WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997

ENROLLED

SENATE BILL NO. 348

(By Senator PLYMOUTH, 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.
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, unless a different meaning is clearly indicated by the context, shall have the following meanings:

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

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

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

5 (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: Provided, That any mental health agency participating in the public employees retirement system before the first day of July, one thousand nine hundred ninety-seven, shall be deemed a political subdivision solely for the purpose of permitting those employees who are members of the public employees retirement system to remain members and continue to participate in the retirement system at their option after the first day of July, one thousand nine hundred ninety-seven.

6 (5) "Participating public employer" means the state of West Virginia, any board, commission, department,
institution 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
subdivision, or an officer or employee whose compen-
sation is calculated on a daily basis and paid monthly or on
completion 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 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 regular sessions for eight or more
years, 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 in this article, of a participating public employer;

(11) "Prior service" means service rendered prior to the first day of July, 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 within this state and for which such member made contributions to a public retirement system account of this state, to the extent credited him as provided by this article, such revised definition being retroactive and applicable to the first day of April, one thousand nine hundred eighty-eight, and thereafter;

(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, 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 the thirtieth day of November, one thousand nine hundred sixty-eight, or the thirtieth day of November, one thousand nine hundred sixty-nine, or the thirtieth day of November, one thousand nine hundred seventy, or on the thirtieth day of November 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, 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 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
(15) "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.

§5-10-17. Retirement system membership.

(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 division of public safety, or any municipal retirement system for either, or both, policemen or firemen; and the bureau of employment programs, by the commissioner of such bureau, 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 or she once becomes a contributing member of the retirement system: Provided, however, That any retired member of the retirement system of the division 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 division of public safety: Provided further, That the membership of the retirement system does not include any person who becomes employed by the Prestera center for mental health services, valley comprehensive mental health center, Westbrook health services or eastern panhandle mental health center on or after the first day of July, one thousand nine hundred ninety-seven.

(c) Any member of the state Legislature, the clerk of the House of Delegates, the clerk of the state Senate and 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 or she notifies the retirement system in writing of his or her 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 or her 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.

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

(a) When a member of the retirement system retires or dies, he or she ceases to be a member. When a member leaves the employ of a participating public employer for any other reason, he or she ceases to be a member and forfeits service credited to him or her at that time. If he or she becomes reemployed by a participating public employer he or she shall be reinstated as a member of the retirement system and his or her credited service last forfeited by him or her shall be restored to his or her credit: Provided, That he or she must be reemployed for a period of one year or longer to have such service restored: Provided, however, That he or she returns to the members’ deposit fund the amount, if any, he or she withdrew therefrom, together with regular interest thereon from the date of withdrawal to the date of repayment, and that such repayment begins within two years of the return to employment and that the full amount be
repaid within five years of the return to employment.

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

(c) The Prestera center for mental health services, valley comprehensive mental health center, Westbrook health services and eastern panhandle mental health center, and their successors in interest, shall provide for their employees a pension plan in lieu of the public employees retirement system on or before the first day of July, one thousand ninety-seven, and continuing thereafter during the existence of the named mental health centers and their successors in interest.

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

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.
In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within.......................... this the .............

day of ....................................... 1997.

Governor
PRESENTED TO THE
GOVERNOR
Date 6/18/47
Time 5:40 pm