

Senate Bill No. 454

(By Senator Barnes)

[Introduced February 7, 2011; referred to the Committee on
Pensions; and then to the Committee on Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §5-10-2 of the Code of West Virginia, 1931, as amended, relating to providing that mental hygiene commissioners are employees under the Public Employees Retirement System and may receive one year of service credit for each year served and prorated service for any partial year served, up to a maximum of fifteen years' credited service.

Be it enacted by the Legislature of West Virginia:

That §5-10-2 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.

§5-10-2. Definitions.

Unless a different meaning is clearly indicated by the context, the following words and phrases as used in this 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

1 regular interest on the contributions;

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

4 (3) "Actuarial equivalent" means a benefit of equal value
5 computed upon the basis of a mortality table and regular interest
6 adopted by the board of Trustees from time to time: *Provided*, That
7 when used in the context of compliance with the federal maximum
8 benefit requirements of Section 415 of the Internal Revenue Code,
9 "actuarial equivalent" shall be computed using the mortality tables
10 and interest rates required to comply with those requirements;

11 (4) "Annuity" means an annual amount payable by the retirement
12 system throughout the life of a person. All annuities shall be
13 paid in equal monthly installments, rounding to the upper cent for
14 any fraction of a cent;

15 (5) "Annuity reserve" means the present value of all payments
16 to be made to a retirant or beneficiary of a retirant on account of
17 any annuity, computed upon the basis of mortality and other tables
18 of experience, and regular interest, adopted by the board of
19 Trustees from time to time;

20 (6) "Beneficiary" means any person, except a retirant, who is
21 entitled to, or will be entitled to, an annuity or other benefit
22 payable by the retirement system;

23 (7) "Board of Trustees" or "board" means the board of Trustees
24 of the West Virginia Consolidated Public Retirement System;

25 (8) "Compensation" means the remuneration paid a member by a
26 participating public employer for personal services rendered by the

1 member to the participating public employer. In the event a
2 member's remuneration is not all paid in money, his or her
3 participating public employer shall fix the value of the portion of
4 the remuneration which is not paid in money;

5 (9) "Contributing service" means service rendered by a member
6 within this state and for which the member made contributions to a
7 public retirement system account of this state, to the extent
8 credited him or her as provided by this article;

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

13 (11) "Employee" means any person who serves regularly as an
14 officer or employee, full time, on a salary basis, whose tenure is
15 not restricted as to temporary or provisional appointment, in the
16 service of, and whose compensation is payable, in whole or in part,
17 by any political subdivision, or an officer or employee whose
18 compensation is calculated on a daily basis and paid monthly or on
19 completion of assignment, including technicians and other personnel
20 employed by the West Virginia National Guard whose compensation, in
21 whole or in part, is paid by the federal government: *Provided,*
22 That an employee of the Legislature whose term of employment is
23 otherwise classified as temporary and who is employed to perform
24 services required by the Legislature for its regular sessions or
25 during the interim between regular sessions and who has been or is
26 employed during regular sessions or during the interim between

1 regular sessions in seven or more consecutive calendar years, as
2 certified by the Clerk of the House in which the employee served,
3 is an employee, any provision to the contrary in this article
4 notwithstanding, and is entitled to credited service in accordance
5 with provisions of section fourteen, article ten, chapter five of
6 this code and: *Provided, however,* That members of the legislative
7 body of any political subdivision and judges of the state Court of
8 Claims are employees receiving one year of service credit for each
9 one-year term served and pro rated service credit for any partial
10 term served, anything contained in this article to the contrary
11 notwithstanding: *Provided, further,* That mental hygiene
12 commissioners are employees receiving one year of service credit
13 for each year served and prorated service credit for any partial
14 year served, any provision to the contrary in this article
15 notwithstanding, and each mental hygiene commissioner may earn a
16 maximum of fifteen years credited service. In any case of doubt as
17 to who is an employee within the meaning of this article, the board
18 of trustees shall decide the question;

19 (12) "Employer error" means an omission, misrepresentation, or
20 violation of relevant provisions of the West Virginia Code or of
21 the West Virginia Code of State Regulations or the relevant
22 provisions of both the West Virginia Code and of the West Virginia
23 Code of State Regulations by the participating public employer that
24 has resulted in an underpayment or overpayment of contributions
25 required. A deliberate act contrary to the provisions of this
26 section by a participating public employer does not constitute

1 employer error.

2 (13) "Final average salary" means either of the following:
3 *Provided*, That salaries for determining benefits during any
4 determination period may not exceed the maximum compensation
5 allowed as adjusted for cost of living in accordance with section
6 seven, article ten-d, chapter five of this code and Section
7 401(a)(17) of the Internal Revenue Code:

8 (A) The average of the highest annual compensation received by
9 a member (including a member of the Legislature who participates in
10 the retirement system in the year 1971 or thereafter), during any
11 period of three consecutive years of credited service contained
12 within the member's ten years of credited service immediately
13 preceding the date his or her employment with a participating
14 public employer last terminated; or (B) if the member has less than
15 five years of credited service, the average of the annual rate of
16 compensation received by the member during his or her total years
17 of credited service; and in determining the annual compensation,
18 under either paragraph (A) or (B) of this subdivision, of a member
19 of the Legislature who participates in the retirement system as a
20 member of the Legislature in the year 1971, or in any year
21 thereafter, his or her actual legislative compensation (the total
22 of all compensation paid under sections two, three, four and five,
23 article two-a, chapter four of this code), in the year 1971, or in
24 any year thereafter, plus any other compensation he or she receives
25 in any year from any other participating public employer including
26 the State of West Virginia, without any multiple in excess of one

