

SB 544

# 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)

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

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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.**

97 APR 19 21 05  
OFFICE OF THE CLERK  
LEGISLATIVE DEPARTMENT  
STATE OF WEST VIRGINIA

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, any agency or organization established by,  
21 or 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: *Provided*, That any mental health  
25 agency participating in the public employees retirement  
26 system on or before the first day of July, one thousand  
27 nine hundred ninety-seven, shall be deemed a political  
28 subdivision solely for the purpose of permitting those  
29 employees who are members of the public employees  
30 retirement system to remain members and continue to  
31 participate in the retirement system at their option after  
32 the first day of July, one thousand nine hundred ninety-  
33 seven;

34 (5) "Participating public employer" means the state of  
35 West Virginia, any board, commission, department,  
36 institution or spending unit, and shall include any agency  
37 created by rule of the supreme court of appeals having  
38 full-time employees, which for the purposes of this article  
39 shall be deemed a department of state government; and

40 any political subdivision in the state which has elected to  
41 cover its employees, as defined in this article, under the  
42 West Virginia public employees retirement system;

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

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

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

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

77 (10) "Service" means personal service rendered to a  
78 participating public employer by an employee, as defined

79 in this article, of a participating public employer;

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

83 (12) "Contributing service" means service rendered by  
84 a member within this state and for which such member  
85 made contributions to a public retirement system account  
86 of this state, to the extent credited him as provided by this  
87 article, such revised definition being retroactive and  
88 applicable to the first day of April, one thousand nine  
89 hundred eighty-eight and thereafter;

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

93 (14) "Compensation" means the remuneration paid a  
94 member by a participating public employer for personal  
95 services rendered by him to the participating public  
96 employer. In the event a member's remuneration is not all  
97 paid in money, his participating public employer shall fix  
98 the value of the portion of his remuneration which is not  
99 paid in money;

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

118 sections two, three, four and five, article two-a, chapter  
119 four of this code) in the year one thousand nine hundred  
120 seventy-one or in any year thereafter, plus any other  
121 compensation he receives in any such year from any other  
122 participating public employer including the state of West  
123 Virginia, without any multiple in excess of one times his  
124 actual legislative compensation as aforesaid and other  
125 compensation, shall be used: *Provided*, That "final  
126 average salary" for any former member of the Legislature  
127 or for any member of the Legislature in the year one  
128 thousand nine hundred seventy-one who, in either event,  
129 was a member of the Legislature on November thirty, one  
130 thousand nine hundred sixty-eight, or November thirty,  
131 one thousand nine hundred sixty-nine, or November  
132 thirty, one thousand nine hundred seventy, or on Novem-  
133 ber thirty in any one or more of said three years, and who  
134 participated in the retirement system as a member of the  
135 Legislature in any one or more of such years of one  
136 thousand nine hundred sixty-eight, one thousand nine  
137 hundred sixty-nine or one thousand nine hundred seventy,  
138 means: (i) Either (notwithstanding the provisions of this  
139 subdivision (15) preceding this proviso) one thousand five  
140 hundred dollars multiplied by eight, plus the highest other  
141 compensation such former member or member received in  
142 any one of said three years from any other participating  
143 public employer including the state of West Virginia; or  
144 (ii) "final average salary" determined in accordance with  
145 (a) or (b) of this subdivision (15), whichever computation  
146 shall produce the higher final average salary (and in  
147 determining the annual compensation under (ii) of this  
148 proviso, the legislative compensation of any such former  
149 member shall be computed on the basis of one thousand  
150 five hundred dollars multiplied by eight, and the legisla-  
151 tive compensation of any such member shall be computed  
152 on the basis set forth in the provisions of this subdivision  
153 (15) immediately preceding this proviso or on the basis of  
154 one thousand five hundred dollars multiplied by eight,  
155 whichever computation as to such member shall produce  
156 the higher annual compensation);

157 (16) "Accumulated contributions" means the sum of all  
158 amounts deducted from the compensations of a member

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

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

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

168 (19) "Annuity reserve" means the present value of all  
169 payments to be made to a retirant or beneficiary of a  
170 retirant on account of any annuity, computed upon the  
171 basis of such mortality and other tables of experience, and  
172 regular interest, as the board of trustees shall from time to  
173 time adopt;

