month of service: *Provided*, That for employees of the State Legislature  
 6 whose term of employment is otherwise classified as temporary and who are employed to perform  
 7 services required by the Legislature for its regular sessions or during the interim between regular  
 8 sessions and who have been or are employed during regular sessions or during the interim  
 9 between regular sessions in seven consecutive calendar years, service credit of one month shall  
 10 be awarded for each 10 days employed in the interim between regular sessions, which interim  
 11 days shall be cumulatively calculated so that any 10 days, regardless of calendar month or year,  
 12 shall be calculated toward any award of one month of service credit;

13 (2) Except for hourly employees, and those persons who first become members of the  
 14 retirement system on or after July 1, 2015, 10 or more months of service credit earned in any  
 15 calendar year shall be credited as a year of service: *Provided*, That no more than one year of  
 16 service may be credited to any member for all service rendered by him or her in any calendar  
 17 year and no days may be carried over by a member from one calendar year to another calendar  
 18 year where the member has received a full-year credit for that year; and

19 (3) Service may be credited to a member who was employed by a political subdivision if

20 his or her employment occurred within a period of 30 years immediately preceding the date the  
21 political subdivision became a participating public employer.

22 (b) The board of trustees shall grant service credit to employees of boards of health, the  
23 Clerk of the House of Delegates and the Clerk of the State Senate or to any former and present  
24 member of the State Teachers Retirement System who have been contributing members in the  
25 Public Employees Retirement System for more than three years, for service previously credited  
26 by the State Teachers Retirement System and shall require the transfer of the member's  
27 accumulated contributions to the system and shall also require a deposit, with reinstatement  
28 interest as set forth in the board's Rule, Refund, Reinstatement, Retroactive Service, Loan and  
29 Correction of Error Interest Factors, 162 C. S. R. 7, of any withdrawals of contributions any time  
30 prior to the member's retirement. Repayment of withdrawals shall be as directed by the Board of  
31 Trustees.

32 (c) Court reporters who are acting in an official capacity, although paid by funds other than  
33 the county commission or State Auditor, may receive prior service credit for time served in that  
34 capacity.

35 (d) Active members who previously worked in Comprehensive Employment and Training  
36 Act (CETA) may receive service credit for time served in that capacity: *Provided*, That in order to  
37 receive service credit under the provisions of this subsection the following conditions ~~must~~ shall  
38 be met: (1) The member ~~must have~~ has moved from temporary employment with the participating  
39 employer to permanent full-time employment with the participating employer within 120 days  
40 following the termination of the member's CETA employment; (2) the board ~~must receive~~ has  
41 received evidence that establishes to a reasonable degree of certainty as determined by the board  
42 that the member previously worked in CETA; and (3) the member shall pay to the board an  
43 amount equal to the employer and employee contribution plus interest at the amount set by the  
44 board for the amount of service credit sought pursuant to this subsection: *Provided, however*,  
45 That the maximum service credit that may be obtained under the provisions of this subsection is

46 two years: *Provided further*, That a member ~~must apply and pay~~ applies and pays for the service  
47 credit allowed under this subsection and provides all necessary documentation by March 31,  
48 2003: *And provided further*, That the board shall exercise due diligence to notify affected  
49 employees of the provisions of this subsection.

