WEST VIRGINIA LEGISLATURE
Regular Session, 2004

ENROLLED

SENATE BILL NO. 563

(By Senator Jenkins)

PASSED March 10, 2004

In Effect ninety days from Passage
AN ACT to amend and reenact §5-10-2, §5-10-17, §5-10-21, §5-10-23, §5-10-26, §5-10-27 and §5-10-44 of the code of West Virginia, 1931, as amended, all relating to the public employees retirement system; rights of members to select a plan beneficiary; requiring annual physician review and annual statement of earnings from those persons receiving disability retirement payments; providing that interest is to be included in the calculation of terminal benefits payable as the result of death of retired participants; alphabetizing definitions; defining service credit for certain employees; increasing look-back period in definition of final average salary; adding definitions of “accumulated net benefit” and “employer error”; providing guidance on correcting employer errors; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §5-10-2, §5-10-17, §5-10-21, §5-10-23, §5-10-26, §5-10-27 and §5-10-44 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:
ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-2. Definitions.

1 Unless a different meaning is clearly indicated by the context, the following words and phrases as used in this article have the following meanings:

4 (1) "Accumulated contributions" means the sum of all amounts deducted from the compensation of a member and credited to his or her individual account in the members' deposit fund, together with regular interest on the contributions;

6 (2) "Accumulated net benefit" means the aggregate amount of all benefits paid to or on behalf of a retired member;

8 (3) "Actuarial equivalent" means a benefit of equal value computed upon the basis of a mortality table and regular interest adopted by the board of trustees from time to time;

9 (4) "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;

11 (5) "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 mortality and other tables of experience and regular interest adopted by the board of trustees from time to time;

13 (6) "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;

15 (7) "Board of trustees" or "board" means the board of trustees of the West Virginia public employees retirement system;
(8) "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;

(9) "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;

(10) "Credited service" means the sum of a member's prior service credit, military service credit and contributing service credit standing to his or her credit as provided in this article;

(11) "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 receiving one year of service credit for each one year term served and prorated service credit for any partial term served, 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;

(12) "Employer error" means an omission, misrepresentation or violation of relevant provisions of the West Virginia code and/or West Virginia code of state regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required. A deliberate act contrary to the provisions of this section by a participating public employer shall not constitute employer error;

(13) "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 the member's credited service contained within his or her fifteen years of credited service immediately preceding the date of last termination of employment with a participating public employer; or

(B) If the member has less than five years of credited service, the average of the annual rate of compensation received by him or her during the member's total years of credited service; and in determining the annual compensation, under either this paragraph or paragraph (A) 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 compensa-
tion, 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
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 (notwithstand-
ing 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 this paragraph or para-
graph (A) of this subdivision, whichever computation
produces the higher final average salary (and in determi-
ning the annual compensation under subparagraph (ii) of
this paragraph, 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 imme-
diately preceding this proviso or on the basis of one
thousand five hundred dollars multiplied by eight, which-
ever computation as to the member produces the higher
annual compensation);
(14) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended;

(15) "Limited credited service" means service by employees of the West Virginia educational broadcasting authority, in the employment of West Virginia university, during a period when the employee made contributions to another retirement system, as required by West Virginia university, and did not make contributions to the public employees retirement system: Provided, That while limited credited service can be used for the formula set forth in subsection (e), section twenty-one of this article, it may not be used to increase benefits calculated under section twenty-two of this article;

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

(17) "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;

(18) "Plan year" means the same as referenced in section forty-two of this article;

(19) "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; and 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: 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: Provided, however, That the regional community policing institute which participated in the public employees retirement system before the first day of July, two thousand, 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 public employees retirement system after the first day of July, two thousand;

(20) "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;

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

(22) "Required beginning date" means the first day of April of the calendar year following the later of: (A) The calendar year in which the member attains age seventy and one-half; or (B) the calendar year in which the member ceases providing service covered under this system to a participating employer;

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

(24) "Retirement" means a member's withdrawal from the employ of a participating public employer with an annuity payable by the retirement system;
"Retirement system" or "system" means the West Virginia public employees retirement system created and established by this article;

"Retroactive service" means: (A) 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 (B) 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 5.13; or (C) service of any member of a legislative body or employees of the state Legislature whose term of employment is otherwise classified as temporary for which the employee is eligible, but which the employee did not elect to participate at that time;

"Service" means personal service rendered to a participating public employer by an employee, as defined in this article, of a participating public employer; and

"State" means the state of West Virginia.

