

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **Senate Bill 622**

By Senators Nelson, Hamilton, Phillips, and Queen

[Introduced February 14, 2023; referred  
to the Committee on Pensions; and then to the  
Committee on Finance]

1 A BILL to amend and reenact §20-18-2 and §20-18-6 of the Code of West Virginia, 1931, as  
 2 amended, all relating to including state correctional officers in the Division of Natural  
 3 Resources Police Officer Retirement System.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 18. WEST VIRGINIA DIVISION OF NATURAL RESOURCES POLICE  
 OFFICER RETIREMENT SYSTEM.**

**§20-18-2. Definitions.**

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

3 (a) "Accrued benefit" means on behalf of any member two and one-quarter percent of the  
 4 member's final average salary multiplied by the member's years of credited service: *Provided*,  
 5 That members who retire after July 1, 2025, shall have an accrued benefit of two and one-half  
 6 percent of the member's final average salary multiplied by the member's years of credited service.  
 7 A member's accrued benefit may not exceed the limits of section 415 of the Internal Revenue  
 8 Code and is subject to the provisions of §20-18-13 of this code.

9 (b) "Accumulated contributions" means the sum of all amounts deducted from the annual  
 10 compensation of a member or paid on his or her behalf pursuant to §5-10C-1 *et seq.* of this code,  
 11 either pursuant to §20-18-8(a) or §5-10-29 of this code as a result of covered employment together  
 12 with regular interest on the deducted amounts.

13 (c) "Active member" means a member who is active and contributing to the plan.

14 (d) "Active military duty" means full-time active duty with any branch of the armed forces of  
 15 the United States, including service with the National Guard or reserve military forces when the  
 16 member has been called to active full-time duty and has received no compensation during the  
 17 period of that duty from any board or employer other than the armed forces.

18 (e) "Actuarial equivalent" means a benefit of equal value computed upon the basis of the

19 mortality table and interest rates as set and adopted by the retirement board in accordance with  
20 the provisions of this article: *Provided*, That when used in the context of compliance with the  
21 federal maximum benefit requirements of section 415 of the Internal Revenue Code, "actuarial  
22 equivalent" shall be computed using the mortality tables and interest rates required to comply with  
23 those requirements.

24 (f) "Annual compensation" means the wages paid to the member during covered  
25 employment within the meaning of section 3401(a) of the Internal Revenue Code, but determined  
26 without regard to any rules that limit the remuneration included in wages based upon the nature or  
27 location of employment or services performed during the plan year plus amounts excluded under  
28 section 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense  
29 allowances, cash or noncash fringe benefits or both, deferred compensation, and welfare benefits.  
30 Annual compensation for determining benefits during any determination period may not exceed  
31 the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of  
32 this code and section 401(a)(17) of the Internal Revenue Code.

33 (g) "Annual leave service" means accrued annual leave.

34 (h) "Annuity starting date" means the first day of the first calendar month following receipt  
35 of the retirement application by the board or the required beginning date, if earlier: *Provided*, That  
36 the member has ceased covered employment and reached normal retirement age.

37 (i) "Beneficiary" means a natural person who is entitled to, or will be entitled to, an annuity  
38 or other benefit payable by the plan.

39 (j) "Board" means the Consolidated Public Retirement Board created pursuant to §5-10D-1  
40 *et seq.* of this code.

41 (k) "Covered employment" means either: (1) Employment as a Natural Resources Police  
42 Officer or state correctional officer and the active performance of the duties required of a Natural  
43 Resources Police Officer or state correctional officer; (2) the period of time which active duties are  
44 not performed but disability benefits are received under §20-18-21 or §20-18-22 of this code; or (3)

45 concurrent employment by a Natural Resources Police Officer or state correctional officer in a job  
46 or jobs in addition to his or her employment as a Natural Resources Police Officer or state  
47 correctional officer where the secondary employment requires the Natural Resources Police  
48 Officer or state correctional officer to be a member of another retirement system which is  
49 administered by the Consolidated Public Retirement Board pursuant to §5-10D-1 *et seq.* of this  
50 code: *Provided*, That the Natural Resources Police Officer or state correctional officer contributes  
51 to the fund created in §20-18-7 of this code the amount specified as the Natural Resource Police  
52 Officer's contribution in §20-18-8 of this code.

