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WEST VIRGINIA LEGISLATURE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997



ENROLLED

SENATE BILL NO. 544

(By Senator PLYMALE, ET AL)



PASSED APRIL 30, 1997

In Effect FROM Passage

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OFFICE OF THE CLERK
SENATE OF WEST VIRGINIA

ENROLLED

Senate Bill No. 544

(BY SENATORS PLYMALE, PREZIOSO, FANNING,
WALKER, JACKSON, SPROUSE AND KIMBLE)

[Passed April 20, 1997; in effect from passage.]

AN ACT to amend and reenact sections two, fourteen, seventeen and eighteen, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to the public employees retirement system; removing mental health centers from the public employees retirement system except for the purpose of continuing participation by current members; giving current members optional withdrawal without losing service credit; requiring mental health centers now participating in the public employees retirement system to provide private pension plans for current employees at their option and for future employees within a time certain; requiring mental health centers to provide to current members notice of their option to withdraw including comparative actuarial projections of individual

accounts; clarifying calculation of retirement service credit for legislative employees; and purchase of retroactive service credit by legislative employees.

Be it enacted by the Legislature of West Virginia:

That sections two, fourteen, seventeen and eighteen, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-2. Definitions.

1 The following words and phrases as used in this article,
2 unless a different meaning is clearly indicated by the
3 context, have the following meanings:

4 (1) "State" means the state of West Virginia;

5 (2) "Retirement system" or "system" means the West
6 Virginia public employees retirement system created and
7 established by this article;

8 (3) "Board of trustees" or "board" means the board of
9 trustees of the West Virginia public employees retirement
10 system;

11 (4) "Political subdivision" means the state of West
12 Virginia, a county, city or town in the state; a school
13 corporation or corporate unit; any separate corporation or
14 instrumentality established by one or more counties, cities
15 or towns, as permitted by law; any corporation or instru-
16 mentality supported in most part by counties, cities or
17 towns; any public corporation charged by law with the
18 performance of a governmental function and whose
19 jurisdiction is coextensive with one or more counties,
20 cities or towns: *Provided*, That any mental health agency
21 participating in the public employees retirement system
22 before the first day of July, one thousand nine hundred
23 ninety-seven, is considered a political subdivision solely
24 for the purpose of permitting those employees who are
25 members of the public employees retirement system to
26 remain members and continue to participate in the
27 retirement system at their option after the first day of

28 July, one thousand nine hundred ninety-seven;

29 (5) "Participating public employer" means the state of
30 West Virginia, any board, commission, department,
31 institution or spending unit, and includes any agency
32 created by rule of the supreme court of appeals having
33 full-time employees, which for the purposes of this article
34 is considered a department of state government; and any
35 political subdivision in the state which has elected to
36 cover its employees, as defined in this article, under the
37 West Virginia public employees retirement system;

38 (6) "Employee" means any person who serves regularly
39 as an officer or employee, full time, on a salary basis,
40 whose tenure is not restricted as to temporary or provi-
41 sional appointment, in the service of, and whose compen-
42 sation is payable, in whole or in part, by any political
43 subdivision, or an officer or employee whose compensa-
44 tion is calculated on a daily basis and paid monthly or on
45 completion of assignment, including technicians and other
46 personnel employed by the West Virginia national guard
47 whose compensation, in whole or in part, is paid by the
48 federal government: *Provided*, That members of the state
49 Legislature, the clerk of the House of Delegates, the clerk
50 of the state Senate, employees of the state Legislature
51 whose term of employment is otherwise classified as
52 temporary and who are employed to perform services
53 required by the Legislature for its regular sessions or
54 during the interim between regular sessions and who have
55 been or are employed during regular sessions or during the
56 interim between regular sessions in seven consecutive
57 calendar years, as certified by the clerk of the house in
58 which the employee served, members of the legislative
59 body of any political subdivision and judges of the state
60 court of claims are considered to be employees, anything
61 contained in this article to the contrary notwithstanding.
62 In any case of doubt as to who is an employee within the
63 meaning of this article the board of trustees shall decide
64 the question;

65 (7) "Member" means any person who is included in the
66 membership of the retirement system;

67 (8) "Retirant" means any member who retires with an
68 annuity payable by the retirement system;