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

177 (21) "Actuarial equivalent" means a benefit of equal  
178 value computed upon the basis of such mortality table and  
179 regular interest as the board of trustees shall from time to  
180 time adopt; and

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

**§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 and regulations as  
4 the board of trustees shall from time to time adopt and  
5 based upon the following:

6 (1) Ten or more days of service rendered by a member in  
7 any calendar month shall be credited as a month of  
8 service: *Provided*, That for employees of the state Legisla-  
9 ture whose term of employment is otherwise classified as  
10 temporary and who are employed to perform services  
11 required by the Legislature for its regular sessions or

12 during the interim between regular sessions and who have  
13 been or are so employed during regular sessions or during  
14 the interim between regular sessions in seven consecutive  
15 calendar years, service credit of one month shall be  
16 awarded for all or any part of each calendar month  
17 encompassed within a regular legislative session, notwith-  
18 standing that the actual number of days served in any one  
19 month of the regular session is less than ten days, and  
20 service credit of one month shall be awarded for each ten  
21 days served during the interim between regular sessions,  
22 which interim days shall be cumulatively calculated so  
23 that any ten days, regardless of calendar month or year,  
24 shall be calculated toward any award of one month of  
25 service credit;

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

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

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

36 (b) The board of trustees shall grant service credit to  
37 employees of boards of health, the clerk of the House of  
38 Delegates and the clerk of the state Senate, or to any  
39 former and present member of the state teachers retire-  
40 ment system who have been contributing members for  
41 more than three years, for service previously credited by  
42 the state teachers retirement system and shall require the  
43 transfer of the member's contributions to the system and  
44 shall also require a deposit, with interest, of any with-  
45 drawals of contributions any time prior to said member's  
46 retirement. Repayment of withdrawals shall be as di-  
47 rected by the board of trustees.

48 (c) Court reporters who are acting in an official capacity,  
49 although paid by funds other than the county commission  
50 or state auditor, may receive prior service credit for such

51 time as served in such capacity.

52 (d) Employees of the state Legislature whose term of  
53 employment is otherwise classified as temporary and who  
54 are employed to perform services required by the Legisla-  
55 ture for its regular sessions or during the interim between  
56 regular sessions may receive service credit for the time  
57 served in that capacity in accordance with the following.  
58 Employees of the state Legislature whose term of employ-  
59 ment is otherwise classified as temporary and who are  
60 employed to perform services required by the Legislature  
61 for its regular sessions or during the interim between  
62 regular sessions and who have been or are so employed  
63 during regular sessions or during the interim between  
64 regular sessions in seven consecutive calendar years, as  
65 certified by the clerk of the house in which the employee  
66 served, shall receive service credit of six months for each  
67 regular session served as certified by the clerk of the house  
68 in which the employee served, and shall receive service  
69 credit of one month for each ten days served during the  
70 interim between regular sessions, which interim days shall  
71 be cumulatively calculated so that any ten days, regardless  
72 of calendar month or year, shall be calculated toward any  
73 award of one month of service credit. Service credit  
74 awarded for legislative employment pursuant to this  
75 subsection shall be used for the purpose of calculating  
76 that member's retirement annuity only, pursuant to  
77 section twenty-two of this article, and notwithstanding  
78 any other provision of this section. Service credit awarded  
79 for legislative service pursuant to this subsection shall not  
80 be used to determine when an employment period begins  
81 or ends, or to determine when the period of eligibility or  
82 filing for retirement begins to run. Certification of  
83 employment for a complete legislative session and for days  
84 of interim sessions shall be determined by the clerk of the  
85 house in which the employee served, based upon employ-  
86 ment records. Service of fifty-five days of a regular  
87 session constitutes a presumption of service for a complete  
88 legislative session.