53 (l) "Credited service" means the sum of a member's years of service, active military duty,  
54 disability service, eligible annual and sick leave service.

55 (m) "Dependent child" means either:

56 (1) An unmarried person under age 18 who is:

57 (A) A natural child of the member;

58 (B) A legally adopted child of the member;

59 (C) A child who at the time of the member's death was living with the member while the  
60 member was an adopting parent during any period of probation; or

61 (D) A stepchild of the member residing in the member's household at the time of the  
62 member's death; or

63 (2) Any unmarried child under age 23:

64 (A) Who is enrolled as a full-time student in an accredited college or university;

65 (B) Who was claimed as a dependent by the member for federal income tax purposes at  
66 the time of the member's death; and

67 (C) Whose relationship with the member is described in subparagraph (A), (B), or (C),  
68 paragraph (1) of this subdivision.

69 (n) "Dependent parent" means the father or mother of the member who was claimed as a  
70 dependent by the member for Federal Income Tax purposes at the time of the member's death.

71 (o) "Director" means Director of the Division of Natural Resources.

72 (p) "Disability service" means service credit received by a member, expressed in whole  
73 years, fractions thereof or both, equal to one half of the whole years, fractions thereof, or both,  
74 during which time a member receives disability benefits under §20-18-21 or §20-18-22 of this  
75 code.

76 (q) ~~"Division of Natural Resources" or "division"~~ "Division" means either the West Virginia  
77 Division of Natural Resources or the Division of Corrections and Rehabilitation.

78 (r) "Effective date" means January 2, 2021.

79 (s) "Employer error" means an omission, misrepresentation, or deliberate act in violation of  
80 relevant provisions of the West Virginia Code or of the West Virginia Code of State Rules or the  
81 relevant provisions of both the West Virginia Code and of the West Virginia Code of State Rules by  
82 the participating public employer that has resulted in an underpayment or overpayment of  
83 contributions required.

84 (t) "Final average salary" means the average of the highest annual compensation received  
85 for covered employment by the member during any five consecutive plan years within the  
86 member's last 10 years of service. If the member did not have annual compensation for the five full  
87 plan years preceding the member's attainment of normal retirement age and during that period the  
88 member received disability benefits under §20-18-21 or §20-18-22 of this code then "final average  
89 salary" means the average of the monthly salary determined paid to the member during that period  
90 determined as if the disability first commenced after the effective date of this article with monthly  
91 compensation equal to that average monthly compensation which the member was receiving in  
92 the plan year prior to the initial disability multiplied by 12.

93 (u) "Fund" means the West Virginia Natural Resources Police Officer Retirement Fund  
94 created pursuant to §20-18-7 of this code.

95 (v) "Hour of service" means:

96 (1) Each hour for which a member is paid;

97           (2) Each hour for which a member is paid but where no duties are performed due to  
98 vacation, holiday, illness, incapacity including disability, layoff, jury duty, military duty, leave of  
99 absence, or any combination thereof, and without regard to whether the employment relationship  
100 has terminated. Hours under this paragraph shall be calculated and credited pursuant to West  
101 Virginia Division of Labor rules. A member will not be credited with any hours of service for any  
102 period of time he or she is receiving benefits under §20-18-21 or §20-18-22 of this code; and

103           (3) Each hour for which back pay is either awarded or agreed to be paid by the Division of  
104 Natural Resources or the Division of Corrections and Rehabilitation, irrespective of mitigation of  
105 damages. The same hours of service may not be credited both under this subdivision and  
106 subdivision (1) or (2) of this subsection. Hours under this paragraph shall be credited to the  
107 member for the plan year or years to which the award or agreement pertains rather than the plan  
108 year in which the award, agreement, or payment is made.

109           (w) "Member" means a person first hired as a Natural Resources Police Officer, as defined  
110 in subsection (y) of this section, on or after January 2, 2021, ~~or~~ a Natural Resources Police Officer  
111 first hired prior to the effective date and who elects to become a member pursuant to §20-18-6 of  
112 this code, or a state correctional officer first hired on or after July 1, 2023, who elects to become a  
113 member pursuant to §20-18-6 of this code. A member shall remain a member until the benefits to  
114 which he or she is entitled under this article are paid or forfeited or until cessation of membership  
115 pursuant to §20-18-6 of this code.