69 (9) "Beneficiary" means any person, except a retirant,
70 who is entitled to, or will be entitled to, an annuity or
71 other benefit payable by the retirement system;

72 (10) "Service" means personal service rendered to a
73 participating public employer by an employee, as defined
74 in this article, of a participating public employer;

75 (11) "Prior service" means service rendered prior to the
76 first day of July, one thousand nine hundred sixty-one, to
77 the extent credited a member as provided in this article;

78 (12) "Contributing service" means service rendered by
79 a member within this state and for which the member
80 made contributions to a public retirement system account
81 of this state, to the extent credited him or her as provided
82 by this article. This revised definition is retroactive and
83 applicable to the first day of April, one thousand nine
84 hundred eighty-eight, and thereafter;

85 (13) "Credited service" means the sum of a member's
86 prior service credit and contributing service credit stand-
87 ing to his or her credit as provided in this article;

88 (14) "Compensation" means the remuneration paid a
89 member by a participating public employer for personal
90 services rendered by him or her to the participating public
91 employer. In the event a member's remuneration is not all
92 paid in money, his or her participating public employer
93 shall fix the value of the portion of his or her remunera-
94 tion which is not paid in money;

95 (15) "Final average salary" means either: (a) The
96 average of the highest annual compensation received by a
97 member (including a member of the Legislature who
98 participates in the retirement system in the year one
99 thousand nine hundred seventy-one or thereafter) during
100 any period of three consecutive years of his credited
101 service contained within his or her ten years of credited
102 service immediately preceding the date his or her employ-
103 ment with a participating public employer last termi-
104 nated; or (b) if he or she has less than five years of credited

105 service, the average of the annual rate of compensation
106 received by him or her during his or her total years of
107 credited service; and in determining the annual compensa-
108 tion, under either (a) or (b) of this subdivision, of a mem-
109 ber of the Legislature who participates in the retirement
110 system as a member of the Legislature in the year one
111 thousand nine hundred seventy-one or in any year thereaf-
112 ter, his or her actual legislative compensation (the total of
113 all compensation paid under sections two, three, four and
114 five, article two-a, chapter four of this code) in the year
115 one thousand nine hundred seventy-one or in any year
116 thereafter, plus any other compensation he or she receives
117 in any such year from any other participating public
118 employer including the state of West Virginia, without any
119 multiple in excess of one times his or her actual legislative
120 compensation and other compensation, shall be used:
121 *Provided*, That "final average salary" for any former
122 member of the Legislature or for any member of the
123 Legislature in the year one thousand nine hundred
124 seventy-one who, in either event, was a member of the
125 Legislature on the thirtieth day of November, one thou-
126 sand nine hundred sixty-eight, or the thirtieth day of
127 November, one thousand nine hundred sixty-nine, or the
128 thirtieth day of November, one thousand nine hundred
129 seventy, or on the thirtieth day of November in any one or
130 more of those three years, and who participated in the
131 retirement system as a member of the Legislature in any
132 one or more of those years means: (i) Either (notwith-
133 standing the provisions of this subdivision preceding this
134 proviso) one thousand five hundred dollars multiplied by
135 eight, plus the highest other compensation the former
136 member or member received in any one of the three years
137 from any other participating public employer including
138 the state of West Virginia; or (ii) "final average salary"
139 determined in accordance with (a) or (b) of this subdivi-
140 sion, whichever computation shall produce the higher
141 final average salary (and in determining the annual
142 compensation under (ii) of this proviso, the legislative
143 compensation of the former member shall be computed on
144 the basis of one thousand five hundred dollars multiplied
145 by eight, and the legislative compensation of the member

146 shall be computed on the basis set forth in the provisions
147 of this subdivision immediately preceding this proviso or
148 on the basis of one thousand five hundred dollars multi-
149 plied by eight, whichever computation as to the member
150 produces the higher annual compensation);

151 (16) "Accumulated contributions" means the sum of all
152 amounts deducted from the compensations of a member
153 and credited to his or her individual account in the mem-
154 bers' deposit fund, together with regular interest on the
155 contributions;

156 (17) "Regular interest" means the rate or rates of
157 interest per annum, compounded annually, as the board of
158 trustees adopts from time to time;

