

H. B. 3083

(By Delegates E. Nelson, Storch, McCuskey, Walters,
D. Evans, Andes, Gearheart, Ellington and Shott)

[Introduced March 25, 2013; 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 definitions used in the Public
Employees Retirement System; redefining the term final average
salary for new enrollees to the average salary received in the
highest ten years of service, rather than the current three.

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

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 paid
13 in equal monthly installments, rounding to the upper cent for any
14 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;

1 (8) "Compensation" means the remuneration paid a member by a
2 participating public employer for personal services rendered by the
3 member to the participating public employer. In the event a
4 member's remuneration is not all paid in money, his or her
5 participating public employer shall fix the value of the portion of
6 the remuneration which is not paid in money. Any lump sum or other
7 payments paid to members that do not constitute regular salary or
8 wage payments are not considered compensation for the purpose of
9 withholding contributions for the system or for the purpose of
10 calculating a member's final average salary. These payments
11 include, but are not limited to, attendance or performance bonuses,
12 one-time flat fee or lump sum payments, payments paid as a result
13 of excess budget, or employee recognition payments. The board
14 shall have final power to decide whether the payments shall be
15 considered compensation for purposes of this article;

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

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

24 (11) "Employee" means any person who serves regularly as an

1 officer or employee, full time, on a salary basis, whose tenure is
2 not restricted as to temporary or provisional appointment, in the
3 service of, and whose compensation is payable, in whole or in part,
4 by any political subdivision, or an officer or employee whose
5 compensation is calculated on a daily basis and paid monthly or on
6 completion of assignment, including technicians and other personnel
7 employed by the West Virginia National Guard whose compensation, in
8 whole or in part, is paid by the federal government: *Provided*, That
9 an employee of the Legislature whose term of employment is
10 otherwise classified as temporary and who is employed to perform
11 services required by the Legislature for its regular sessions or
12 during the interim between regular sessions and who has been or is
13 employed during regular sessions or during the interim between
14 regular sessions in seven or more consecutive calendar years, as
15 certified by the clerk of the house in which the employee served,
16 is an employee, any provision to the contrary in this article
17 notwithstanding, and is entitled to credited service in accordance
18 with provisions of section fourteen, article ten, chapter five of
19 this code and: *Provided, however*, That members of the legislative
20 body of any political subdivision and judges of the state Court of
21 Claims are employees receiving one year of service credit for each
22 one-year term served and pro rated service credit for any partial
23 term served, anything contained in this article to the contrary
24 notwithstanding. In any case of doubt as to who is an employee

1 within the meaning of this article, the board of trustees shall
2 decide the question;

3 (12) "Employer error" means an omission, misrepresentation, or
4 violation of relevant provisions of the West Virginia Code or of
5 the West Virginia Code of State Regulations or the relevant
6 provisions of both the West Virginia Code and of the West Virginia
7 Code of State Regulations by the participating public employer that
8 has resulted in an underpayment or overpayment of contributions
9 required. A deliberate act contrary to the provisions of this
10 section by a participating public employer does not constitute
11 employer error.

12 (13) "Final average salary" means either of the following:
13 *Provided*, That salaries for determining benefits during any
14 determination period may not exceed the maximum compensation
15 allowed as adjusted for cost of living in accordance with section
16 seven, article ten-d, chapter five of this code and Section
17 401(a)(17) of the Internal Revenue Code: *Provided, however*, That
18 the provisions of section twenty-two-h of this article are not
19 applicable to the amendments made to this subdivision during the
20 2011 Regular Session of the Legislature.

21 (A) The average of the highest annual compensation received by
22 a member (including a member of the Legislature who participates in
23 the retirement system in the year 1971 or thereafter), during any
24 period of three consecutive years of credited service contained

1 within the member's fifteen years of credited service immediately
2 preceding the date his or her employment with a participating
3 public employer last terminated: Provided, That for new members
4 whose date of first employment is after July 1, 2013, the final
5 average salary means the average of the highest annual compensation
6 received by a member (including a member of the Legislature who
7 participates in the retirement system in the year 1971 or
8 thereafter), during any period of ten consecutive years of credited
9 service contained within the member's fifteen years of credited
10 service immediately preceding the date his or her employment with
11 a participating public employer last terminated; or

12 (B) If the member has less than five years of credited
13 service, the average of the annual rate of compensation received by
14 the member during his or her total years of credited service; and
15 in determining the annual compensation, under either paragraph (A)
16 or (B) of this subdivision, of a member of the Legislature who
17 participates in the retirement system as a member of the
18 Legislature in the year 1971, or in any year thereafter, his or her
19 actual legislative compensation (the total of all compensation paid
20 under sections two, three, four and five, article two-a, chapter
21 four of this code), in the year 1971, or in any year thereafter,
22 plus any other compensation he or she receives in any year from any
23 other participating public employer including the State of West
24 Virginia, without any multiple in excess of one times his or her

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

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

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

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

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

1 the West Virginia Public Employees Retirement System;

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

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

1 2000;

2 (20) "Prior service" means service rendered prior to July 1,
3 1961, to the extent credited a member as provided in this article;

4 (21) "Regular interest" means the rate or rates of interest
5 per annum, compounded annually, as the board of trustees adopts
6 from time to time;

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

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

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

18 (25) "Retirement system" or "system" means the West Virginia
19 Public Employees Retirement System created and established by this
20 article;

21 (26) "Retroactive service" means: (1) Service between July 1,
22 1961, and the date an employer decides to become a participating
23 member of the Public Employees Retirement System; (2) service prior

1 to July 1, 1961, for which the employee is not entitled to prior
2 service at no cost in accordance with 162 CSR 5.13; and (3) service
3 of any member of a legislative body or employees of the State
4 Legislature whose term of employment is otherwise classified as
5 temporary for which the employee is eligible, but for which the
6 employee did not elect to participate at that time;

7 (27) "Service" means personal service rendered to a
8 participating public employer by an employee of a participating
9 public employer; and

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

NOTE: The purpose of this bill is to redefine the term final average salary for new enrollees to be the average salary received in the highest ten years of service, rather than the current three.

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