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WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
REGULAR SESSION, 2013

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ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 469

(SENATORS JENKINS, KESSLER (MR. PRESIDENT), CHAFIN,
McCABE AND PLYMALE, *ORIGINAL SPONSOR*)

[PASSED APRIL 13, 2013; IN EFFECT NINETY DAYS FROM PASSAGE.]

SB 469

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WEST VIRGINIA
LEGISLATURE
OFFICE OF THE CLERK
STATE HOUSE
CHARLESTON, WEST VIRGINIA

FOR

Senate Bill No. 469

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

[Passed April 13, 2013; in effect ninety days from passage.]

AN ACT to amend and reenact §5-10-14 and §5-10-18 of the Code of West Virginia, 1931, as amended, all relating to service credit; providing for the purchasing of retroactive service credit by certain employees; requiring payment of reinstatement interest in the Public Employees Retirement System in certain circumstances.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

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

- 1 (a) The Board of Trustees shall credit each member with
- 2 the prior service and contributing service to which he or she
- 3 is entitled based upon rules adopted by the Board of Trustees
- 4 and based upon the following:

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

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

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

32 (b) The Board of Trustees shall grant service credit to
33 employees of boards of health, the Clerk of the House of
34 Delegates and the Clerk of the State Senate or to any former
35 and present member of the State Teachers' Retirement
36 System who have been contributing members in the Public
37 Employees Retirement System for more than three years, for
38 service previously credited by the State Teachers' Retirement

39 System and shall require the transfer of the member's
40 accumulated contributions to the system and shall also
41 require a deposit, with reinstatement interest as set forth in
42 the Board's Rule, Refund, Reinstatement, Retroactive
43 Service, Loan And Employer Error Interest Factors, 162 C.
44 S. R. 7, of any withdrawals of contributions any time prior to
45 the member's retirement. Repayment of withdrawals shall be
46 as directed by the Board of Trustees.

47 (c) Court reporters who are acting in an official capacity;
48 although paid by funds other than the county commission or
49 State Auditor, may receive prior service credit for time served
50 in that capacity.

51 (d) Active members who previously worked in CETA
52 (Comprehensive Employment and Training Act) may receive
53 service credit for time served in that capacity: *Provided*, That
54 in order to receive service credit under the provisions of this
55 subsection the following conditions must be met: (1) The
56 member must have moved from temporary employment with
57 the participating employer to permanent full-time
58 employment with the participating employer within one
59 hundred twenty days following the termination of the
60 member's CETA employment; (2) the board must receive
61 evidence that establishes to a reasonable degree of certainty
62 as determined by the board that the member previously
63 worked in CETA; and (3) the member shall pay to the board
64 an amount equal to the employer and employee contribution
65 plus interest at the amount set by the board for the amount of
66 service credit sought pursuant to this subsection: *Provided*,
67 *however*, That the maximum service credit that may be
68 obtained under the provisions of this subsection is two years:
69 *Provided further*, That a member must apply and pay for the
70 service credit allowed under this subsection and provide all
71 necessary documentation by March 31, 2003: *And provided*
72 *further*, That the board shall exercise due diligence to notify
73 affected employees of the provisions of this subsection.

74 (e)(1) Employees of the State Legislature whose terms of
75 employment are otherwise classified as temporary and who
76 are employed to perform services required by the Legislature
77 for its regular sessions or during the interim time between
78 regular sessions shall receive service credit for the time
79 served in that capacity in accordance with the following. For
80 purposes of this section, the term "regular session" means day
81 one through day sixty of a sixty-day legislative session or day
82 one through day thirty of a thirty-day legislative session.
83 Employees of the State Legislature whose term of
84 employment is otherwise classified as temporary and who are
85 employed to perform services required by the Legislature for
86 its regular sessions or during the interim time between regular
87 sessions and who have been or are employed during regular
88 sessions or during the interim time between regular sessions
89 in seven consecutive calendar years, as certified by the clerk
90 of the house in which the employee served, shall receive
91 service credit of six months for all regular sessions served, as
92 certified by the clerk of the house in which the employee
93 served, or shall receive service credit of three months for
94 each regular thirty-day session served prior to 1971:
95 *Provided*, That employees of the State Legislature whose
96 term of employment is otherwise classified as temporary and
97 who are employed to perform services required by the
98 Legislature for its regular sessions and who have been or are
99 employed during the regular sessions in thirteen consecutive
100 calendar years as either temporary employees or full-time
101 employees or a combination thereof, as certified by the clerk
102 of the house in which the employee served, shall receive a
103 service credit of twelve months for each regular session
104 served, as certified by the clerk of the house in which the
105 employee served: *Provided, however*, That the amendments
106 made to this subsection during the 2002 regular session of the
107 Legislature only apply to employees of the Legislature who
108 are employed by the Legislature as either temporary
109 employees or full-time employees as of January 1, 2002, or
110 who become employed by the Legislature as temporary or

