WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2015

ENROLLED
COMMITTEE SUBSTITUTE
FOR
House Bill No. 2505

(By Delegate(s) Canterbury, Pethtel, Folk, Walters, Hamilton, Marcum, Kurcaba and Hicks)

Passed March 9, 2015

In effect ninety days from passage.
AN ACT to amend and reenact §5-10-17 of the Code of West Virginia, 1931, as amended; to amend and reenact §7-14D-5 of said code; to amend and reenact §8-22A-6 of said code; to amend and reenact §15-2A-3 of said code; to amend and reenact §16-5V-6 of said code; and to amend and reenact §18-7A-13 of said code, all relating to retirement system participation; clarifying that police officers and firefighters hired after a certain date are members of the West Virginia Municipal Police and Firefighters Retirement System; clarifying that members first employed in covered employment in the West Virginia Deputy Sheriffs Retirement System, West Virginia Municipal Police Officers and Firefighters Retirement System or the West Virginia Emergency Medical Services Retirement System shall participate in only one retirement system administered by the Consolidated Public Retirement Board in which the member has the earliest date of
hire; and specifying that members of the Public Employees Retirement System, the State Police Retirement System and the Teachers’ Retirement System who are employed in an additional job that requires membership in the West Virginia Deputy Sheriff Retirement System, the West Virginia Municipal Police Officers and Firefighters Retirement System or the West Virginia Emergency Medical Services Retirement System shall abide by the concurrent employment provisions of said system and participate in only one system administered by the Consolidated Public Retirement Board.

Be it enacted by the Legislature of West Virginia:

That §5-10-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §7-14D-5 of said code be amended and reenacted; that §8-22A-6 of said code be amended and reenacted; that §15-2A-3 of said code be amended and reenacted; that §16-5V-6 of said code be amended and reenacted; and that §18-7A-13 of said code be amended and reenacted, all to read as follows:

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-17. Retirement system membership.

1 The membership of the retirement system consists of the following persons:

3 (a) All employees, as defined in section two of this article, who are in the employ of a political subdivision 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), (c) and (d) of this section.

(b) The membership of the Public Employees Retirement System shall 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, any Retirement System of the West Virginia State Police, the Deputy Sheriff Retirement System or any municipal retirement system for either, or both, police or firefighter; 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 authorization of a separate enactment: Provided, That the exclusions of membership do 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 State Police Death, Disability and Retirement 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, police or firefighter 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 police officer or firefighter or as a member of the State Police Death, Disability and Retirement Fund, the West Virginia State Police Retirement System or the Deputy Sheriff Retirement System: Provided further, That any retired member of the State Police Death, Disability and Retirement Fund, the West Virginia State Police Retirement System or the Deputy Sheriff Retirement System.
System, the Deputy Sheriff Retirement System and any retired member of any municipal retirement system for either, or both, police or firefighters, who begins participation in the retirement system established in this article on or after July 1, 2005, may not receive a combined retirement benefit in excess of one hundred five percent of the member’s highest annual salary earned while either a member of the retirement system established in this article or while a member of the other retirement system or systems from which he or she previously retired when adding the retirement benefit from the retirement system created in this article to the retirement benefit received by that member from the other retirement system or systems set forth herein from which he or she previously retired: And 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 July 1, 1997, 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 July 1, 2000.

(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 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) Any employee, as defined in section two of this article,
who has concurrent employment in an additional job or jobs
which would require the employee to be a member of the West
Virginia Deputy Sheriff Retirement System, the West Virginia
Municipal Police Officers and Firefighters Retirement System or
the West Virginia Emergency Medical Services Retirement
System shall abide by the concurrent employment statutory
provisions of said retirement system and shall participate in only
one retirement system administered by the board.

(e) If question arises regarding the membership status of any
employee, the Board of Trustees has the final power to decide
the question.

(f) 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.
CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-5. Members.

(a) Any deputy sheriff first employed by a county in covered employment after the effective date of this article shall be a member of this retirement system and does not qualify for membership in any other retirement system administered by the board, so long as he or she remains employed in covered employment: Provided, That any deputy sheriff who has concurrent employment in an additional job or jobs which would require the deputy sheriff to be a member of the West Virginia Municipal Police Officers and Firefighters Retirement System or the West Virginia Emergency Medical Services Retirement System shall participate in only one retirement system administered by the board, and the retirement system applicable to the concurrent employment for which the employee has the earliest date of hire shall prevail. The membership of any person in the plan ceases: (1) Upon the withdrawal of accumulated contributions after the cessation of service; (2) upon retirement; (3) at death; or (4) upon the date, if any, when after the cessation of service, the outstanding balance of any loan obtained by the member pursuant to section twenty-three of the article, plus accrued interest, equals or exceeds the accumulated contributions of the member.

