

**Senate Bill No. 469**

(By Senators Jenkins, Kessler (Mr. President), Chafin, McCabe and  
Plymale)

[Introduced March 6, 2013; referred to the Committee on Pensions;  
and then to the Committee on Finance.]

A BILL to amend and reenact §5-10-14 and §5-10-18 of the Code of  
West Virginia, 1931, as amended, all relating to service  
credit; retroactive service credit; and reinstatement interest  
in the Public Employees Retirement System.

*Be it enacted by the Legislature of West Virginia:*

That §5-10-14 and §5-10-18 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.**

**§5-10-14. Service credit; retroactive provisions.**

(a) The Board of Trustees shall credit each member with the  
prior service and contributing service to which he or she is  
entitled based upon rules adopted by the board of trustees and  
based upon the following:

(1) In no event may less than ten days of service rendered by

1 a member in any calendar month be credited as a month of service:  
2 *Provided*, That for employees of the State Legislature whose term of  
3 employment is otherwise classified as temporary and who are  
4 employed to perform services required by the Legislature for its  
5 regular sessions or during the interim between regular sessions and  
6 who have been or are so employed during regular sessions or during  
7 the interim between regular sessions in seven consecutive calendar  
8 years, service credit of one month shall be awarded for each ten  
9 days employed in the interim between regular sessions, which  
10 interim days shall be cumulatively calculated so that any ten days,  
11 regardless of calendar month or year, shall be calculated toward  
12 any award of one month of service credit;

13 (2) Except for hourly employees, ten or more months of service  
14 credit earned in any calendar year shall be credited as a year of  
15 service: *Provided*, That no more than one year of service may be  
16 credited to any member for all service rendered by him or her in  
17 any calendar year and no days may be carried over by a member from  
18 one calendar year to another calendar year where the member has  
19 received a full-year credit for that year; and

20 (3) Service may be credited to a member who was employed by a  
21 political subdivision if his or her employment occurred within a  
22 period of thirty years immediately preceding the date the political  
23 subdivision became a participating public employer.

24 (b) The Board of Trustees shall grant service credit to

1 employees of boards of health, the Clerk of the House of Delegates  
2 and the Clerk of the State Senate or to any former and present  
3 member of the State Teachers Retirement System who have been  
4 contributing members in the Public Employees Retirement System for  
5 more than three years, for service previously credited by the State  
6 Teachers Retirement System and shall require the transfer of the  
7 member's accumulated contributions to the system and shall also  
8 require a deposit, with reinstatement interest as set forth in 162  
9 CSR 7-4, of any withdrawals of contributions any time prior to the  
10 member's retirement. Repayment of withdrawals shall be as directed  
11 by the Board of Trustees.

12 (c) Court reporters who are acting in an official capacity,  
13 although paid by funds other than the county commission or State  
14 Auditor, may receive prior service credit for time served in that  
15 capacity.

16 (d) Active members who previously worked in CETA  
17 (Comprehensive Employment and Training Act) may receive service  
18 credit for time served in that capacity: *Provided*, That in order to  
19 receive service credit under the provisions of this subsection the  
20 following conditions must be met: (1) The member must have moved  
21 from temporary employment with the participating employer to  
22 permanent full-time employment with the participating employer  
23 within one hundred twenty days following the termination of the  
24 member's CETA employment; (2) the board must receive evidence that

1 establishes to a reasonable degree of certainty as determined by  
2 the board that the member previously worked in CETA; and (3) the  
3 member shall pay to the board an amount equal to the employer and  
4 employee contribution plus interest at the amount set by the board  
5 for the amount of service credit sought pursuant to this  
6 subsection: *Provided, however,* That the maximum service credit that  
7 may be obtained under the provisions of this subsection is two  
8 years: *Provided further,* That a member must apply and pay for the  
9 service credit allowed under this subsection and provide all  
10 necessary documentation by March 31, 2003: *And provided further,*  
11 That the board shall exercise due diligence to notify affected  
12 employees of the provisions of this subsection.