159 (18) "Annuity" means an annual amount payable by the
160 retirement system throughout the life of a person. All
161 annuities shall be paid in equal monthly installments,
162 using the upper cent for any fraction of a cent;

163 (19) "Annuity reserve" means the present value of all
164 payments to be made to a retirant or beneficiary of a
165 retirant on account of any annuity, computed upon the
166 basis of such mortality and other tables of experience, and
167 regular interest, as the board of trustees adopts from time
168 to time;

169 (20) "Retirement" means a member's withdrawal from
170 the employ of a participating public employer with an
171 annuity payable by the retirement system; and

172 (21) "Actuarial equivalent" means a benefit of equal
173 value computed upon the basis of such mortality table and
174 regular interest as the board of trustees adopts from time
175 to time.

§5-10-14. Service credit.

1 (a) The board of trustees shall credit each member with
2 the prior service and contributing service to which he or
3 she is entitled based upon such rules as the board of
4 trustees shall from time to time adopt and based upon the
5 following:

6 (1) Ten or more days of service rendered by a member in

7 any calendar month shall be credited as a month of
8 service: *Provided*, That for employees of the state Legisla-
9 ture whose term of employment is otherwise classified as
10 temporary and who are employed to perform services
11 required by the Legislature for its regular sessions or
12 during the interim between regular sessions and who have
13 been or are so employed during regular sessions or during
14 the interim between regular sessions in seven consecutive
15 calendar years, service credit of one month shall be
16 awarded for all or any part of each calendar month
17 encompassed within a regular legislative session, notwith-
18 standing that the actual number of days served in any one
19 month of the regular session is less than ten days, and
20 service credit of one month shall be awarded for each ten
21 days served during the interim between regular sessions,
22 which interim days shall be cumulatively calculated so
23 that any ten days, regardless of calendar month or year,
24 shall be calculated toward any award of one month of
25 service credit;

26 (2) Ten or more months of service rendered in any
27 calendar year shall be credited as a year of service;

28 (3) No more than one year of service may be credited to
29 any member for all service rendered by him or her in any
30 calendar year; and

31 (4) Service may be credited to a member who was
32 employed by a political subdivision if his or her employ-
33 ment occurred within a period of thirty years immediately
34 preceding the date the political subdivision became a
35 participating public employer.

36 (b) The board of trustees shall grant service credit to
37 employees of boards of health, the clerk of the House of
38 Delegates and the clerk of the state Senate, or to any
39 former and present member of the state teachers retire-
40 ment system who have been contributing members for
41 more than three years, for service previously credited by
42 the state teachers retirement system and shall require the
43 transfer of the member's contributions to the system and
44 shall also require a deposit, with interest, of any with-
45 drawals of contributions any time prior to the member's

46 retirement. Repayment of withdrawals shall be as di-
47 rected by the board of trustees.

48 (c) Court reporters who are acting in an official capacity,
49 although paid by funds other than the county commission
50 or state auditor, may receive prior service credit for time
51 served in that capacity.

52 (d) Employees of the state Legislature whose term of
53 employment is otherwise classified as temporary and who
54 are employed to perform services required by the Legisla-
55 ture for its regular sessions or during the interim between
56 regular sessions may receive service credit for the time
57 served in that capacity in accordance with the following.
58 Employees of the state Legislature whose term of employ-
59 ment is otherwise classified as temporary and who are
60 employed to perform services required by the Legislature
61 for its regular sessions or during the interim between
62 regular sessions and who have been or are employed
63 during regular sessions or during the interim between
64 regular sessions in seven consecutive calendar years, as
65 certified by the clerk of the house in which the employee
66 served, shall receive service credit of six months for each
67 regular session served as certified by the clerk of the house
68 in which the employee served, and shall receive service
69 credit of one month for each ten days served during the
70 interim between regular sessions, which interim days shall
71 be cumulatively calculated so that any ten days, regardless
72 of calendar month or year, shall be calculated toward any
73 award of one month of service credit. Service credit
74 awarded for legislative employment pursuant to this
75 subsection shall be used for the purpose of calculating
76 that member's retirement annuity only, pursuant to
77 section twenty-two of this article, and notwithstanding
78 any other provision of this section. Service credit awarded
79 for legislative service pursuant to this subsection shall not
80 be used to determine when an employment period begins
81 or ends, or to determine when the period of eligibility or
82 filing for retirement begins to run. Certification of
83 employment for a complete legislative session and for days
84 of interim sessions shall be determined by the clerk of the
85 house in which the employee served, based upon employ-

86 ment records. Service of fifty-five days of a regular
87 session constitutes a presumption of service for a complete
88 legislative session.