(b) Any deputy sheriff employed in covered employment on the effective date of this article shall within six months of that effective date notify in writing both the county commission in the county in which he or she is employed and the board, of his or her desire to become a member of the plan: Provided, That this time period is extended to January 30, 1999, in accordance with the decision of the Supreme Court of Appeals in West Virginia Deputy Sheriffs' Association, et al v. James L. Sims, et
al, No. 25212: Provided, however, That any deputy sheriff employed in covered employment on the effective date of this article has an additional time period consisting of the ten-day period following the day after which the amended provisions of this section become law to notify in writing both the county commission in the county in which he or she is employed and the board of his or her desire to become a member of the plan. Any deputy sheriff who elects to become a member of the plan ceases to be a member or have any credit for covered employment in any other retirement system administered by the board and shall continue to be ineligible for membership in any other retirement system administered by the board so long as the deputy sheriff remains employed in covered employment in this plan: Provided further, That any deputy sheriff who elects during the time period from July 1, 1998 to January 30, 1999 or who so elects during the ten-day time period occurring immediately following the day after the day the amendments made during the 1999 legislative session become law, to transfer from the Public Employees Retirement System to the plan created in this article shall contribute to the plan created in this article at the rate set forth in section seven of this article retroactive to July 1, 1998. Any deputy sheriff who does not affirmatively elect to become a member of the plan continues to be eligible for any other retirement system as is from time to time offered to other county employees but is ineligible for this plan regardless of any subsequent termination of employment and rehire.

(c) Any deputy sheriff employed in covered employment on the effective date of this article who has timely elected to transfer into this plan as provided in subsection (b) of this section shall be given credited service at the time of transfer for all credited service then standing to the deputy sheriff’s service credit in the Public Employees Retirement System regardless of whether the credited service (as that term is defined in section two, article ten, chapter five of this code) was earned as a deputy
sheriff. All the credited service standing to the transferring
deputy sheriff's credit in the Public Employees Retirement Fund
System at the time of transfer into this plan shall be transferred
into the plan created by this article, and the transferring deputy
sheriff shall be given the same credit for the purposes of this
article for all service transferred from the Public Employees
Retirement System as that transferring deputy sheriff would have
received from the Public Employees Retirement System as if the
transfer had not occurred. In connection with each transferring
department receiving credit for prior employment as provided
in this subsection, a transfer from the Public Employees
Retirement System to this plan shall be made pursuant to the
procedures described in section eight of this article: Provided,
That a member of this plan who has elected to transfer from the
Public Employees Retirement System into this plan pursuant to
subsection (b) of this section may not, after having transferred
into and become an active member of this plan, reestablish to his
or her credit in this plan any service credit relating to periods of
nondeputy sheriff service which were withdrawn from the Public
Employees Retirement System prior to his or her elective
transfer into this plan.

(d) Any deputy sheriff who was employed as a deputy sheriff
prior to the effective date of this article, but was not employed
as a deputy sheriff on the effective date of this article, shall
become a member upon rehire as a deputy sheriff. For purposes
of this subsection, the member's years of service and credited
service in the Public Employees Retirement System prior to the
effective date of this article shall not be counted for any purposes
under this plan unless: (1) The deputy sheriff has not received
the return of his or her accumulated contributions in the Public
Employees Retirement System pursuant to section thirty, article
ten, chapter five of this code; or (2) the accumulated
contributions returned to the member from the Public Employees
Retirement System have been repaid pursuant to section thirteen
of this article. If the conditions of subdivision (1) or (2) of this subsection are met, all years of the deputy sheriff's covered employment shall be counted as years of service for the purposes of this article.

(e) Once made, the election provided in this section is irrevocable. All deputy sheriffs first employed after the effective date and deputy sheriffs electing to become members as described in this section shall be members as a condition of employment and shall make the contributions required by section seven of this article.

(f) Notwithstanding any other provisions of this article, any individual who is a leased employee is not eligible to participate in the plan. For purposes of this plan, a "leased employee" means any individual who performs services as an independent contractor or pursuant to an agreement with an employee leasing organization or similar organization. If a question arises regarding the status of an individual as a leased employee, the board has final power to decide the question.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 22A. WEST VIRGINIA MUNICIPAL POLICE OFFICERS AND FIREFIGHTERS RETIREMENT SYSTEM.

§8-22A-6. Members.

(a) A police officer or firefighter hired in covered employment after the effective date of this article by a municipality or municipal subdivision which has established and maintained a policemen's pension and relief fund or a firemen's pension and relief fund pursuant to section sixteen, article twenty-two of this chapter and which is a participating employer, shall be a member of this retirement plan: Provided, That any police officer or firefighter who has concurrent employment in an additional job or jobs which would require the police officer
or firefighter to be a member of the West Virginia Deputy Sheriff Retirement System or the West Virginia Emergency Medical Services Retirement System shall participate in only one retirement system administered by the board, and the retirement system applicable to the concurrent employment for which the employee has the earliest date of hire shall prevail.

