

No. 312

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1985

RECEIVED
1985 MAY -3 AM 10:44
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

Committee Substitute for
SENATE BILL NO. 312

(By Mr. *T. Shilloms, et al*)

PASSED April 13, 1985

In Effect July 1, 1985 Passage



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-six-h, 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 RETIRE-
MENT ACT.**

§5-10-2. Definitions.

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

4 (1) "State" means the state of West Virginia;

5 (2) "Retirement system" or "system" means the West
6 Virginia public employees retirement system created and
7 established by this article;

8 (3) "Board of trustees" or "board" means the board of
9 trustees of the West Virginia public employees retirement
10 system;

11 (4) "Political subdivision" means the state of West
12 Virginia, a county, city or town in the state; a school
13 corporation or corporate unit; any separate corporation or
14 instrumentality established by one or more counties, cities
15 or towns, as permitted by law; any corporation or instru-
16 mentality supported in most part by counties, cities
17 or towns; any public corporation charged by law with the
18 performance of a governmental function and whose juris-
19 diction is coextensive with one or more counties, cities
20 or towns, any agency or organization established by, or
21 approved by the department of mental health for the
22 provision of community health or mental retardation
23 services, and which is supported in part by state, county
24 or municipal funds;

25 (5) "Participating public employer" means the state of
26 West Virginia, any board, commission, department, in-

27 stitution or spending unit, and shall include any agency
28 created by rule of the supreme court of appeals having
29 full-time employees, which for the purposes of this article
30 shall be deemed a department of state government; and
31 any political subdivision in the state which has elected to
32 cover its employees, as defined in this article, under the
33 West Virginia public employees retirement system;

34 (6) "Employee" means any person who serves regularly
35 as an officer or employee, full time, on a salary basis, whose
36 tenure is not restricted as to temporary or provisional
37 appointment, in the service of, and whose compensation
38 is payable, in whole or in part, by any political subdivi-
39 sion, or an officer or employee whose compensation is
40 calculated on a daily basis and paid monthly or on com-
41 pletion of assignment, including technicians and other
42 personnel employed by the West Virginia national guard
43 whose compensation, in whole or in part, is paid by the
44 federal government: *Provided*, That members of the state
45 Legislature, the Clerk of the House of Delegates, the
46 Clerk of the state Senate, employees of the state Legisla-
47 ture whose term of employment is otherwise classified as
48 temporary and who are employed to perform services
49 required by the Legislature for its regular sessions or
50 during the interim between regular sessions and who
51 have been or are so employed during regular sessions or
52 during the interim between regular sessions for ten or
53 more years, members of the legislative body of any politi-
54 cal subdivision and judges of the state court of claims
55 shall be considered to be employees, anything contained
56 herein to the contrary notwithstanding. In any case of
57 doubt as to who is an employee within the meaning of
58 this article the board of trustees shall decide the ques-
59 tion;

60 (7) "Member" means any person who is included in the
61 membership of the retirement system;

62 (8) "Retirant" means any member who retires with an
63 annuity payable by the retirement system;

64 (9) "Beneficiary" means any person, except a retirant,
65 who is entitled to, or will be entitled to, an annuity or
66 other benefit payable by the retirement system;

67 (10) "Service" means personal service rendered to a
68 participating public employer by an employee, as defined
69 in this article, of a participating public employer;

70 (11) "Prior service" means service rendered prior to
71 July one, one thousand nine hundred sixty-one, to the
72 extent credited a member as provided in this article;

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

77 (13) "Credited service" means the sum of a member's
78 prior service credit and contributing service credit stand-
79 ing to his credit as provided in this article;

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

87 (15) "Final average salary" means either (a) the aver-
88 age of the highest annual compensation received by a
89 member (including a member of the Legislature who
90 participates in the retirement system in the year one
91 thousand nine hundred seventy-one or thereafter) during
92 any period of three consecutive years of his credited ser-
93 vice contained within his ten years of credited service
94 immediately preceding the date his employment with a
95 participating public employer last terminated, or (b) if he
96 has less than five years of credited service, the average of
97 the annual rate of compensation received by him during
98 his total years of credited service; and in determining the
99 annual compensation, under either (a) or (b) of this sub-
100 division (15), of a member of the Legislature who par-
101 ticipates in the retirement system as a member of the
102 Legislature in the year one thousand nine hundred sev-
103 enty-one or in any year thereafter, his actual legislative
104 compensation (the total of all compensation paid under
105 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

146 and credited to his individual account in the members'
147 deposit fund, together with regular interest thereon;

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

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

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

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

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

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

§5-10-14. Service credit.