116           (x) "Monthly salary" means the portion of a member's gross annual compensation which is  
117 paid to him or her per month.

118           (y) "Natural Resources Police Officer" means any person regularly employed in the service  
119 of the division as a law-enforcement officer on or after the effective date of this article, and who is  
120 eligible to participate in the fund. The term shall not include Emergency Natural Resources Police  
121 Officers as defined in §20-7-1(c) of this code, Special Natural Resources Police Officers as  
122 defined in §20-7-1(d) of this code, Forestry Special Natural Resources Police Officers as defined

123 in §20-7-1(e) of this code, or Federal Law Enforcement Officer as defined in §20-7-1b of this code.

124 (z) "Normal form" means a monthly annuity which is 1/12 of the amount of the member's  
125 accrued benefit which is payable for the member's life. If the member dies before the sum of the  
126 payments he or she receives equals his or her accumulated contributions on the annuity starting  
127 date, the named beneficiary or beneficiaries shall receive in one lump sum the difference between  
128 the accumulated contributions at the annuity starting date and the total of the retirement income  
129 payments made to the member.

130 (aa) "Normal retirement age" means the first to occur of the following: (1) Attainment of age  
131 55 years and the completion of 15 or more years of service; (2) while still in covered employment,  
132 attainment of at least age 55 years, and when the sum of current age plus years of service equals  
133 or exceeds 70 years; or (3) attainment of at least age 62 years, and completion of 10 years of  
134 service: *Provided*, That any member shall in qualifying for retirement pursuant to this article have  
135 10 or more years of service, all of which years shall be actual, contributory ones.

136 (bb) "Partially disabled" means a member's inability to engage in the duties of a Natural  
137 Resources Police Officer or state correctional officer by reason of any medically determinable  
138 physical or mental impairment that can be expected to result in death or that has lasted or can be  
139 expected to last for a continuous period of not less than 12 months. A member may be determined  
140 partially disabled for the purposes of this article and maintain the ability to engage in other gainful  
141 employment which exists within the state but which ability would not enable him or her to earn an  
142 amount at least equal to two thirds of the average annual compensation earned by all active  
143 members of this plan during the plan year ending as of the most recent June 30, as of which plan  
144 data has been assembled and used for the actuarial valuation of the plan.

145 (cc) "Plan" means the West Virginia Natural Resources Police Officers Retirement System  
146 established by this article.

147 (dd) "Plan year" means the 12-month period commencing on July 1 of any designated year  
148 and ending the following June 30.

149 (ee) "Public Employees Retirement System" means the West Virginia Public Employees  
150 Retirement System created by §5-10-1 *et seq.* of this code.

151 (ff) "Qualified public safety employee" means any employee of the division who provides  
152 police protection, fire-fighting services, or emergency medical services for any area within the  
153 jurisdiction of the state or political subdivision, or such other meaning given to the term by section  
154 72(t)(10)(B) of the Internal Revenue Code or by Treasury Regulation §1.401(a)-1(b)(2)(v) as they  
155 may be amended from time to time.

156 (gg) "Regular interest" means the rate or rates of interest per annum, compounded  
157 annually, as the board adopts in accordance with the provisions of this article.

158 (hh) "Required beginning date" means April 1 of the calendar year following the later of: (i)  
159 The calendar year in which the member attains age 72; or (ii) the calendar year in which the  
160 member retires or otherwise separates from covered employment.

161 (ii) "Retirant" means any member who commences an annuity payable by the retirement  
162 system.

163 (jj) "Retire" or "retirement" means a member's termination from the employ of a  
164 participating public employer and the commencement of an annuity by the plan.

165 (kk) "Retirement income payments" means the annual retirement income payments  
166 payable under the plan.

167 (ll) "Spouse" means the person to whom the member is legally married on the annuity  
168 starting date.

169 (mm) "State correctional officer" means any person regularly employed in the service of  
170 the Division of Corrections and Rehabilitation to enforce rules necessary for the control of  
171 offenders and the maintenance of public safety in state adult centers, prisons, regional jails, and  
172 juvenile centers who was hired on or after July 1, 2023, and who is eligible to participate in the  
173 fund.

