

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 469**

5 (SENATORS JENKINS, KESSLER (MR. PRESIDENT), CHAFIN, MCCABE AND PLYMALE,
6 *original sponsors*)

7 _____
8 [Passed April 13, 2013; in effect ninety days from passage.]
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12 AN ACT to amend and reenact §5-10-14 and §5-10-18 of the Code of
13 West Virginia, 1931, as amended, all relating to service
14 credit; providing for the purchasing of retroactive service
15 credit by certain employees; requiring payment of
16 reinstatement interest in the Public Employees Retirement
17 System in certain circumstances.

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

19 That §5-10-14 and §5-10-18 of the Code of West Virginia, 1931,
20 as amended, be amended and reenacted, all to read as follows:

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

22 **§5-10-14. Service credit; retroactive provisions.**

23 (a) The Board of Trustees shall credit each member with the
24 prior service and contributing service to which he or she is
25 entitled based upon rules adopted by the Board of Trustees and

1 based upon the following:

2 (1) In no event may less than ten days of service rendered by
3 a member in any calendar month be credited as a month of service:
4 *Provided*, That for employees of the State Legislature whose term of
5 employment is otherwise classified as temporary and who are
6 employed to perform services required by the Legislature for its
7 regular sessions or during the interim between regular sessions and
8 who have been or are employed during regular sessions or during the
9 interim between regular sessions in seven consecutive calendar
10 years, service credit of one month shall be awarded for each ten
11 days employed in the interim between regular sessions, which
12 interim days shall be cumulatively calculated so that any ten days,
13 regardless of calendar month or year, shall be calculated toward
14 any award of one month of service credit;

15 (2) Except for hourly employees, ten or more months of service
16 credit earned in any calendar year shall be credited as a year of
17 service: *Provided*, That no more than one year of service may be
18 credited to any member for all service rendered by him or her in
19 any calendar year and no days may be carried over by a member from
20 one calendar year to another calendar year where the member has
21 received a full-year credit for that year; and

22 (3) Service may be credited to a member who was employed by a
23 political subdivision if his or her employment occurred within a
24 period of thirty years immediately preceding the date the political
25 subdivision became a participating public employer.

26 (b) The Board of Trustees shall grant service credit to

1 employees of boards of health, the Clerk of the House of Delegates
2 and the Clerk of the State Senate or to any former and present
3 member of the State Teachers Retirement System who have been
4 contributing members in the Public Employees Retirement System for
5 more than three years, for service previously credited by the State
6 Teachers Retirement System and shall require the transfer of the
7 member's accumulated contributions to the system and shall also
8 require a deposit, with reinstatement interest as set forth in the
9 Board's Rule, Refund, Reinstatement, Retroactive Service, Loan And
10 Employer Error Interest Factors, 162 C. S. R. 7, of any withdrawals
11 of contributions any time prior to the member's retirement.
12 Repayment of withdrawals shall be as directed by the Board of
13 Trustees.

14 (c) Court reporters who are acting in an official capacity,
15 although paid by funds other than the county commission or State
16 Auditor, may receive prior service credit for time served in that
17 capacity.

18 (d) Active members who previously worked in CETA
19 (Comprehensive Employment and Training Act) may receive service
20 credit for time served in that capacity: *Provided*, That in order to
21 receive service credit under the provisions of this subsection the
22 following conditions must be met: (1) The member must have moved
23 from temporary employment with the participating employer to
24 permanent full-time employment with the participating employer
25 within one hundred twenty days following the termination of the
26 member's CETA employment; (2) the board must receive evidence that

1 establishes to a reasonable degree of certainty as determined by
2 the board that the member previously worked in CETA; and (3) the
3 member shall pay to the board an amount equal to the employer and
4 employee contribution plus interest at the amount set by the board
5 for the amount of service credit sought pursuant to this
6 subsection: *Provided, however,* That the maximum service credit that
7 may be obtained under the provisions of this subsection is two
8 years: *Provided further,* That a member must apply and pay for the
9 service credit allowed under this subsection and provide all
10 necessary documentation by March 31, 2003: *And provided further,*
11 That the board shall exercise due diligence to notify affected
12 employees of the provisions of this subsection.

