WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1997

ENROLLED

SENATE BILL NO. 544

(By Senator RYAHLE, ET AL.)

PASSED April 20, 1997

In Effect From Passage
ENROLLED

Senate Bill No. 544

(By Senators Plymale, Prezioso, Fanning, Walker, Jackson, Sprouse and Kimble)

[Passed April 20, 1997; in effect from passage.]

AN ACT to amend and reenact sections two, fourteen, seventeen and eighteen, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to the public employees retirement system; 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; requiring mental health centers to provide to current members notice of their option to withdraw including comparative actuarial projections of individual
accounts; clarifying calculation of retirement service credit for legislative employees; and purchase of retroactive service credit by legislative employees.

Be it enacted by the Legislature of West Virginia:

That sections two, fourteen, 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 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, 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; participating in the public employees retirement system before the first day of July, one thousand nine hundred ninety-seven, is considered 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
Enr. S. B. No. 544

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 includes 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 is considered a department of state government; and any
35 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 compens-
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 employed during regular sessions or during the
56 interim between regular sessions in seven consecutive
57 calendar years, as certified by the clerk of the house in
58 which the employee served, members of the legislative
59 body of any political subdivision and judges of the state
60 court of claims are considered to be employees, anything
61 contained in this article to the contrary notwithstanding.
62 In any case of doubt as to who is an employee within the
63 meaning of this article the board of trustees shall decide
64 the question;

65 (7) “Member” means any person who is included in the
66 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 the member made contributions to a public retirement system account of this state, to the extent credited him or her as provided by this article. This revised definition is 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 or her 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 or her to the participating public employer. In the event a member's remuneration is not all paid in money, his or her participating public employer shall fix the value of the portion of his or her 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 or her ten years of credited service immediately preceding the date his or her employment with a participating public employer last terminated; or (b) if he or she has less than five years of credited
service, the average of the annual rate of compensation received by him or her during his or her 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 or her 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 or she 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 or her actual legislative compensation 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 ninety-eight, or the thirtieth day of November, one thousand ninety-nine, or the thirtieth day of November in any one or more of those three years, and who participated in the retirement system as a member of the Legislature in any one or more of those years means: (i) Either (notwithstanding the provisions of this subdivision preceding this proviso) one thousand five hundred dollars multiplied by eight, plus the highest other compensation the former member or member received in any one of the 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 the former member shall be computed on the basis of one thousand five hundred dollars multiplied by eight, and the legislative compensation of the member
146 shall be computed on the basis set forth in the provisions
147 of this subdivision immediately preceding this proviso or
148 on the basis of one thousand five hundred dollars multi-
149 plied by eight, whichever computation as to the member
150 produces the higher annual compensation);
151 (16) "Accumulated contributions" means the sum of all
152 amounts deducted from the compensations of a member
153 and credited to his or her individual account in the mem-
154 bers' deposit fund, together with regular interest on the
155 contributions;
156 (17) "Regular interest" means the rate or rates of
157 interest per annum, compounded annually, as the board of
158 trustees adopts from time to time;
159 (18) "Annuity" means an annual amount payable by the
160 retirement system throughout the life of a person. All
161 annuities shall be paid in equal monthly installments,
162 using the upper cent for any fraction of a cent;
163 (19) "Annuity reserve" means the present value of all
164 payments to be made to a retirant or beneficiary of a
165 retirant on account of any annuity, computed upon the
166 basis of such mortality and other tables of experience, and
167 regular interest, as the board of trustees adopts from time
168 to time;
169 (20) "Retirement" means a member's withdrawal from
170 the employ of a participating public employer with an
171 annuity payable by the retirement system; and
172 (21) "Actuarial equivalent" means a benefit of equal
173 value computed upon the basis of such mortality table and
174 regular interest as the board of trustees adopts from time
175 to time.
§5-10-14. Service credit.
1 (a) The board of trustees shall credit each member with
2 the prior service and contributing service to which he or
3 she is entitled based upon such rules as the board of
4 trustees shall from time to time adopt and based upon the
5 following:
6 (1) Ten or more days of service rendered by a member in
any calendar month shall be credited as a month of
service: Provided, That for 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 in seven consecutive
calendar years, service credit of one month shall be
awarded for all or any part of each calendar month
encompassed within a regular legislative session, notwithstanding that the actual number of days served in any one
month of the regular session is less than ten days, and
service credit of one month shall be awarded for each ten
days served during the interim between regular sessions,
which interim days shall be cumulatively calculated so
that any ten days, regardless of calendar month or year,
shall be calculated toward any award of one month of
service credit;

(2) Ten or more months of service rendered in any
calendar year shall be credited as a year of service;

(3) No more than one year of service may be credited to
any member for all service rendered by him or her in any
calendar year; and

(4) Service may be credited to a member who was
employed by a political subdivision if his or her employ-
ment occurred within a period of thirty years immediately
preceding the date the political subdivision became a
participating public employer.

