

Senate Bill No. 312

(By Senators Kessler (Acting President and Klempa)

[Introduced January 27, 2011; referred to the Committee on
Pensions; and then to the Committee on Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §5-10-25 of the Code of West Virginia,
1931, as amended, relating to the Public Employees Retirement
System; and preventing reduction of disability pensions at age
sixty-five.

Be it enacted by the Legislature of West Virginia:

That §5-10-25 of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.**§5-10-25. Disability retirement.**

(a) Upon the application of a member or former member of the
retirement system, or his or her present or past employing
authority, any member or former member who is in the employ of a
participating public employer or was in the employ of a
participating public employer on a date which is twelve months or
less from the date upon which the former member became
incapacitated, who has ten or more years of credited service of

1 which three years is contributing service, and who becomes totally
2 and permanently incapacitated for employment, by reason of a
3 personal injury or disease, may be retired by the board if after a
4 medical examination of the ~~said~~ member or former member made by or
5 under the direction of a medical committee consisting of two
6 physicians, one of whom ~~shall be~~ is named by the board, and one by
7 the ~~said~~ member or former member, the ~~said~~ medical committee
8 reports, in writing, to the board that the ~~said~~ member or former
9 member is physically or mentally totally incapacitated for
10 employment, that ~~such~~ the incapacity will probably be permanent,
11 and that the ~~said~~ member or former member should be retired. In
12 the event the two above-mentioned examining physicians do not agree
13 in their findings, then the board may, at its discretion, appoint
14 a third physician to examine ~~said~~ the member or former member and,
15 based upon the third physician's report in writing, the board may
16 retire ~~said~~ the member or former member. A former member who has
17 not been employed by a participating public employer may receive
18 disability retirement under the provisions of this subsection if,
19 in the opinion of the medical committee, the incapacity occurred
20 during the time that the former member was employed by a
21 participating public employer and the incapacity otherwise
22 qualifies the former member for retirement under this subsection.

23 (b) A member with less than ten years of credited service
24 shall have the service requirement provided ~~for~~ in subsection (a)
25 above, (including the requirement of three years contributing

1 service) waived in the event: (1) The board finds his or her total
 2 and permanent disability to be the natural and proximate result of
 3 a personal injury or disease arising out of and in the course of
 4 his or her actual performance of duty in the employ of a
 5 participating public employer, and (2) he or she is receiving or
 6 has received workers' compensation benefits on account of ~~such~~ the
 7 physical or mental disability.

8 (c) For any member or former member retiring and any member
 9 retired, as of March 1, 1970, he or she shall receive a straight
 10 life annuity computed according to section twenty-two ~~hereof~~ of
 11 this article and he or she ~~shall have~~ has the right to elect an
 12 option provided ~~for~~ in section twenty-four ~~hereof~~ of this article:
 13 *Provided*, That his or her straight life annuity ~~payable to his or~~
 14 ~~her attainment of age sixty-five years~~ may not be less than fifty
 15 percent of his or her final average salary: ~~and his or her said~~
 16 ~~straight life annuity payable from and after his or her attainment~~
 17 ~~of age sixty-five years may not be less than twenty percent of his~~
 18 ~~or her final average salary~~ *Provided, however*, That his or her
 19 ~~said annuity shall be~~ is subject to section twenty-six ~~hereof~~ of
 20 this article.

NOTE: The purpose of this bill is to prevent a reduction in the annuity of a person who retires with disability retirement at age sixty-five.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

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