WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1997

ENROLLED

SENATE BILL NO. 544

(By Senator Plymale, et al.)

PASSED APRIL 12, 1997

In Effect FROM Passage
ENROLLED

Senate Bill No. 544

(BY SENATORS PLYMALE, PREZIOSO, FANNING, WALKER, JACKSON, SPROUSE AND KIMBLE)

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

AN ACT to amend and reenact sections two, fourteen and seventeen, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to clarifying calculation of retirement service credit for legislative employees and purchase of retroactive service credit.

Be it enacted by the Legislature of West Virginia:

That sections two, fourteen and seventeen, 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.
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: Provided, That any mental health agency participating in the public employees retirement system on or 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;

(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 compensa-
tion 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 in seven consecutive
calendar years, as certified by the clerk of the house in
which the employee served, 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 (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 or she is entitled based upon such rules and regulations as the board of trustees shall from time to time adopt and based upon the following:

(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;

(4) Service may be credited to a member who was employed by a political subdivision if his or her employment 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 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 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 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 so 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 employment 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 1989 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 1989, the employee shall pay the employee's share only, and not the state's share. Other employees shall pay the state's share and the employee's share to purchase 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 such 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 shall last occur: 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.

(e) Former justices of the peace and constables shall be entitled to credit for retirement purposes for those years of service as a justice of the peace or constable: Provided, that they have a minimum of five years contributing service and they compensate the retirement fund in an amount equal to the amount which they would have contributed for a like period of time, according to a formula determined by the retirement board, plus an amount equal to the determined employer's contribution for the same period. For purposes of calculating the contributions, the salary for constables shall be deemed to be five thousand dollars per year and the salary for
justices of the peace shall be deemed to be seven thousand
five hundred dollars per year. In addition, they shall
deposit the compounded yearly interest on the aggregate
of the employee and employer contributions at a rate or
rates to be determined by the retirement board: Provided,
however, That those former justices of the peace and
constables who elect to seek credit under this subsection
shall be allowed until the thirtieth day of June, one
thousand nine hundred ninety-five, to compensate the
retirement fund as provided herein.

§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 once becomes a contributing member of the
28 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 retire-
ment 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.

(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 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 notifies the retirement system in writing of his inten-
tion 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 partici-
pate 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 legisla-
tive 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.
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