

COMMITTEE SUBSTITUTE

FOR

H. B. 2507

(BY DELEGATE(S) CANTERBURY, PETHTEL,
FOLK, KURCABA, WALTERS, HAMILTON,
MARCUM AND HICKS)

(Originating in the House Committee on Finance.)

[February 18, 2015]

A BILL to amend and reenact §8-22A-2 and §8-22A-6 of the Code of West Virginia, 1931, as amended, all relating to membership provisions in the West Virginia Municipal Police and Firefighters Retirement System.

Be it enacted by the Legislature of West Virginia:

That §8-22A-2 and §8-22A-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 22A. WEST VIRGINIA MUNICIPAL POLICE OFFICERS AND
FIREFIGHTERS RETIREMENT SYSTEM.**

§8-22A-2. Definitions.

1 As used in this article, unless a federal law or regulation or
2 the context clearly requires a different meaning:

3 (a) “Accrued benefit” means on behalf of any member two
4 and six-tenths percent per year of the member’s final average
5 salary for the first twenty years of credited service. Additionally,
6 two percent per year for twenty-one through twenty-five years
7 and one percent per year for twenty-six through thirty years will
8 be credited with a maximum benefit of sixty-seven percent. A
9 member’s accrued benefit may not exceed the limits of Section
10 415 of the Internal Revenue Code and is subject to the provisions
11 of section ten of this article.

12 (b) “Accumulated contributions” means the sum of all
13 retirement contributions deducted from the compensation of a
14 member, or paid on his or her behalf as a result of covered
15 employment, together with regular interest on the deducted
16 amounts.

17 (c) “Active military duty” means full-time duty in the active
18 military service of the United States Army, Navy, Air Force,

19 Coast Guard or Marine Corps. The term does not include
20 regularly required training or other duty performed by a member
21 of a reserve component or National Guard unless the member
22 can substantiate that he or she was called into the full-time active
23 military service of the United States and has received no
24 compensation during the period of that duty from any board or
25 employer other than the Armed Forces.

26 (d) “Actuarial equivalent” means a benefit of equal value
27 computed on the basis of the mortality table and interest rates as
28 set and adopted by the board in accordance with the provisions
29 of this article: *Provided*, That when used in the context of
30 compliance with the federal maximum benefit requirements of
31 Section 415 of the Internal Revenue Code, “actuarial equivalent”
32 shall be computed using the mortality tables and interest rates
33 required to comply with those requirements.

34 (e) “Annual compensation” means the wages paid to the
35 member during covered employment within the meaning of
36 Section 3401(a) of the Internal Revenue Code, but determined
37 without regard to any rules that limit the remuneration included
38 in wages based on the nature or location of employment or

39 services performed during the plan year plus amounts excluded
40 under Section 414(h)(2) of the Internal Revenue Code and less
41 reimbursements or other expense allowances, cash or noncash
42 fringe benefits or both, deferred compensation and welfare
43 benefits. Annual compensation for determining benefits during
44 any determination period may not exceed the maximum
45 compensation allowed as adjusted for cost-of-living in
46 accordance with section seven, article ten-d, chapter five of this
47 code and Section 401(a)(17)of the Internal Revenue Code.

48 (f) “Annual leave service” means accrued annual leave.

49 (g) “Annuity starting date” means the first day of the month
50 for which an annuity is payable after submission of a retirement
51 application or the required beginning date, if earlier. For
52 purposes of this subsection, if retirement income payments
53 commence after the normal retirement age, “retirement” means
54 the first day of the month following or coincident with the latter
55 of the last day the member worked in covered employment or the
56 member’s normal retirement age and after completing proper
57 written application for “retirement” on an application supplied
58 by the board.

59 (h) “Board” means the Consolidated Public Retirement
60 Board.

61 (i) “Covered employment” means either: (1) Employment as
62 a full-time municipal police officer or firefighter and the active
63 performance of the duties required of that employment; or (2)
64 the period of time during which active duties are not performed
65 but disability benefits are received under this article; or (3)
66 concurrent employment by a municipal police officer or
67 firefighter in a job or jobs in addition to his or her employment
68 as a municipal police officer or firefighter in this plan where the
69 secondary employment requires the police officer or firefighter
70 to be a member of another retirement system which is
71 administered by the Consolidated Public Retirement Board
72 pursuant to this code: *Provided*, That the police officer or
73 firefighter contributes to the fund created in this article the
74 amount specified as the member’s contribution in section eight
75 of this article.