89 Any employee may purchase retroactive service credit
90 for periods of employment in which contributions were
91 not deducted from the employee's pay. In the purchase of
92 service credit for employment prior to the year one
93 thousand nine hundred eighty-nine in any department,
94 including the Legislature, which operated from the
95 general revenue fund and which was not expressly ex-
96 cluded from budget appropriations in which blanket
97 appropriations were made for the state's share of public
98 employees' retirement coverage in the years prior to the
99 year one thousand nine hundred eighty-nine, the employee
100 shall pay the employee's share. Other employees shall pay
101 the state's share and the employee's share to purchase
102 retroactive service credit. Where an employee purchases
103 service credit for employment which occurred after the
104 year one thousand nine hundred eighty-eight, that em-
105 ployee shall pay for the employee's share and the employer
106 shall pay its share for the purchase of retroactive service
107 credit: *Provided*, That no legislative employee may be
108 required to pay any interest or penalty upon the purchase
109 of retroactive service credit in accordance with the
110 provisions of this section where the employee was not
111 eligible to become a member during the years he or she is
112 purchasing retroactive credit for or had the employee
113 attempted to contribute to the system during the years he
114 or she is purchasing retroactive service credit for and such
115 contributions would have been refused by the board:
116 *Provided, however*, That a legislative employee purchas-
117 ing retroactive credit under this section does so within
118 twenty-four months of becoming a member of the system
119 or no later than the last day of December, one thousand
120 nine hundred ninety-nine, whichever occurs last: *Pro-*
121 *vided further*, That once a legislative employee becomes a
122 member of the retirement system, he or she may purchase
123 retroactive service credit for any time he or she was
124 employed by the Legislature and did not receive service
125 credit.

§5-10-17. Retirement system membership.

1 The membership of the retirement system consists of the
2 following persons:

3 (a) All employees, as defined in section two of this
4 article, who are in the employ of a political subdivision
5 the day preceding the date it becomes a participating
6 public employer and who continue in the employ of the
7 participating public employer on and after that date shall
8 become members of the retirement system; and all persons
9 who become employees of a participating public employer
10 on or after that date shall thereupon become members of
11 the system; except as provided in subdivisions (b) and (c)
12 of this section.

13 (b) The membership of the retirement system shall not
14 include any person who is a member of, or who has been
15 retired by, the state teachers retirement system, the judges
16 retirement system, the retirement system of the division of
17 public safety, or any municipal retirement system for
18 either, or both, policemen or firemen; and the bureau of
19 employment programs, by the commissioner of the bureau,
20 may elect whether its employees will accept coverage
21 under this article or be covered under the authorization of
22 a separate enactment: *Provided*, That the exclusions of
23 membership shall not apply to any member of the state
24 Legislature, the clerk of the House of Delegates, the clerk
25 of the state Senate or to any member of the legislative
26 body of any political subdivision provided he or she once
27 becomes a contributing member of the retirement system:
28 *Provided, however*, That any retired member of the
29 retirement system of the division of public safety, and any
30 retired member of any municipal retirement system for
31 either, or both, policemen or firemen may on and after the
32 effective date of this section become a member of the
33 retirement system as provided in this article, without
34 receiving credit for prior service as a municipal policeman
35 or fireman or as a member of the division of public safety:
36 *Provided further*, That the membership of the retirement
37 system does not include any person who becomes em-
38 ployed by the Prestera center for mental health services,
39 valley comprehensive mental health center, Westbrook

40 health services or eastern panhandle mental health center
41 on or after the first day of July, one thousand nine hun-
42 dred ninety-seven.

