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ENROLLED

Senate Bill No. 444

(BY SENATORS KIRKENDOLL, CANN, EDGELL, CARMICHAEL AND PLYMALE)

[PASSED FEBRUARY 20, 2014; IN EFFECT FROM PASSAGE.]
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(BY SENATORS KIRKENDOLL, CANN, EDGELL, CARMICHAEL
AND PLYMALE)

[Passed February 20, 2014; in effect from passage.]

AN ACT to amend and reenact §5-10-2, §5-10-31 and §5-10-48 of
the Code of West Virginia, 1931, as amended, all relating to the
Public Employees Retirement System; defining “compensation”
and “employee” in this article; removing the requirement to set
employer contribution rate by legislative rule; and allowing
employee and employer retirement contributions to be credited
to the participating public employer when a retirant is
reemployed for less than one year.

Be it enacted by the Legislature of West Virginia:

That §5-10-2, §5-10-31 and §5-10-48 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
2 context, the following words and phrases as used in this
3 article have the following meanings:
(1) "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;

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

(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: Provided, That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, "actuarial equivalent" shall be computed using the mortality tables and interest rates required to comply with those requirements;

(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, rounding to the upper cent for any fraction of a cent;

(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;

(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;

(7) "Board of Trustees" or "board" means the Board of Trustees of the West Virginia Consolidated Public Retirement System;
(8) “Compensation” means the remuneration paid a member by a participating public employer for personal services rendered by the member 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 the remuneration which is not paid in money: Provided, That members hired in a position for the first time on or after July 1, 2014, who receive nonmonetary remuneration shall not have nonmonetary remuneration included in compensation for retirement purposes and nonmonetary remuneration may not be used in calculating a member’s final average salary. Any lump sum or other payments paid to members that do not constitute regular salary or wage payments are not considered compensation for the purpose of withholding contributions for the system or for the purpose of calculating a member’s final average salary. These payments include, but are not limited to, attendance or performance bonuses, one-time flat fee or lump sum payments, payments paid as a result of excess budget or employee recognition payments. The board shall have final power to decide whether the payments shall be considered compensation for purposes of this article;

(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;

(10) “Credited service” means the sum of a member’s prior service credit, military service credit, workers’ compensation 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 an employee of the Legislature whose term of 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 employed during regular sessions or during the interim between regular sessions in seven or more consecutive calendar years, as certified by the clerk of the house in which the employee served, is an employee, any provision to the contrary in this article notwithstanding, and is entitled to credited service in accordance with provisions of section fourteen, article ten, chapter five of this code and: Provided, however, That members of the legislative body of any political subdivision and judges of the State Court of Claims are employees receiving one year of service credit for each one-year term served and pro rated service credit for any partial term served, anything contained in this article to the contrary notwithstanding: Provided further, That only a compensated board member of a participating public employer appointed to a board of a nonlegislative body for the first time on or after July 1, 2014, who normally is required to work twelve months per year and one thousand forty hours of service per year is an employee. 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 or of the West Virginia Code of State Regulations or the relevant provisions of both the West Virginia Code and of the 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 does not constitute employer error.

(13) "Final average salary" means either of the following:

Provided, That salaries for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with section seven, article ten-d, chapter five of this code and Section 401(a)(17) of the Internal Revenue Code: Provided, however, That the provisions of section twenty-two-h of this article are not applicable to the amendments made to this subdivision during the 2011 Regular Session of the Legislature.

(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 1971 or thereafter), during any period of three consecutive years of credited service contained within the member's fifteen years of credited service immediately preceding the date his or her employment with a participating public employer last terminated; or

(B) If the member has less than five years of credited service, the average of the annual rate of compensation received by the member 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 1971, 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 1971, 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 1971, who, in either event, was a member of the Legislature on November 30, 1968, or November 30, 1969, or November 30, 1970, or on November 30 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) $1,500 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 subparagraph (ii) of this proviso, the legislative compensation of the former member shall be computed on the basis of $1,500 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 preceding this proviso or on the basis of $1,500 multiplied by eight, whichever computation as to the member produces the higher annual compensation);

(14) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, codified at Title 26 of the United States Code;
(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 has accumulated contributions standing to his or her credit in the members' deposit fund;

(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 July 1, 1997, 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 July 1, 1997: Provided, however, That the Regional Community Policing Institute which participated in the Public Employees Retirement System before July 1, 2000, 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 July 1, 2000;

(20) “Prior service” means service rendered prior to July 1, 1961, 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 April 1 of the calendar year following the later of: (A) The calendar year in which the member attains age seventy and one-half years of age; or (B) the calendar year in which a member who has attained the age seventy and one-half years of age and who ceases providing service covered under this system to a participating employer;

(23) “Retirant” means any member who commences an annuity payable by the retirement system;
(24) "Retirement" means a member's withdrawal from the employ of a participating public employer and the commencement of an annuity by the retirement system;

(25) "Retirement system" or "system" means the West Virginia Public Employees Retirement System created and established by this article;

(26) "Retroactive service" means: (1) Service between July 1, 1961, and the date an employer decides to become a participating member of the Public Employees Retirement System; (2) service prior to July 1, 1961, for which the employee is not entitled to prior service at no cost in accordance with 162 CSR 5.13; and (3) 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 for which the employee did not elect to participate at that time;

(27) "Service" means personal service rendered to a participating public employer by an employee of a participating public employer; and

(28) "State" means the State of West Virginia.

§5-10-31. Employers Accumulation Fund; employers contributions.

(a) The Employers Accumulation Fund is hereby continued. It is the fund in which shall be accumulated the contributions made by the participating public employers to the retirement system, and from which transfers shall be made as provided in this section.