(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 retire-
ment 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 system and
shall also require a deposit, with interest, of any with-
drawals of contributions any time prior to the 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 time served in that 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 may receive service credit for the time served in that capacity in accordance with the following. 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 employed during regular sessions or during the interim between regular sessions in seven consecutive calendar years, as certified by the clerk of the house in which the employee served, shall receive service credit of six months for each regular session served as certified by the clerk of the house in which the employee served, and shall receive service credit of one month for each ten days served during the interim between regular sessions, which interim days shall be cumulatively calculated so that any ten days, regardless of calendar month or year, shall be calculated toward any award of one month of service credit. Service credit awarded for legislative employment pursuant to this subsection shall be used for the purpose of calculating that member's retirement annuity only, pursuant to section twenty-two of this article, and notwithstanding any other provision of this section. Service credit awarded for legislative service pursuant to this subsection shall not be used to determine when an employment period begins or ends, or to determine when the period of eligibility or filing for retirement begins to run. Certification of employment for a complete legislative session and for days of interim sessions shall be determined by the clerk of the house in which the employee served, based upon employ-
ment records. Service of fifty-five days of a regular session constitutes a presumption of service for a complete legislative session.

Any employee may purchase retroactive service credit for periods of employment in which contributions were not deducted from the employee's pay. In the purchase of service credit for employment prior to the year one thousand nine hundred eighty-nine in any department, including the Legislature, which operated from the general revenue fund and which was not expressly excluded from budget appropriations in which blanket appropriations were made for the state's share of public employees' retirement coverage in the years prior to the year one thousand nine hundred eighty-nine, the employee shall pay the employee's share. Other employees shall pay the state's share and the employee's share to purchase retroactive service credit. Where an employee purchases service credit for employment which occurred after the year one thousand nine hundred eighty-eight, that employee shall pay for the employee's share and the employer shall pay its share for the purchase of retroactive service credit: Provided, That no legislative employee may be required to pay any interest or penalty upon the purchase of retroactive service credit in accordance with the provisions of this section where the employee was not eligible to become a member during the years he or she is purchasing retroactive credit for or had the employee attempted to contribute to the system during the years he or she is purchasing retroactive service credit for and such contributions would have been refused by the board: Provided, however, That a legislative employee purchasing retroactive credit under this section does so within twenty-four months of becoming a member of the system or no later than the last day of December, one thousand nine hundred ninety-nine, whichever occurs last: Provided further, That once a legislative employee becomes a member of the retirement system, he or she may purchase retroactive service credit for any time he or she was employed by the Legislature and did not receive service credit.
§5-10-17. Retirement system membership.

The membership of the retirement system consists of the following persons:

(a) All employees, as defined in section two of this article, who are in the employ of a political subdivision on the day preceding the date it becomes a participating public employer and who continue in the employ of the participating public employer on and after that date shall become members of the retirement system; and all persons who become employees of a participating public employer on or after that 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 the bureau, may elect whether its employees will accept coverage under this article or be covered under the authorization of a separate enactment: Provided, That the 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
(d) 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 in
seven consecutive calendar years, as certified by the clerk
of the house in which the employee served, 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 prescribed by the board
of trustees, and each person, upon filing his or her written
notice to participate in the retirement system, shall by
that 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 the member's
contribution, as provided in subsection (b), section
twenty-nine of this article, and after the deductions have
been made from the member's compensation, the deduc-
tions shall be forwarded to the retirement system.

(d) If question arises 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 em-
ployer he or she shall be reinstated as a member of the
Enr. S. B. No. 544] 12

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 the service restored: Provided, however, That he or she returns to the members' deposit fund the amount, if any, he or she withdrew from the fund, together with regular interest on the withdrawn amount from the date of withdrawal to the date of repayment, and that the repayment begins within two years of the return to employment and that the full amount is 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 nine hundred 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 of
the explanation regarding the individual member's
current account balance, vested and nonvested, and his or
her projected return upon remaining in the public employ-
ees retirement system until retirement, disability or death,
in comparison with the projected return upon withdraw-
ing from the public employees retirement system and
joining a private pension plan provided by the community
mental health center and remaining therein until retire-
ment, disability or death. The administrative bodies shall
keep in their respective records a permanent record of
each employee's 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 is approved... this the ___

day of May, _____________, 1997.

________________________
Governor