50 (e) (1) Employees of the State Legislature whose terms of employment are otherwise  
51 classified as temporary and who are employed to perform services required by the Legislature for  
52 its regular sessions or during the interim time between regular sessions shall receive service  
53 credit for the time served in that capacity in accordance with the following: For purposes of this  
54 section, the term "regular session" means day one through day 60 of a 60-day legislative session  
55 or day one through day 30 of a 30-day legislative session. Employees of the State Legislature  
56 whose term of employment is otherwise classified as temporary and who are employed to perform  
57 services required by the Legislature for its regular sessions or during the interim time between  
58 regular sessions and who have been or are employed during regular sessions or during the interim  
59 time between regular sessions in seven consecutive calendar years, as certified by the clerk of  
60 the house in which the employee served, shall receive service credit of six months for all regular  
61 sessions served, as certified by the clerk of the house in which the employee served, or shall  
62 receive service credit of three months for each regular 30-day session served prior to 1971:  
63 *Provided*, That employees of the State Legislature whose term of employment is otherwise  
64 classified as temporary and who are employed to perform services required by the Legislature for  
65 its regular sessions and who have been or are employed during the regular sessions in 13  
66 consecutive calendar years as either temporary employees or full-time employees or a  
67 combination thereof, as certified by the clerk of the house in which the employee served, shall  
68 receive a service credit of 12 months for each regular session served, as certified by the clerk of  
69 the house in which the employee served: *Provided, however*, That the amendments made to this  
70 subsection during the 2002 regular session of the Legislature only apply to employees of the  
71 Legislature who are employed by the Legislature as either temporary employees or full-time

72 employees as of January 1, 2002, or who become employed by the Legislature as temporary or  
73 full-time employees for the first time after January 1, 2002. Employees of the State Legislature  
74 whose terms of employment are otherwise classified as temporary and who are employed to  
75 perform services required by the Legislature during the interim time between regular sessions  
76 shall receive service credit of one month for each 10 days served during the interim between  
77 regular sessions, which interim days shall be cumulatively calculated so that any 10 days,  
78 regardless of calendar month or year, shall be calculated toward any award of one month of  
79 service credit: *Provided further*, That no more than one year of service may be credited to any  
80 temporary legislative employee for all service rendered by that employee in any calendar year  
81 and no days may be carried over by a temporary legislative employee from one calendar year to  
82 another calendar year where the member has received a full year credit for that year. Service  
83 credit awarded for legislative employment pursuant to this section shall be used for the purpose  
84 of calculating that member's retirement annuity, pursuant to §5-10-22 of this code, and  
85 determining eligibility as it relates to credited service, notwithstanding any other provision of this  
86 section. Certification of employment for a complete legislative session and for interim days shall  
87 be determined by the clerk of the house in which the employee served, based upon employment  
88 records. Service of 55 days of a regular session constitutes an absolute presumption of service  
89 for a complete legislative session and service of 27 days of a 30-day regular session occurring  
90 prior to 1971 constitutes an absolute presumption of service for a complete legislative session.  
91 Once a legislative employee has been employed during regular sessions for seven consecutive  
92 years or has become a full-time employee of the Legislature, that employee shall receive the  
93 service credit provided in this section for all regular and interim sessions and interim days worked  
94 by that employee, as certified by the clerk of the house in which the employee served, regardless  
95 of when the session or interim legislative employment occurred: *And provided further*, That regular  
96 session legislative employment for seven consecutive years may be served in either or both  
97 houses of the Legislature.

98           (2) For purposes of this section, employees of the Joint Committee on Government and  
99 Finance are entitled to the same benefits as employees of the House of Delegates or the Senate:  
100 *Provided*, That for joint committee employees whose terms of employment are otherwise  
101 classified as temporary, employment in preparation for regular sessions, certified by the legislative  
102 manager as required by the Legislature for its regular sessions, shall be considered the same as  
103 employment during regular sessions to meet service credit requirements for sessions served.

