

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4676

BY DELEGATES LOVEJOY, BROWN, ROHRBACH,

HORNBUCKLE, AND ROWE

[Introduced February 14, 2022; Referred to the

Committee on Pensions and Retirement then

Finance]

1 A BILL to amend and reenact §5-10-2 and §5-10-24 of the Code of West Virginia, 1931, as
 2 amended, all relating to special needs trusts; allowing retirees in the Public Employees
 3 Retirement System to designate a special needs trust as beneficiary; defining terms; and
 4 providing for substitution of special needs trust as beneficiary post retirement in certain
 5 circumstances.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-2. Definitions.

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

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

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

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

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

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

19 annuity reserve shall include a special needs trust as that term is defined in §44D-8B-13 of this
20 code for the benefit of one individual beneficiary and which trust terminates upon the death of
21 such individual with no further annuity benefits being payable;

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

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

26 (8) "Compensation" means the remuneration paid a member by a participating public
27 employer for personal services rendered by the member to the participating public employer. In
28 the event a member's remuneration is not all paid in money, his or her participating public
29 employer shall fix the value of the portion of the remuneration which is not paid in money:
30 *Provided*, That members hired in a position for the first time on or after July 1, 2014, who receive
31 nonmonetary remuneration shall not have nonmonetary remuneration included in compensation
32 for retirement purposes and nonmonetary remuneration may not be used in calculating a
33 member's final average salary. Any lump sum or other payments paid to members that do not
34 constitute regular salary or wage payments are not considered compensation for the purpose of
35 withholding contributions for the system or for the purpose of calculating a member's final average
36 salary. These payments include, but are not limited to, attendance or performance bonuses, one-
37 time flat fee or lump sum payments, payments paid as a result of excess budget, or employee
38 recognition payments. The board shall have final power to decide whether the payments shall be
39 considered compensation for purposes of this article;

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

43 (10) "Credited service" means the sum of a member's prior service credit, military service
44 credit, workers' compensation service credit and contributing service credit standing to his or her

45 credit as provided in this article;

46 (11) "Employee" means any person who serves regularly as an officer or employee, full
47 time, on a salary basis, whose tenure is not restricted as to temporary or provisional appointment,
48 in the service of, and whose compensation is payable, in whole or in part, by any political
49 subdivision, or an officer or employee whose compensation is calculated on a daily basis and
50 paid monthly or on completion of assignment, including technicians and other personnel
51 employed by the West Virginia National Guard whose compensation, in whole or in part, is paid
52 by the federal government: *Provided*, That an employee of the Legislature whose term of
53 employment is otherwise classified as temporary and who is employed to perform services
54 required by the Legislature for its regular sessions or during the interim between regular sessions
55 and who has been or is employed during regular sessions or during the interim between regular
56 sessions in seven or more consecutive calendar years, as certified by the clerk of the house in
57 which the employee served, is an employee, any provision to the contrary in this article
58 notwithstanding, and is entitled to credited service in accordance with provisions of section 14 of
59 this article: *Provided, however*, That members of the legislative body of any political subdivision
60 and judges of the state Court of Claims are employees receiving one year of service credit for
61 each one-year term served and prorated service credit for any partial term served, anything
62 contained in this article to the contrary notwithstanding: *Provided further*, That only a
63 compensated board member of a participating public employer appointed to a board of a
64 nonlegislative body for the first time on or after July 1, 2014, who normally is required to work 12
65 months per year and 1,040 hours of service per year is an employee. In any case of doubt as to
66 who is an employee within the meaning of this article, the board of trustees shall decide the
67 question;

68 (12) "Employer error" means an omission, misrepresentation or violation of relevant
69 provisions of the West Virginia Code or of the West Virginia Code of State Regulations or the
70 relevant provisions of both the West Virginia Code and of the West Virginia Code of State

71 Regulations by the participating public employer that has resulted in an underpayment or
72 overpayment of contributions required. A deliberate act contrary to the provisions of this section
73 by a participating public employer does not constitute employer error;