(b) Based upon the provisions of section thirteen of this article, the participating public employers' contributions to
the retirement system, as determined by the Consolidated Public Retirement Board, shall be a percent of the members’ total annual compensation related to benefits under this retirement system. In determining the amount, the board shall give consideration to setting the amount at a sum equal to an amount which, if paid annually by the participating public employers, will be sufficient to provide for the total normal cost of the benefits expected to become payable to all members and to amortize any unfunded liability found by application of the actuarial funding method chosen for that purpose by the Consolidated Public Retirement Board, over a period of years determined actuarially appropriate.

§5-10-48. Reemployment after retirement; options for holder of elected public office.

(a) The Legislature finds that a compelling state interest exists in maintaining an actuarially sound retirement system and that this interest necessitates that certain limitations be placed upon an individual’s ability to retire from the system and to then later return to state employment as an employee with a participating public employer while contemporaneously drawing an annuity from the system. The Legislature hereby further finds and declares that the interests of the public are served when persons having retired from public employment are permitted, within certain limitations, to render post-retirement employment in positions of public service, either in elected or appointed capacities. The Legislature further finds and declares that it has the need for qualified employees and that in many cases an employee of the Legislature will retire and be available to return to work for the Legislature as a per diem employee. The Legislature further finds and declares that in many instances these employees have particularly valuable expertise which the Legislature cannot find elsewhere. The Legislature further finds and declares that reemploying these persons on a
limited per diem basis after they have retired is not only in
the best interests of this state, but has no adverse effect
whatsoever upon the actuarial soundness of this particular
retirement system.

(b) For the purposes of this section: (1) “Regularly
employed on a full-time basis” means employment of an
individual by a participating public employer, in a position
other than as an elected or appointed public official, which
normally requires twelve months per year service and at least
one thousand forty hours of service per year in that position;
(2) “temporary full-time employment” or “temporary
part-time employment” means employment of an individual
on a temporary or provisional basis by a participating public
employer, other than as an elected or appointed public
official, in a position which does not otherwise render the
individual as regularly employed; (3) “former employee of
the Legislature” means any person who has retired from
employment with the Legislature and who has at least ten
years’ contributing service with the Legislature; and (4)
“reemployed by the Legislature” means a former employee of
the Legislature who has been reemployed on a per diem basis
not to exceed one hundred seventy-five days per calendar
year.

(c) In the event a retirant becomes regularly employed on
a full-time basis by a participating public employer, payment
of his or her annuity shall be suspended during the period of
his or her reemployment and he or she shall become a
contributing member to the retirement system. If his or her
reemployment is for a period of one year or longer, his or her
annuity shall be recalculated and he or she shall be granted an
increased annuity due to the additional employment, the
annuity to be computed according to section twenty-two of
this article. If his or her reemployment is for a period less
than one year, he or she may request in writing that the
employee and employer retirement contributions submitted
during reemployment be credited to the participating public
employer pursuant to section forty-four of this article, and his
or her previous annuity shall be reinstated effective the first
day of the month following termination of reemployment and
the board’s receipt of written notice thereof. A retirant may
accept legislative per diem, temporary full-time or temporary
part-time employment from a participating employer without
suspending his or her retirement annuity so long as he or she
does not receive annual compensation in excess of $20,000.

(d) In the event a member retires and is then subsequently
elected to a public office or is subsequently appointed to hold
an elected public office, or is a former employee of the
Legislature who has been reemployed by the Legislature, he
or she has the option, notwithstanding subsection (c) of this
section, to either:

(1) Continue to receive payment of his or her annuity
while holding public office or during any reemployment of a
former employee of the Legislature on a per diem basis, in
addition to the salary he or she may be entitled to as an office
holder or as a per diem reemployed former employee of the
Legislature; or

(2) Suspend the payment of his or her annuity and
become a contributing member of the retirement system as
provided in subsection (c) of this section. Notwithstanding
the provisions of this subsection, a member who is
participating in the system as an elected public official may
not retire from his or her elected position and commence to
receive an annuity from the system and then be elected or
reappointed to the same position unless and until a
continuous twelve-month period has passed since his or her
retirement from the position: Provided, That a former
employee of the Legislature may not be reemployed by the
Legislature on a per diem basis until at least sixty days after
the employee has retired: *Provided, however,* That the
limitation on compensation provided by subsection (c) of this
section does not apply to the reemployed former employee:
*Provided further,* That in no event may reemployment by the
Legislature of a per diem employee exceed one hundred
seventy-five days per calendar year.

(e) A member who is participating in the system
simultaneously as both a regular, full-time employee of a
participating public employer and as an elected or appointed
member of the legislative body of the state or any political
subdivision may, upon meeting the age and service
requirements of this article, elect to retire from his or her
regular full-time state employment and may commence to
receive an annuity from the system without terminating his or
her position as a member of the legislative body of the state
or political subdivision: *Provided,* That the retired member
shall not, during the term of his or her retirement and
continued service as a member of the legislative body of a
political subdivision, be eligible to continue his or her
participation as a contributing member of the system and
shall not continue to accrue any additional service credit or
benefits in the system related to the continued service.

(f) Notwithstanding the provisions of section
twenty-seven-b of this article, any publicly elected member
of the legislative body of any political subdivision or of the
State Legislature, the Clerk of the House of Delegates and the
Clerk of the Senate may elect to commence receiving
in-service retirement distributions from this system upon
attaining the age of seventy and one-half years: *Provided,*
That the member is eligible to retire under the provisions of
section twenty or twenty-one of this article: *Provided,
however,* That the member elects to stop actively contributing
to the system while receiving the in-service distributions.
(g) The provisions of section twenty-two-h of this article are not applicable to the amendments made to this section during the 2006 Regular Session.
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 from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 

Day of March, 2014.

Governor