104           (f) Any employee may purchase retroactive service credit for periods of employment in  
105 which contributions were not deducted from the employee's pay. In the purchase of service credit  
106 for employment prior to 1989 in any department, including the Legislature, which operated from  
107 the General Revenue Fund and which was not expressly excluded from budget appropriations in  
108 which blanket appropriations were made for the state's share of public employees' retirement  
109 coverage in the years prior to 1989, the employee shall pay the employee's share. Other  
110 employees shall pay the state's share and the employee's share to purchase retroactive service  
111 credit. Where the member elects to repay the required amount other than by lump sum without  
112 interest, the member shall pay interest at the rate determined by the board until the required  
113 amount is paid in full. Where an employee purchases service credit for employment which  
114 occurred after 1988, that employee shall pay for the employee's share and the employer shall pay  
115 its share for the purchase of retroactive service credit: *Provided*, That no legislative employee and  
116 no current or former member of the Legislature may be required to pay any interest or penalty  
117 upon the purchase of retroactive service credit in accordance with the provisions of this section  
118 where the employee was not eligible to become a member during the years for which he or she  
119 is purchasing retroactive credit or had the employee attempted to contribute to the system during  
120 the years for which he or she is purchasing retroactive service credit and the contributions would  
121 have been refused by the board: *Provided, however*, That a current legislative employee  
122 purchasing retroactive credit under this section shall do so within 24 months of beginning  
123 contributions to the retirement system as a legislative employee or no later than December 31,

124 2016, whichever occurs later: *Provided further*, That once a legislative employee becomes a  
125 member of the retirement system, he or she may purchase retroactive service credit for any time  
126 he or she was employed by the Legislature and did not receive service credit. Any service credit  
127 purchased shall be credited as six months for each 60-day session worked, three months for each  
128 30-day session worked or 12 months for each 60-day session for legislative employees who have  
129 been employed during regular sessions in 13 consecutive calendar years, as certified by the clerk  
130 of the house in which the employee served, and credit for interim employment as provided in this  
131 subsection: *And provided further*, That this legislative service credit shall also be used for months  
132 of service in order to meet the 60-month requirement for the payments of a temporary legislative  
133 employee member's retirement annuity: *And provided further*, That no legislative employee may  
134 be required to pay for any service credit beyond the actual time he or she worked regardless of  
135 the service credit which is credited to him or her pursuant to this section: *And provided further*,  
136 That any legislative employee may request a recalculation of his or her credited service to comply  
137 with the provisions of this section at any time.

138 (g) (1) Notwithstanding any provision to the contrary, the seven consecutive calendar  
139 years requirement and the 13 consecutive calendar years requirement and the service credit  
140 requirements set forth in this section shall be applied retroactively to all periods of legislative  
141 employment prior to the passage of this section, including any periods of legislative employment  
142 occurring before the seven consecutive and 13 consecutive calendar years referenced in this  
143 section: *Provided*, That the employee has not retired prior to the effective date of the amendments  
144 made to this section in the 2002 regular session of the Legislature.

145 (2) The requirement of seven consecutive years and the requirement of 13 consecutive  
146 years apply retroactively to all legislative employment prior to the effective date of the 2006  
147 amendments to this section.

148 (h) The board of trustees shall grant service credit to any former or present member of the  
149 State Police Death, Disability and Retirement Fund who has been a contributing member of this

150 system for more than three years for service previously credited by the State Police Death,  
151 Disability and Retirement Fund if the member transfers all of his or her contributions to the State  
152 Police Death, Disability and Retirement Fund to the system created in this article, including  
153 repayment of any amounts withdrawn any time from the State Police Death, Disability and  
154 Retirement Fund by the member seeking the transfer allowed in this subsection: *Provided*, That  
155 there shall be added by the member to the amounts transferred or repaid under this subsection  
156 an amount which shall be sufficient to equal the contributions he or she would have made had  
157 the member been under the Public Employees Retirement System during the period of his or her  
158 membership in the State Police Death, Disability and Retirement Fund, excluding contributions  
159 on lump sum payment for annual leave, plus interest at a rate determined by the board.

160 (i) The provisions of §5-10-22h of this code are not applicable to the amendments made  
161 to this section during the 2006 regular session.

NOTE: The purpose of this bill is to allow purchase of retroactive service credit, for periods of employment in which contributions were not deducted from the employee's pay, in installments rather than in a lump sum under the West Virginia Public Employees Retirement Act.

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