13 (e) (1) Employees of the State Legislature whose terms of  
14 employment are otherwise classified as temporary and who are  
15 employed to perform services required by the Legislature for its  
16 regular sessions or during the interim time between regular  
17 sessions shall receive service credit for the time served in that  
18 capacity in accordance with the following. For purposes of this  
19 section, the term "regular session" means day one through day sixty  
20 of a sixty-day legislative session or day one through day thirty of  
21 a thirty-day legislative session. Employees of the State  
22 Legislature whose term of employment is otherwise classified as  
23 temporary and who are employed to perform services required by the  
24 Legislature for its regular sessions or during the interim time

1 between regular sessions and who have been or are employed during  
2 regular sessions or during the interim time between regular  
3 sessions in seven consecutive calendar years, as certified by the  
4 clerk of the house in which the employee served, shall receive  
5 service credit of six months for all regular sessions served, as  
6 certified by the clerk of the house in which the employee served,  
7 or shall receive service credit of three months for each regular  
8 thirty-day session served prior to 1971: *Provided*, That employees  
9 of the State Legislature whose term of employment is otherwise  
10 classified as temporary and who are employed to perform services  
11 required by the Legislature for its regular sessions and who have  
12 been or are employed during the regular sessions in thirteen  
13 consecutive calendar years as either temporary employees or full-  
14 time employees or a combination thereof, as certified by the clerk  
15 of the house in which the employee served, shall receive a service  
16 credit of twelve months for each regular session served, as  
17 certified by the clerk of the house in which the employee served:  
18 *Provided, however*, That the amendments made to this subsection  
19 during the 2002 regular session of the Legislature only apply to  
20 employees of the Legislature who are employed by the Legislature as  
21 either temporary employees or full-time employees as of January 1,  
22 2002, or who become employed by the Legislature as temporary or  
23 full-time employees for the first time after January 1, 2002.  
24 Employees of the State Legislature whose terms of employment are

1 otherwise classified as temporary and who are employed to perform  
2 services required by the Legislature during the interim time  
3 between regular sessions shall receive service credit of one month  
4 for each ten days served during the interim between regular  
5 sessions, which interim days shall be cumulatively calculated so  
6 that any ten days, regardless of calendar month or year, shall be  
7 calculated toward any award of one month of service credit:  
8 *Provided further,* That no more than one year of service may be  
9 credited to any temporary legislative employee for all service  
10 rendered by that employee in any calendar year and no days may be  
11 carried over by a temporary legislative employee from one calendar  
12 year to another calendar year where the member has received a full  
13 year credit for that year. Service credit awarded for legislative  
14 employment pursuant to this section shall be used for the purpose  
15 of calculating that member's retirement annuity, pursuant to  
16 section twenty-two of this article, and determining eligibility as  
17 it relates to credited service, notwithstanding any other provision  
18 of this section. Certification of employment for a complete  
19 legislative session and for interim days shall be determined by the  
20 clerk of the house in which the employee served, based upon  
21 employment records. Service of fifty-five days of a regular session  
22 constitutes an absolute presumption of service for a complete  
23 legislative session and service of twenty-seven days of a thirty-  
24 day regular session occurring prior to 1971 constitutes an absolute

1 presumption of service for a complete legislative session. Once a  
2 legislative employee has been employed during regular sessions for  
3 seven consecutive years or has become a full-time employee of the  
4 Legislature, that employee shall receive the service credit  
5 provided in this section for all regular and interim sessions and  
6 interim days worked by that employee, as certified by the clerk of  
7 the house in which the employee served, regardless of when the  
8 session or interim legislative employment occurred: *And provided*  
9 *further*, That regular session legislative employment for seven  
10 consecutive years may be served in either or both houses of the  
11 Legislature.

12 (2) For purposes of this section, employees of the Joint  
13 Committee on Government and Finance are entitled to the same  
14 benefits as employees of the House of Delegates or the Senate:  
15 *Provided*, That for joint committee employees whose terms of  
16 employment are otherwise classified as temporary, employment in  
17 preparation for regular sessions, certified by the legislative  
18 manager as required by the Legislature for its regular sessions,  
19 shall be considered the same as employment during regular sessions  
20 to meet service credit requirements for sessions served.