§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 may not include any person who is an active contributing member
of, or who has been retired by, any of the state teachers
retirement systems, the judges retirement system, the West
Virginia state police death, disability and retirement fund,
the West Virginia state police retirement system, the
deployer sheriff retirement system or any municipal retire-
ment 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 autho-
rization of a separate enactment: Provided, That the
exclusions of membership may 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 West Virginia state police death, disability and retire-
ment fund, the West Virginia state police retirement
system, the deputy sheriff retirement system 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 West Virginia state police
death, disability and retirement fund, the West Virginia
state police retirement system or the deputy sheriff
retirement system: 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 ninety-seven: And provided further, That
membership of the retirement system does not include any
person who becomes a member of the federal railroad
retirement act on or after the first day of July, two thou-
sand.
(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 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 deductions 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.

(e) Any individual who is a leased employee is not eligible to participate in the system. For the purposes of this article, the term "leased employee" means any individual who performs services as an independent contractor or pursuant to an agreement with an employee leasing organization or other similar organization. If a question arises regarding the status of an individual as a leased employee, the board has final authority to decide the question.
§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 contributory service, and who leaves the employ of a participating public employer prior to his or her attaining age sixty years for any reason except his or her disability retirement or death shall be 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 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: Provided, however, That on and after the first day of July, two thousand two, any person who becomes a new member of this retirement system shall, in qualifying for retirement hereunder, have five or more years of service, all of which years shall be actual, contributory ones. His or her annuity shall begin the first day of the calendar month next following the month in which his or her application for same is filed with the board of trustees on or after his or her attaining 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 deferred 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 com-
mencing 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, except sections twenty-seven-a
and twenty-seven-b 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 applica-
tion, shall be 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 applica-
tion, 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 computation of benefit without
any reduction.

(e) Notwithstanding any of the other provisions of this
section or of this article, except sections twenty-seven-a
and twenty-seven-b of this article, any member of the
retirement system may retire with full pension rights,
without reduction of benefits, if he or she is at least
fifty-five years of age and the sum of his or her age plus
years of contributing service and limited credited service,
as defined in section two of this article, equals or exceeds
eighty. An annuity shall begin the first day of the calendar
month next following the month in which application for
the annuity is filed with the board of trustees.

§5-10-23. Terminal payment following retirement.

(a) This section provides for the payment of the balance
in a retired member's account in the event that all claims
to benefits payable to, or on behalf of, a member expire
before his or her member account has been fully ex-
hausted. The expiration of rights to benefits would be on
the later of either the death of the retired member drawing
benefits under a straight life annuity or the death of a
survivor annuitant drawing benefits under any optional
form of benefit selected by the retired member.

(b) In the event that all claims to benefits payable to, or
on behalf of, a retired member expire and the accumulated
contributions exceed the accumulated net benefit paid to
or on behalf of the retired member, the balance in the
retired member's account shall be paid to the person or
persons nominated by the retired member by written
designation duly executed and filed with the board of
trustees. If there is no designated person or persons
surviving the retired member following the expiration of
claims, the excess of the accumulated contributions over
the accumulated net benefit, if any, shall be paid to the
retired member's estate: Provided, That the provisions of
this section shall be retroactive for all members who
entered retirement status on or after the ninth day of June,
two thousand.

§5-10-26. Reexamination of disability retirants; reemployment;
adjustment of annuity for earnings.

(a) At least once each year during the first five years
following the retirement of a member on account of
disability, as provided in section twenty-five hereof, and
at least once in each three-year period thereafter, the
board of trustees shall require a disability retirant, who
has not attained age sixty years, to submit a statement
from the disability retirant's physician certifying contin-
ued disability and to submit a copy of the disability
retirant's income tax return from the previous tax year.
Should the retirant refuse to submit required documenta-
tion in any period, the retirant's disability annuity may be
discontinued by the board until the board receives the
required documentation. Should refusal continue for one
year, all the retirant's rights in and to the annuity may be
revoked by the board. If, upon medical examination of a
disability retirant, a physician reports to the board that
the retirant is physically able and capable of resuming
employment with a participating public employer, the
retirant shall be returned to the employ of the participat-
ing public employer from whose employment he or she
retired and his or her disability annuity shall terminate:
Provided, That the board concurs with the physician's
report.