111 full-time employees for the first time after January 1, 2002.
112 Employees of the State Legislature whose terms of
113 employment are otherwise classified as temporary and who
114 are employed to perform services required by the Legislature
115 during the interim time between regular sessions shall receive
116 service credit of one month for each ten days served during
117 the interim between regular sessions, which interim days
118 shall be cumulatively calculated so that any ten days,
119 regardless of calendar month or year, shall be calculated
120 toward any award of one month of service credit: *Provided*
121 *further*, That no more than one year of service may be
122 credited to any temporary legislative employee for all service
123 rendered by that employee in any calendar year and no days
124 may be carried over by a temporary legislative employee
125 from one calendar year to another calendar year where the
126 member has received a full year credit for that year. Service
127 credit awarded for legislative employment pursuant to this
128 section shall be used for the purpose of calculating that
129 member's retirement annuity, pursuant to section twenty-two
130 of this article, and determining eligibility as it relates to
131 credited service, notwithstanding any other provision of this
132 section. Certification of employment for a complete
133 legislative session and for interim days shall be determined
134 by the clerk of the house in which the employee served,
135 based upon employment records. Service of fifty-five days
136 of a regular session constitutes an absolute presumption of
137 service for a complete legislative session and service of
138 twenty-seven days of a thirty-day regular session occurring
139 prior to 1971 constitutes an absolute presumption of service
140 for a complete legislative session. Once a legislative
141 employee has been employed during regular sessions for
142 seven consecutive years or has become a full-time employee
143 of the Legislature, that employee shall receive the service
144 credit provided in this section for all regular and interim
145 sessions and interim days worked by that employee, as
146 certified by the clerk of the house in which the employee
147 served, regardless of when the session or interim legislative

148 employment occurred: *And provided further*. That regular
149 session legislative employment for seven consecutive years
150 may be served in either or both houses of the Legislature.

151 (2) For purposes of this section, employees of the Joint
152 Committee on Government and Finance are entitled to the
153 same benefits as employees of the House of Delegates or the
154 Senate: *Provided*, That for joint committee employees whose
155 terms of employment are otherwise classified as temporary,
156 employment in preparation for regular sessions, certified by
157 the legislative manager as required by the Legislature for its
158 regular sessions, shall be considered the same as employment
159 during regular sessions to meet service credit requirements
160 for sessions served.

161 (f) Any employee may purchase retroactive service credit
162 for periods of employment in which contributions were not
163 deducted from the employee's pay. In the purchase of service
164 credit for employment prior to the year 1989 in any
165 department, including the Legislature, which operated from
166 the General Revenue Fund and which was not expressly
167 excluded from budget appropriations in which blanket
168 appropriations were made for the state's share of public
169 employees' retirement coverage in the years prior to the year
170 1989, the employee shall pay the employee's share. Other
171 employees shall pay the state's share and the employee's share
172 to purchase retroactive service credit. Where an employee
173 purchases service credit for employment which occurred after
174 the year 1988, that employee shall pay for the employee's
175 share and the employer shall pay its share for the purchase of
176 retroactive service credit: *Provided*, That no legislative
177 employee and no current or former member of the Legislature
178 may be required to pay any interest or penalty upon the
179 purchase of retroactive service credit in accordance with the
180 provisions of this section where the employee was not
181 eligible to become a member during the years for which he or
182 she is purchasing retroactive credit or had the employee

183 attempted to contribute to the system during the years for
184 which he or she is purchasing retroactive service credit and
185 the contributions would have been refused by the board:
186 *Provided, however,* That a current legislative employee
187 purchasing retroactive credit under this section does so within
188 twenty-four months of beginning contributions to the
189 retirement system or no later than December 31, 2013,
190 whichever occurs last: *Provided further,* That once a
191 legislative employee becomes a member of the retirement
192 system, he or she may purchase retroactive service credit for
193 any time he or she was employed by the Legislature and did
194 not receive service credit. Any service credit purchased shall
195 be credited as six months for each sixty-day session worked,
196 three months for each thirty-day session worked or twelve
197 months for each sixty-day session for legislative employees
198 who have been employed during regular sessions in thirteen
199 consecutive calendar years, as certified by the clerk of the
200 house in which the employee served, and credit for interim
201 employment as provided in this subsection: *And provided*
202 *further,* That this legislative service credit shall also be used
203 for months of service in order to meet the sixty-month
204 requirement for the payments of a temporary legislative
205 employee member's retirement annuity: *And provided further,*
206 That no legislative employee may be required to pay for any
207 service credit beyond the actual time he or she worked
208 regardless of the service credit which is credited to him or her
209 pursuant to this section: *And provided further,* That any
210 legislative employee may request a recalculation of his or her
211 credited service to comply with the provisions of this section
212 at any time.