21 (f) Any employee may purchase retroactive service credit for  
22 periods of employment in which contributions were not deducted from  
23 the employee's pay. In the purchase of service credit for  
24 employment prior to the year 1989 in any department, including the

1 Legislature, which operated from the General Revenue Fund and which  
2 was not expressly excluded from budget appropriations in which  
3 blanket appropriations were made for the state's share of public  
4 employees' retirement coverage in the years prior to the year 1989,  
5 the employee shall pay the employee's share. Other employees shall  
6 pay the state's share and the employee's share to purchase  
7 retroactive service credit. Where an employee purchases service  
8 credit for employment which occurred after the year 1988, that  
9 employee shall pay for the employee's share and the employer shall  
10 pay its share for the purchase of retroactive service credit:  
11 *Provided*, That no legislative employee and no current or former  
12 member of the Legislature may be required to pay any interest or  
13 penalty upon the purchase of retroactive service credit in  
14 accordance with the provisions of this section where the employee  
15 was not eligible to become a member during the years for which he  
16 or she is purchasing retroactive credit or had the employee  
17 attempted to contribute to the system during the years for which he  
18 or she is purchasing retroactive service credit and such  
19 contributions would have been refused by the board: *Provided*,  
20 *however*, That a current legislative employee purchasing retroactive  
21 credit under this section does so within twenty-four months of  
22 ~~becoming a member of~~ beginning contributions to the retirement  
23 system or no later than December 31, ~~2008~~ 2013, whichever occurs  
24 last: *Provided further*, That once a legislative employee becomes a



1 member of the retirement system, he or she may purchase retroactive  
2 service credit for any time he or she was employed by the  
3 Legislature and did not receive service credit. Any service credit  
4 purchased shall be credited as six months for each sixty-day  
5 session worked, three months for each thirty-day session worked or  
6 twelve months for each sixty-day session for legislative employees  
7 who have been employed during regular sessions in thirteen  
8 consecutive calendar years, as certified by the clerk of the house  
9 in which the employee served, and credit for interim employment as  
10 provided in this subsection: *And provided further,* That this  
11 legislative service credit shall also be used for months of service  
12 in order to meet the sixty-month requirement for the payments of a  
13 temporary legislative employee member's retirement annuity: *And*  
14 *provided further,* That no legislative employee may be required to  
15 pay for any service credit beyond the actual time he or she worked  
16 regardless of the service credit which is credited to him or her  
17 pursuant to this section: *And provided further,* That any  
18 legislative employee may request a recalculation of his or her  
19 credited service to comply with the provisions of this section at  
20 any time.

21 (g)(1) Notwithstanding any provision to the contrary, the  
22 seven consecutive calendar years requirement and the thirteen  
23 consecutive calendar years requirement and the service credit  
24 requirements set forth in this section shall be applied

1 retroactively to all periods of legislative employment prior to the  
2 passage of this section, including any periods of legislative  
3 employment occurring before the seven consecutive and thirteen  
4 consecutive calendar years referenced in this section: *Provided,*  
5 That the employee has not retired prior to the effective date of  
6 the amendments made to this section in the 2002 regular session of  
7 the Legislature.

8       (2) The requirement of seven consecutive years and the  
9 requirement of thirteen consecutive years apply retroactively to  
10 all legislative employment prior to the effective date of the 2006  
11 amendments to this section.

12       (h) The Board of Trustees shall grant service credit to any  
13 former or present member of the State Police Death, Disability and  
14 Retirement Fund who has been a contributing member of this system  
15 for more than three years for service previously credited by the  
16 State Police Death, Disability and Retirement Fund if the member  
17 transfers all of his or her contributions ~~to~~ from the State Police  
18 Death, Disability and Retirement Fund to the system created in this  
19 article, including repayment of any amounts withdrawn any time from  
20 the State Police Death, Disability and Retirement Fund by the  
21 member seeking the transfer allowed in this subsection: *Provided,*  
22 That there shall be added by the member to the amounts transferred  
23 or repaid under this subsection an amount which shall be sufficient  
24 to equal the contributions he or she would have made had the member

1 been under the Public Employees Retirement System during the period  
2 of his or her membership in the State Police Death, Disability and  
3 Retirement Fund, excluding contributions on lump sum payment for  
4 annual leave, plus interest at a rate determined by the board.

5 (i) The provisions of section twenty-two-h of this article are  
6 not applicable to the amendments made to this section during the  
7 2006 regular session.