(b) A disability retirant who is returned to the employ of
a participating public employer shall again become a
member of the retirement system and his or her credited
service in force at the time of retirement shall be restored
to his or her credit.

§5-10-27. Preretirement death annuities.

(a) In the event any member who has ten or more years
of credited service, or any former member with ten or more
years of credited service and who is entitled to a deferred
annuity, pursuant to section twenty-one of this article: (1)
Dies without leaving surviving him or her a spouse; but (2)
leaves surviving him or her a child who is financially
dependent on the member by virtue of a permanent mental
or physical disability upon evidence satisfactory to the
board; and (3) has named such disabled child as sole
beneficiary, the disabled child shall immediately receive
an annuity computed in the same manner in all respects as
if the said member had: (i) Retired the day preceding the
date of his or her death, notwithstanding that he or she
might not have attained age sixty or sixty-two years, as
the case may be; (ii) elected option A provided in section
twenty-four of this article; and (iii) nominated his or her
disabled child as beneficiary. A member or former mem-
er with ten or more years of credited service who does not
leave surviving him or her a spouse or a disabled child may
elect to have the preretirement death benefit paid as a
return of accumulated contributions in a lump sum
amount to any beneficiary or beneficiaries he or she
chooses.
(b) In the event any member who has ten or more years of credited service, or any former member with ten or more years of credited service and who is entitled to a deferred annuity, pursuant to section twenty-one of this article: (1) Dies; and (2) leaves a surviving spouse, the surviving spouse shall immediately receive an annuity computed in the same manner in all respects as if the said member had: (1) Retired the day preceding the date of his or her death, notwithstanding that he or she might not have attained age sixty or sixty-two years, as the case may be; (2) elected option A provided in section twenty-four of this article; and (3) nominated his or her surviving spouse as beneficiary. However, the surviving spouse shall have the right to waive the annuity provided in this section: Provided, That he or she executes a valid and notarized waiver on a form provided by the retirement board and that the member or former member attests to the waiver. If the waiver is presented to and accepted by the retirement board, the member or former member may nominate, upon evidence satisfactory to the board, a child who is financially dependent on the member by virtue of a permanent mental or physical disability under annuity option A. As an alternative to annuity option A, the member or former member may elect to have the preretirement death benefit paid as a return of accumulated contributions in a lump sum amount to any beneficiary or beneficiaries he or she chooses in the event a waiver, as provided in this section, has been presented to and accepted by the retirement board.

(c) In the event any member who has ten or more years of credited service, or any former member with ten or more years of credited service and who is entitled to a deferred annuity, pursuant to section twenty-one of this article: (1) Dies without leaving surviving him or her a spouse; but (2) leaves surviving him or her an infant child or children; and (3) does not have a beneficiary nominated as provided in subsection (a) of this section, the infant child or children shall be entitled to an annuity to be calculated as follows:
The annuity reserve shall be calculated as though the member had retired as of the date of his or her decease and elected a straight life annuity and the amount of the annuity reserve shall be paid in equal monthly installments to said member's infant child or children until the child or children attain age twenty-one or sooner marry or become emancipated; however, in no event shall any child or children receive more than two hundred fifty dollars per month each. The annuity payments shall be computed as of the date of the death of the member and the amount of the annuity shall remain constant during the period of payment. The annual amount of the annuities payable by this section shall not exceed sixty percent of the deceased member's final average salary.

(d) In the event any member or former member does not have ten or more years of credited service, no preretirement death annuity may be authorized, owed or awarded under this section.

§5-10-44. Correction of errors.

Should any change or employer error in the records of any participating public employer or the retirement system result in any person receiving from the system more or less than the person would have been entitled to receive had the records been correct, the board of trustees shall correct the records and, as far as is practicable, shall adjust the payment of the benefit in such manner that the actuarial equivalent of the benefit to which the person was correctly entitled shall be paid. Any employer error resulting in an underpayment to the retirement system may be corrected by the employee remitting the required employee contribution and the participating public employer remitting the required employer contribution. Interest shall accumulate in accordance with 162 CSR 7.4.1.2 and any interest owed on the employee and employer contributions resulting from employer error shall be the responsibility of the participating public employer. The participating public employer may remit total payment and the employee
reimburse the participating public employer through payroll deduction over a period equivalent to the time period during which the employer error occurred not to exceed two thousand dollars. The participating public employer shall submit proof that employer error was not willful, wanton or reckless.
The 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 ninety days 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 25th Day of March, 2004.

Governor