13 (e)(1) Employees of the State Legislature whose terms of
14 employment are otherwise classified as temporary and who are
15 employed to perform services required by the Legislature for its
16 regular sessions or during the interim time between regular
17 sessions shall receive service credit for the time served in that
18 capacity in accordance with the following. For purposes of this
19 section, the term "regular session" means day one through day sixty
20 of a sixty-day legislative session or day one through day thirty of
21 a thirty-day legislative session. Employees of the State
22 Legislature whose term of employment is otherwise classified as
23 temporary and who are employed to perform services required by the
24 Legislature for its regular sessions or during the interim time
25 between regular sessions and who have been or are employed during
26 regular sessions or during the interim time between regular

1 sessions in seven consecutive calendar years, as certified by the
2 clerk of the house in which the employee served, shall receive
3 service credit of six months for all regular sessions served, as
4 certified by the clerk of the house in which the employee served,
5 or shall receive service credit of three months for each regular
6 thirty-day session served prior to 1971: *Provided*, That employees
7 of the State Legislature whose term of employment is otherwise
8 classified as temporary and who are employed to perform services
9 required by the Legislature for its regular sessions and who have
10 been or are employed during the regular sessions in thirteen
11 consecutive calendar years as either temporary employees or full-
12 time employees or a combination thereof, as certified by the clerk
13 of the house in which the employee served, shall receive a service
14 credit of twelve months for each regular session served, as
15 certified by the clerk of the house in which the employee served:
16 *Provided, however*, That the amendments made to this subsection
17 during the 2002 regular session of the Legislature only apply to
18 employees of the Legislature who are employed by the Legislature as
19 either temporary employees or full-time employees as of January 1,
20 2002, or who become employed by the Legislature as temporary or
21 full-time employees for the first time after January 1, 2002.
22 Employees of the State Legislature whose terms of employment are
23 otherwise classified as temporary and who are employed to perform
24 services required by the Legislature during the interim time
25 between regular sessions shall receive service credit of one month
26 for each ten days served during the interim between regular

1 sessions, which interim days shall be cumulatively calculated so
2 that any ten days, regardless of calendar month or year, shall be
3 calculated toward any award of one month of service credit:
4 *Provided further,* That no more than one year of service may be
5 credited to any temporary legislative employee for all service
6 rendered by that employee in any calendar year and no days may be
7 carried over by a temporary legislative employee from one calendar
8 year to another calendar year where the member has received a full
9 year credit for that year. Service credit awarded for legislative
10 employment pursuant to this section shall be used for the purpose
11 of calculating that member's retirement annuity, pursuant to
12 section twenty-two of this article, and determining eligibility as
13 it relates to credited service, notwithstanding any other provision
14 of this section. Certification of employment for a complete
15 legislative session and for interim days shall be determined by the
16 clerk of the house in which the employee served, based upon
17 employment records. Service of fifty-five days of a regular
18 session constitutes an absolute presumption of service for a
19 complete legislative session and service of twenty-seven days of a
20 thirty-day regular session occurring prior to 1971 constitutes an
21 absolute presumption of service for a complete legislative session.
22 Once a legislative employee has been employed during regular
23 sessions for seven consecutive years or has become a full-time
24 employee of the Legislature, that employee shall receive the
25 service credit provided in this section for all regular and interim
26 sessions and interim days worked by that employee, as certified by

1 the clerk of the house in which the employee served, regardless of
2 when the session or interim legislative employment occurred: *And*
3 *provided further*, That regular session legislative employment for
4 seven consecutive years may be served in either or both houses of
5 the Legislature.

6 (2) For purposes of this section, employees of the Joint
7 Committee on Government and Finance are entitled to the same
8 benefits as employees of the House of Delegates or the Senate:
9 *Provided*, That for joint committee employees whose terms of
10 employment are otherwise classified as temporary, employment in
11 preparation for regular sessions, certified by the legislative
12 manager as required by the Legislature for its regular sessions,
13 shall be considered the same as employment during regular sessions
14 to meet service credit requirements for sessions served.