174 ~~(mm)~~ (nn) "Substantial gainful employment" or "gainful employment" means employment



175 in which an individual may earn up to an amount that is determined by the United States Social  
176 Security Administration as substantial gainful activity and still receive total disability benefits.

177 ~~(nn)~~ (oo) "Surviving spouse" means the person to whom the member was legally married  
178 at the time of the member's death and who survived the member.

179 ~~(ee)~~ (pp) "Totally disabled" means a member's inability to engage in substantial gainful  
180 activity by reason of any medically determined physical or mental impairment that can be expected  
181 to result in death or that has lasted or can be expected to last for a continuous period of not less  
182 than 12 months. For purposes of this subdivision:

183 (1) A member is totally disabled only if his or her physical or mental impairment or  
184 impairments are so severe that he or she is not only unable to perform his or her previous work as  
185 a Natural Resources Police Officer or state correctional officer but also cannot, considering his or  
186 her age, education, and work experience, engage in any other kind of substantial gainful  
187 employment which exists in the state regardless of whether: (A) The work exists in the immediate  
188 area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be  
189 hired if he or she applied for work.

190 (2) "Physical or mental impairment" is an impairment that results from an anatomical,  
191 physiological, or psychological abnormality that is demonstrated by medically accepted clinical  
192 and laboratory diagnostic techniques. A member's receipt of Social Security disability benefits  
193 creates a rebuttable presumption that the member is totally disabled for purposes of this plan.  
194 Substantial gainful employment rebuts the presumption of total disability.

195 ~~(pp)~~ (qq) "Year of service." A member shall, except in his or her first and last years of  
196 covered employment, or within the plan year of the effective date, be credited with year of service  
197 credit, based upon the hours of service performed as covered employment and credited to the  
198 member during the plan year based upon the following schedule:

Hours of Service	Years of Service Credited
Less than 500	0

201	500 to 999	1/3
202	1,000 to 1,499	2/3
203	1,500 or more	1

204 During a member's first and last years of covered employment or within the plan year of the  
 205 effective date, the member shall be credited with 1/12 of a year of service for each month during  
 206 the plan year in which the member is credited with an hour of service. A member is not entitled to  
 207 credit for years of service for any time period during which he or she received disability payments  
 208 under §20-18-21 or §20-18-22 of this code. Except as specifically excluded, years of service  
 209 include covered employment prior to the effective date. Years of service which are credited to a  
 210 member prior to his or her receipt of accumulated contributions upon termination of employment  
 211 pursuant to §20-18-20 or §5-10-30 of this code, shall be disregarded for all purposes under this  
 212 plan unless the member repays the accumulated contributions with interest pursuant to §20-18-20  
 213 of this code or had prior to the effective date made the repayment pursuant to §5-10-18 of this  
 214 code.

**§20-18-6. Members.**

1 (a) Any Natural Resources Police Officer first employed in covered employment after the  
 2 effective date of this article and any state correctional officer first employed in covered  
 3 employment on or after July 1, 2023, shall be a member of this retirement system and does not  
 4 qualify for membership in any other retirement system administered by the board, so long as he or  
 5 she remains employed in covered employment: *Provided,* That any Natural Resources Police  
 6 Officer or state correctional officer who has concurrent employment in an additional job or jobs  
 7 which would require the Natural Resources Police Officer or state correctional officer to be a  
 8 member of the West Virginia Deputy Sheriff Retirement System, West Virginia Municipal Police  
 9 Officers and Firefighters Retirement System or the West Virginia Emergency Medical Services  
 10 Retirement System shall participate in only one retirement system administered by the board, and  
 11 the retirement system applicable to the concurrent employment for which the employee has the

12 earliest date of hire shall prevail. The membership of any person in the plan ceases: (1) Upon the  
13 withdrawal of accumulated contributions after the cessation of service; (2) upon retirement; or (3)  
14 at death.