74 (13) "Final average salary" means either of the following: *Provided*, That salaries for
75 determining benefits during any determination period may not exceed the maximum
76 compensation allowed as adjusted for cost of living in accordance with section seven, article 10D
77 of this chapter and Section 401 (a) (17) of the Internal Revenue Code: *Provided, however*, That
78 the provisions of section 22(h) of this article are not applicable to the amendments made to this
79 subdivision during the 2011 regular session of the Legislature;

80 (A) The average of the highest annual compensation received by a member, including a
81 member of the Legislature who participates in the retirement system in the year 1971 or thereafter,
82 during any period of three consecutive years of credited service contained within the member's
83 15 years of credited service immediately preceding the date his or her employment with a
84 participating public employer last terminated: *Provided*, That for persons who were first hired on
85 or after July 1, 2015, any period of five consecutive years of contributing service contained within
86 the member's 15 years of credited service immediately preceding the date his or her employment
87 with a participating public employer last terminated; or

88 (B) If the member has less than five years of credited service, the average of the annual
89 rate of compensation received by the member during his or her total years of credited service;
90 and in determining the annual compensation, under either paragraph (A) or (B) of this subdivision,
91 of a member of the Legislature who participates in the retirement system as a member of the
92 Legislature in the year 1971, or in any year thereafter, his or her actual legislative compensation
93 (the total of all compensation paid under sections two, three, four and five, article two-a, chapter
94 four of this code), in the year 1971, or in any year thereafter, plus any other compensation he or
95 she receives in any year from any other participating public employer including the State of West
96 Virginia, without any multiple in excess of one times his or her actual legislative compensation

97 and other compensation, shall be used: *Provided*, That final average salary for any former
98 member of the Legislature or for any member of the Legislature in the year 1971 who, in either
99 event, was a member of the Legislature on November 30, 1968, or November 30, 1969, or
100 November 30, 1970, or on November 30 in any one or more of those three years and who
101 participated in the retirement system as a member of the Legislature in any one or more of those
102 years means: (i) Either, notwithstanding the provisions of this subdivision preceding this proviso,
103 \$1,500 multiplied by eight, plus the highest other compensation the former member or member
104 received in any one of the three years from any other participating public employer including the
105 State of West Virginia; or (ii) final average salary determined in accordance with paragraph (A) or
106 (B) of this subdivision, whichever computation produces the higher final average salary, and in
107 determining the annual compensation under subparagraph (ii) of this paragraph, the legislative
108 compensation of the former member shall be computed on the basis of \$1,500 multiplied by eight,
109 and the legislative compensation of the member shall be computed on the basis set forth in the
110 provisions of this subdivision immediately preceding this paragraph or on the basis of \$1,500
111 multiplied by eight, whichever computation as to the member produces the higher annual
112 compensation;

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

115 (15) "Limited credited service" means service by employees of the West Virginia
116 Educational Broadcasting Authority, in the employment of West Virginia University, during a
117 period when the employee made contributions to another retirement system, as required by West
118 Virginia University, and did not make contributions to the Public Employees Retirement System:
119 *Provided*, That while limited credited service can be used for the formula set forth in subsection
120 (e), section twenty-one of this article, it may not be used to increase benefits calculated under
121 section 22 of this article;

122 (16) "Member" means any person who has accumulated contributions standing to his or

123 her credit in the members' deposit fund;

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

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

131 (19) "Political subdivision" means the State of West Virginia, a county, city or town in the
132 state; a school corporation or corporate unit; any separate corporation or instrumentality
133 established by one or more counties, cities or towns, as permitted by law; any corporation or
134 instrumentality supported in most part by counties, cities or towns; and any public corporation
135 charged by law with the performance of a governmental function and whose jurisdiction is
136 coextensive with one or more counties, cities or towns: *Provided*, That any mental health agency
137 participating in the Public Employees Retirement System before July 1, 1997, is considered a
138 political subdivision solely for the purpose of permitting those employees who are members of the
139 Public Employees Retirement System to remain members and continue to participate in the
140 retirement system at their option after July 1, 1997: *Provided, however*, That the Regional
141 Community Policing Institute which participated in the Public Employees Retirement System
142 before July 1, 2000, is considered a political subdivision solely for the purpose of permitting those
143 employees who are members of the Public Employees Retirement System to remain members
144 and continue to participate in the Public Employees Retirement System after July 1, 2000;

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

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

149 (22) "Required beginning date" means April 1 of the calendar year following the later of:
150 (A) The calendar year in which the member attains age seventy and one-half years of age; or (B)
151 the calendar year in which a member who has attained the age 70 and one-half years of age and
152 who ceases providing service covered under this system to a participating employer;

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

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

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

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

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

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

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

§5-10-24. Annuity options.

