WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1970

ENROLLED

SENATE BILL NO. 44

(Passed)

(By Mr. Jackson, President, and
Mr. Carrigan, original sponsor)

PASSED

Jan. 6, 1970

In Effect

Passage

FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE
THIS DATE 2-12-70
AN ACT

To amend and reenact sections two, fourteen, twenty-two, twenty-five and thirty-one, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to definitions of words used in the West Virginia Public Employees Retirement Act; service credit; retirement annuity; disability retirement; and employers' contributions.

Be it enacted by the Legislature of West Virginia:

That sections two, fourteen, twenty-two, twenty-five and thirty-one, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-2. Definitions.

The following words and phrases as used in this article, unless a different meaning is clearly indicated by the context, shall have the following meanings:

1. "State" means the state of West Virginia;
2. "Retirement system" or "system" means the West Virginia public employees retirement system created and established by this article;
3. "Board of trustees" or "board" means the board of trustees of the West Virginia public employees retirement system;
4. "Political subdivision" means the state of West Virginia, a county, city or town in the state; a school corporation or corporate unit; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; any public corporation charged by law with the performance of a governmental function and whose juris-
diction is coextensive with one or more counties, cities or
towns, any agency or organization established by, or ap-
proved by the department of mental health for the provi-
sion of community health or mental retardation services,
and which is supported in part by state, county or munici-
pal funds;

(5) "Participating public employer" means the state of
West Virginia, any board, commission, department, insti-
tution or spending unit, and shall include any agency
created by rule of the supreme court of appeals having
full-time employees, which for the purposes of this article
shall be deemed a department of state government; and
any political subdivision in the state which has elected to
cover its employees, as defined in this article, under the
West Virginia public employees retirement system;

(6) "Employee" means any person who serves regularly
as an officer or employee, full time, on a salary basis,
whose tenure is not restricted as to temporary or provi-
sional appointment, in the service of, and whose compen-
sation is payable in whole or in part by any political sub-
division, or an officer or employee whose compensation is
calculated on a daily basis and paid monthly or on comple-
tion of assignment, including technicians and other per-
sonnel employed by the West Virginia national guard
whose compensation in whole or in part is paid by the
federal government: Provided, That members of the state
Legislature, the clerk of the House of Delegates, the clerk
of the state Senate, members of the legislative body of any
political subdivision and judges of the state court of claims
shall be considered to be employees, anything contained
herein to the contrary notwithstanding. In any case of
doubt as to who is an employee within the meaning of this
article the board of trustees shall decide the question;
(7) “Member” means any person who is included in the
membership of the retirement system;
(8) “Retirant” means any member who retires with an
annuity payable by the retirement system;
(9) “Beneficiary” means any person, except a retirant,
who is entitled to, or will be entitled to, an annuity or
other benefit payable by the retirement system;
(10) “Service” means personal service rendered to a
participating public employer by an employee, as defined
(11) "Prior service" means service rendered prior to July one, one thousand nine hundred sixty-one, to the extent credited a member as provided in this article;

(12) "Contributing service" means service rendered by a member from and after the date of his entrance in the retirement system, to the extent credited him as provided in this article;

(13) "Credited service" means the sum of a member's prior service credit and contributing service credit standing to his credit as provided in this article;

(14) "Compensation" means the remuneration paid a member by a participating public employer for personal services rendered by him to the participating public employer. In the event a member's remuneration is not all paid in money, his participating public employer shall fix the value of the portion of his remuneration which is not paid in money;

(15) "Final average salary" means the average of the highest annual compensation received by a member during any period of three consecutive years of his credited
service contained within his ten years of credited service immediately preceding the date his employment with a participating public employer last terminated. If he has less than five years of credited service, his final average salary shall be the average of the annual rate of compensation received by him during his total years of credited service. Final average salary for members of the Legislature means their actual compensation serving as a member of the Legislature multiplied by eight; plus any other compensation they receive from any other participating public employer including the state of West Virginia;

(16) "Accumulated contributions" means the sum of all amounts deducted from the compensations of a member and credited to his individual account in the members' deposit fund, together with regular interest thereon;

(17) "Regular interest" means such rate or rates of interest per annum, compounded annually, as the board of trustees shall from time to time adopt;

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

(19) "Annuity reserve" means the present value of all payments to be made to a retirant or beneficiary of a retirant on account of any annuity, computed upon the basis of such mortality and other tables of experience, and regular interest, as the board of trustees shall from time to time adopt;

(20) "Retirement" means a member's withdrawal from the employ of a participating public employer with an annuity payable by the retirement system;

(21) "Actuarial equivalent" means a benefit of equal value computed upon the basis of such mortality table and regular interest as the board of trustees shall from time to time adopt;

(22) The masculine gender shall include the feminine gender, and words of the singular number with respect to persons shall include the plural number, and vice versa.

§5-10-14. Service credit.

(a) The board of trustees shall credit each member with the prior service and contributing service to
which he is entitled based upon such rules and regulations as the board of trustees shall from time to time adopt: Provided, That in no case shall less than ten days of service rendered by a member in any calendar month be credited as a month of service; nor shall less than ten months of service rendered in any calendar year be credited as a year of service; nor shall more than one year of service be credited any member for all service rendered by him in any calendar year; nor shall any member who was not in the employ of a political subdivision within a period of twenty-five years immediately preceding the date the political subdivision became a participating public employer be credited with prior service.

(b) The board of trustees shall grant service credit to employees of boards of health, the clerk of the House of Delegates and the clerk of the state Senate, or to any former and present member of the state teachers retirement system who have been contributing members for more than three years, for service previously credited by the state teachers retirement system, and shall re-
quire the transfer of the member's contributions to the retirement system, and shall also require a deposit, with interest, of any withdrawals of contributions any time prior to said member's retirement. Repayment of withdrawals shall be as directed by the board of trustees.