89 Any employee may purchase retroactive service credit  
90 for periods of employment in which contributions were

91 not deducted from the employee's pay. In the purchase of  
92 service credit for employment prior to 1989 in any depart-  
93 ment, including the Legislature, which operated from the  
94 general revenue fund and which was not expressly ex-  
95 cluded from budget appropriations in which blanket  
96 appropriations were made for the state's share of public  
97 employees' retirement coverage in the years prior to 1989,  
98 the employee shall pay the employee's share only, and not  
99 the state's share. Other employees shall pay the state's  
100 share and the employee's share to purchase retroactive  
101 service credit: *Provided*, That no legislative employee may  
102 be required to pay any interest or penalty upon the  
103 purchase of retroactive service credit in accordance with  
104 the provisions of this section where such employee was not  
105 eligible to become a member during the years he or she is  
106 purchasing retroactive credit for or had the employee  
107 attempted to contribute to the system during the years he  
108 or she is purchasing retroactive service credit for and such  
109 contributions would have been refused by the board:  
110 *Provided, however*, That a legislative employee purchas-  
111 ing retroactive credit under this section does so within  
112 twenty-four months of becoming a member of the system  
113 or no later than the last day of December, one thousand  
114 nine hundred ninety-nine, whichever shall last occur:  
115 *Provided further*, That once a legislative employee be-  
116 comes a member of the retirement system, he or she may  
117 purchase retroactive service credit for any time he or she  
118 was employed by the Legislature and did not receive  
119 service credit.

120 (e) Former justices of the peace and constables shall be  
121 entitled to credit for retirement purposes for those years  
122 of service as a justice of the peace or constable: *Provided*,  
123 That they have a minimum of five years contributing  
124 service and they compensate the retirement fund in an  
125 amount equal to the amount which they would have  
126 contributed for a like period of time, according to a  
127 formula determined by the retirement board, plus an  
128 amount equal to the determined employer's contribution  
129 for the same period. For purposes of calculating the  
130 contributions, the salary for constables shall be deemed to  
131 be five thousand dollars per year and the salary for

132 justices of the peace shall be deemed to be seven thousand  
133 five hundred dollars per year. In addition, they shall  
134 deposit the compounded yearly interest on the aggregate  
135 of the employee and employer contributions at a rate or  
136 rates to be determined by the retirement board: *Provided,*  
137 *however,* That those former justices of the peace and  
138 constables who elect to seek credit under this subsection  
139 shall be allowed until the thirtieth day of June, one  
140 thousand nine hundred ninety-five, to compensate the  
141 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

29 member of the retirement system of the division of public  
30 safety, and any retired member of any municipal retire-  
31 ment system for either, or both, policemen or firemen may  
32 on and after the effective date of this section become a  
33 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.

37 (c) Any member of the state Legislature, the clerk of the  
38 House of Delegates, the clerk of the state Senate and any  
39 employee of the state Legislature whose employment is  
40 otherwise classified as temporary and who is employed to  
41 perform services required by the Legislature for its  
42 regular sessions or during the interim between regular  
43 sessions and who has been or is so employed during  
44 regular sessions or during the interim between sessions in  
45 seven consecutive calendar years, as certified by the clerk  
46 of the house in which the employee served, or any member  
47 of the legislative body of any other political subdivision  
48 shall become a member of the retirement system provided  
49 he notifies the retirement system in writing of his inten-  
50 tion to be a member of the system and files a membership  
51 enrollment form as the board of trustees shall prescribe,  
52 and each person, upon filing his written notice to partici-  
53 pate in the retirement system, shall by said act authorize  
54 the clerk of the House of Delegates or the clerk of the state  
55 Senate or such person or legislative agency as the legisla-  
56 tive body of any other political subdivision shall designate  
57 to deduct such member's contribution, as provided in  
58 subsection (b), section twenty-nine of this article, and  
59 after said deductions have been made from said member's  
60 compensation, such deductions shall be forwarded to the  
61 retirement system.

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

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

*Randy Schanover*  
.....  
Chairman Senate Committee

*Neil Frantasia*  
.....  
Chairman House Committee

Originated in the Senate.

In effect from passage

*Carroll Holmes*  
.....  
Clerk of the Senate

*Suzanne M. Smith*  
.....  
Clerk of the House of Delegates

*Carl Ray Tomblin*  
.....  
President of the Senate

*R. K.*  
.....  
Speaker House of Delegates

The within *disapproved* this the *19<sup>th</sup>*  
day of *April*, 1997.

*[Signature]*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 4/18/97

Time 4:10 pm