

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997



ENROLLED

SENATE BILL NO. 348

(By Senator PLYMAGE, ET AL)



PASSED APRIL 12, 1997

In Effect FROM Passage

ENROLLED

Senate Bill No. 348

(BY SENATORS PLYMALE, OLIVERIO, SNYDER, PREZIOSO, DUGAN,
SCOTT, JACKSON, DEEM, BOLEY AND WALKER)

[Passed April 12, 1997; in effect from passage.]

AN ACT to amend and reenact sections two, seventeen and eighteen, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to removing mental health centers from the public employees retirement system except for the purpose of continuing participation by current members; giving current members optional withdrawal without losing service credit; requiring mental health centers now participating in the public employees retirement system to provide private pension plans for current employees at their option and for future employees within a time certain; and requiring mental health centers to provide to current members notice of their option to withdraw including comparative actuarial projections of individual accounts.

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SENATE
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Be it enacted by the Legislature of West Virginia:

That sections two, seventeen and eighteen, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 10. WEST VIRGINIA EMPLOYEES RETIREMENT 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 or
17 towns; any public corporation charged by law with the
18 performance of a governmental function and whose
19 jurisdiction is coextensive with one or more counties,
20 cities or towns: *Provided*, That any mental health agency
21 participating in the public employees retirement system
22 before the first day of July, one thousand nine hundred
23 ninety-seven, shall be deemed a political subdivision
24 solely for the purpose of permitting those employees who
25 are members of the public employees retirement system to
26 remain members and continue to participate in the
27 retirement system at their option after the first day of
28 July, one thousand nine hundred ninety-seven.

29 (5) "Participating public employer" means the state of
30 West Virginia, any board, commission, department,

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

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

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

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

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

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

73 (11) "Prior service" means service rendered prior to the
74 first day of July, one thousand nine hundred sixty-one, to
75 the extent credited a member as provided in this article;

76 (12) "Contributing service" means service rendered by
77 a member within this state and for which such member
78 made contributions to a public retirement system account
79 of this state, to the extent credited him as provided by this
80 article, such revised definition being retroactive and
81 applicable to the first day of April, one thousand nine
82 hundred eighty-eight, and thereafter;

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

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

93 (15) "Final average salary" means either: (a) The average
94 of the highest annual compensation received by a member
95 (including a member of the Legislature who participates
96 in the retirement system in the year one thousand nine
97 hundred seventy-one or thereafter) during any period of
98 three consecutive years of his credited service contained
99 within his ten years of credited service immediately
100 preceding the date his employment with a participating
101 public employer last terminated; or (b) if he has less than
102 five years of credited service, the average of the annual
103 rate of compensation received by him during his total
104 years of credited service; and in determining the annual
105 compensation, under either (a) or (b) of this subdivision, of
106 a member of the Legislature who participates in the
107 retirement system as a member of the Legislature in the
108 year one thousand nine hundred seventy-one or in any

109 year thereafter, his actual legislative compensation (the
110 total of all compensation paid under sections two, three,
111 four and five, article two-a, chapter four of this code) in
112 the year one thousand nine hundred seventy-one or in any
113 year thereafter, plus any other compensation he receives
114 in any such year from any other participating public
115 employer including the state of West Virginia, without any
116 multiple in excess of one times his actual legislative
117 compensation as aforesaid and other compensation, shall
118 be used: *Provided*, That "final average salary" for any
119 former member of the Legislature or for any member of
120 the Legislature in the year one thousand nine hundred
121 seventy-one who, in either event, was a member of the
122 Legislature on the thirtieth day of November, one thou-
123 sand nine hundred sixty-eight, or the thirtieth day of
124 November, one thousand nine hundred sixty-nine, or the
125 thirtieth day of November, one thousand nine hundred
126 seventy, or on the thirtieth day of November in any one or
127 more of said three years, and who participated in the
128 retirement system as a member of the Legislature in any
129 one or more of such years of one thousand nine hundred
130 sixty-eight, one thousand nine hundred sixty-nine or one
131 thousand nine hundred seventy, means: (i) Either (not-
132 withstanding the provisions of this subdivision (15)
133 preceding this proviso) one thousand five hundred dollars
134 multiplied by eight, plus the highest other compensation
135 such former member or member received in any one of
136 said three years from any other participating public
137 employer including the state of West Virginia; or (ii) "final
138 average salary" determined in accordance with (a) or (b)
139 of this subdivision, whichever computation shall produce
140 the higher final average salary (and in determining the
141 annual compensation under (ii) of this proviso, the legisla-
142 tive compensation of any such former member shall be
143 computed on the basis of one thousand five hundred
144 dollars multiplied by eight, and the legislative compensa-
145 tion of any such member shall be computed on the basis
146 set forth in the provisions of this subdivision immediately
147 preceding this proviso or on the basis of one thousand five
148 hundred dollars multiplied by eight, whichever computa-
149 tion as to such member shall produce the higher annual

150 compensation);

