

H. B. 4428

(By Delegate Sponaugle, By Request)
[Introduced February 6, 2014; referred to the
Committee on Pensions & 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 providing 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 prorated service for any partial year served, up to a maximum of fifteen years credited service.

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

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

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

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

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

23 (6) "Beneficiary" means any person, except a retirant, who is
24 entitled to, or will be entitled to, an annuity or other benefit

1 payable by the retirement system;

2 (7) "Board of Trustees" or "board" means the board of trustees
3 of the West Virginia Consolidated Public Retirement System;

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

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

23 (10) "Credited service" means the sum of a member's prior
24 service credit, military service credit, workers' compensation

1 service credit and contributing service credit standing to his or
2 her credit as provided in this article;

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

1 year of service credit for each one-year term served and pro rated
2 service credit for any partial term served, anything contained in
3 this article to the contrary notwithstanding: Provided further,
4 That each Mental Hygiene Commissioner may earn a maximum of fifteen
5 years credited service. In any case of doubt as to who is an
6 employee within the meaning of this article, the board of Trustees
7 shall decide the question;

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

17 (13) "Final average salary" means either of the following:
18 *Provided,* That salaries for determining benefits during any
19 determination period may not exceed the maximum compensation
20 allowed as adjusted for cost of living in accordance with section
21 seven, article ten-d, chapter five of this code and Section
22 401(a)(17) of the Internal Revenue Code: *Provided, however,* That
23 the provisions of section twenty-two-h of this article are not
24 applicable to the amendments made to this subdivision during the

1 2011 Regular Session of the Legislature.

2 (A) The average of the highest annual compensation received by
3 a member (including a member of the Legislature who participates in
4 the retirement system in the year 1971 or thereafter), during any
5 period of three consecutive years of credited service contained
6 within the member's fifteen years of credited service immediately
7 preceding the date his or her employment with a participating
8 public employer last terminated; or

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

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

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

24 (15) "Limited credited service" means service by employees of

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

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

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

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

23 (19) "Political subdivision" means the State of West Virginia,
24 a county, city or town in the state; a school corporation or

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

20 (20) "Prior service" means service rendered prior to July 1,
21 1961, to the extent credited a member as provided in this article;

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

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

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

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

12 (25) "Retirement system" or "system" means the West Virginia
13 Public Employees Retirement System created and established by this
14 article;

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

24 (27) "Service" means personal service rendered to a

1 participating public employer by an employee of a participating
2 public employer; and

3 (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.