15 (b) Any Natural Resources Police Officer employed in covered employment on July 1,  
16 2020, shall notify in writing both the Division of Natural Resources and the board no later than  
17 September 30, 2020, of his or her desire to become a member of the plan beginning January 2,  
18 2021: *Provided*, That any Natural Resources Police Officer hired after July 1, 2020, but before  
19 January 2, 2021, shall make this required notification to the division and the board no later than 30  
20 days from receipt of the notice required by §20-18-11 of this code or September 30, 2020,  
21 whichever is later. Any Natural Resources Police Officer who elects to become a member of the  
22 plan ceases to be an active member in the Public Employees Retirement System and shall  
23 continue to be ineligible for future membership in any other retirement system administered by the  
24 board so long as the Natural Resources Police Officer remains employed in covered employment  
25 in this plan; any Natural Resources Police Officer who does not affirmatively elect to become a  
26 member of the plan continues to be eligible for any other retirement system as is from time to time  
27 offered to other state employees but is ineligible for this plan regardless of any subsequent  
28 termination of employment and rehire.

29 (c) Any Natural Resources Police Officer employed in covered employment on the  
30 effective date of this article, who has timely elected to transfer into this plan as provided in  
31 subsection (b) of this section, shall be given credited service at the time of transfer for all credited  
32 service then standing to the Natural Resources Police Officer service credit in the Public  
33 Employees Retirement System regardless of whether the credited service (as that term is defined  
34 in §5-10-2 of this code) was earned as a Natural Resources Police Officer. All the credited service  
35 standing to the transferring Natural Resources Police Officer's credit in the Public Employees  
36 Retirement Fund System at the time of transfer into this plan shall be transferred into the plan

37 created by this article, and the transferring Natural Resources Police Officer shall be given the  
38 same credit for the purposes of this article for all service transferred from the Public Employees  
39 Retirement System, as that transferring Natural Resources Police Officer would have received  
40 from the Public Employees Retirement System as if the transfer had not occurred. In connection  
41 with each transferring Natural Resources Police Officer receiving credit for prior employment as  
42 provided in this subsection, a transfer from the Public Employees Retirement System to this plan  
43 shall be made pursuant to the procedures described in §20-18-10 of this code: *Provided*, That a  
44 member of this plan who has elected to transfer from the Public Employees Retirement System  
45 into this plan pursuant to subsection (b) of this section may not, after having transferred into and  
46 become an active member of this plan, reinstate to his or her credit in this plan any service credit  
47 relating to periods of non-Natural Resources Police Officer service which were withdrawn from the  
48 Public Employees Retirement System prior to his or her elective transfer into this plan.

49 (d) Any Natural Resources Police Officer who was employed as a Natural Resources  
50 Police Officer prior to the effective date of this article but was not employed as a Natural  
51 Resources Police Officer on the effective date of this article and has not commenced retirement  
52 under the Public Employees Retirement System, shall become a member upon rehire as a Natural  
53 Resources Police Officer. For purposes of this subsection, the member's years of service and  
54 credited service prior to the effective date shall not be counted for any purposes under this plan  
55 unless the Natural Resources Police Officer has not received the return of his or her accumulated  
56 contributions in the Public Employees Retirement System pursuant to §5-10-30 of this code. The  
57 member may request in writing within one year of first becoming a member of the plan to have his  
58 or her accumulated contributions and employer contributions from covered employment in the  
59 Public Employees Retirement System transferred to the plan. If the conditions of the subsection  
60 are met, all years of the Natural Resources Police Officer's covered employment shall be counted  
61 as years of service for the purposes of this article.

62 (e) Once made, the election provided in this section is irrevocable. All Natural Resources  
63 Police Officers first employed after the effective date and Natural Resources Police Officers  
64 electing to become members as described in this section shall be members as a condition of  
65 employment and shall make the contributions required by §20-18-8 of this code.

66 (f) Notwithstanding any other provisions of this article to the contrary, any individual who is  
67 a leased employee is not eligible to participate in the plan. For purposes of this plan, a "leased  
68 employee" means any individual who performs services as an independent contractor or pursuant  
69 to an agreement with an employee leasing organization or similar organization. If a question arises  
70 regarding the status of an individual as a leased employee, the board has final power to decide the  
71 question. Additionally, any individual who is an Emergency Natural Resources Police Officer as  
72 defined in §20-7-1(c) of this code, Special Natural Resources Police Officer as defined in §20-7-  
73 1(d) of this code, Forestry Special Natural Resources Police Officer as defined in §20-7-1(e) of this  
74 code, or Federal Law Enforcement Officer as defined in §20-7-1b of this code, is not eligible to  
75 participate in the plan.

NOTE: The purpose of this bill is to include state correctional officers in the Division of Natural Resources Police Officer Retirement System.

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