15 (f) Any employee may purchase retroactive service credit for
16 periods of employment in which contributions were not deducted from
17 the employee's pay. In the purchase of service credit for
18 employment prior to the year 1989 in any department, including the
19 Legislature, which operated from the General Revenue Fund and which
20 was not expressly excluded from budget appropriations in which
21 blanket appropriations were made for the state's share of public
22 employees' retirement coverage in the years prior to the year 1989,
23 the employee shall pay the employee's share. Other employees shall
24 pay the state's share and the employee's share to purchase
25 retroactive service credit. Where an employee purchases service
26 credit for employment which occurred after the year 1988, that

1 employee shall pay for the employee's share and the employer shall
2 pay its share for the purchase of retroactive service credit:
3 *Provided*, That no legislative employee and no current or former
4 member of the Legislature may be required to pay any interest or
5 penalty upon the purchase of retroactive service credit in
6 accordance with the provisions of this section where the employee
7 was not eligible to become a member during the years for which he
8 or she is purchasing retroactive credit or had the employee
9 attempted to contribute to the system during the years for which he
10 or she is purchasing retroactive service credit and the
11 contributions would have been refused by the board: *Provided*,
12 *however*, That a current legislative employee purchasing retroactive
13 credit under this section does so within twenty-four months of
14 beginning contributions to the retirement system or no later than
15 December 31, 2013, whichever occurs last: *Provided further*, That
16 once a legislative employee becomes a member of the retirement
17 system, he or she may purchase retroactive service credit for any
18 time he or she was employed by the Legislature and did not receive
19 service credit. Any service credit purchased shall be credited as
20 six months for each sixty-day session worked, three months for each
21 thirty-day session worked or twelve months for each sixty-day
22 session for legislative employees who have been employed during
23 regular sessions in thirteen consecutive calendar years, as
24 certified by the clerk of the house in which the employee served,
25 and credit for interim employment as provided in this subsection:
26 *And provided further*, That this legislative service credit shall

1 also be used for months of service in order to meet the sixty-month
2 requirement for the payments of a temporary legislative employee
3 member's retirement annuity: *And provided further,* That no
4 legislative employee may be required to pay for any service credit
5 beyond the actual time he or she worked regardless of the service
6 credit which is credited to him or her pursuant to this section:
7 *And provided further,* That any legislative employee may request a
8 recalculation of his or her credited service to comply with the
9 provisions of this section at any time.

10 (g) (1) Notwithstanding any provision to the contrary, the
11 seven consecutive calendar years requirement and the thirteen
12 consecutive calendar years requirement and the service credit
13 requirements set forth in this section shall be applied
14 retroactively to all periods of legislative employment prior to the
15 passage of this section, including any periods of legislative
16 employment occurring before the seven consecutive and thirteen
17 consecutive calendar years referenced in this section: *Provided,*
18 That the employee has not retired prior to the effective date of
19 the amendments made to this section in the 2002 regular session of
20 the Legislature.

21 (2) The requirement of seven consecutive years and the
22 requirement of thirteen consecutive years apply retroactively to
23 all legislative employment prior to the effective date of the 2006
24 amendments to this section.

25 (h) The Board of Trustees shall grant service credit to any
26 former or present member of the State Police Death, Disability and

1 Retirement Fund who has been a contributing member of this system
2 for more than three years for service previously credited by the
3 State Police Death, Disability and Retirement Fund if the member
4 transfers all of his or her contributions from the State Police
5 Death, Disability and Retirement Fund to the system created in this
6 article, including repayment of any amounts withdrawn any time from
7 the State Police Death, Disability and Retirement Fund by the
8 member seeking the transfer allowed in this subsection: *Provided,*
9 That there shall be added by the member to the amounts transferred
10 or repaid under this subsection an amount which shall be sufficient
11 to equal the contributions he or she would have made had the member
12 been under the Public Employees Retirement System during the period
13 of his or her membership in the State Police Death, Disability and
14 Retirement Fund, excluding contributions on lump sum payment for
15 annual leave, plus interest at a rate determined by the board.

16 (i) The provisions of section twenty-two-h of this article are
17 not applicable to the amendments made to this section during the
18 2006 regular session.

