

# **WEST VIRGINIA LEGISLATURE**

**2023 REGULAR SESSION**

## **Senate Bill 64**

By Senator Nelson

[Introduced January 11, 2023; referred  
to the Committee on Pensions; and then to the  
Committee on Finance]

1 A BILL to amend and reenact §5-10-2 of the Code of West Virginia, 1931, as amended; and to  
 2 amend said code by adding thereto four new sections, designated §5-10-25a, §5-10-25b,  
 3 §5-10-25c, and §5-10-25d, all relating to updating definitions of the West Virginia Public  
 4 Employees Retirement Act; providing benefits for law enforcement, public safety, and  
 5 rescue personnel for total disability and death resulting from their covered employment;  
 6 providing awards and benefits to surviving spouses of law enforcement, public safety, and  
 7 rescue personnel when a member dies in performance of duty; providing for additional  
 8 death benefits and scholarships; clarifying dependent children of law enforcement, public  
 9 safety, and rescue personnel; and providing for burial benefits for law enforcement, public  
 10 safety, and rescue personnel.

*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 phrases  
 2 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 behalf  
 7 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*, That  
 10 when used in the context of compliance with the federal maximum benefit requirements of Section  
 11 415 of the Internal Revenue Code, actuarial equivalent shall be computed using the mortality tables  
 12 and interest rates required to comply with those requirements;

13 (4) "Annuity" means an annual amount payable by the retirement system throughout the life of

14 a person. All annuities shall be paid in equal monthly installments, rounding to the upper cent for any  
15 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;

19 (6) "Beneficiary" means any person which shall include an irrevocable special needs trust, as  
20 that term is defined in this section, for the benefit of one individual beneficiary and which trust  
21 terminates upon the death of such individual with no further annuity benefits being payable, except a  
22 retirant, who is entitled to, or will be entitled to, an annuity or other benefit payable by the retirement  
23 system;

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

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

39 (9) "Contributing service" means service rendered by a member within this state and for which  
40 the member made contributions to a public retirement system account of this state, to the extent

41 credited him or her as provided by this article;

42 ~~(10)~~ "Credited service" means the sum of a member's prior service credit, military service  
43 credit, workers' compensation service credit and contributing service credit standing to his or her  
44 credit as provided in this article;

45 "Dependent child" means either:

46 (A) An unmarried person under age 18 who is:

47 (i) A natural child of the member;

48 (ii) A legally adopted child of the member;

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

51 (iv) A stepchild of the member residing in the member's household at the time of the member's  
52 death; or

53 (B) Any unmarried child under age 23:

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

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

57 (iii) Whose relationship with the member is described in subparagraph (i), (ii), or (iii),  
58 paragraph (A) of this subdivision.

59 "Dependent parent" means the father or mother of the member who was claimed as a  
60 dependent by the member for federal income tax purposes at the time of the member's death.

61 ~~(11)~~ "Employee" means any person who serves regularly as an officer or employee, full time,  
62 on a salary basis, whose tenure is not restricted as to temporary or provisional appointment, in the  
63 service of, and whose compensation is payable, in whole or in part, by any political subdivision, or an  
64 officer or employee whose compensation is calculated on a daily basis and paid monthly or on  
65 completion of assignment, including technicians and other personnel employed by the West Virginia  
66 National Guard whose compensation, in whole or in part, is paid by the federal government: *Provided,*  
67 That an employee of the Legislature whose term of employment is otherwise classified as temporary

68 and who is employed to perform services required by the Legislature for its regular sessions or during  
69 the interim between regular sessions and who has been or is employed during regular sessions or  
70 during the interim between regular sessions in seven or more consecutive calendar years, as certified  
71 by the clerk of the house in which the employee served, is an employee, any provision to the contrary  
72 in this article notwithstanding, and is entitled to credited service in accordance with provisions of §5-  
73 10-14 of this code: *Provided, however,* That members of the legislative body of any political  
74 subdivision and commissioners of the West Virginia Claims Commission are employees receiving  
75 one year of service credit for each one-year term served and prorated service credit for any partial  
76 term served, anything contained in this article to the contrary notwithstanding: *Provided further,* That  
77 only a compensated board member of a participating public employer appointed to a board of a  
78 nonlegislative body for the first time on or after July 1, 2014, who normally is required to work 12  
79 months per year and 1040 hours of service per year is an employee. In any case of doubt as to who is  
80 an employee within the meaning of this article, the board of trustees shall decide the question;

81 (12) "Employer error" means an omission, misrepresentation, or deliberate act in violation of  
82 relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations or the  
83 relevant provisions of both the West Virginia Code and of the West Virginia Code of State Regulations  
84 by the participating public employer that has resulted in an underpayment or overpayment of  
85 contributions required;

86 (13) "Final average salary" means either of the following: *Provided,* That salaries for  
87 determining benefits during any determination period may not exceed the maximum compensation  
88 allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and Section 401 (a)  
89 (17) of the Internal Revenue Code: *Provided, however,* That the provisions of §5-10-22h of this code  
90 are not applicable to the amendments made to this subdivision during the 2011 regular session of the  
91 Legislature;

