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LEGISLATIVE SERVICES

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

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H. B. 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.

- 1 The following words and phrases as used in this article,
- 2 unless a different meaning is clearly indicated by the context,
- 3 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 Vir-
12 ginia, a county, city or town in the state; a school corporation
13 or corporate unit; any separate corporation or instrumentality
14 established by one or more counties, cities or towns, as permit-
15 ted by law; any corporation or instrumentality supported in
16 most part by counties, cities or towns; any public corporation
17 charged by law with the performance of a governmental
18 function and whose jurisdiction is coextensive with one or more
19 counties, cities or towns: *Provided*, That any mental health
20 agency participating in the public employees retirement system
21 before the first day of July, one thousand nine hundred ninety-
22 seven, is considered a political subdivision solely for the
23 purpose of permitting those employees who are members of the
24 public employees retirement system to remain members and
25 continue to participate in the retirement system at their option
26 after the first day of July, one thousand nine hundred ninety-
27 seven;

28 (5) "Participating public employer" means the state of West
29 Virginia, any board, commission, department, institution or
30 spending unit, and includes any agency created by rule of the
31 supreme court of appeals having full-time employees, which for
32 the purposes of this article is considered a department of state
33 government; and any political subdivision in the state which has
34 elected to cover its employees, as defined in this article, under
35 the West Virginia public employees retirement system;

36 (6) "Employee" means any person who serves regularly as
37 an officer or employee, full time, on a salary basis, whose
38 tenure is not restricted as to temporary or provisional appoint-
39 ment, in the service of, and whose compensation is payable, in
40 whole or in part, by any political subdivision, or an officer or
41 employee whose compensation is calculated on a daily basis
42 and paid monthly or on completion of assignment, including
43 technicians and other personnel employed by the West Virginia
44 national guard whose compensation, in whole or in part, is paid
45 by the federal government: *Provided*, That members of the
46 Legislature, the clerk of the House of Delegates, the clerk of the
47 Senate, employees of the Legislature whose term of employ-
48 ment is otherwise classified as temporary and who are em-
49 ployed to perform services required by the Legislature for its
50 regular sessions or during the interim between regular sessions
51 and who have been or are employed during regular sessions or
52 during the interim between regular sessions in seven consecu-
53 tive calendar years, as certified by the clerk of the house in
54 which the employee served, members of the legislative body of
55 any political subdivision and judges of the state court of claims
56 are considered to be employees, anything contained in this
57 article to the contrary notwithstanding. In any case of doubt as
58 to who is an employee within the meaning of this article, the
59 board of trustees shall decide the question;

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

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

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

67 (10) "Service" means personal service rendered to a

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
101 of the highest annual compensation received by a member
102 (including a member of the Legislature who participates in the
103 retirement system in the year one thousand nine hundred
104 seventy-one or thereafter) during any period of three consecu-
105 tive years of his or her credited service contained within his or
106 her ten years of credited service immediately preceding the date
107 his or her employment with a participating public employer last
108 terminated; or (b) if he or she has less than five years of
109 credited service, the average of the annual rate of compensation
110 received by him or her during his or her total years of credited
111 service; and in determining the annual compensation, under
112 either paragraph (a) or (b) of this subdivision, of a member of
113 the Legislature who participates in the retirement system as a
114 member of the Legislature in the year one thousand nine
115 hundred seventy-one or in any year thereafter, his or her actual
116 legislative compensation (the total of all compensation paid
117 under sections two, three, four and five, article two-a, chapter
118 four of this code) in the year one thousand nine hundred
119 seventy-one or in any year thereafter, plus any other compensa-
120 tion he or she receives in any year from any other participating
121 public employer including the state of West Virginia, without
122 any multiple in excess of one times his or her actual legislative
123 compensation and other compensation, shall be used: *Provided*,
124 That "final average salary" for any former member of the
125 Legislature or for any member of the Legislature in the year one
126 thousand nine hundred seventy-one who, in either event, was a
127 member of the Legislature on the thirtieth day of November,
128 one thousand nine hundred sixty-eight, or the thirtieth day of
129 November, one thousand nine hundred sixty-nine, or the
130 thirtieth day of November, one thousand nine hundred seventy,
131 or on the thirtieth day of November in any one or more of those
132 three years, and who participated in the retirement system as a
133 member of the Legislature in any one or more of those years
134 means: (i) Either (notwithstanding the provisions of this