(b) Except as provided in section thirty-two of this article, a police officer or firefighter who is a member of the Municipal Police Officers and Firefighters Retirement System may not have credit for covered employment in any other retirement system applied as service credit in the Municipal Police Officers and Firefighters Retirement System.

(c) Notwithstanding any other provisions of this article, any individual who is a leased employee is not eligible to participate in the plan. For purposes of this plan, a “leased employee” means any individual who performs services as an independent contractor or pursuant to an agreement with an employee leasing organization or similar organization. If a question arises regarding the status of an individual as a leased employee, the board has final power to decide the question.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.

§15-2A-3. Continuation and administration of West Virginia State Police Retirement System; leased employees; federal qualification requirements.

(a) The West Virginia State Police Retirement System is continued. It is contemplated that substantially all of the members of the retirement system shall be qualified public safety employees as defined in section two of this article. Any West Virginia state trooper employed by the agency on or after the effective date of this article shall be a member of this
retirement system and may not qualify for membership in any
other retirement system administered by the board so long as he
or she remains employed by the State Police: Provided, That any
state trooper who has concurrent employment in an additional
job or jobs which would require the state trooper to be a member
of the West Virginia Deputy Sheriff Retirement System, the
West Virginia Municipal Police Officers and Firefighters
Retirement System or the West Virginia Emergency Medical
Services Retirement System shall abide by the statutory
provisions of said retirement system related to concurrent
employment and participate in only one retirement system
administered by the board.

(b) Any individual who is a leased employee shall not be
eligible to participate in the system. For purposes of this system,
a “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 power to
decide the question.

(c) The board created pursuant to article ten-d, chapter five
of this code shall administer the retirement system. The board
may sue and be sued, contract and be contracted with and
conduct all the business of the system in the name of the West
Virginia State Police Retirement System.

(d) This fund is intended to meet the federal qualification
requirements of Section 401(a) and related sections of the
Internal Revenue Code as applicable to governmental plans.
Notwithstanding any other provision of state law, the board shall
administer the retirement system to fulfill this intent for the
exclusive benefit of the employees, members, retirants and their
beneficiaries. Any provision of this article referencing or relating
to these federal qualification requirements shall be effective as
of the date required by federal law. The board may promulgate
rules and amend or repeal conflicting rules in accordance with
the authority granted to the board pursuant to section one, article
ten-d, chapter five of this code to assure compliance with this
section.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5V. EMERGENCY MEDICAL SERVICES RETIREMENT SYSTEM ACT.

§16-5V-6. Members.

(a) Any emergency medical services officer first employed
by a county or political subdivision in covered employment after
the effective date of this article shall be a member of this
retirement plan as a condition of employment and upon
membership does not qualify for membership in any other
retirement system administered by the board, so long as he or
she remains employed in covered employment: Provided, That
any emergency medical services officer who has concurrent
employment in an additional job or jobs which would require the
emergency medical services officer to be a member of the West
Virginia Deputy Sheriff Retirement System or the West Virginia
Municipal Police Officers and Firefighters Retirement System
shall participate in only one retirement system administered by
the board, and the retirement system applicable to the concurrent
employment for which the employee has the earliest date of hire
shall prevail.

(b) Any emergency medical services officer employed in
covered employment by an employer which is currently a
participating public employer of the Public Employees
Retirement System shall notify in writing both the county
commission in the county or officials in the political subdivision
in which he or she is employed and the board of his or her desire
to become a member of the plan by December 31, 2007. Any
emergency medical services officer who elects to become a member of the plan ceases to be a member or have any credit for covered employment in any other retirement system administered by the board and shall continue to be ineligible for membership in any other retirement system administered by the board so long as the emergency medical services officer remains employed in covered employment by an employer which is currently a participating public employer of this plan: Provided, That any emergency medical services officer who does not affirmatively elect to become a member of the plan continues to be eligible for any other retirement system as is, from time to time, offered to other county employees but is ineligible for this plan regardless of any subsequent termination of employment and rehire.

(c) Any emergency medical services officer who was employed as an emergency medical services officer prior to the effective date, but was not employed on the effective date of this article, shall become a member upon rehire as an emergency medical services officer. For purposes of this section, the member’s years of service and credited service prior to the effective date shall not be counted for any purposes under this plan unless the emergency medical services officer has not received the return of his or her accumulated contributions in the Public Employees Retirement System pursuant to section thirty, article ten, chapter five of this code. The member may request in writing to have his or her accumulated contributions and employer contributions from covered employment in the Public Employees Retirement System transferred to the plan. If the conditions of this subsection are met, all years of the emergency medical services officer’s covered employment shall be counted as years of service for the purposes of this article.