8 **§5-10-18. Termination of membership; reentry.**

9 (a) When a member of the retirement system retires, withdraws  
10 his or her accumulated contributions, or dies, he or she ceases to  
11 be a member. When a member leaves the employ of a participating  
12 public employer for any reason other than retirement or death, and  
13 withdraws his or her accumulated contributions from the system, he  
14 or she ceases to be a member and forfeits service credited to him  
15 or her at that time. If he or she becomes reemployed by a  
16 participating public employer he or she shall be reinstated as a  
17 member of the retirement system and his or her credited service  
18 last forfeited by him or her shall be restored to his or her  
19 credit: *Provided*, That he or she must be reemployed for a period of  
20 one year or longer to have the service restored: *Provided, however*,  
21 That he or she returns to the members' deposit fund the amount, if  
22 any, he or she withdrew from the fund, together with ~~regular~~  
23 reinstatement interest as set forth in 162 CSR 7-4 on the withdrawn  
24 amount from the date of withdrawal to the date of repayment, and

1 that the repayment begins within two years of the return to  
2 employment and that the full amount is repaid within five years of  
3 the return to employment. Any failure to repay the full amount in  
4 accordance with this section shall be treated as an overpayment or  
5 excess contribution subject to section forty-four of this article.

6 (b) The Prester Center for Mental Health Services, Valley  
7 Comprehensive Mental Health Center, Westbrook Health Services and  
8 Eastern Panhandle Mental Health Center, and their successors in  
9 interest, shall provide for their employees a pension plan in lieu  
10 of the Public Employees Retirement System during the existence of  
11 the named mental health centers and their successors in interest.

12 (c) The administrative bodies of the Prester Center for  
13 Mental Health Services, Valley Comprehensive Mental Health Center,  
14 Westbrook Health Services and Eastern Panhandle Mental Health  
15 Center shall, on or before May 1, 1997, give written notice to each  
16 employee who is a member of the Public Employees Retirement System  
17 of the option to withdraw from or remain in the system. The notice  
18 shall include a copy of this section and a statement explaining the  
19 member's options regarding membership. The notice shall include a  
20 statement in plain language giving a full explanation and actuarial  
21 projection figures in support of the explanation regarding the  
22 individual member's current account balance, vested and nonvested,  
23 and his or her projected return upon remaining in the Public  
24 Employees Retirement System until retirement, disability or death,

1 in comparison with the projected return upon withdrawing from the  
2 Public Employees Retirement System and joining a private pension  
3 plan provided by the Community Mental Health Center and remaining  
4 therein until retirement, disability or death. The administrative  
5 bodies shall keep in their respective records a permanent record of  
6 each employee's signature confirming receipt of the notice.

7 (d) Effective March 1, 2003, and ending December 31, 2004, any  
8 member may purchase credited service previously forfeited by him or  
9 her and the credited service shall be restored to his or her  
10 credit: *Provided*, That he or she returns to the members' deposit  
11 fund the amount, if any, he or she withdrew from the fund, together  
12 with interest on the withdrawn amount from the date of withdrawal  
13 to the date of repayment at a rate to be determined by the board.  
14 The repayment under this section may be made by lump sum or repaid  
15 over a period of time not to exceed sixty months. Where the member  
16 elects to repay the required amount other than by lump sum, the  
17 member is required to pay interest at the rate determined by the  
18 board until all sums are fully repaid.

19 (e) Effective July 1, 2005, and ending December 31, 2006, any  
20 emergency services personnel may purchase service credit for the  
21 time period beginning January 1, 1990, and ending December 31,  
22 1995: *Provided*, That the person was employed as an emergency  
23 service person in this state for that time period: *Provided*,  
24 *however*, That any person obtaining service credit under this

1 subsection is required to pay the employee's share and the  
2 employer's share upon his or her actual salary for the years in  
3 question plus interest at the assumed actuarial rate of return for  
4 the plan year being repurchased.

5 (f) Jobs for West Virginia's graduates and their successors in  
6 interest shall provide a pension plan in lieu of the Public  
7 Employees Retirement System for employees hired on or after July 1,  
8 2005.

9 (g) Wetzel County Hospital and their successors in interest  
10 shall provide a pension plan in lieu of the Public Employees  
11 Retirement System for employees hired on or after July 1, 2005.

NOTE: The purpose of this bill is to clarify the service credit and retroactive service credit available to certain members of the Public Employees Retirement System. It also defines the type of interest applicable for purchasing reinstated service.

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