WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2000

ENROLLED

House Bill No. 4102
(By Delegates Jenkins, Hubbard, J. Smith, Campbell, Williams, Hall and Harrison)

Passed March 11, 2000
In Effect Ninety Days from Passage
AN ACT to amend and reenact sections two, twenty-one and twenty-two, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the public employees retirement system; adding and defining terms; providing for retroactive service” and “limited credited service”; providing for application of terms; and providing for restrictions resulting from said application.

Be it enacted by the Legislature of West Virginia:

That sections two, twenty-one and twenty-two, 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, 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 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, 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 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 includes any agency created by rule of the supreme court of appeals having full-time employees, which for the purposes of this article is considered 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 provisional appointment, in the service of, and whose compensation is payable, in whole or in part, by any political subdivision, or an officer or employee whose compensation 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 Legislature, the clerk of the House of Delegates, the clerk of the Senate, employees of the 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, members of the legislative body of any political subdivision and judges of the state court of claims are considered to be employees, anything contained in this article 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 retiree, 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
Enr. H. B. 4102] 4

68 participating public employer by an employee, as defined in this
69 article, of a participating public employer;

70 (11) “Prior service” means service rendered prior to the
71 first day of July, one thousand nine hundred sixty-one, to the
72 extent credited a member as provided in this article;

73 (12) “Contributing service” means service rendered by a
74 member within this state and for which the member made
75 contributions to a public retirement system account of this state,
76 to the extent credited him or her as provided by this article. This
77 revised definition is retroactive and applicable to the first day
78 of April, one thousand nine hundred eighty-eight, and thereaf-
79 ter;

80 (13) “Credited service” means the sum of a member’s prior
81 service credit and contributing service credit standing to his or
82 her credit as provided in this article;

83 (14) “Limited credited service” means service by employ-
84 ees of the West Virginia educational broadcasting authority, in
85 the employment of West Virginia university, during a period
86 when the employee made contributions to another retirement
87 system, as required by West Virginia University, and did not
88 make contributions to the public employees retirement system:
89 Provided, That while limited credited service can be used for
90 the formula set forth in section twenty-one, subsection (e) of
91 this article, it may not be used to increase benefits calculated
92 under section twenty-two of this article;

93 (15) “Compensation” means the remuneration paid a
94 member by a participating public employer for personal
95 services rendered by him or her to the participating public
96 employer. In the event a member’s remuneration is not all paid
97 in money, his or her participating public employer shall fix the
98 value of the portion of his or her remuneration which is not paid
99 in money;
100 (16) "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 or her 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 paragraph (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 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 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 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 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 paragraph (a) or (b) of this
subdivision, whichever computation produces 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 shall be computed on the basis set
forth in the provisions of this subdivision immediately preced-
ing this proviso or on the basis of one thousand five hundred
dollars multiplied by eight, whichever computation as to the
member produces the higher annual compensation);

(17) “Accumulated contributions” means the sum of all
amounts deducted from the compensations of a member and
credited to his or her individual account in the members’
deposit fund, together with regular interest on the contributions;

(18) “Regular interest” means the rate or rates of interest
per annum, compounded annually, as the board of trustees
adopts from time to time;

(19) “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;

(20) “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 adopts from time to time;
(21) “Retirement” means a member’s withdrawal from the employ of a participating public employer with an annuity payable by the retirement system;

(22) “Actuarial equivalent” means a benefit of equal value computed upon the basis of such mortality table and regular interest as the board of trustees adopts from time to time; and

(23) “Retroactive service” means: (1) Service an employee was entitled to, but which the employer has not withheld or paid for; or (2) that service from the first day of July, one thousand nine hundred sixty-one, and the date an employer decides to become a participating member of the public employees retirement system; or (3) service prior to the first day of July, one thousand nine hundred sixty-one, for which the employee is not entitled to prior service at no cost in accordance with 162 CSR 5.16.

§5-10-21. Deferred retirement and early retirement.