76 (j) “Credited service” means the sum of a member’s years of
77 service, active military duty and disability service.

78 (k) "Dependent child" means either: (1) An unmarried
79 person under age eighteen who is: (A) A natural child of the
80 member; (B) a legally adopted child of the member; (C) a child
81 who at the time of the member's death was living with the
82 member while the member was an adopting parent during any
83 period of probation; or (D) a stepchild of the member residing in
84 the member's household at the time of the member's death; or
85 (2) Any unmarried child under age twenty-three: (A) Who is
86 enrolled as a full-time student in an accredited college or
87 university; (B) who was claimed as a dependent by the member
88 for federal income tax purposes at the time of the member's
89 death; and (C) whose relationship with the member is described
90 in paragraph (A), (B) or (C), subdivision (1) of this subsection.

91 (l) "Dependent parent" means the father or mother of the
92 member who was claimed as a dependent by the member for
93 federal income tax purposes at the time of the member's death.

94 (m) "Disability service" means service credit received by a
95 member, expressed in whole years, fractions thereof or both,
96 equal to one half of the whole years, fractions thereof, or both,

97 during which time a member receives disability benefits under
98 this article.

99 (n) “Effective date” means January 1, 2010.

100 ~~(o) (1) “Municipal police officer” means an individual~~
101 ~~employed as a member of a paid police department by a West~~
102 ~~Virginia municipality or municipal subdivision which has~~
103 ~~established and maintains a municipal policemen’s pension and~~
104 ~~relief fund, and who is not a member of, and not eligible for~~
105 ~~membership in, a municipal policemen’s pension and relief fund~~
106 ~~as provided in section sixteen, article twenty-two of this chapter.~~

107 ~~Paid police department does not mean a department whose~~
108 ~~employees are paid nominal salaries or wages or are paid only~~
109 ~~for services actually rendered on an hourly basis. (2) “Municipal~~

110 ~~firefighter” means an individual employed as a member of a paid~~
111 ~~fire department by a West Virginia municipality or municipal~~
112 ~~subdivision which has established and maintains a municipal~~
113 ~~firemen’s pension and relief fund, and who is not a member of,~~
114 ~~and not eligible for membership in, a municipal firemen’s~~
115 ~~pension and relief fund as provided in section sixteen, article~~
116 ~~twenty-two of this chapter. Paid fire department does not mean~~

117 ~~a department whose employees are paid nominal salaries or~~
118 ~~wages or are paid only for services actually rendered on an~~
119 ~~hourly basis.~~

120 (p) (o) “Final average salary” means the average of the
121 highest annual compensation received for covered employment
122 by the member during any five consecutive plan years within the
123 member’s last ten years of service while employed, prior to any
124 disability payment. If the member did not have annual
125 compensation for the five full plan years preceding the member’s
126 attainment of normal retirement age and during that period the
127 member received disability benefits under this article, then “final
128 average salary” means the average of the monthly compensation
129 which the member was receiving in the plan year prior to the
130 initial disability. “Final average salary” does not include any
131 lump sum payment for unused, accrued leave of any kind or
132 character.

133 (q) (p) “Full-time employment” means permanent
134 employment of an employee by a participating municipality in
135 a position which normally requires twelve months per year

136 service and requires at least one thousand forty hours per year
137 service in that position.

138 (†) (q) “Fund” means the West Virginia Municipal Police
139 Officers and Firefighters Retirement Fund created by this article.