1 (a) The board of trustees shall credit each member
2 with the prior service and contributing service to which
3 he is entitled based upon such rules and regulations as the
4 board of trustees shall from time to time adopt: *Provided*,
5 That in no case shall less than ten days of service ren-
6 dered by a member in any calendar month be credited as
7 a month of service; nor shall less than ten months of ser-
8 vice rendered in any calendar year be credited as a year
9 of service; nor shall more than one year of service be
10 credited any member for all service rendered by him in
11 any calendar year; nor shall any member who was not in
12 the employ of a political subdivision within a period of

13 twenty-five years immediately preceding the date the
14 political subdivision became a participating public em-
15 ployer be credited with prior service.

16 (b) The board of trustees shall grant service credit to
17 employees of boards of health, the Clerk of the House of
18 Delegates and the Clerk of the state Senate, or to any
19 former and present member of the state teachers retire-
20 ment system who have been contributing members for
21 more than three years, for service previously credited by
22 the state teachers' retirement system, and shall require
23 the transfer of the member's contributions to the retire-
24 ment system, and shall also require a deposit, with inter-
25 est, of any withdrawals of contributions any time prior to
26 said member's retirement. Repayment of withdrawals
27 shall be as directed by the board of trustees.

28 (c) Court reporters who are acting in an official ca-
29 pacity, although paid by funds other than the county
30 commission or state auditor, may receive prior service
31 credit for such time as served in such capacity.

32 (d) Employees of the state Legislature whose term of
33 employment is otherwise classified as temporary and who
34 are employed to perform services required by the Legis-
35 lature for its regular sessions or during the interim be-
36 tween regular sessions and who have been or are so
37 employed during regular sessions or during the interim
38 between sessions for ten or more years, may receive ser-
39 vice credit for such time as served in that capacity.

§5-10-17. Retirement system membership.

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

3 (a) All employees, as defined in section two of this
4 article, who are in the employ of a political subdivision
5 the day preceding the date it becomes a participating
6 public employer and who continue in the employ of the
7 said participating public employer on and after the said
8 date shall become members of the retirement system; and
9 all persons who become employees of a participating
10 public employer on or after the said date shall thereupon

11 become members of the system; except as provided in
12 subdivisions (b) and (c) of this section.

13 (b) The membership of the retirement system shall not
14 include any person who is a member of, or who has been
15 retired by, the state teachers retirement system, the
16 judges retirement system, the retirement system of the
17 department of public safety, or any municipal retirement
18 system for either, or both, policemen or firemen; and the
19 West Virginia department of employment security, by
20 the commissioner of such department, may elect whether
21 its employees will accept coverage under this article or
22 be covered under the authorization of a separate enact-
23 ment: *Provided*, That such exclusions of membership
24 shall not apply to any member of the state Legislature,
25 the Clerk of the House of Delegates, the Clerk of the
26 state Senate or to any member of the legislative body
27 of any political subdivision provided he once becomes
28 a contributing member of the retirement system: *Pro-*
29 *vided, however*, That any retired member of the retire-
30 ment system of the department of public safety, and
31 any retired member of any municipal retirement system
32 for either, or both, policemen or firemen may on and
33 after the effective date of this section become a member
34 of the retirement system as provided in this article,
35 without receiving credit for prior service as a municipal
36 policeman or fireman or as a member of the department
37 of public safety.

38 (c) Any member of the state Legislature, the Clerk of
39 the House of Delegates, the Clerk of the state Senate, any
40 employee of the state Legislature whose employment is
41 otherwise classified as temporary and who is employed to
42 perform services required by the Legislature for its regu-
43 lar sessions or during the interim between regular ses-
44 sions and who has been or is so employed during regular
45 sessions or during the interim between sessions for ten
46 or more years, or any member of the legislative body of
47 any other political subdivision shall become a member of
48 the retirement system provided he notifies the retirement
49 system in writing of his intention to be a member of the
50 system and files a membership enrollment form as the

51 board of trustees shall prescribe, and each person, upon
52 filing his written notice to participate in the retirement
53 system, shall by said act authorize the Clerk of the House
54 of Delegates or the Clerk of the state Senate or such per-
55 son or legislative agency as the legislative body of any
56 other political subdivision shall designate to deduct such
57 member's contribution, as provided in subsection (b),
58 section twenty-nine of this article, and after said deduc-
59 tions have been made from said member's compensation,
60 such deductions shall be forwarded to the retirement
61 system.

