

H. B. 4117

(By Delegates Kump, Folk and Faircloth)
[Introduced January 9, 2014; referred to the
Committee on Pensions and Retirement then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §5-10-2 and §5-10-17 of the Code of West Virginia, 1931, as amended, all relating to eliminating eligibility for participation in the Public Employees Retirement System for those newly elected or appointed as members of the State Legislature after the year 2016.

Be it enacted by the Legislature of West Virginia:

That §5-10-2 and §5-10-17 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.

§5-10-2. 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 (1) "Accumulated contributions" means the sum of all amounts
2 deducted from the compensations of a member and credited to his or
3 her individual account in the members' deposit fund, together with
4 regular interest on the contributions;

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

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

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

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

23 (6) "Beneficiary" means any person, except a retirant, who is

1 entitled to, or will be entitled to, an annuity or other benefit
2 payable by the retirement system;

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

5 (8) "Compensation" means the remuneration paid a member by a
6 participating public employer for personal services rendered by the
7 member to the participating public employer. In the event a
8 member's remuneration is not all paid in money, his or her
9 participating public employer shall fix the value of the portion of
10 the remuneration which is not paid in money. Any lump sum or other
11 payments paid to members that do not constitute regular salary or
12 wage payments are not considered compensation for the purpose of
13 withholding contributions for the system or for the purpose of
14 calculating a member's final average salary. These payments
15 include, but are not limited to, attendance or performance bonuses,
16 one-time flat fee or lump sum payments, payments paid as a result
17 of excess budget, or employee recognition payments. The board
18 shall have final power to decide whether the payments shall be
19 considered compensation for purposes of this article;

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

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

5 (11) "Employee" means any person who serves regularly as an
6 officer or employee, full time, on a salary basis, whose tenure is
7 not restricted as to temporary or provisional appointment, in the
8 service of, and whose compensation is payable, in whole or in part,
9 by any political subdivision, or an officer or employee whose
10 compensation is calculated on a daily basis and paid monthly or on
11 completion of assignment, including technicians and other personnel
12 employed by the West Virginia National Guard whose compensation, in
13 whole or in part, is paid by the federal government: *Provided*, That
14 an employee of the Legislature whose term of employment is
15 otherwise classified as temporary and who is employed to perform
16 services required by the Legislature for its regular sessions or
17 during the interim between regular sessions and who has been or is
18 employed during regular sessions or during the interim between
19 regular sessions in seven or more consecutive calendar years, as
20 certified by the clerk of the house in which the employee served,
21 is an employee, any provision to the contrary in this article
22 notwithstanding, and is entitled to credited service in accordance
23 with provisions of section fourteen, article ten, chapter five of

1 this code and: *Provided, however,* That members of the legislative
2 body of any political subdivision and judges of the State Court of
3 Claims are employees receiving one year of service credit for each
4 one-year term served and pro rated service credit for any partial
5 term served, anything contained in this article to the contrary
6 notwithstanding: *Provided further,* That notwithstanding any other
7 provision of this code enacted before the reenactment of this
8 section in the Regular Session of the Legislature, 2014, a person
9 newly elected or appointed as a member of State Legislature after
10 2016 is not an employee for purposes of determining eligibility for
11 pension benefits. In any case of doubt as to who is an employee
12 within the meaning of this article, the Board of Trustees shall
13 decide the question;

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

23 (13) "Final average salary" means either of the following:

1 *Provided*, That salaries for determining benefits during any
2 determination period may not exceed the maximum compensation
3 allowed as adjusted for cost-of-living in accordance with section
4 seven, article ten-d, chapter five of this code and Section
5 401(a)(17) of the Internal Revenue Code: *Provided, however*, That
6 the provisions of section twenty-two-h of this article are not
7 applicable to the amendments made to this subdivision during the
8 2011 Regular Session of the Legislature.

9 (A) The average of the highest annual compensation received by
10 a member (including a member of the Legislature who participates in
11 the retirement system in the year 1971 or thereafter), during any
12 period of three consecutive years of credited service contained
13 within the member's fifteen years of credited service immediately
14 preceding the date his or her employment with a participating
15 public employer last terminated; or

16 (B) If the member has less than five years of credited
17 service, the average of the annual rate of compensation received by
18 the member during his or her total years of credited service; and
19 in determining the annual compensation, under either paragraph (A)
20 or (B) of this subdivision, of a member of the Legislature who
21 participates in the retirement system as a member of the
22 Legislature in the year 1971, or in any year thereafter, his or her
23 actual legislative compensation (the total of all compensation paid

