WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1985

ENROLLED
Committee Substitute for
SENATE BILL NO. 312

(By Mr. C. Williams, et al.)

PASSED 13th Day Of April 1985
In Effect July 1, 1985

1985
SECRETARY OF STATE
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE
ENROLLED

COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 312

(Mr. R. Williams, Mrs. Spears, Mr. Holmes, Mr. Fanning,
Mr. Colombo, Mr. Sharpe, Mr. B. Williams, Mr. Whitlow,
Mr. Parker, Mr. Whitacre, Mr. Kaufman and Mr. Shaw,
original sponsors)

(Originating in the Committee on Finance.)

[Passed April 13, 1985; to take effect July 1, 1985.]

AN ACT to amend and reenact sections two, fourteen, seventeen and twenty-two-b, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section twenty-sixth, article seven-a, chapter eighteen of said code, all relating to the state public employees retirement act and the state teachers retirement system; providing increased supplemental benefits for certain annuitants contingent on legislative budgetary action; specifying factors for eligibility and computation thereof, under both systems; providing, in respect of the public employees retirement act, for all temporary employees of the Legislature who have been employed for ten years or more to be eligible for participation in such public employees retirement system; membership; definitions; and service credit.

Be it enacted by the Legislature of West Virginia:

That sections two, fourteen, seventeen and twenty-two-b, article ten, chapter five of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended, be amended and reenacted; and that section twenty-six-h, article seven-a, chapter eighteen of said code be amended and reenacted, all to read as follows:

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-2. Definitions.

1. 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 jurisdiction is coextensive with one or more counties; cities or towns, any agency or organization established by, or approved by the department of mental health for the provision of community health or mental retardation services, and which is supported in part by state, county or municipal funds;

   (5) “Participating public employer” means the state of West Virginia, any board, commission, department, in-
stitution 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 provisional
appointment, in the service of, and whose compensation
is payable, in whole or in part, by any political subdivi-
sion, or an officer or employee whose compensation is
calculated on a daily basis and paid monthly or on com-
pletion of assignment, including technicians and other
personnel 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, employees of the state Legisla-
ture whose term of employment is otherwise classified as
temporary and who are employed to perform services
required by the Legislature for its regular sessions or
during the interim between regular sessions and who
have been or are so employed during regular sessions or
during the interim between regular sessions for ten or
more years, members of the legislative body of any politi-
cal 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 ques-

(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 in this article, of a participating public employer;

(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 either (a) the average of the highest annual compensation received by a member (including a member of the Legislature who participates in the retirement system in the year one thousand nine hundred seventy-one or thereafter) 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, or (b) if he has less than five years of credited service, the average of the annual rate of compensation received by him during his total years of credited service; and in determining the annual compensation, under either (a) or (b) of this subdivision (15), of a member of the Legislature who participates in the retirement system as a member of the Legislature in the year one thousand nine hundred seventy-one or in any year thereafter, his actual legislative compensation (the total of all compensation paid under sections two, three, four and five, article two-a, chapter
four of this code) in the year one thousand nine hundred seventy-one or in any year thereafter, plus any other compensation he receives in any such year from any other participating public employer including the state of West Virginia, without any multiple in excess of one times his actual legislative compensation as aforesaid and other compensation, shall be used: Provided, That “final average salary” for any former member of the Legislature or for any member of the Legislature in the year one thousand nine hundred seventy-one who, in either event, was a member of the Legislature on November thirty, one thousand nine hundred sixty-eight, or November thirty, one thousand nine hundred sixty-nine, or November thirty, one thousand nine hundred seventy, or on November thirty in any one or more of said three years, and who participated in the retirement system as a member of the Legislature in any one or more of such years of one thousand nine hundred sixty-eight, one thousand nine hundred sixty-nine or one thousand nine hundred seventy, means (i) either (notwithstanding the provisions of this subdivision (15) preceding this proviso) one thousand five hundred dollars multiplied by eight, plus the highest other compensation such former member or member received in any one of said three years from any other participating public employer including the state of West Virginia, or (ii) “final average salary” determined in accordance with (a) or (b) of this subdivision (15), whichever computation shall produce the higher final average salary (and in determining the annual compensation under (ii) of this proviso, the legislative compensation of any such former member shall be computed on the basis of one thousand five hundred dollars multiplied by eight, and the legislative compensation of any such member shall be computed on the basis set forth in the provisions of this subdivision (15) immediately preceding this proviso or on the basis of one thousand five hundred dollars multiplied by eight, whichever computation as to such member shall produce the higher annual compensation);