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

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

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

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

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

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

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

§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 judges
16 retirement system, the retirement system of the division of
17 public safety, or any municipal retirement system for
18 either, or both, policemen or firemen; and the bureau of
19 employment programs, by the commissioner of such
20 bureau, may elect whether its employees will accept
21 coverage under this article or be covered under the
22 authorization of a separate enactment: *Provided*, That
23 such exclusions of membership shall not apply to any
24 member of the state Legislature, the clerk of the House of
25 Delegates, the clerk of the state Senate or to any member
26 of the legislative body of any political subdivision pro-
27 vided he or she once becomes a contributing member of
28 the retirement system: *Provided, however*, That any
29 retired member of the retirement system of the division of
30 public safety, and any retired member of any municipal
31 retirement system for either, or both, policemen or firemen
32 may on and after the effective date of this section become
33 a member of the retirement system as provided in this
34 article, without receiving credit for prior service as a
35 municipal policeman or fireman or as a member of the
36 division of public safety: *Provided further*, That the
37 membership of the retirement system does not include any
38 person who becomes employed by the Prestera center for
39 mental health services, valley comprehensive mental
40 health center, Westbrook health services or eastern
41 panhandle mental health center on or after the first day of
42 July, one thousand nine hundred ninety-seven.

43 (c) Any member of the state Legislature, the clerk of the
44 House of Delegates, the clerk of the state Senate and any
45 employee of the state Legislature whose employment is
46 otherwise classified as temporary and who is employed to
47 perform services required by the Legislature for its

48 regular sessions or during the interim between regular
49 sessions and who has been or is so employed during
50 regular sessions or during the interim between sessions for
51 ten or more years, or any member of the legislative body
52 of any other political subdivision shall become a member
53 of the retirement system provided he or she notifies the
54 retirement system in writing of his or her intention to be
55 a member of the system and files a membership enroll-
56 ment form as the board of trustees shall prescribe, and
57 each person, upon filing his or her written notice to
58 participate in the retirement system, shall by said act
59 authorize the clerk of the House of Delegates or the clerk
60 of the state Senate or such person or legislative agency as
61 the legislative body of any other political subdivision shall
62 designate to deduct such member's contribution, as
63 provided in subsection (b), section twenty-nine of this
64 article, and after said deductions have been made from
65 said member's compensation, such deductions shall be
66 forwarded to the retirement system.

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

§5-10-18. Termination of membership; reentry.

1 (a) When a member of the retirement system retires or
2 dies, he or she ceases to be a member. When a member
3 leaves the employ of a participating public employer for
4 any other reason, he or she ceases to be a member and
5 forfeits service credited to him or her at that time. If he or
6 she becomes reemployed by a participating public em-
7 ployer he or she shall be reinstated as a member of the
8 retirement system and his or her credited service last
9 forfeited by him or her shall be restored to his or her
10 credit: *Provided*, That he or she must be reemployed for
11 a period of one year or longer to have such service re-
12 stored: *Provided, however*, That he or she returns to the
13 members' deposit fund the amount, if any, he or she
14 withdrew therefrom, together with regular interest
15 thereon from the date of withdrawal to the date of repay-
16 ment, and that such repayment begins within two years of
17 the return to employment and that the full amount be

18 repaid within five years of the return to employment.

19 (b) Effective on the first day of July, one thousand nine
20 hundred ninety-seven, and continuing through the first
21 day of July, one thousand nine hundred ninety-eight, any
22 employee of the Prestera center for mental health services,
23 valley comprehensive mental health center, Westbrook
24 health services and eastern panhandle mental health
25 center who is a member of the retirement system may elect
26 to withdraw from membership without forfeiting service
27 credited to him or her.

28 (c) The Prestera center for mental health services, valley
29 comprehensive mental health center, Westbrook health
30 services and eastern panhandle mental health center, and
31 their successors in interest, shall provide for their employ-
32 ees a pension plan in lieu of the public employees retire-
33 ment system on or before the first day of July, one thou-
34 sand nine hundred ninety-seven, and continuing thereafter
35 during the existence of the named mental health centers
36 and their successors in interest.

37 (d) The administrative bodies of the Prestera center for
38 mental health services, valley comprehensive mental
39 health center, Westbrook health services and eastern
40 panhandle mental health center shall, on or before the
41 first day of May, one thousand nine hundred ninety-seven,
42 give written notice to each employee who is a member of
43 the public employees retirement system of the option to
44 withdraw from or remain in the system. The notice shall
45 include a copy of this section and a statement explaining
46 the member's options regarding membership. The notice
47 shall include a statement in plain language giving a full
48 explanation and actuarial projection figures in support
49 thereof regarding the individual member's current account
50 balance, vested and nonvested, and his or her projected
51 return upon remaining in the public employees retirement
52 system until retirement, disability or death, in comparison
53 with the projected return upon withdrawing from the
54 public employees retirement system and joining a private
55 pension plan provided by the community mental health
56 center and remaining therein until retirement, disability
57 or death. The administrative bodies shall keep in their

- 58 respective records a permanent record of each employee's
- 59 signature confirming receipt of the notice.

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

Ray Scherson
.....
Chairman Senate Committee

Neil Fantasia
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Carrolla Walker
.....
Clerk of the Senate

Gregory M. Boy
.....
Clerk of the House of Delegates

Earl Ray Tomblin
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *disapproval* this the *19th*
day of *April*, 1997.

[Signature]
.....
Governor

PRESENTED TO THE

GUBERNOR

Date

4/18/97

Time

5:40 pm