

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Committee Substitute

for

Senate Bill 486

BY SENATORS PLYMALE, WOELFEL, CAPUTO, AND

LINDSAY

[Originating in the Committee on Pensions; reported

on February 17, 2022]

1 A BILL to amend and reenact §5-10-2 and §5-10-24 of the Code of West Virginia, 1931, as
2 amended, all relating to irrevocable special needs trusts; allowing retirees in the Public
3 Employees Retirement System to designate an irrevocable special needs trust as
4 beneficiary; defining terms; and providing for substitution of irrevocable special needs trust
5 as beneficiary post-retirement in certain circumstances.

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 (which shall include an irrevocable special needs trust,
20 as that term is defined in §5-10-2 of this code, for the benefit of one individual beneficiary and
21 which trust terminated upon the death of such individual with no further annuity benefits being
22 payable), except a retirant, who is entitled to, or will be entitled to, an annuity or other benefit
23 payable by the retirement system;

24 (7) "Board of trustees" or "board" means the Board of Trustees of the West Virginia
25 Consolidated Public Retirement System;

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

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

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

46 (11) "Employee" means any person who serves regularly as an officer or employee, full
47 time, on a salary basis, whose tenure is not restricted as to temporary or provisional appointment,
48 in the service of, and whose compensation is payable, in whole or in part, by any political
49 subdivision, or an officer or employee whose compensation is calculated on a daily basis and
50 paid monthly or on completion of assignment, including technicians and other personnel
51 employed by the West Virginia National Guard whose compensation, in whole or in part, is paid
52 by the federal government: *Provided*, That an employee of the Legislature whose term of
53 employment is otherwise classified as temporary and who is employed to perform services
54 required by the Legislature for its regular sessions or during the interim between regular sessions
55 and who has been or is employed during regular sessions or during the interim between regular
56 sessions in seven or more consecutive calendar years, as certified by the clerk of the house in
57 which the employee served, is an employee, any provision to the contrary in this article
58 notwithstanding, and is entitled to credited service in accordance with provisions of §5-10-14 of
59 this code: *Provided, however*, That members of the legislative body of any political subdivision
60 and judges of the state Court of Claims are employees receiving one year of service credit for
61 each one-year term served and prorated service credit for any partial term served, anything
62 contained in this article to the contrary notwithstanding: *Provided further*, That only a
63 compensated board member of a participating public employer appointed to a board of a
64 nonlegislative body for the first time on or after July 1, 2014, who normally is required to work 12
65 months per year and 1,040 hours of service per year is an employee. In any case of doubt as to
66 who is an employee within the meaning of this article, the board of trustees shall decide the
67 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 15 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 either paragraph (A) or (B) of this subdivision,
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 sections §4-2A-2, §4-2A-3, §4-2A-4, and §4-2A-5 of this

94 code), in the year 1971, or in any year thereafter, plus any other compensation he or she receives
95 in any year from any other participating public employer including the State of West Virginia,
96 without any multiple in excess of one times his or her actual legislative compensation and other
97 compensation, shall be used: *Provided*, That final average salary for any former member of the
98 Legislature or for any member of the Legislature in the year 1971 who, in either event, was a
99 member of the Legislature on November 30, 1968, or November 30, 1969, or November 30, 1970,
100 or on 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 paragraph (A) or (B) of this subdivision,
106 whichever computation produces the higher final average salary, and in determining the annual
107 compensation under subparagraph (ii) of this paragraph, the legislative compensation of the
108 former member shall be computed on the basis of \$1,500 multiplied by eight, and the legislative
109 compensation of the member shall be computed on the basis set forth in the provisions of this
110 subdivision immediately preceding this paragraph or on the basis of \$1,500 multiplied by eight,
111 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 §5-10-21e of
119 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 and one-half years of age; or (B) the
149 calendar year in which a member who has attained the age 70 and one-half years of age and who
150 ceases providing service covered 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) "Special needs trust" means a trust established pursuant to §44D-8B-13 of this code
167 for an individual beneficiary with a disability and such special needs trust is or will become
168 irrevocable by the time the retiree names the special needs trust as the beneficiary of retirant's
169 annuity benefits in place of the individual beneficiary and terminates upon the death of the
170 individual beneficiary with no further annuity benefits being payable; and

171 ~~(28)~~ (29) “State” means the State of West Virginia.

§5-10-24. Annuity options.

1 (a) Prior to the effective date of his or her retirement, but not thereafter except upon the
2 death of a spouse, a member may elect to receive his or her annuity as a straight life annuity
3 payable throughout his or her life, or he or she may elect to receive the actuarial equivalent, at
4 the time, of his or her straight life annuity in a reduced annuity payable throughout his or her life,
5 and nominate a beneficiary, in accordance with option A or B set forth below:

6 *Option A—Joint and survivor annuity.*—Upon the death of a retirant who elected option A,
7 his or her reduced annuity shall be continued throughout the life of and paid to the beneficiary,
8 having an insurable interest in the retirant’s life, whom the retirant nominated by written
9 designation duly executed and filed with the board of trustees prior to the effective date of his or
10 her retirement; or

11 *Option B—Modified joint and survivor annuity.*—Upon the death of a retirant who elected
12 option B, one half of his or her reduced annuity shall be continued throughout the life of and paid
13 to the beneficiary, having an insurable interest in the retirant’s life, whom the retirant nominated
14 by written designation duly executed and filed with the board of trustees prior to the effective date
15 of his or her retirement.

16 (b) Upon the death of a spouse, a retirant may elect any of the retirement options offered
17 by the provisions of this section in an amount adjusted on a fair basis to be of equal actuarial
18 value as the annuity prospectively in effect relative to the retirant at the time the new option is
19 elected.

20 (c) Upon divorce, a retirant may elect to change any of the retirement benefit options
21 offered by the provisions of this section to a life annuity in an amount adjusted on a fair basis to
22 be of equal actuarial value of the annuity prospectively in effect relative to the retirant at the time
23 the option is elected: *Provided*, That the retirant furnishes to the board satisfactory proof of entry
24 of a final decree of divorce or annulment: *Provided, however*, That the retirant certifies under

25 penalty of perjury that no qualified domestic relations order, final decree of divorce, or other court
26 order that would restrict the election is in effect: *Provided further*, That no cause of action against
27 the board may then arise or be maintained on the basis of having permitted the retirant to name
28 a new spouse as annuitant for any of the survivorship retirement benefit options.

29 (d) Upon remarriage, a retirant may name the new spouse as an annuitant for any of the
30 retirement benefit options offered by the provisions of this section: *Provided*, That the retirant shall
31 furnish to the board proof of marriage: *Provided, however*, That the retirant certifies under penalty
32 of perjury that no qualified domestic relations order, final decree of divorce, or other court order
33 that would restrict the designation is in effect: *Provided further*, That no cause of action against
34 the board may then arise or be maintained on the basis of having permitted the retirant to name
35 a new spouse as annuitant for any of the survivorship retirement benefit options. The value of the
36 new survivorship annuity shall be the actuarial equivalent of the retirant's benefit prospectively in
37 effect at the time the new annuity is elected.

38 (e) In the event a retiree has named a beneficiary pursuant to §5-10-24 of this code, such
39 retiree may change such beneficiary designation from the named beneficiary to an irrevocable
40 special needs trust, as that term is defined in section two of this article of this code, if the
41 irrevocable special needs trust is for the benefit of the same beneficiary. No further annuity
42 payments shall be payable or paid from and after the later of the death of the retirant or the death
43 of the beneficiary of the irrevocable special needs trust.