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H. B. 2921

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

[Introduced January 28, 2011; referred to the
Committee on Pensions and Retirement then Finance.]

**FISCAL
NOTE**

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.

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

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

(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:

25 (A) The average of the highest annual compensation received by
26 a member (including a member of the Legislature who participates in

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

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

15 (14) "Internal Revenue Code" means the Internal Revenue Code
16 of 1986, as amended, codified at Title 26 of the United States
17 Code;

18 (15) "Limited credited service" means service by employees of
19 the West Virginia Educational Broadcasting Authority, in the
20 employment of West Virginia University, during a period when the
21 employee made contributions to another retirement system, as
22 required by West Virginia University, and did not make
23 contributions to the Public Employees Retirement System: *Provided,*
24 That while limited credited service can be used for the formula set
25 forth in subsection (e), section twenty-one of this article, it may
26 not be used to increase benefits calculated under section twenty-

1 two of this article;

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

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

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

15 (19) "Political subdivision" means the State of West Virginia,
16 a county, city or town in the state; a school corporation or
17 corporate unit; any separate corporation or instrumentality
18 established by one or more counties, cities or towns, as permitted
19 by law; any corporation or instrumentality supported in most part
20 by counties, cities or towns; and any public corporation charged by
21 law with the performance of a governmental function and whose
22 jurisdiction is coextensive with one or more counties, cities or
23 towns: *Provided*, That any mental health agency participating in
24 the Public Employees Retirement System before July 1, 1997, is
25 considered a political subdivision solely for the purpose of
26 permitting those employees who are members of the Public Employees

1 Retirement System to remain members and continue to participate in
2 the retirement system at their option after July 1, 1997:
3 *Provided, however,* That the Regional Community Policing Institute
4 which participated in the Public Employees Retirement System before
5 July 1, 2000, is considered a political subdivision solely for the
6 purpose of permitting those employees who are members of the Public
7 Employees Retirement System to remain members and continue to
8 participate in the Public Employees Retirement System after July 1,
9 2000;

10 (20) "Prior service" means service rendered prior to July 1,
11 1961, to the extent credited a member as provided in this article;

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

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

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

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

26 (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.

NOTE: The purpose of this bill is to amend the definition of final average salary to permit consideration of compensation over a fifteen-year period preceding retirement instead of a ten-year period, for computing pension benefits.

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