92 (A) The average of the highest annual compensation received by a member, including a  
93 member of the Legislature who participates in the retirement system in the year 1971 or thereafter,  
94 during any period of three consecutive years of credited service contained within the member's 15

95 years of credited service immediately preceding the date his or her employment with a participating  
96 public employer last terminated: *Provided*, That for persons who were first hired on or after July 1,  
97 2015, any period of five consecutive years of contributing service contained within the member's 15  
98 years of credited service immediately preceding the date his or her employment with a participating  
99 public employer last terminated; or

100 (B) If the member has less than five years of credited service, the average of the annual rate of  
101 compensation received by the member during his or her total years of credited service; and in  
102 determining the annual compensation, under either paragraph (A) or (B) of this subdivision, of a  
103 member of the Legislature who participates in the retirement system as a member of the Legislature  
104 in the year 1971, or in any year thereafter, his or her actual legislative compensation (the total of all  
105 compensation paid under §4-2A-2, §4-2A-3, §4-2A-4, and §4-2A-5 of this code), in the year 1971, or  
106 in any year thereafter, plus any other compensation he or she receives in any year from any other  
107 participating public employer including the State of West Virginia, without any multiple in excess of  
108 one times his or her actual legislative compensation and other compensation, shall be used:  
109 *Provided*, That final average salary for any former member of the Legislature or for any member of the  
110 Legislature in the year 1971 who, in either event, was a member of the Legislature on November 30,  
111 1968, or November 30, 1969, or November 30, 1970, or on November 30 in any one or more of those  
112 three years and who participated in the retirement system as a member of the Legislature in any one  
113 or more of those years means: (i) Either, notwithstanding the provisions of this subdivision preceding  
114 this proviso, \$1,500 multiplied by eight, plus the highest other compensation the former member or  
115 member received in any one of the three years from any other participating public employer including  
116 the State of West Virginia; or (ii) final average salary determined in accordance with paragraph (A) or  
117 (B) of this subdivision, whichever computation produces the higher final average salary, and in  
118 determining the annual compensation under subparagraph (ii) of this paragraph, the legislative  
119 compensation of the former member shall be computed on the basis of \$1,500 multiplied by eight, and  
120 the legislative compensation of the member shall be computed on the basis set forth in the provisions  
121 of this subdivision immediately preceding this paragraph or on the basis of \$1,500 multiplied by eight,

122 whichever computation as to the member produces the higher annual compensation;

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

125       (15) "Limited credited service" means service by employees of the West Virginia Educational  
126 Broadcasting Authority, in the employment of West Virginia University, during a period when the  
127 employee made contributions to another retirement system, as required by West Virginia University,  
128 and did not make contributions to the Public Employees Retirement System: *Provided*, That while  
129 limited credited service can be used for the formula set forth in §5-10-21(e) of this code, it may not be  
130 used to increase benefits calculated under §5-10-22 of this code;

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

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

139       (18) "Plan year" means the same as referenced in §5-10-42 of this code;

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

149 July 1, 1997: *Provided, however*, That the Regional Community Policing Institute which participated in  
150 the Public Employees Retirement System before July 1, 2000, is considered a political subdivision  
151 solely for the purpose of permitting those employees who are members of the Public Employees  
152 Retirement System to remain members and continue to participate in the Public Employees  
153 Retirement System after July 1, 2000;

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

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

158 ~~(22)~~ "Required beginning date" means April 1 of the calendar year following the later of: (A)  
159 The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age 72 (if born  
160 after June 30, 1949); or (B) the calendar year in which a member ceases providing service covered  
161 under this retirement system to a participating employer;

162 ~~(23)~~ "Retirant" means any member who commences an annuity payable by the retirement  
163 system;

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

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

168 ~~(26)~~ "Retroactive service" means: (1) Service between July 1, 1961, and the date an employer  
169 decides to become a participating member of the Public Employees Retirement System; (2) service  
170 prior to July 1, 1961, for which the employee is not entitled to prior service at no cost in accordance  
171 with 162 CSR 5.12; and (3) service of any member of a legislative body or employees of the State  
172 Legislature whose term of employment is otherwise classified as temporary for which the employee is  
173 eligible, but for which the employee did not elect to participate at that time;

174 ~~(27)~~ "Service" means personal service rendered to a participating public employer by an  
175 employee of a participating public employer;



176           (28) "Special needs trust" means a trust established pursuant to §44D-8B-13 of this code for  
177 an individual beneficiary with a disability and such special needs trust is or will become irrevocable by  
178 the time the retirant names the special needs trust as the beneficiary of retirant's annuity benefits in  
179 place of the individual beneficiary and terminates upon the death of the individual beneficiary with no  
180 further annuity benefits being payable; and  
181           (29) "State" means the State of West Virginia.