1 under sections two, three, four and five, article two-a, chapter
2 four of this code), in the year 1971, or in any year thereafter,
3 plus any other compensation he or she receives in any year from any
4 other participating public employer including the State of West
5 Virginia, without any multiple in excess of one times his or her
6 actual legislative compensation and other compensation, shall be
7 used: *Provided*, That "final average salary" for any former member
8 of the Legislature or for any member of the Legislature in the year
9 1971, who, in either event, was a member of the Legislature on
10 November 30, 1968, or November 30, 1969, or November 30, 1970, or
11 on November 30 in any one or more of those three years and who
12 participated in the retirement system as a member of the
13 Legislature in any one or more of those years means: (i) Either
14 (notwithstanding the provisions of this subdivision preceding this
15 proviso) \$1,500 multiplied by eight, plus the highest other
16 compensation the former member or member received in any one of the
17 three years from any other participating public employer including
18 the State of West Virginia; or (ii) "final average salary"
19 determined in accordance with paragraph (A) or (B) of this
20 subdivision, whichever computation produces the higher final
21 average salary (and in determining the annual compensation under
22 subparagraph (ii) of this proviso, the legislative compensation of
23 the former member shall be computed on the basis of \$1,500

1 multiplied by eight, and the legislative compensation of the member
2 shall be computed on the basis set forth in the provisions of this
3 subdivision immediately preceding this proviso or on the basis of
4 \$1,500 multiplied by eight, whichever computation as to the member
5 produces the higher annual compensation);

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

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

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

22 (17) "Participating public employer" means the State of West
23 Virginia, any board, commission, department, institution or

1 spending unit, and includes any agency created by rule of the
2 Supreme Court of Appeals having full-time employees, which for the
3 purposes of this article is considered a department of state
4 government; and any political subdivision in the state which has
5 elected to cover its employees, as defined in this article, under
6 the West Virginia Public Employees Retirement System;

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

9 (19) "Political subdivision" means the State of West Virginia,
10 a county, city or town in the state; a school corporation or
11 corporate unit; any separate corporation or instrumentality
12 established by one or more counties, cities or towns, as permitted
13 by law; any corporation or instrumentality supported in most part
14 by counties, cities or towns; and any public corporation charged by
15 law with the performance of a governmental function and whose
16 jurisdiction is coextensive with one or more counties, cities or
17 towns: *Provided*, That any mental health agency participating in
18 the Public Employees Retirement System before July 1, 1997, is
19 considered a political subdivision solely for the purpose of
20 permitting those employees who are members of the Public Employees
21 Retirement System to remain members and continue to participate in
22 the retirement system at their option after July 1, 1997:
23 *Provided, however*, That the Regional Community Policing Institute

1 which participated in the Public Employees Retirement System before
2 July 1, 2000, is considered a political subdivision solely for the
3 purpose of permitting those employees who are members of the Public
4 Employees Retirement System to remain members and continue to
5 participate in the Public Employees Retirement System after July 1,
6 2000;

7 (20) "Prior service" means service rendered prior to July 1,
8 1961, to the extent credited a member as provided in this article;

9 (21) "Regular interest" means the rate or rates of interest
10 per annum, compounded annually, as the Board of Trustees adopts
11 from time to time;

12 (22) "Required beginning date" means April 1 of the calendar
13 year following the later of: (A) The calendar year in which the
14 member attains age seventy and one-half years of age; or (B) the
15 calendar year in which a member who has attained the age seventy
16 and one-half years of age and who ceases providing service covered
17 under this system to a participating employer;

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

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

23 (25) "Retirement system" or "system" means the West Virginia

1 Public Employees Retirement System created and established by this
2 article;

3 (26) "Retroactive service" means: (1) Service between July 1,
4 1961, and the date an employer decides to become a participating
5 member of the Public Employees Retirement System; (2) service prior
6 to July 1, 1961, for which the employee is not entitled to prior
7 service at no cost in accordance with 162 CSR 5.13; and (3) service
8 of any member of a legislative body or employees of the State
9 Legislature whose term of employment is otherwise classified as
10 temporary for which the employee is eligible, but for which the
11 employee did not elect to participate at that time;

12 (27) "Service" means personal service rendered to a
13 participating public employer by an employee of a participating
14 public employer; and

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

16 **§5-10-17. Retirement system membership.**

17 The membership of the retirement system consists of the
18 following persons:

19 (a) All employees, as defined in section two of this article,
20 who are in the employ of a political subdivision the day preceding
21 the date it becomes a participating public employer and who
22 continue in the employ of the participating public employer on and
23 after that date shall become members of the retirement system; and

1 all persons who become employees of a participating public employer
2 on or after that date shall thereupon become members of the system;
3 except as provided in subdivisions (b) and (c) of this section.