(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; and

(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 require 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 commission or state auditor, may receive prior service credit for such time as served in such capacity.

(d) Employees of the state Legislature whose term of employment is otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who have been or are so employed during regular sessions or during the interim between sessions for ten or more years, may receive service credit for such time as served in that capacity.

§5-10-17. Retirement system membership.

The membership of the retirement system shall consist of the following persons:

(a) All employees, as defined in section two of this article, who are in the employ of a political subdivision the day preceding the date it becomes a participating public employer and who continue in the employ of the said participating public employer on and after the said date shall become members of the retirement system; and all persons who become employees of a participating public employer on or after the said date shall thereupon
become members of the system; except as provided in subdivisions (b) and (c) of this section.

(b) The membership of the retirement system shall not include any person who is a member of, or who has been retired by, the state teachers retirement system, the judges retirement system, the retirement system of the department of public safety, or any municipal retirement system for either, or both, policemen or firemen; and the West Virginia department of employment security, by the commissioner of such department, may elect whether its employees will accept coverage under this article or be covered under the authorization of a separate enactment: Provided, That such exclusions of membership shall not apply to any member of the state Legislature, the Clerk of the House of Delegates, the Clerk of the state Senate or to any member of the legislative body of any political subdivision provided he once becomes a contributing member of the retirement system: Provided, however, That any retired member of the retirement system of the department of public safety, and any retired member of any municipal retirement system for either, or both, policemen or firemen may on and after the effective date of this section become a member of the retirement system as provided in this article, without receiving credit for prior service as a municipal policeman or fireman or as a member of the department of public safety.

(c) Any member of the state Legislature, the Clerk of the House of Delegates, the Clerk of the state Senate, any employee of the state Legislature whose employment is otherwise classified as temporary and who is employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who has been or is so employed during regular sessions or during the interim between sessions for ten or more years, or any member of the legislative body of any other political subdivision shall become a member of the retirement system provided he notifies the retirement system in writing of his intention to be a member of the system and files a membership enrollment form as the
board of trustees shall prescribe, and each person, upon filing his written notice to participate in the retirement system, shall by said act authorize the Clerk of the House of Delegates or the Clerk of the state Senate or such person or legislative agency as the legislative body of any other political subdivision shall designate to deduct such member's contribution, as provided in subsection (b), section twenty-nine of this article, and after said deductions have been made from said member's compensation, such deductions shall be forwarded to the retirement system.

(d) Should any question arise regarding the membership status of any employee, the board of trustees has the final power to decide the question.

§5-10-22b. Supplemental benefits for certain annuitants.

Any annuitant who is receiving a retirement annuity of less than seven thousand five hundred dollars annually on the effective date of this section shall receive, upon application, a supplemental benefit, prospectively, under this section in any fiscal year for which the Legislature provides by line item appropriations for the payment of such benefit: Provided, That the effective date of retirement for such annuitants was prior to the first day of July, one thousand nine hundred seventy-eight, and he had ten years or more of credited service at the time of such retirement. For the purposes of this section, "effective date of retirement" means the last day of actual employment, or the last day carried on the payroll of the employer, whichever is later, together with a meeting fully of all eligibility requirements for retirement prior to the aforesaid effective date. Any annuitant retired pursuant to the disability provisions of this article shall be considered to have had ten years or more of credited service at the time of such retirement.