135 subdivision preceding this proviso) one thousand five hundred
136 dollars multiplied by eight, plus the highest other compensation
137 the former member or member received in any one of the three
138 years from any other participating public employer including
139 the state of West Virginia; or (ii) “final average salary”
140 determined in accordance with paragraph (a) or (b) of this
141 subdivision, whichever computation produces the higher final
142 average salary (and in determining the annual compensation
143 under (ii) of this proviso, the legislative compensation of the
144 former member shall be computed on the basis of one thousand
145 five hundred dollars multiplied by eight, and the legislative
146 compensation of the member shall be computed on the basis set
147 forth in the provisions of this subdivision immediately preced-
148 ing this proviso or on the basis of one thousand five hundred
149 dollars multiplied by eight, whichever computation as to the
150 member produces the higher annual compensation);

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

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

158 (19) “Annuity” means an annual amount payable by the
159 retirement system throughout the life of a person. All annuities
160 shall be paid in equal monthly installments, using the upper
161 cent for any fraction of a cent;

162 (20) “Annuity reserve” means the present value of all
163 payments to be made to a retirant or beneficiary of a retirant on
164 account of any annuity, computed upon the basis of such
165 mortality and other tables of experience, and regular interest, as
166 the board of trustees adopts from time to time;

167 (21) "Retirement" means a member's withdrawal from the
168 employ of a participating public employer with an annuity
169 payable by the retirement system;

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

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

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

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

15 (b) Any member who qualifies for deferred retirement
16 benefits in accordance with subsection (a) of this section, and

17 has ten or more years of credited service in force and who has
18 attained age fifty-five as of the date of his or her separation
19 may, prior to the effective date of his or her retirement, but not
20 thereafter, elect to receive the actuarial equivalent of his or her
21 deferred retirement annuity as a reduced annuity commencing
22 on the first day of any calendar month between his or her date
23 of separation and his or her attainment of age sixty-two years
24 and payable throughout his or her life.

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

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

47 (e) Notwithstanding any of the other provisions of this
48 section or of this article, any member of the retirement system
49 may retire with full pension rights, without reduction of

50 benefits, if the member is at least fifty-five years of age and the
51 sum of his or her age plus years of contributing service and
52 limited credited service as defined in section two of this article
53 equals or exceeds eighty.

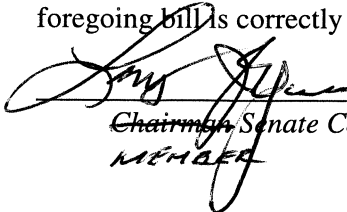
§5-10-22. Retirement annuity.

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

26 The annuity of any member of the Legislature who partici-
27 pates in the retirement system as a member of the Legislature
28 and who retires under this article or of any former member of

29 the Legislature who has retired under this article (including any
30 former member of the Legislature who has retired under this
31 article and whose annuity was readjusted as of the first day of
32 March, one thousand nine hundred seventy, under the former
33 provisions of this section) shall be increased from time to time
34 during the period of his or her retirement when and if the
35 legislative compensation paid under section two, article two-a,
36 chapter four of this code to a member of the Legislature shall be
37 increased to the point where a higher annuity would be payable
38 to the retirant if he or she were retiring as of the effective date
39 of the latest increase in such legislative compensation, but on
40 the basis of his or her years of credited service to the date of his
41 or her actual retirement.

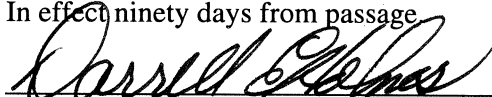
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman Senate Committee
MICHAEL

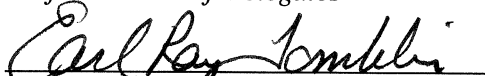

Chairman House Committee

Originating in the House.

In effect ninety days from passage

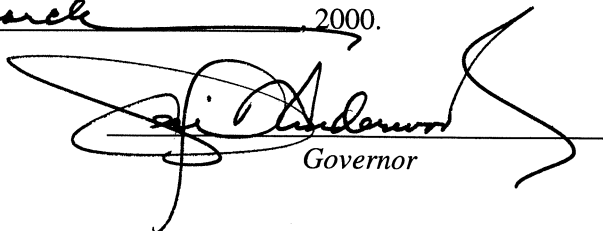

Clerk of the Senate


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

PRESENTED TO THE

GOVERNOR

Date

3/16/00

Time

12:30pm