1 (a) Prior to the effective date of his or her retirement, but not thereafter except upon the
2 death of a spouse, a member may elect to receive his or her annuity as a straight life annuity
3 payable throughout his or her life, or he or she may elect to receive the actuarial equivalent, at
4 the time, of his or her straight life annuity in a reduced annuity payable throughout his or her life,
5 and nominate a beneficiary, in accordance with option A or B set forth below:

6 *Option A -- Joint and survivor annuity.* -- Upon the death of a retirant who elected option
7 A, his or her reduced annuity shall be continued throughout the life of and paid to the beneficiary,
8 having an insurable interest in the retirant's life, whom the retirant nominated by written
9 designation duly executed and filed with the board of trustees prior to the effective date of his or
10 her retirement; or

11 *Option B -- Modified joint and survivor annuity.* – Upon the death of a retirant who elected
12 option B, one half of his or her reduced annuity shall be continued throughout the life of and paid
13 to the beneficiary, having an insurable interest in the retirant's life, whom the retirant nominated
14 by written designation duly executed and filed with the board of trustees prior to the effective date
15 of his or her retirement.

16 (b) Upon the death of a spouse, a retirant may elect any of the retirement options offered
17 by the provisions of this section in an amount adjusted on a fair basis to be of equal actuarial
18 value as the annuity prospectively in effect relative to the retirant at the time the new option is
19 elected.

20 (c) Upon divorce, a retirant may elect to change any of the retirement benefit options
21 offered by the provisions of this section to a life annuity in an amount adjusted on a fair basis to
22 be of equal actuarial value of the annuity prospectively in effect relative to the retirant at the time
23 the option is elected: *Provided*, That the retirant furnishes to the board satisfactory proof of entry
24 of a final decree of divorce or annulment: *Provided, however*, That the retirant certifies under
25 penalty of perjury that no qualified domestic relations order, final decree of divorce, or other court
26 order that would restrict the election is in effect: *Provided further*, That no cause of action against
27 the board may then arise or be maintained on the basis of having permitted the retirant to name
28 a new spouse as annuitant for any of the survivorship retirement benefit options.

29 (d) Upon remarriage, a retirant may name the new spouse as an annuitant for any of the
30 retirement benefit options offered by the provisions of this section: *Provided*, That the retirant shall
31 furnish to the board proof of marriage: *Provided, however*, That the retirant certifies under penalty

32 of perjury that no qualified domestic relations order, final decree of divorce or other court order
33 that would restrict the designation is in effect: *Provided further*, That no cause of action against
34 the board may then arise or be maintained on the basis of having permitted the retirant to name
35 a new spouse as annuitant for any of the survivorship retirement benefit options. The value of the
36 new survivorship annuity shall be the actuarial equivalent of the retirant's benefit prospectively in
37 effect at the time the new annuity is elected.

38 (e) In the event a retiree has named a beneficiary pursuant to §5-10-24 of this code, such
39 retiree may change such beneficiary designation from the named beneficiary to a special needs
40 trust, as that term is defined in §44D-8B-13 of this code, if the special needs trust is for the benefit
41 of the same beneficiary. No further annuity payments shall be payable or paid from and after the
42 later of the death of the retirant or the death of the beneficiary of the special needs trust.

NOTE: The purpose of this bill is to allow retirees in the public employees retirement system to designate a special needs trust as beneficiary. The bill defines terms. Finally, the bill provides for substitution of special needs trust as beneficiary post retirement in certain circumstances.

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