43 (c) Any member of the state Legislature, the clerk of the
44 House of Delegates, the clerk of the state Senate and any
45 employee of the state Legislature whose employment is
46 otherwise classified as temporary and who is employed to
47 perform services required by the Legislature for its
48 regular sessions or during the interim between regular
49 sessions and who has been or is so employed during
50 regular sessions or during the interim between sessions in
51 seven consecutive calendar years, as certified by the clerk
52 of the house in which the employee served, or any member
53 of the legislative body of any other political subdivision
54 shall become a member of the retirement system provided
55 he or she notifies the retirement system in writing of his or
56 her intention to be a member of the system and files a
57 membership enrollment form as prescribed by the board
58 of trustees, and each person, upon filing his or her written
59 notice to participate in the retirement system, shall by
60 that act authorize the clerk of the House of Delegates or
61 the clerk of the state Senate or such person or legislative
62 agency as the legislative body of any other political
63 subdivision shall designate to deduct the member's
64 contribution, as provided in subsection (b), section
65 twenty-nine of this article, and after the deductions have
66 been made from the member's compensation, the deduc-
67 tions shall be forwarded to the retirement system.

68 (d) If question arises regarding the membership status of
69 any employee, the board of trustees has the final power to
70 decide the question.

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

1 (a) When a member of the retirement system retires or
2 dies, he or she ceases to be a member. When a member
3 leaves the employ of a participating public employer for
4 any other reason, he or she ceases to be a member and
5 forfeits service credited to him or her at that time. If he or
6 she becomes reemployed by a participating public em-
7 ployer he or she shall be reinstated as a member of the

8 retirement system and his or her credited service last
9 forfeited by him or her shall be restored to his or her
10 credit: *Provided*, That he or she must be reemployed for
11 a period of one year or longer to have the service restored:
12 *Provided, however*, That he or she returns to the members'
13 deposit fund the amount, if any, he or she withdrew from
14 the fund, together with regular interest on the withdrawn
15 amount from the date of withdrawal to the date of repay-
16 ment, and that the repayment begins within two years of
17 the return to employment and that the full amount is
18 repaid within five years of the return to employment.

19 (b) Effective on the first day of July, one thousand nine
20 hundred ninety-seven, and continuing through the first
21 day of July, one thousand nine hundred ninety-eight, any
22 employee of the Prestera center for mental health services,
23 valley comprehensive mental health center, Westbrook
24 health services and eastern panhandle mental health
25 center who is a member of the retirement system may elect
26 to withdraw from membership without forfeiting service
27 credited to him or her.

28 (c) The Prestera center for mental health services, valley
29 comprehensive mental health center, Westbrook health
30 services and eastern panhandle mental health center, and
31 their successors in interest, shall provide for their employ-
32 ees a pension plan in lieu of the public employees retire-
33 ment system on or before the first day of July, one thou-
34 sand nine hundred ninety-seven, and continuing thereafter
35 during the existence of the named mental health centers
36 and their successors in interest.

37 (d) The administrative bodies of the Prestera center for
38 mental health services, valley comprehensive mental
39 health center, Westbrook health services and eastern
40 panhandle mental health center shall, on or before the
41 first day of May, one thousand nine hundred ninety-seven,
42 give written notice to each employee who is a member of
43 the public employees retirement system of the option to
44 withdraw from or remain in the system. The notice shall
45 include a copy of this section and a statement explaining
46 the member's options regarding membership. The notice
47 shall include a statement in plain language giving a full

48 explanation and actuarial projection figures in support of
49 the explanation regarding the individual member's
50 current account balance, vested and nonvested, and his or
51 her projected return upon remaining in the public employ-
52 ees retirement system until retirement, disability or death,
53 in comparison with the projected return upon withdraw-
54 ing from the public employees retirement system and
55 joining a private pension plan provided by the community
56 mental health center and remaining therein until retire-
57 ment, disability or death. The administrative bodies shall
58 keep in their respective records a permanent record of
59 each employee's signature confirming receipt of the notice.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Ray Ashover
.....
Chairman Senate Committee

Nick Fantasia
.....
Chairman House Committee

Originated in the Senate.

In effect from passage

Darrell Holmes
.....
Clerk of the Senate

Gregory M. Barr
.....
Clerk of the House of Delegates

Earl Ray Tomblin
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is approved* this the *2nd*
day of *May*, 1997.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 4/30/07

Time 3:10 pm