

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4539

FISCAL
NOTE

BY DELEGATES STORCH, BATES, EVANS, ANDERSON, AND

GEARHEART

(BY REQUEST OF THE CONSOLIDATED PUBLIC

RETIREMENT BOARD)

[Introduced February 03, 2022; Referred to the

Committee on Pensions and Retirement then

Finance]

1 A BILL to amend and reenact §5-10-14 and §5-10-30 of the Code of West Virginia, 1931, as
2 amended, all relating to service credit, retroactive provisions and the refund of
3 accumulated contributions for certain members of the West Virginia Public Employees
4 Retirement System.

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 ten 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 ten days employed in the interim between regular sessions, which interim
11 days shall be cumulatively calculated so that any ten 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, ten 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: Provided, That members of the State Teachers Retirement
31 System who first became a member of the State Teachers Retirement System on or after July 1,
32 2015, may only transfer to the Public Employees Retirement System if they first became a
33 member of the Public Employees Retirement System on or after July 1, 2015. Repayment of
34 withdrawals shall be as directed by the Board of Trustees.

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

38 (d) Active members who previously worked in Comprehensive Employment and Training
39 Act (CETA) may receive service credit for time served in that capacity: Provided, That in order to
40 receive service credit under the provisions of this subsection the following conditions must be
41 met: (1) The member must have moved from temporary employment with the participating
42 employer to permanent full-time employment with the participating employer within one hundred
43 twenty days following the termination of the member's CETA employment; (2) the board must
44 receive evidence that establishes to a reasonable degree of certainty as determined by the board
45 that the member previously worked in CETA; and (3) the member shall pay to the board an

46 amount equal to the employer and employee contribution plus interest at the amount set by the
47 board for the amount of service credit sought pursuant to this subsection: Provided, however,
48 That the maximum service credit that may be obtained under the provisions of this subsection is
49 two years: Provided further, That a member must apply and pay for the service credit allowed
50 under this subsection and provide all necessary documentation by March 31, 2003: And provided
51 further, That the board shall exercise due diligence to notify affected employees of the provisions
52 of this subsection.

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

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

98 of when the session or interim legislative employment occurred: *And provided further*, That regular
99 session legislative employment for seven consecutive years may be served in either or both
100 houses of the Legislature.

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

107 (f) Any employee may purchase retroactive service credit for periods of employment in
108 which contributions were not deducted from the employee's pay. In the purchase of service credit
109 for employment prior to 1989 in any department, including the Legislature, which operated from
110 the General Revenue Fund and which was not expressly excluded from budget appropriations in
111 which blanket appropriations were made for the state's share of public employees' retirement
112 coverage in the years prior to 1989, the employee shall pay the employee's share. Other
113 employees shall pay the state's share and the employee's share to purchase retroactive service
114 credit. Where an employee purchases service credit for employment which occurred after 1988,
115 that employee shall pay for the employee's share and the employer shall pay its share for the
116 purchase of retroactive service credit: *Provided*, That no legislative employee and no current or
117 former member of the Legislature may be required to pay any interest or penalty upon the
118 purchase of retroactive service credit in accordance with the provisions of this section where the
119 employee was not eligible to become a member during the years for which he or she is purchasing
120 retroactive credit or had the employee attempted to contribute to the system during the years for
121 which he or she is purchasing retroactive service credit and the contributions would have been
122 refused by the board: *Provided, however*, That a current legislative employee purchasing
123 retroactive credit under this section shall do so within 24 months of beginning contributions to the

124 retirement system as a legislative employee or no later than December 31, 2016, whichever
125 occurs later: *Provided further*, That once a legislative employee becomes a member of the
126 retirement system, he or she may purchase retroactive service credit for any time he or she was
127 employed by the Legislature and did not receive service credit. Any service credit purchased shall
128 be credited as six months for each 60 day session worked, three months for each 30-day session
129 worked or 12 months for each 60 day session for legislative employees who have been employed
130 during regular sessions in 13 consecutive calendar years, as certified by the clerk of the house in
131 which the employee served, and credit for interim employment as provided in this subsection: *And*
132 *provided further*, That this legislative service credit shall also be used for months of service in
133 order to meet the 60 month requirement for the payments of a temporary legislative employee
134 member's retirement annuity: *And provided further*, That no legislative employee may be required
135 to pay for any service credit beyond the actual time he or she worked regardless of the service
136 credit which is credited to him or her pursuant to this section: *And provided further*, That any
137 legislative employee may request a recalculation of his or her credited service to comply with the
138 provisions of this section at any time.

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

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

149 (h) The board of trustees shall grant service credit to any former or present member of the

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

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

§5-10-30. Refund of accumulated contributions.

1 (a) In the event a member leaves the employ of a participating public employer prior to the
2 date ~~he~~ the member becomes entitled to retire with an annuity payable by the retirement system,
3 ~~he~~ the member shall be paid, upon ~~his~~ the member's written application filed with the board of
4 trustees, ~~his~~ their accumulated contributions ~~standing to his credit in the members deposit fund,~~
5 if ~~his~~ the member's separation from the employ of a participating public employer occurs
6 subsequent to a period of two years ~~from and after the date he last became a member of the~~
7 ~~system~~ of contributing service. If ~~his~~ the member's said separation from the employ of a
8 participating public employer occurs ~~within a period of~~ prior to two years ~~from and after the date~~
9 ~~he last became a member of the system~~ of contributing service, ~~he~~ the member shall be paid ~~his~~
10 their accumulated contributions ~~standing to his credit in the members deposit fund~~ less the total
11 regular interest credited to ~~his~~ their individual account ~~therein; and the said total interest credit~~
12 ~~shall be transferred to the income fund.~~

13 (b) In the event a member dies and does not leave a beneficiary entitled to an annuity
14 payable by the retirement system, ~~his~~ the member's accumulated contributions ~~standing to his~~
15 ~~credit in the members deposit fund~~ at the time of his their death shall be paid to such person or
16 persons as he shall have nominated by written designation duly executed and filed with the board
17 of trustees. If there be no such designated person or persons surviving the said member, his said
18 accumulated contributions shall be paid to his estate.

19 ~~(c) Refunds of a member's contributions or accumulated contributions, as the case may~~
20 ~~be, may be made in equal installments according to such rules and regulations as the board of~~
21 ~~trustees may from time to time adopt.~~

22 ~~(d)~~(c) In the event a member dies and a refund of his the member's contributions is due
23 to be made to an infant child or children by reason of being the person or persons nominated by
24 written designation duly executed and filed with the retirement system, and the amount of said
25 refund is less than \$1,000, then, and in said event, the board of trustees may make said refund,
26 upon written application, to the closest relative or natural guardian for the use of said infant child
27 or children. The board of trustees may, at its discretion, require that said relative or natural
28 guardian post bond with the retirement system to insure that said money will be used for the
29 benefit of said infant child or children. In any event, before said refund is made to said relative or
30 natural guardian of the said infant or infants, said relative or natural guardian shall give the
31 retirement system an indemnifying release of said sums so paid over.

32 (d) In the event a member leaves the employ of a participating public employer and is
33 entitled to retire with an annuity payable by the retirement system, but will be subject to an annuity
34 reduction at any time due to the 105 percent provision contained in §5-10-17(b), the member may
35 be paid, upon the member's written application filed with the board of trustees, their accumulated
36 contributions.

NOTE: The purpose of this bill is to specify that TRS Tier 2 service can only transfer to PERS Tier 2; permit members who are subject to their PERS retirement being capped at 105% to receive a refund of their accumulated contributions upon written request in lieu of

an annuity; and miscellaneous clean-up.

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