

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2921**

4 (By Delegates Swartzmiller, Boggs, Ennis,
5 Perry and Pethtel)

6 (Originating in the Committee on Finance)

7 [February 15, 2011]

8
9

10 A BILL to amend and reenact §5-10-2 of the Code of West Virginia,
11 1931, as amended, relating to redefining final average salary.

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

13 That §5-10-2 of the Code of West Virginia, 1931, as amended,
14 be amended and reenacted, to read as follows:

15 **ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.**

16 **§5-10-2. Definitions.**

17 Unless a different meaning is clearly indicated by the
18 context, the following words and phrases as used in this article,
19 have the following meanings:

20 (1) "Accumulated contributions" means the sum of all amounts
21 deducted from the compensations of a member and credited to his or
22 her individual account in the members' deposit fund, together with
23 regular interest on the contributions;

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

26 (3) "Actuarial equivalent" means a benefit of equal value

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

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

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

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

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

21 (8) "Compensation" means the remuneration paid a member by a
22 participating public employer for personal services rendered by the
23 member to the participating public employer. In the event a
24 member's remuneration is not all paid in money, his or her
25 participating public employer shall fix the value of the portion of
26 the remuneration which is not paid in money;

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

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

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

1 with provisions of section fourteen, article ten, chapter five of
2 this code and: *Provided, however,* That members of the legislative
3 body of any political subdivision and judges of the state Court of
4 Claims are employees receiving one year of service credit for each
5 one-year term served and pro rated service credit for any partial
6 term served, anything contained in this article to the contrary
7 notwithstanding. In any case of doubt as to who is an employee
8 within the meaning of this article, the board of trustees shall
9 decide the question;

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

19 (13) "Final average salary" means either of the following:
20 *Provided,* That salaries for determining benefits during any
21 determination period may not exceed the maximum compensation
22 allowed as adjusted for cost of living in accordance with section
23 seven, article ten-d, chapter five of this code and Section
24 401(a)(17) of the Internal Revenue Code: *Provided, however, That*
25 the provisions of section twenty-two-h of this article are not
26 applicable to the amendments made to this subdivision during the

1 2011 regular session of the Legislature.

2 (A) The average of the highest annual compensation received by
3 a member (including a member of the Legislature who participates in
4 the retirement system in the year 1971 or thereafter), during any
5 period of three consecutive years of credited service contained
6 within the member's ~~ten~~ fifteen years of credited service
7 immediately preceding the date his or her employment with a
8 participating public employer last terminated; or (B) if the member
9 has less than five years of credited service, the average of the
10 annual rate of compensation received by the member during his or
11 her total years of credited service; and in determining the annual
12 compensation, under either paragraph (A) or (B) of this
13 subdivision, of a member of the Legislature who participates in the
14 retirement system as a member of the Legislature in the year 1971,
15 or in any year thereafter, his or her actual legislative
16 compensation (the total of all compensation paid under sections
17 two, three, four and five, article two-a, chapter four of this
18 code), in the year 1971, or in any year thereafter, plus any other
19 compensation he or she receives in any year from any other
20 participating public employer including the State of West Virginia,
21 without any multiple in excess of one times his or her actual
22 legislative compensation and other compensation, shall be used:
23 *Provided*, That "final average salary" for any former member of the
24 Legislature or for any member of the Legislature in the year 1971,
25 who, in either event, was a member of the Legislature on November
26 30, 1968, or November 30, 1969, or November 30, 1970, or on

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

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

22 (15) "Limited credited service" means service by employees of
23 the West Virginia Educational Broadcasting Authority, in the
24 employment of West Virginia University, during a period when the
25 employee made contributions to another retirement system, as
26 required by West Virginia University, and did not make

1 contributions to the Public Employees Retirement System: *Provided,*
2 That while limited credited service can be used for the formula set
3 forth in subsection (e), section twenty-one of this article, it may
4 not be used to increase benefits calculated under section twenty-
5 two of this article;

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

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

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

19 (19) "Political subdivision" means the State of West Virginia,
20 a county, city or town in the state; a school corporation or
21 corporate unit; any separate corporation or instrumentality
22 established by one or more counties, cities or towns, as permitted
23 by law; any corporation or instrumentality supported in most part
24 by counties, cities or towns; and any public corporation charged by
25 law with the performance of a governmental function and whose
26 jurisdiction is coextensive with one or more counties, cities or

1 towns: *Provided*, That any mental health agency participating in
2 the Public Employees Retirement System before July 1, 1997, is
3 considered a political subdivision solely for the purpose of
4 permitting those employees who are members of the Public Employees
5 Retirement System to remain members and continue to participate in
6 the retirement system at their option after July 1, 1997:

7 *Provided, however*, That the Regional Community Policing Institute
8 which participated in the Public Employees Retirement System before
9 July 1, 2000, is considered a political subdivision solely for the
10 purpose of permitting those employees who are members of the Public
11 Employees Retirement System to remain members and continue to
12 participate in the Public Employees Retirement System after July 1,
13 2000;

14 (20) "Prior service" means service rendered prior to July 1,
15 1961, to the extent credited a member as provided in this article;

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

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

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

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

4 (25) "Retirement system" or "system" means the West Virginia
5 Public Employees Retirement System created and established by this
6 article;

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

16 (27) "Service" means personal service rendered to a
17 participating public employer by an employee of a participating
18 public employer; and

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