

COMMITTEE SUBSTITUTE

FOR

**H. B. 2921**

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(BY DELEGATES SWARTZMILLER, BOGGS, ENNIS,  
PERRY AND PETHTEL)

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(Originating in the Committee on Finance)  
[February 15, 2011]

A BILL to amend and reenact §5-10-2 of the Code of West Virginia, 1931, as amended, relating to redefining final average salary.

*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.**

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:

4 (1) “Accumulated contributions” means the sum of all  
5 amounts deducted from the compensations of a member and  
6 credited to his or her individual account in the members’  
7 deposit fund, together with regular interest on the  
8 contributions;

9 (2) “Accumulated net benefit” means the aggregate  
10 amount of all benefits paid to or on behalf of a retired  
11 member;

12 (3) “Actuarial equivalent” means a benefit of equal value  
13 computed upon the basis of a mortality table and regular  
14 interest adopted by the board of Trustees from time to time:  
15 *Provided*, That when used in the context of compliance with  
16 the federal maximum benefit requirements of Section 415 of  
17 the Internal Revenue Code, “actuarial equivalent” shall be  
18 computed using the mortality tables and interest rates  
19 required to comply with those requirements;

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

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

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

32 (7) "Board of Trustees" or "board" means the board of  
33 Trustees of the West Virginia Consolidated Public  
34 Retirement System;

35 (8) "Compensation" means the remuneration paid a  
36 member by a participating public employer for personal  
37 services rendered by the member to the participating public  
38 employer. In the event a member's remuneration is not all

39 paid in money, his or her participating public employer shall  
40 fix the value of the portion of the remuneration which is not  
41 paid in money;

42 (9) “Contributing service” means service rendered by a  
43 member within this state and for which the member made  
44 contributions to a public retirement system account of this  
45 state, to the extent credited him or her as provided by this  
46 article;

47 (10) “Credited service” means the sum of a member’s  
48 prior service credit, military service credit, workers’  
49 compensation service credit and contributing service credit  
50 standing to his or her credit as provided in this article;

51 (11) “Employee” means any person who serves regularly  
52 as an officer or employee, full time, on a salary basis, whose  
53 tenure is not restricted as to temporary or provisional  
54 appointment, in the service of, and whose compensation is  
55 payable, in whole or in part, by any political subdivision, or  
56 an officer or employee whose compensation is calculated on  
57 a daily basis and paid monthly or on completion of

58 assignment, including technicians and other personnel  
59 employed by the West Virginia National Guard whose  
60 compensation, in whole or in part, is paid by the federal  
61 government: *Provided*, That an employee of the Legislature  
62 whose term of employment is otherwise classified as  
63 temporary and who is employed to perform services required  
64 by the Legislature for its regular sessions or during the  
65 interim between regular sessions and who has been or is  
66 employed during regular sessions or during the interim  
67 between regular sessions in seven or more consecutive  
68 calendar years, as certified by the Clerk of the House in  
69 which the employee served, is an employee, any provision to  
70 the contrary in this article notwithstanding, and is entitled to  
71 credited service in accordance with provisions of section  
72 fourteen, article ten, chapter five of this code and: *Provided*,  
73 *however*, That members of the legislative body of any  
74 political subdivision and judges of the state Court of Claims  
75 are employees receiving one year of service credit for each  
76 one-year term served and pro rated service credit for any

77 partial term served, anything contained in this article to the  
78 contrary notwithstanding. In any case of doubt as to who is  
79 an employee within the meaning of this article, the board of  
80 trustees shall decide the question;

81 (12) “Employer error” means an omission,  
82 misrepresentation, or violation of relevant provisions of the  
83 West Virginia Code or of the West Virginia Code of State  
84 Regulations or the relevant provisions of both the West  
85 Virginia Code and of the West Virginia Code of State  
86 Regulations by the participating public employer that has  
87 resulted in an underpayment or overpayment of contributions  
88 required. A deliberate act contrary to the provisions of this  
89 section by a participating public employer does not constitute  
90 employer error.

91 (13) “Final average salary” means either of the following:  
92 *Provided*, That salaries for determining benefits during any  
93 determination period may not exceed the maximum  
94 compensation allowed as adjusted for cost of living in  
95 accordance with section seven, article ten-d, chapter five of

96 this code and Section 401(a)(17) of the Internal Revenue  
97 Code: Provided, however, That the provisions of section  
98 twenty-two-h of this article are not applicable to the  
99 amendments made to this subdivision during the 2011  
100 regular session of the Legislature.

101 (A) The average of the highest annual compensation  
102 received by a member (including a member of the  
103 Legislature who participates in the retirement system in the  
104 year 1971 or thereafter), during any period of three  
105 consecutive years of credited service contained within the  
106 member's ~~ten~~ fifteen years of credited service immediately  
107 preceding the date his or her employment with a participating  
108 public employer last terminated; or (B) if the member has  
109 less than five years of credited service, the average of the  
110 annual rate of compensation received by the member during  
111 his or her total years of credited service; and in determining  
112 the annual compensation, under either paragraph (A) or (B)  
113 of this subdivision, of a member of the Legislature who  
114 participates in the retirement system as a member of the