140 (§) (r) “Hour of service” means: (1) Each hour for which a
141 member is paid or entitled to payment for covered employment
142 during which time active duties are performed. These hours shall
143 be credited to the member for the plan year in which the duties
144 are performed; and (2) each hour for which a member is paid or
145 entitled to payment for covered employment during a plan year
146 but where no duties are performed due to vacation, holiday,
147 illness, incapacity including disability, layoff, jury duty, military
148 duty, leave of absence or any combination thereof and without
149 regard to whether the employment relationship has terminated.
150 Hours under this subdivision shall be calculated and credited
151 pursuant to West Virginia Division of Labor rules. A member
152 will not be credited with any hours of service for any period of
153 time he or she is receiving benefits under section seventeen or
154 eighteen of this article; and (3) each hour for which back pay is
155 either awarded or agreed to be paid by the employing

156 municipality, irrespective of mitigation of damages. The same
157 hours of service shall not be credited both under subdivision (1)
158 or (2) of this subsection and under this subdivision. Hours under
159 this paragraph shall be credited to the member for the plan year
160 or years to which the award or agreement pertains, rather than
161 the plan year in which the award, agreement or payment is made.

162 ~~(t)~~ (s) “Member” means, except as provided in section thirty-
163 two of this article, a person ~~first~~ hired as a municipal police
164 officer or municipal firefighter, as defined in this section, by a
165 participating municipal employer on or after January 1, 2010. A
166 member shall remain a member until the benefits to which he or
167 she is entitled under this article are paid or forfeited.

168 ~~(tt)~~ (t) “Monthly salary” means the W-2 reportable
169 compensation received by a member during the month.

170 ~~(v)~~ (u) “Municipality” has the meaning ascribed to it in this
171 code.

172 (v) (1) “Municipal police officer” means an individual
173 employed as a member of a paid police department by a West
174 Virginia municipality or municipal subdivision which has
175 established and maintains a municipal policemen’s pension and

176 relief fund, and who is not a member of, and not eligible for
177 membership in, a municipal policemen’s pension and relief fund
178 as provided in section sixteen, article twenty-two of this chapter.
179 Paid police department does not mean a department whose
180 employees are paid nominal salaries or wages or are paid only
181 for services actually rendered on an hourly basis.

182 (2) “Municipal firefighter” means an individual employed as
183 a member of a paid fire department by a West Virginia
184 municipality or municipal subdivision which has established and
185 maintains a municipal firemen’s pension and relief fund, and
186 who is not a member of, and not eligible for membership in, a
187 municipal firemen’s pension and relief fund as provided in
188 section sixteen, article twenty-two of this chapter. Paid fire
189 department does not mean a department whose employees are
190 paid nominal salaries or wages or are paid only for services
191 actually rendered on an hourly basis.

192 (w) “Municipal subdivision” means any separate corporation
193 or instrumentality established by one or more municipalities, as
194 permitted by law; and any public corporation charged by law

195 with the performance of a governmental function and whose
196 jurisdiction is coextensive with one or more municipalities.

197 (x) "Normal form" means a monthly annuity which is one
198 twelfth of the amount of the member's accrued benefit which is
199 payable for the member's life. If the member dies before the sum
200 of the payments he or she receives equals his or her accumulated
201 contributions on the annuity starting date, the named beneficiary
202 shall receive in one lump sum the difference between the
203 accumulated contributions at the annuity starting date and the
204 total of the retirement income payments made to the member.

205 (y) "Normal retirement age" means the first to occur of the
206 following: (1) Attainment of age fifty years and the completion
207 of twenty or more years of regular contributory service; (2)
208 while still in covered employment, attainment of at least age
209 fifty years and when the sum of current age plus regular
210 contributory service equals or exceeds seventy years; (3) while
211 still in covered employment, attainment of at least age sixty
212 years and completion of ten years of regular contributory
213 service; or (4) Attainment of age sixty-two years and completion
214 of five or more years of regular contributory service.

215 (z) “Plan” means the West Virginia Municipal Police
216 Officers and Firefighters Retirement System established by this
217 article.

218 (aa) “Plan year” means the twelve-month period
219 commencing on January 1 of any designated year and ending the
220 following December 31.

221 (bb) “Qualified public safety employee” means any
222 employee of a participating state or political subdivision who
223 provides police protection, firefighting services or emergency
224 medical services for any area within the jurisdiction of the state
225 or political subdivision, or such other meaning given to the term
226 by Section 72(t)(10)(B) of the Internal Revenue Code or by
227 Treasury Regulation §1.401(a)-1(b)(2)(v) as they may be
228 amended from time to time.