(a) Any member who has five or more years of credited service in force, of which at least three years are contributing service, and who leaves the employ of a participating public employer prior to his or her attainment of age sixty years, for any reason except his or her disability retirement or death, is entitled to an annuity computed according to section twenty-two of this article, as that section was in force as of the date of his or her said separation from the employ of a participating public employer: Provided, That he or she does not withdraw his or her accumulated contributions from the members’ deposit fund. His or her said annuity begins the first day of the calendar month next following the month in which his or her application is filed with the board of trustees on or after his or her attainment of age sixty-two years.

(b) Any member who qualifies for deferred retirement benefits in accordance with subsection (a) of this section, and
has ten or more years of credited service in force and who has
attained age fifty-five as of the date of his or her separation
may, prior to the effective date of his or her retirement, but not
thereafter, elect to receive the actuarial equivalent of his or her
defered retirement annuity as a reduced annuity commencing
on the first day of any calendar month between his or her date
of separation and his or her attainment of age sixty-two years
and payable throughout his or her life.

(c) Any member who qualifies for deferred retirement
benefits in accordance with subsection (a) of this section, and
has twenty or more years of credited service in force, may elect
to receive the actuarial equivalent of his or her deferred
retirement annuity as a reduced annuity commencing on the
first day of any calendar month between his or her fifty-fifth
birthday and his or her attainment of age sixty-two years and
payable throughout his or her life.

(d) Notwithstanding any of the other provisions of this
section or of this article and pursuant to rules promulgated by
the board, any member who has thirty or more years of credited
service in force, at least three of which are contributing service,
and who elects to take early retirement, which for the purposes
of this subsection means retirement prior to age sixty, whether
an active employee or a separated employee at the time of
application, is entitled to the full computation of annuity
according to section twenty-two of this article, as that section
was in force as of the date of retirement application, but with
the reduced actuarial equivalent of the annuity the member
would have received if his or her benefit had commenced at age
sixty when he or she would have been entitled to full computa-
tion of benefit without any reduction.

(e) Notwithstanding any of the other provisions of this
section or of this article, any member of the retirement system
may retire with full pension rights, without reduction of
§5-10-22. Retirement annuity.

Upon a member’s retirement, as provided in this article, he or she shall receive a straight life annuity equal to one and five-tenths percent of his or her final average salary multiplied by the number of years, and fraction of a year, of his or her credited service in force at the time of his or her retirement. The credited service used for this calculation may not include any period of limited credited service: Provided, That after March one, one thousand nine hundred seventy, all members retired and all members retiring shall receive a straight life annuity equal to two percent of his or her final average salary multiplied by the number of years, and fraction of a year, of his or her credited service, exclusive of limited credited service in force at the time of his or her retirement. In either event, upon his or her retirement he or she has the right to elect an option provided for in section twenty-four of this article. All annuity payments shall commence effective the first of the month following the month in which a member retires or a member dies leaving a beneficiary entitled to benefits and shall continue to the end of the month in which the retirant or beneficiary dies, and the annuity payments may not be prorated for any portion of a month in which a member retires or retirant or beneficiary dies. Any member receiving an annuity based in part upon limited credited service is not eligible for the supplements provided for in sections twenty-two-a through twenty-two-d, inclusive, of this article.

The annuity of any member of the Legislature who participates in the retirement system as a member of the Legislature and who retires under this article or of any former member of
the Legislature who has retired under this article (including any former member of the Legislature who has retired under this article and whose annuity was readjusted as of the first day of March, one thousand nine hundred seventy, under the former provisions of this section) shall be increased from time to time during the period of his or her retirement when and if the legislative compensation paid under section two, article two-a, chapter four of this code to a member of the Legislature shall be increased to the point where a higher annuity would be payable to the retirant if he or she were retiring as of the effective date of the latest increase in such legislative compensation, but on the basis of his or her years of credited service to the date of his or her actual retirement.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within approved this the 20th day of March 2000.

Governor