1 times his or her actual legislative compensation and other
2 compensation, shall be used: *Provided*, That "final average salary"
3 for any former member of the Legislature or for any member of the
4 Legislature in the year 1971, who, in either event, was a member of
5 the Legislature on November 30, 1968, or November 30, 1969, or
6 November 30, 1970, or on November 30 in any one or more of those
7 three years and who participated in the retirement system as a
8 member of the Legislature in any one or more of those years means:
9 (i) Either (notwithstanding the provisions of this subdivision
10 preceding this proviso) \$1,500 multiplied by eight, plus the
11 highest other compensation the former member or member received in
12 any one of the three years from any other participating public
13 employer including the State of West Virginia; or (ii) "final
14 average salary" determined in accordance with paragraph (A) or (B)
15 of this subdivision, whichever computation produces the higher
16 final average salary (and in determining the annual compensation
17 under subparagraph (ii) of this proviso, the legislative
18 compensation of the former member shall be computed on the basis of
19 \$1,500 multiplied by eight, and the legislative compensation of the
20 member shall be computed on the basis set forth in the provisions
21 of this subdivision immediately preceding this proviso or on the
22 basis of \$1,500 multiplied by eight, whichever computation as to
23 the member produces the higher annual compensation);

24 (14) "Internal Revenue Code" means the Internal Revenue Code
25 of 1986, as amended, codified at Title 26 of the United States
26 Code;

1 (15) "Limited credited service" means service by employees of
2 the West Virginia Educational Broadcasting Authority, in the
3 employment of West Virginia University, during a period when the
4 employee made contributions to another retirement system, as
5 required by West Virginia University, and did not make
6 contributions to the Public Employees Retirement System: *Provided,*
7 That while limited credited service can be used for the formula set
8 forth in subsection (e), section twenty-one of this article, it may
9 not be used to increase benefits calculated under section twenty-
10 two of this article;

11 (16) "Member" means any person who has accumulated
12 contributions standing to his or her credit in the members' deposit
13 fund;

14 (17) "Participating public employer" means the State of West
15 Virginia, any board, commission, department, institution or
16 spending unit, and includes any agency created by rule of the
17 Supreme Court of Appeals having full-time employees, which for the
18 purposes of this article is considered a department of state
19 government; and any political subdivision in the state which has
20 elected to cover its employees, as defined in this article, under
21 the West Virginia Public Employees Retirement System;

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

24 (19) "Political subdivision" means the State of West Virginia,
25 a county, city or town in the state; a school corporation or
26 corporate unit; any separate corporation or instrumentality

1 established by one or more counties, cities or towns, as permitted
2 by law; any corporation or instrumentality supported in most part
3 by counties, cities or towns; and any public corporation charged by
4 law with the performance of a governmental function and whose
5 jurisdiction is coextensive with one or more counties, cities or
6 towns: *Provided*, That any mental health agency participating in
7 the Public Employees Retirement System before July 1, 1997, is
8 considered a political subdivision solely for the purpose of
9 permitting those employees who are members of the Public Employees
10 Retirement System to remain members and continue to participate in
11 the retirement system at their option after July 1, 1997:
12 *Provided, however*, That the Regional Community Policing Institute
13 which participated in the Public Employees Retirement System before
14 July 1, 2000, is considered a political subdivision solely for the
15 purpose of permitting those employees who are members of the Public
16 Employees Retirement System to remain members and continue to
17 participate in the Public Employees Retirement System after July 1,
18 2000;

19 (20) "Prior service" means service rendered prior to July 1,
20 1961, to the extent credited a member as provided in this article;

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

24 (22) "Required beginning date" means April 1 of the calendar
25 year following the later of: (A) The calendar year in which the
26 member attains age seventy and one-half years of age; or (B) the

1 calendar year in which a member who has attained the age seventy
2 and one-half years of age and who ceases providing service covered
3 under this system to a participating employer;

4 (23) "Retirant" means any member who commences an annuity
5 payable by the retirement system;

6 (24) "Retirement" means a member's withdrawal from the employ
7 of a participating public employer and the commencement of an
8 annuity by the retirement system;

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

12 (26) "Retroactive service" means: (1) Service between July 1,
13 1961, and the date an employer decides to become a participating
14 member of the Public Employees Retirement System; (2) service prior
15 to July 1, 1961, for which the employee is not entitled to prior
16 service at no cost in accordance with 162 CSR 5.13; and (3) service
17 of any member of a legislative body or employees of the State
18 Legislature whose term of employment is otherwise classified as
19 temporary for which the employee is eligible, but for which the
20 employee did not elect to participate at that time;

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

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

NOTE: The purpose of this bill is to provide that mental

hygiene commissioners are employees under the Public Employees Retirement System and may receive one year of service credit for each year served and pro rated service for any partial year served, up to a maximum of fifteen years credited service.

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