19 **§5-10-18. Termination of membership; reentry.**

20 (a) When a member of the retirement system retires, withdraws
21 his or her accumulated contributions, or dies, he or she ceases to
22 be a member. When a member leaves the employ of a participating
23 public employer for any reason other than retirement or death, and
24 withdraws his or her accumulated contributions from the system, he
25 or she ceases to be a member and forfeits service credited to him
26 or her at that time. If he or she becomes reemployed by a

1 participating public employer he or she shall be reinstated as a
2 member of the retirement system and his or her credited service
3 last forfeited by him or her shall be restored to his or her
4 credit: *Provided*, That he or she must be reemployed for a period of
5 one year or longer to have the service restored: *Provided, however*,
6 That he or she returns to the members' deposit fund the amount, if
7 any, he or she withdrew from the fund, together with reinstatement
8 interest as set forth in the Board's Rule, Refund, Reinstatement,
9 Retroactive Service, Loan And Employer Error Interest Factors, 162
10 C. S. R. 7, on the withdrawn amount from the date of withdrawal to
11 the date of repayment, and that the repayment begins within two
12 years of the return to employment and that the full amount is
13 repaid within five years of the return to employment. Any failure
14 to repay the full amount in accordance with this section shall be
15 treated as an overpayment or excess contribution subject to section
16 forty-four of this article.

17 (b) The Presteria Center for Mental Health Services, Valley
18 Comprehensive Mental Health Center, Westbrook Health Services and
19 Eastern Panhandle Mental Health Center, and their successors in
20 interest, shall provide for their employees a pension plan in lieu
21 of the Public Employees Retirement System during the existence of
22 the named mental health centers and their successors in interest.

23 (c) The administrative bodies of the Presteria Center for
24 Mental Health Services, Valley Comprehensive Mental Health Center,
25 Westbrook Health Services and Eastern Panhandle Mental Health
26 Center shall, on or before May 1, 1997, give written notice to each

1 employee who is a member of the Public Employees Retirement System
2 of the option to withdraw from or remain in the system. The notice
3 shall include a copy of this section and a statement explaining the
4 member's options regarding membership. The notice shall include a
5 statement in plain language giving a full explanation and actuarial
6 projection figures in support of the explanation regarding the
7 individual member's current account balance, vested and nonvested,
8 and his or her projected return upon remaining in the Public
9 Employees Retirement System until retirement, disability or death,
10 in comparison with the projected return upon withdrawing from the
11 Public Employees Retirement System and joining a private pension
12 plan provided by the Community Mental Health Center and remaining
13 in the private pension plan until retirement, disability or death.
14 The administrative bodies shall keep in their respective records a
15 permanent record of each employee's signature confirming receipt of
16 the notice.

17 (d) Effective March 1, 2003, and ending December 31, 2004, any
18 member may purchase credited service previously forfeited by him or
19 her and the credited service shall be restored to his or her
20 credit: *Provided*, That he or she returns to the members' deposit
21 fund the amount, if any, he or she withdrew from the fund, together
22 with interest on the withdrawn amount from the date of withdrawal
23 to the date of repayment at a rate to be determined by the board.
24 The repayment under this section may be made by lump sum or repaid
25 over a period of time not to exceed sixty months. Where the member
26 elects to repay the required amount other than by lump sum, the

1 member is required to pay interest at the rate determined by the
2 board until all sums are fully repaid.

3 (e) Effective July 1, 2005, and ending December 31, 2006, any
4 emergency services personnel may purchase service credit for the
5 time period beginning January 1, 1990, and ending December 31,
6 1995: *Provided*, That the person was employed as an emergency
7 service person in this state for that time period: *Provided*,
8 *however*, That any person obtaining service credit under this
9 subsection is required to pay the employee's share and the
10 employer's share upon his or her actual salary for the years in
11 question plus interest at the assumed actuarial rate of return for
12 the plan year being repurchased.

13 (f) Jobs for West Virginia's graduates and their successors in
14 interest shall provide a pension plan in lieu of the Public
15 Employees Retirement System for employees hired on or after July 1,
16 2005.

17 (g) Wetzel County Hospital and their successors in interest
18 shall provide a pension plan in lieu of the Public Employees
19 Retirement System for employees hired on or after July 1, 2005.