

**Senate Bill No. 454**

(By Senator Barnes)

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[Introduced February 7, 2011; referred to the Committee on  
Pensions; and then to the Committee on Finance.]  
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**FISCAL  
NOTE**

10 A BILL to amend and reenact §5-10-2 of the Code of West Virginia,  
11 1931, as amended, relating to providing that mental hygiene  
12 commissioners are employees under the Public Employees  
13 Retirement System and may receive one year of service credit  
14 for each year served and prorated service for any partial year  
15 served, up to a maximum of fifteen years' credited service.

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

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

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

20 **§5-10-2. Definitions.**

21 Unless a different meaning is clearly indicated by the  
22 context, the following words and phrases as used in this article,  
23 have the following meanings:

24 (1) "Accumulated contributions" means the sum of all amounts  
25 deducted from the compensations of a member and credited to his or  
26 her individual account in the members' deposit fund, together with

1 regular interest on the contributions;

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

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

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

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

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

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

25 (8) "Compensation" means the remuneration paid a member by a  
26 participating public employer for personal services rendered by the

1 member to the participating public employer. In the event a  
2 member's remuneration is not all paid in money, his or her  
3 participating public employer shall fix the value of the portion of  
4 the remuneration which is not paid in money;

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

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

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

1 regular sessions in seven or more consecutive calendar years, as  
2 certified by the Clerk of the House in which the employee served,  
3 is an employee, any provision to the contrary in this article  
4 notwithstanding, and is entitled to credited service in accordance  
5 with provisions of section fourteen, article ten, chapter five of  
6 this code and: *Provided, however,* That members of the legislative  
7 body of any political subdivision and judges of the state Court of  
8 Claims are employees receiving one year of service credit for each  
9 one-year term served and pro rated service credit for any partial  
10 term served, anything contained in this article to the contrary  
11 notwithstanding: *Provided, further,* That mental hygiene  
12 commissioners are employees receiving one year of service credit  
13 for each year served and prorated service credit for any partial  
14 year served, any provision to the contrary in this article  
15 notwithstanding, and each mental hygiene commissioner may earn a  
16 maximum of fifteen years credited service. In any case of doubt as  
17 to who is an employee within the meaning of this article, the board  
18 of trustees shall decide the question;

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

1 employer error.

2 (13) "Final average salary" means either of the following:  
3 *Provided*, That salaries for determining benefits during any  
4 determination period may not exceed the maximum compensation  
5 allowed as adjusted for cost of living in accordance with section  
6 seven, article ten-d, chapter five of this code and Section  
7 401(a)(17) of the Internal Revenue Code:

8 (A) The average of the highest annual compensation received by  
9 a member (including a member of the Legislature who participates in  
10 the retirement system in the year 1971 or thereafter), during any  
11 period of three consecutive years of credited service contained  
12 within the member's ten years of credited service immediately  
13 preceding the date his or her employment with a participating  
14 public employer last terminated; or (B) if the member has less than  
15 five years of credited service, the average of the annual rate of  
16 compensation received by the member during his or her total years  
17 of credited service; and in determining the annual compensation,  
18 under either paragraph (A) or (B) of this subdivision, of a member  
19 of the Legislature who participates in the retirement system as a  
20 member of the Legislature in the year 1971, or in any year  
21 thereafter, his or her actual legislative compensation (the total  
22 of all compensation paid under sections two, three, four and five,  
23 article two-a, chapter four of this code), in the year 1971, or in  
24 any year thereafter, plus any other compensation he or she receives  
25 in any year from any other participating public employer including  
26 the State of West Virginia, without any multiple in excess of one

1 times his or her actual legislative compensation and other  
2 compensation, shall be used: *Provided*, That "final average salary"  
3 for any former member of the Legislature or for any member of the  
4 Legislature in the year 1971, who, in either event, was a member of  
5 the Legislature on November 30, 1968, or November 30, 1969, or  
6 November 30, 1970, or on November 30 in any one or more of those  
7 three years and who participated in the retirement system as a  
8 member of the Legislature in any one or more of those years means:  
9 (i) Either (notwithstanding the provisions of this subdivision  
10 preceding this proviso) \$1,500 multiplied by eight, plus the  
11 highest other compensation the former member or member received in  
12 any one of the three years from any other participating public  
13 employer including the State of West Virginia; or (ii) "final  
14 average salary" determined in accordance with paragraph (A) or (B)  
15 of this subdivision, whichever computation produces the higher  
16 final average salary (and in determining the annual compensation  
17 under subparagraph (ii) of this proviso, the legislative  
18 compensation of the former member shall be computed on the basis of  
19 \$1,500 multiplied by eight, and the legislative compensation of the  
20 member shall be computed on the basis set forth in the provisions  
21 of this subdivision immediately preceding this proviso or on the  
22 basis of \$1,500 multiplied by eight, whichever computation as to  
23 the member produces the higher annual compensation);

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

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

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

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

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

24           (19) "Political subdivision" means the State of West Virginia,  
25 a county, city or town in the state; a school corporation or  
26 corporate unit; any separate corporation or instrumentality

1 established by one or more counties, cities or towns, as permitted  
2 by law; any corporation or instrumentality supported in most part  
3 by counties, cities or towns; and any public corporation charged by  
4 law with the performance of a governmental function and whose  
5 jurisdiction is coextensive with one or more counties, cities or  
6 towns: *Provided*, That any mental health agency participating in  
7 the Public Employees Retirement System before July 1, 1997, is  
8 considered a political subdivision solely for the purpose of  
9 permitting those employees who are members of the Public Employees  
10 Retirement System to remain members and continue to participate in  
11 the retirement system at their option after July 1, 1997:  
12 *Provided, however*, That the Regional Community Policing Institute  
13 which participated in the Public Employees Retirement System before  
14 July 1, 2000, is considered a political subdivision solely for the  
15 purpose of permitting those employees who are members of the Public  
16 Employees Retirement System to remain members and continue to  
17 participate in the Public Employees Retirement System after July 1,  
18 2000;

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

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

24 (22) "Required beginning date" means April 1 of the calendar  
25 year following the later of: (A) The calendar year in which the  
26 member attains age seventy and one-half years of age; or (B) the



1 calendar year in which a member who has attained the age seventy  
2 and one-half years of age and who ceases providing service covered  
3 under this system to a participating employer;

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

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

9 (25) "Retirement system" or "system" means the West Virginia  
10 Public Employees Retirement System created and established by this  
11 article;

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

21 (27) "Service" means personal service rendered to a  
22 participating public employer by an employee of a participating  
23 public employer; and

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

NOTE: The purpose of this bill is to provide that mental

hygiene commissioners are employees under the Public Employees Retirement System and may receive one year of service credit for each year served and pro rated service for any partial year served, up to a maximum of fifteen years credited service.

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