62 (d) Should any question arise regarding the member-
63 ship status of any employee, the board of trustees has the
64 final power to decide the question.

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

1 Any annuitant who is receiving a retirement annuity of
2 less than seven thousand five hundred dollars annually
3 on the effective date of this section shall receive, upon
4 application, a supplemental benefit, prospectively, under
5 this section in any fiscal year for which the Legislature
6 provides by line item appropriations for the payment of
7 such benefit: *Provided*, That the effective date of retire-
8 ment for such annuitants was prior to the first day of
9 July, one thousand nine hundred seventy-eight, and he
10 had ten years or more of credited service at the time of
11 such retirement. For the purposes of this section, "effec-
12 tive date of retirement" means the last day of actual
13 employment, or the last day carried on the payroll of the
14 employer, whichever is later, together with a meeting
15 fully of all eligibility requirements for retirement prior
16 to the aforesaid effective date. Any annuitant retired pur-
17 suant to the disability provisions of this article shall be
18 considered to have had ten years or more credited service
19 at the time of such retirement.

20 Each such annuitant shall receive as his supplemental
21 benefit an increased annual amount which is the product
22 of the sum of eighteen dollars multiplied by his years of
23 credited service: *Provided*, That the total annuity of any
24 annuitant affected by the provisions of this section, to-

25 gether with any of the other provisions of this article,
26 shall not exceed seven thousand five hundred dollars
27 annually.

28 Any annuitant receiving the supplemental benefit pro-
29 vided for herein for the annuity payment period just
30 prior to the first day of July, one thousand nine hundred
31 eighty-four, or any annuitant made newly eligible for
32 receipt of such supplemental benefit on such date, shall
33 receive a nineteen percent increase in the amount of such
34 supplemental benefit prior received or newly calculated,
35 effective on and after the first day of July, one thousand
36 nine hundred eighty-four, and irrespective of the maxi-
37 mum total annuity proviso and limitation of seven thous-
38 and five hundred dollars annually. In any fiscal year in
39 which pay increases are granted by the Legislature to
40 active public employees, there may also be given an in-
41 crease in retirement benefits for retired public employees,
42 if funding is available for this purpose.

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

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

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

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

1 Any annuitant who is receiving a retirement annuity of
2 less than seven thousand five hundred dollars annually
3 on the effective date of this section shall receive a supple-

4 mental benefit, prospectively, under this section in any
5 fiscal year for which the Legislature provides by line
6 item appropriation for the payment of such benefit:
7 *Provided*, That the effective date of retirement for such
8 annuitant was prior to the first day of July, one thousand
9 nine hundred seventy-eight, and he had ten years or more
10 of credited service at the time of such retirement. For the
11 purposes of this section, "effective date of retirement"
12 means the last day of actual employment, or the last day
13 carried on the payroll of the employer, whichever is later,
14 together with a meeting fully of all eligibility require-
15 ments for retirement prior to the aforesaid effective date.
16 Any annuitant retired pursuant to the disability provisions
17 of this article shall be considered to have had ten years or
18 more credited service at the time of such retirement.

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

27 Any annuitant receiving the supplemental benefit pro-
28 vided for herein for the annuity payment period just
29 prior to the first day of July, one thousand nine hundred
30 eighty-four, or any annuitant made newly eligible for
31 receipt of such supplemental benefit on such date, shall
32 receive a nineteen percent increase in the amount of such
33 supplemental benefit prior received or newly calculated,
34 effective on and after the first day of July, one thousand
35 nine hundred eighty-four and irrespective of the maxi-
36 mum total annuity proviso, and limitation of seven thous-
37 and five hundred dollars annually. If any fiscal year in
38 which pay increases are granted by the Legislature to
39 active teachers, there may also be given an increase in
40 retirement benefits for retired teachers, if funding is
41 available for this purpose.

42 For the purpose of calculating the supplemental benefit
43 provided in this section, fractional parts of a service

44 credit year are to be disregarded unless in excess of one
45 half of a credited service year, in which event the same
46 shall constitute a full year of service credit.

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Samuel E. Blue
Chairman Senate Committee

Floyd Fuller
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1985.

Judd C. Willis
Clerk of the Senate

Donald L. Kopp
Clerk of the House of Delegates

Dan Turberville
President of the Senate

Joseph P. Albright
Speaker House of Delegates

The within *approved* this the *2nd*
day of *May*, 1985.

Arch A. Moore, Jr.
Governor

PRESENTED TO THE

GOVERNOR

Date

4/19/85

Time

8:47pm.