(c) Court reporters who are acting in an official capacity, although paid by funds other than the county court or state auditor, may receive prior service credit for such time as served in such capacity.

§5-10-22. Retirement annuity.

Upon a member's retirement, as provided in this article, he shall receive a straight life annuity equal to one and five-tenths percent of his final average salary multiplied by the number of years, and fraction of a year, of his credited service in force at the time of his retirement: Provided, That after March one, one thousand nine hundred seventy, all members retired and all members retiring shall receive a straight life annuity equal to two percent of his final average salary multiplied by the number of years, and fraction of a year, of his credited service in force at the
time of his retirement. In either event, upon his re-
tirement he shall have the right to elect an option pro-
vided for in section twenty-four hereof. All annuity
payments shall commence effective the first of the
month following the month in which a member retires
or a member dies leaving a beneficiary entitled to benefits
and shall continue to the end of the month in which
said retirant or beneficiary dies, and said annuity pay-
ments shall not be prorated for any portion of a month
in which a member retires or retirant or beneficiary
dies.

Any member of the Legislature who retires, or former
member who has been retired under this article, shall
receive an annuity as provided herein based upon the
salary at the time of his retirement, which annuity
shall be changed from time to time during the period
of his retirement and shall be changed proportionately
when and if the compensation of members of the Leg-
islature is changed: Provided further, That all former
members of the Legislature, now retired, shall, effective
March one, one thousand nine hundred seventy, have
§5-10-25. Disability retirement.

(a) Upon the application of a member or former member of the retirement system, or his present or past employing authority, any member or former member who (1) is or was in the employ of a participating public employer, (2) has ten or more years of credited service, and (3) becomes totally and permanently incapacitated for employment, by reason of a personal injury or disease, may be retired by the board of trustees if after a medical examination of the said member or former member, made by or under the direction of a medical committee consisting of two physicians, one of whom shall be named by the board, and one by the said member or former member, the said medical committee reports, in writing, to the board that (1) the said member or former member is physically or mentally totally incapacitated for employment, (2) that such incapacity will probably be permanent, and (3) that the said member or former member should be retired. In
the event the two above-mentioned physicians do not
agree in their findings, then the board of trustees may,
at its discretion, appoint a third physician to examine
said member or former member and, based upon the
third physician's report in writing, the board may retire
said member or former member.

(b) A member with less than ten years of credited
service shall have the service requirement provided for
in subsection (a) above waived in the event (1) the
board of trustees finds his total and permanent disability
to be the natural and proximate result of a personal
injury or disease arising out of and in the course of his
actual performance of duty in the employ of a partici-
pating public employer, and (2) he is in receipt of work-
men's compensation on account of such physical or
mental disability.

(c) For those members or former members retiring and
those members retired, as of March one, one thousand nine
hundred seventy, he shall receive a straight life annuity
computed according to section twenty-two hereof and
he shall have the right to elect an option provided for
in section twenty-four hereof: Provided, however, That
his straight life annuity payable to his attainment of
age sixty-five years shall not be less than fifty percent
of his final average salary; and his said straight life
annuity payable from and after his attainment of age
sixty-five years shall not be less than twenty percent
of his final average salary: Provided further, That his
said annuity shall be subject to section twenty-six hereof.

§5-10-31. Employers' accumulation fund; employers' contribu-

(a) The employers' accumulation fund is hereby cre-
ated. It shall be the fund in which shall be accumulated
the contributions made by the participating public em-
ployers to the retirement system, and from which trans-
fers shall be made as provided in this section.

(b) Based upon the provisions of section thirteen of
this article, the participating public employers' contribu-
tions to the retirement system shall be determined, ac-
cording to subdivisions one, two, three and four below,
for the state as the state division, and for the other par-
(1) The participating public employers’ contributions for members’ current service shall be a percent of the members’ annual compensation which will equal an amount which if paid annually by the participating public employers during the members’ future service will be sufficient to provide, at the time annuities will become payable on their account, the difference between the annuity reserves for the future service portions of the annuities to be paid and the present value of the members’ future net contributions.

(2) The participating public employers’ contributions for members’ accrued service shall be a percent of the members’ annual compensation which will equal an amount which if paid annually by the participating public employers over a period of years, to be determined by the board of trustees, will amortize, at regular interest, the unfunded annuity reserves for the accrued portions of the annuities to be paid on account of members.
(3) The participating public employers' contributions for annuities being paid retirants and beneficiaries shall be a percent of the members' annual compensations which will equal an amount which if paid annually by the participating public employers over a period of years, to be determined by the board of trustees, will amortize, at regular interest, the unfunded annuity reserves for annuities being paid retirants and beneficiaries.

(4) In no year shall the total of the contributions, provided for in subdivisions one, two and three above, to be paid by any participating public employer exceed ten and five-tenths percent of the total payroll for the members in the employ of such participating public employer for the preceding fiscal year.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

William J. Tempon
Chairman Senate Committee

Clayton C. Dawson
Chairman House Committee

Originated in the Senate.

To take effect from passage.

Westley H. Jones
Clerk of the Senate

W. F. Lankershim
Clerk of the House of Delegates

Harry E. Jackson
President of the Senate

Joe H. Brumbaugh
Speaker House of Delegates

The within approved this the 11th day of February, 1970.

Archie Moore, Jr.
Governor
PRESENTED TO THE
GOVERNOR

Date 2/6/70
Time 4:25 p.m.