213 (g)(1) Notwithstanding any provision to the contrary, the
214 seven consecutive calendar years requirement and the thirteen
215 consecutive calendar years requirement and the service credit
216 requirements set forth in this section shall be applied
217 retroactively to all periods of legislative employment prior to
218 the passage of this section, including any periods of

219 legislative employment occurring before the seven
220 consecutive and thirteen consecutive calendar years
221 referenced in this section: *Provided*, That the employec has
222 not retired prior to the effective date of the amendments made
223 to this section in the 2002 regular session of the Legislature.

224 (2) The requirement of seven consecutive years and the
225 requirement of thirteen consecutive years apply retroactively
226 to all legislative employment prior to the effective date of the
227 2006 amendments to this section.

228 (h) The Board of Trustees shall grant service credit to any
229 former or present member of the State Police Death,
230 Disability and Retirement Fund who has been a contributing
231 member of this system for more than three years for service
232 previously credited by the State Police Death, Disability and
233 Retirement Fund if the member transfers all of his or her
234 contributions from the State Police Death, Disability and
235 Retirement Fund to the system created in this article,
236 including repayment of any amounts withdrawn any time
237 from the State Police Death, Disability and Retirement Fund
238 by the member seeking the transfer allowed in this
239 subsection: *Provided*, That there shall be added by the
240 member to the amounts transferred or repaid under this
241 subsection an amount which shall be sufficient to equal the
242 contributions he or she would have made had the member
243 been under the Public Employees Retirement System during
244 the period of his or her membership in the State Police Death,
245 Disability and Retirement Fund, excluding contributions on
246 lump sum payment for annual leave, plus interest at a rate
247 determined by the board.

248 (i) The provisions of section twenty-two-h of this article
249 arc not applicable to the amendments made to this section
250 during the 2006 regular session.

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

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

26 (b) The Prestera Center for Mental Health Services,
27 Valley Comprehensive Mental Health Center, Westbrook
28 Health Services and Eastern Panhandle Mental Health
29 Center, and their successors in interest, shall provide for their
30 employees a pension plan in lieu of the Public Employees
31 Retirement System during the existence of the named mental
32 health centers and their successors in interest.

33 (c) The administrative bodies of the Prestera Center for
34 Mental Health Services, Valley Comprehensive Mental
35 Health Center, Westbrook Health Services and Eastern
36 Panhandle Mental Health Center shall, on or before May 1,
37 1997, give written notice to each employee who is a member
38 of the Public Employees Retirement System of the option to
39 withdraw from or remain in the system. The notice shall
40 include a copy of this section and a statement explaining the
41 member's options regarding membership. The notice shall
42 include a statement in plain language giving a full
43 explanation and actuarial projection figures in support of the
44 explanation regarding the individual member's current
45 account balance, vested and nonvested, and his or her
46 projected return upon remaining in the Public Employees
47 Retirement System until retirement, disability or death, in
48 comparison with the projected return upon withdrawing from
49 the Public Employees Retirement System and joining a
50 private pension plan provided by the Community Mental
51 Health Center and remaining in the private pension plan until
52 retirement, disability or death. The administrative bodies
53 shall keep in their respective records a permanent record of
54 each employee's signature confirming receipt of the notice.

55 (d) Effective March 1, 2003, and ending December 31,
56 2004, any member may purchase credited service previously
57 forfeited by him or her and the credited service shall be
58 restored to his or her credit: *Provided*, That he or she returns
59 to the members' deposit fund the amount, if any, he or she
60 withdrew from the fund, together with interest on the
61 withdrawn amount from the date of withdrawal to the date of
62 repayment at a rate to be determined by the board. The
63 repayment under this section may be made by lump sum or
64 repaid over a period of time not to exceed sixty months.
65 Where the member elects to repay the required amount other
66 than by lump sum, the member is required to pay interest at
67 the rate determined by the board until all sums are fully
68 repaid.

69 (e) Effective July 1, 2005, and ending December 31, 2006,
70 any emergency services personnel may purchase service
71 credit for the time period beginning January 1, 1990, and
72 ending December 31, 1995: *Provided*, That the person was
73 employed as an emergency service person in this state for that
74 time period: *Provided, however*, That any person obtaining
75 service credit under this subsection is required to pay the
76 employee's share and the employer's share upon his or her
77 actual salary for the years in question plus interest at the
78 assumed actuarial rate of return for the plan year being
79 repurchased.

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

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Member Rocky Ferguson
Chairman Senate Committee

Danny Wells
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Joseph M. Minard
Clerk of the Senate

Bryce A. Spivey
Clerk of the House of Delegates

Jeffrey Heath
President of the Senate

Robert R. Spivey
Speaker of the House of Delegates

SEAL OF THE SENATE
STATE OF FLORIDA

2013 APR 29 PM 5:10

FILED

The within is approved this the 29th
Day of April, 2013.

Carl R. Scott
Governor

PRESENTED TO THE GOVERNOR

APR 26 2013

Time 10:45 am