Each such annuitant shall receive as his supplemental benefit an increased annual amount which is the product of the sum of eighteen dollars multiplied by his years of credited service: Provided, That the total annuity of any annuitant affected by the provisions of this section, to-
gather with any of the other provisions of this article, shall not exceed seven thousand five hundred dollars annually.

Any annuitant receiving the supplemental benefit provided for herein for the annuity payment period just prior to the first day of July, one thousand nine hundred eighty-four, or any annuitant made newly eligible for receipt of such supplemental benefit on such date, shall receive a nineteen percent increase in the amount of such supplemental benefit prior received or newly calculated, effective on and after the first day of July, one thousand nine hundred eighty-four, and irrespective of the maximum total annuity proviso and limitation of seven thousand five hundred dollars annually. In any fiscal year in which pay increases are granted by the Legislature to active public employees, there may also be given an increase in retirement benefits for retired public employees, if funding is available for this purpose.

For the purpose of calculating the supplemental benefit provided in this section, fractional parts of a service credit year are to be disregarded unless in excess of one half of a credited service year, in which event the same shall constitute a full year of service credit.

On and after the first day of July, one thousand nine hundred eighty-two, for the purpose of computation for determination of eligibility and for the amount of any supplemental benefit hereunder, separate computation shall be made of a retirant's own benefit and that which may be receivable as beneficiary of another, under the provisions of this article, with each such benefit being eligible for the supplemental benefit herein provided.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-26h. Supplemental benefits for certain annuitants.

Any annuitant who is receiving a retirement annuity of less than seven thousand five hundred dollars annually on the effective date of this section shall receive a supple-
mental benefit, prospectively, under this section in any fiscal year for which the Legislature provides by line item appropriation for the payment of such benefit:

Provided, That the effective date of retirement for such annuitant was prior to the first day of July, one thousand nine hundred seventy-eight, and he had ten years or more of credited service at the time of such retirement. For the purposes of this section, "effective date of retirement" means the last day of actual employment, or the last day carried on the payroll of the employer, whichever is later, together with a meeting fully of all eligibility requirements for retirement prior to the aforesaid effective date. Any annuitant retired pursuant to the disability provisions of this article shall be considered to have had ten years or more credited service at the time of such retirement.

Each such annuitant shall receive as his supplemental benefit an increased annual amount which is the product of the sum of eighteen dollars multiplied by his years of credited service: Provided, That the total annuity of any annuitant affected by the provisions of this section, together with any of the other provisions of this article, shall not exceed seven thousand five hundred dollars annually.

Any annuitant receiving the supplemental benefit provided for herein for the annuity payment period just prior to the first day of July, one thousand nine hundred eighty-four, or any annuitant made newly eligible for receipt of such supplemental benefit on such date, shall receive a nineteen percent increase in the amount of such supplemental benefit prior received or newly calculated, effective on and after the first day of July, one thousand nine hundred eighty-four and irrespective of the maximum total annuity proviso, and limitation of seven thousand five hundred dollars annually. If any fiscal year in which pay increases are granted by the Legislature to active teachers, there may also be given an increase in retirement benefits for retired teachers, if funding is available for this purpose.

For the purpose of calculating the supplemental benefit provided in this section, fractional parts of a service
credit year are to be disregarded unless in excess of one half of a credited service year, in which event the same shall constitute a full year of service credit.

On or after the first day of July, one thousand nine hundred eighty-two, for the purpose of computation for determination of eligibility and for the amount of any supplemental benefit hereunder, separate computation shall be made of a retirant's own benefit and that which may be receivable as beneficiary of another under the provisions of this article, with each such benefit being eligible for the supplemental benefit herein provided.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect July 1, 1985.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within ________ approved this the ________ day of ________, 1985.
PRESENTED TO THE

GOVERNOR

Date: 4/19/85

Time: 8:47 p.m.