4 (b) The membership of the Public Employees Retirement System
5 shall not include any person who is an active contributing member
6 of, or who has been retired by, any of the State Teachers
7 Retirement Systems, the Judges Retirement System, any Retirement
8 System of the West Virginia State Police, the Deputy Sheriff
9 Retirement System or any municipal retirement system for either, or
10 both, police or firefighter; and the Bureau of Employment Programs,
11 by the Commissioner of the Bureau, may elect whether its employees
12 will accept coverage under this article or be covered under the
13 authorization of a separate enactment: *Provided*, That the
14 exclusions of membership do not apply to any member of the State
15 Legislature elected or appointed before 2016, the Clerk of the
16 House of Delegates, the Clerk of the state Senate or to any member
17 of the legislative body of any political subdivision provided he or
18 she once becomes a contributing member of the retirement system:
19 *Provided, however*, That any retired member of the State Police
20 Death, Disability and Retirement Fund, the West Virginia State
21 Police Retirement System, the Deputy Sheriff Retirement System and
22 any retired member of any municipal retirement system for either,
23 or both, police or firefighter may on and after the effective date

1 of this section become a member of the retirement system as
2 provided in this article, without receiving credit for prior
3 service as a municipal police officer or firefighter or as a member
4 of the State Police Death, Disability and Retirement Fund, the West
5 Virginia State Police Retirement System or the Deputy Sheriff
6 Retirement System: *Provided further,* That any retired member of
7 the State Police Death, Disability and Retirement Fund, the West
8 Virginia State Police Retirement System, the Deputy Sheriff
9 Retirement System and any retired member of any municipal
10 retirement system for either, or both, police or firefighters, who
11 begins participation in the retirement system established in this
12 article on or after July 1, 2005, may not receive a combined
13 retirement benefit in excess of one hundred five percent of the
14 member's highest annual salary earned while either a member of the
15 retirement system established in this article or while a member of
16 the other retirement system or systems from which he or she
17 previously retired when adding the retirement benefit from the
18 retirement system created in this article to the retirement benefit
19 received by that member from the other retirement system or systems
20 set forth herein from which he or she previously retired: *And*
21 *provided further,* That the membership of the retirement system does
22 not include any person who becomes employed by the Prestera Center
23 for Mental Health Services, Valley Comprehensive Mental Health

1 Center, Westbrook Health Services or Eastern Panhandle Mental
2 Health Center on or after July 1, 1997: *And provided further,* That
3 membership of the retirement system does not include any person who
4 becomes a member of the federal railroad retirement act on or after
5 July 1, 2000.

6 (c) Any member of the State Legislature elected or appointed
7 before 2016, the Clerk of the House of Delegates, the Clerk of the
8 state Senate and any employee of the State Legislature whose
9 employment is otherwise classified as temporary and who is employed
10 to perform services required by the Legislature for its regular
11 sessions or during the interim between regular sessions and who has
12 been or is employed during regular sessions or during the interim
13 between sessions in seven consecutive calendar years, as certified
14 by the Clerk of the House in which the employee served, or any
15 member of the legislative body of any other political subdivision
16 shall become a member of the retirement system provided he or she
17 notifies the retirement system in writing of his or her intention
18 to be a member of the system and files a membership enrollment form
19 as prescribed by the Board of Trustees, and each person, upon
20 filing his or her written notice to participate in the retirement
21 system, shall by that act authorize the Clerk of the House of
22 Delegates or the Clerk of the state Senate or such person or
23 legislative agency as the legislative body of any other political

1 subdivision shall designate to deduct the member's contribution, as
2 provided in subsection (b), section twenty-nine of this article,
3 and after the deductions have been made from the member's
4 compensation, the deductions shall be forwarded to the retirement
5 system.

6 (d) If question arises regarding the membership status of any
7 employee, the board of Trustees has the final power to decide the
8 question.

9 (e) Any individual who is a leased employee is not eligible to
10 participate in the system. For the purposes of this article, the
11 term "leased employee" means any individual who performs services
12 as an independent contractor or pursuant to an agreement with an
13 employee leasing organization or other similar organization. If a
14 question arises regarding the status of an individual as a leased
15 employee, the board has final authority to decide the question.

NOTE: The purpose of this bill is to provide that a person newly elected or appointed as a member of the State Legislature after 2016 will not be eligible for pension benefits based on legislative service.

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