(d) Any emergency medical services officer employed in covered employment on the effective date of this article who has timely elected to transfer into this plan as provided in subsection
(b) of this section shall be given credited service at the time of transfer for all credited service then standing to the emergency medical services officer’s service credit in the Public Employees Retirement System regardless of whether the credited service (as that term is defined in section two, article ten, chapter five of this code) was earned as an emergency medical services officer. All credited service standing to the transferring emergency medical services officer’s credit in the Public Employees Retirement System at the time of transfer into this plan shall be transferred into the plan created by this article and the transferring emergency medical services officer shall be given the same credit for the purposes of this article for all service transferred from the Public Employees Retirement System as that transferring emergency medical services officer would have received from the Public Employees Retirement System as if the transfer had not occurred. In connection with each transferring emergency medical services officer receiving credit for prior employment as provided in this subsection, a transfer from the Public Employees Retirement System to this plan shall be made pursuant to the procedures described in this article: Provided, That any member of this plan who has elected to transfer from the Public Employees Retirement System into this plan pursuant to subsection (b) of this section may not, after having transferred into and becoming an active member of this plan, reinstate to his or her credit in this plan any service credit relating to periods in which the member was not in covered employment as an emergency medical services officer and which service was withdrawn from the Public Employees Retirement System prior to his or her elective transfer into this plan.

(e) Once made, the election made under this section is irrevocable. All emergency medical services officers employed by an employer which is a participating public employer of the Public Employees Retirement System after the effective date and emergency medical services officers electing to become
members as described in this section shall be members as a
condition of employment and shall make the contributions
required by this article.

(f) Notwithstanding any other provisions of this article, any
individual who is a leased employee is not eligible to participate
in the plan. For purposes of this plan, a "leased employee"
means any individual who performs services as an independent
contractor or pursuant to an agreement with an employee leasing
organization or similar organization. If a question arises
regarding the status of an individual as a leased employee, the
board has final power to decide the question.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-13. Membership in retirement system; cessation of
membership; reinstatement of withdrawn service.

The membership of the retirement system shall consist of the
following:

(a) New entrants, whose membership in the system is
compulsory upon employment as teachers and nonteachers:
Provided, That any teaching member or nonteaching member, as
defined in section three of this article, who has concurrent
employment in an additional job or jobs which would require the
teaching member or nonteaching member to be a member of the
West Virginia Deputy Sheriff Retirement System, the West
Virginia Municipal Police Officers and Firefighters Retirement
System or the West Virginia Emergency Medical Services
Retirement System shall abide by the concurrent employment
statutory provisions of said retirement system and shall
participate in only one retirement system administered by the
retirement board.
(b) The membership of the retirement system shall not include any person who is an active member of or who has been retired by the West Virginia Public Employees Retirement System, the judge's retirement system, or the retirement system of the West Virginia State Police or the supplemental retirement system as provided in section four-a, article twenty-three of this chapter. The membership of any person in the retirement system ceases: (1) Upon the withdrawal of accumulated contributions after the cessation of service; (2) upon effective retirement date; (3) at death; or (4) upon the date, if any, when after the cessation of service, the outstanding balance of any loan obtained by the member pursuant to section thirty-four of this article or section five, article seven-d of this chapter, plus accrued interest, equals or exceeds the member's accumulated contributions.

(c) Any former member of the retirement system who has withdrawn accumulated contributions but subsequently reenters the retirement system may repay to the retirement fund the amount withdrawn, plus interest at a rate set by the board, compounded annually from the date of withdrawal to the date of repayment: Provided, That no repayment may be made until the former member has completed two years of contributory service after reentry; and the member shall be accorded all the rights to prior service and experience as were held at the time of withdrawal of the accumulated contributions: Provided, however, That no withdrawn service may be reinstated that has been transferred to another retirement system from which the member is currently or will in the future draw benefits based on the same service. The interest paid shall be deposited in the reserve fund.

(d) No member is eligible for prior service credit unless he or she is eligible for prior service pension, as prescribed by section twenty-two of this article; however, a new entrant who becomes a present teacher as provided in this subdivision shall be considered eligible for prior service pension upon retirement.
(e) Any individual who is a leased employee is not eligible to participate in the system. For purposes of this system, a "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 power to decide the question.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

John B. McClellan  
Chairman, House Committee

Mark D. Hamrick  
Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Stephan D.Heyman  
Clerk of the House of Delegates

Clarence Don Goodman  
Speaker of the House of Delegates

WILLIAM P. BANNISTER  
President of the Senate

The within approved this the ___ day of _____, 2015.

[Signature]
Governor