229 (cc) “Regular contributory service” means a member’s
230 credited service excluding active military duty, disability service
231 and accrued annual and sick leave service.

232 (dd) “Regular interest” means the rate or rates of interest per
233 annum, compounded annually, as the board adopts in accordance
234 with the provisions of this article.

235 (ee) “Required beginning date” means April 1 of the
236 calendar year following the later of: (1) The calendar year in
237 which the member attains age seventy and one-half; or (2) the
238 calendar year in which he or she retires or otherwise separates
239 from covered employment.

240 (ff) “Retirement income payments” means the monthly
241 retirement income payments payable under the plan.

242 (gg) “Spouse” means the person to whom the member is
243 legally married on the annuity starting date.

244 (hh) “Surviving spouse” means the person to whom the
245 member was legally married at the time of the member’s death
246 and who survived the member.

247 (ii) “Totally disabled” means a member’s inability to
248 engage in substantial gainful activity by reason of any medically
249 determined physical or mental impairment that can be expected
250 to result in death or that has lasted or can be expected to last for
251 a continuous period of not less than twelve months. For purposes
252 of this subsection: (1) A member is totally disabled only if his or
253 her physical or mental impairment or impairments is so severe
254 that he or she is not only unable to perform his or her previous

255 work as a police officer or firefighter but also cannot,
256 considering his or her age, education and work experience,
257 engage in any other kind of substantial gainful employment
258 which exists in the state regardless of whether: (A) The work
259 exists in the immediate area in which the member lives; (B) a
260 specific job vacancy exists; or (C) the member would be hired if
261 he or she applied for work. For purposes of this article,
262 substantial gainful employment is the same definition as used by
263 the United States Social Security Administration. (2) “Physical
264 or mental impairment” is an impairment that results from an
265 anatomical, physiological or psychological abnormality that is
266 demonstrated by medically accepted clinical and laboratory
267 diagnostic techniques. The board may require submission of a
268 member’s annual tax return for purposes of monitoring the
269 earnings limitation.

270 (jj) “Year of service” means a member shall, except in his or
271 her first and last years of covered employment, be credited with
272 years of service credit based on the hours of service performed
273 as covered employment and credited to the member during the
274 plan year based on the following schedule:

275	Hours of Service	Year of Service Credited
276	Less than 500.....	0
277	500 to 999.	1/3
278	1,000 to 1,499.	2/3
279	1,500 or more.....	1

280 During a member's first and last years of covered
281 employment, the member shall be credited with one twelfth of
282 a year of service for each month during the plan year in which
283 the member is credited with an hour of service for which
284 contributions were received by the fund. A member is not
285 entitled to credit for years of service for any time period during
286 which he or she received disability payments under section
287 seventeen or eighteen of this article.

§8-22A-6. Members.

1 (a) A police officer or firefighter ~~first employed~~ hired in
2 covered employment after the effective date of this article by a
3 municipality or municipal subdivision which has established and
4 maintained a policemen's pension and relief fund or a firemen's
5 pension and relief fund pursuant to section sixteen, article
6 twenty-two of this chapter and which is a participating employer,

7 shall be a member of this retirement plan: Provided, That any
8 police officer or firefighter who has concurrent employment in
9 an additional job or jobs which would require the police officer
10 or firefighter to be a member of the West Virginia Deputy
11 Sheriff Retirement System or the West Virginia Emergency
12 Medical Services Retirement System shall participate in only
13 one retirement system administered by the board, and the
14 retirement system applicable to the concurrent employment for
15 which the employee has the earliest date of hire shall prevail.

16 (b) Except as provided in section thirty-two of this article, a
17 police officer or firefighter who is a member of the Municipal
18 Police Officers and Firefighters Retirement System may not
19 have credit for covered employment in any other retirement
20 system applied as service credit in the Municipal Police Officers
21 and Firefighters Retirement System.

22 (c) Notwithstanding any other provisions of this article, any
23 individual who is a leased employee is not eligible to participate
24 in the plan. For purposes of this plan, a “leased employee”
25 means any individual who performs services as an independent
26 contractor or pursuant to an agreement with an employee leasing

27 organization or similar organization. If a question arises
28 regarding the status of an individual as a leased employee, the
29 board has final power to decide the question.