**§5-10-25a. Disability retirement for law-enforcement, public safety and rescue personnel duty related.**

1           (a) Notwithstanding any provision of §5-10-25 of this code to the contrary, any member who is  
2 employed as a law-enforcement officer, correctional officer, firefighter, or 911 personnel, and who  
3 after the effective date of this section and during covered employment:  
4           (1) Has been or becomes totally disabled by injury, illness, or disease; and  
5           (2) The disability is a result of an occupational risk or hazard inherent in or peculiar to the  
6 services required of him or her; and  
7           (3) In the opinion of the board, the member is by reason of the disability unable to perform  
8 adequately the duties required of his or her covered employment, shall receive 90 percent of his or her  
9 average full monthly compensation for the 12-month contributory period preceding the member's  
10 disability award, or the shorter period if the member has not worked 12 months.  
11           (b) The disability benefit payments authorized by this section shall begin the first day of the  
12 month following termination of employment and receipt of the disability retirement application by the  
13 Consolidated Public Retirement Board.

**§5-10-25b. Awards and benefits to surviving spouse of law-enforcement, public safety and rescue personnel when a member dies in performance of duty.**

1           (a) The surviving spouse of any member who, after the effective date of this article while in  
2 covered employment, has died or dies by reason of injury, illness, or disease resulting from an  
3 occupational risk or hazard inherent in or peculiar to the service required of members, while the  
4 member was or is engaged in the performance of his or her duties as a law-enforcement officer,

5 correctional officer, firefighter, or 911 personnel may receive and shall be paid from the fund  
6 benefits as determined in this section. The surviving spouse shall receive, annually, in equal  
7 monthly installments during his or her lifetime, an amount equal to the greater of:

8 (1) Two- thirds of the annual compensation received in the preceding 12-month period by  
9 the deceased member; or

10 (2) If the member dies after his or her normal retirement age, the monthly amount which the  
11 spouse would have received had the member retired the day before his or her death, elected a 100  
12 percent joint and survivor annuity with the spouse as the joint annuitant, and then died.

13 (b) Benefits for a surviving spouse received under this section are in lieu of receipt of any  
14 other benefits under this article for the spouse or any other person or under the provisions of any  
15 other state retirement system based on the member's covered employment.

**§5-10-25c. Additional death benefits and scholarships; dependent children of law**  
**enforcement, public safety and rescue personnel.**

1 (a) In addition to the spouse death benefits in §5-10-25b of this code, the surviving spouse  
2 of a member who was employed as a law-enforcement officer, correctional officer, firefighter, or  
3 911 personnel, may receive and there shall be paid to the spouse \$100 monthly for each  
4 dependent child.

5 (b) If the surviving spouse dies while receiving death benefits provided in §5-10-25b of this  
6 code or if there is no surviving spouse, the fund shall pay monthly to each dependent child a sum  
7 equal to 100 percent of the spouse's entitlement under this article divided by the number of  
8 dependent children. If there is neither a surviving spouse nor a dependent child, the fund shall pay  
9 in equal monthly installments to the dependent parents of the deceased member during their joint  
10 lifetimes a sum equal to the amount which a surviving spouse, without children, would have  
11 received: *Provided*, That when there is only one dependent parent surviving, that parent may  
12 receive during his or her lifetime one-half the amount which both parents, if living, would have  
13 been entitled to receive: *Provided, however*, That if there is no surviving spouse, dependent child

14 or dependent parent of the deceased member, the accumulated contributions shall be paid to a  
15 named beneficiary or beneficiaries: *Provided further*, That if there is no surviving spouse,  
16 dependent child or dependent parent of the deceased member, or any named beneficiary or  
17 beneficiaries, then the accumulated contributions shall be paid to the estate of the deceased  
18 member.

19 (c) Any person qualifying as a dependent child under this section, in addition to any other  
20 benefits due under this or other sections of this article, may receive a scholarship to be applied to  
21 the career development education of that person. This sum, up to but not exceeding \$7,500 per  
22 year, shall be paid from the fund to any higher education institution in this state, career-technical  
23 education provider in this state or other entity in this state approved by the board, to offset the  
24 expenses of tuition, room and board, books, fees or other costs incurred in a course of study at any  
25 of these institutions as long as the recipient makes application to the board on an approved form  
26 and under rules provided by the board and maintains scholastic eligibility as defined by the  
27 institution or the board. The board may propose legislative rules for promulgation in accordance  
28 with §29A-3-1 et seq. of this code which define age requirements, physical and mental  
29 requirements, scholastic eligibility, disbursement methods, institutional qualifications and other  
30 requirements as necessary and not inconsistent with this section. Scholarship benefits awarded  
31 pursuant to this subsection are not subject to division or payable to an alternate payee by any  
32 Qualified Domestic Relations Order.

**§5-10-25d. Burial benefit law-enforcement and public safety and rescue personnel.**

1 Any member who was employed as a law-enforcement officer, correctional officer,  
2 firefighter, or 911 personnel and who dies as a result of any service-related illness or injury after  
3 the effective date of this section is entitled to a lump sum burial benefit of \$5,000. If the member  
4 was married, the burial benefit shall be paid to the member's spouse. If the member was not  
5 married, the burial benefit shall be paid to the member's estate for the purposes of paying burial  
6 expenses, settling the member's final affairs, or both. Burial benefits awarded pursuant to this

- 7 section are not subject to division or payable to an alternate payee by any Qualified Domestic
- 8 Relations Order.