115 Legislature in the year 1971, or in any year thereafter, his or  
116 her actual legislative compensation (the total of all  
117 compensation paid under sections two, three, four and five,  
118 article two-a, chapter four of this code), in the year 1971, or  
119 in any year thereafter, plus any other compensation he or she  
120 receives in any year from any other participating public  
121 employer including the State of West Virginia, without any  
122 multiple in excess of one times his or her actual legislative  
123 compensation and other compensation, shall be used:  
124 *Provided*, That “final average salary” for any former member  
125 of the Legislature or for any member of the Legislature in the  
126 year 1971, who, in either event, was a member of the  
127 Legislature on November 30, 1968, or November 30, 1969,  
128 or November 30, 1970, or on November 30 in any one or  
129 more of those three years and who participated in the  
130 retirement system as a member of the Legislature in any one  
131 or more of those years means: (i) Either (notwithstanding the  
132 provisions of this subdivision preceding this proviso) \$1,500  
133 multiplied by eight, plus the highest other compensation the



134 former member or member received in any one of the three  
135 years from any other participating public employer including  
136 the State of West Virginia; or (ii) “final average salary”  
137 determined in accordance with paragraph (A) or (B) of this  
138 subdivision, whichever computation produces the higher  
139 final average salary (and in determining the annual  
140 compensation under subparagraph (ii) of this proviso, the  
141 legislative compensation of the former member shall be  
142 computed on the basis of \$1,500 multiplied by eight, and the  
143 legislative compensation of the member shall be computed  
144 on the basis set forth in the provisions of this subdivision  
145 immediately preceding this proviso or on the basis of \$1,500  
146 multiplied by eight, whichever computation as to the member  
147 produces the higher annual compensation);

148 (14) “Internal Revenue Code” means the Internal  
149 Revenue Code of 1986, as amended, codified at Title 26 of  
150 the United States Code;

151 (15) “Limited credited service” means service by  
152 employees of the West Virginia Educational Broadcasting

153 Authority, in the employment of West Virginia University,  
154 during a period when the employee made contributions to  
155 another retirement system, as required by West Virginia  
156 University, and did not make contributions to the Public  
157 Employees Retirement System: *Provided*, That while limited  
158 credited service can be used for the formula set forth in  
159 subsection (e), section twenty-one of this article, it may not  
160 be used to increase benefits calculated under section twenty-  
161 two of this article;

162 (16) “Member” means any person who has accumulated  
163 contributions standing to his or her credit in the members’  
164 deposit fund;

165 (17) “Participating public employer” means the State of  
166 West Virginia, any board, commission, department,  
167 institution or spending unit, and includes any agency created  
168 by rule of the Supreme Court of Appeals having full-time  
169 employees, which for the purposes of this article is  
170 considered a department of state government; and any  
171 political subdivision in the state which has elected to cover

172 its employees, as defined in this article, under the West  
173 Virginia Public Employees Retirement System;

174 (18) “Plan year” means the same as referenced in section  
175 forty-two of this article;

176 (19) “Political subdivision” means the State of West  
177 Virginia, a county, city or town in the state; a school  
178 corporation or corporate unit; any separate corporation or  
179 instrumentality established by one or more counties, cities or  
180 towns, as permitted by law; any corporation or  
181 instrumentality supported in most part by counties, cities or  
182 towns; and any public corporation charged by law with the  
183 performance of a governmental function and whose  
184 jurisdiction is coextensive with one or more counties, cities  
185 or towns: *Provided*, That any mental health agency  
186 participating in the Public Employees Retirement System  
187 before July 1, 1997, is considered a political subdivision  
188 solely for the purpose of permitting those employees who are  
189 members of the Public Employees Retirement System to  
190 remain members and continue to participate in the retirement

191 system at their option after July 1, 1997: *Provided, however,*  
192 That the Regional Community Policing Institute which  
193 participated in the Public Employees Retirement System  
194 before July 1, 2000, is considered a political subdivision  
195 solely for the purpose of permitting those employees who are  
196 members of the Public Employees Retirement System to  
197 remain members and continue to participate in the Public  
198 Employees Retirement System after July 1, 2000;

199 (20) “Prior service” means service rendered prior to July  
200 1, 1961, to the extent credited a member as provided in this  
201 article;

202 (21) “Regular interest” means the rate or rates of interest  
203 per annum, compounded annually, as the board of Trustees  
204 adopts from time to time;

205 (22) “Required beginning date” means April 1 of the  
206 calendar year following the later of: (A) The calendar year  
207 in which the member attains age seventy and one-half years  
208 of age; or (B) the calendar year in which a member who has  
209 attained the age seventy and one-half years of age and who

210 ceases providing service covered under this system to a  
211 participating employer;

212 (23) “Retirant” means any member who commences an  
213 annuity payable by the retirement system;

214 (24) “Retirement” means a member’s withdrawal from  
215 the employ of a participating public employer and the  
216 commencement of an annuity by the retirement system;

217 (25) “Retirement system” or “system” means the West  
218 Virginia Public Employees Retirement System created and  
219 established by this article;

220 (26) “Retroactive service” means: (1) Service between  
221 July 1, 1961, and the date an employer decides to become a  
222 participating member of the Public Employees Retirement  
223 System; (2) service prior to July 1, 1961, for which the  
224 employee is not entitled to prior service at no cost in  
225 accordance with 162 CSR 5.13; and (3) service of any  
226 member of a legislative body or employees of the State  
227 Legislature whose term of employment is otherwise  
228 classified as temporary for which the employee is eligible,

229 but for which the employee did not elect to participate at that  
230 time;

231 (27) “Service” means personal service rendered to a  
232 participating public employer by an employee of a  
233 participating public employer; and

234 (28) “State” means the State of West Virginia.