

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

ENROLLED

House Bill 2854

BY DELEGATES STORCH, GEARHEART, PETHTEL, EVANS, ANDERSON, GRAVES,

J. PACK AND RILEY

(BY REQUEST OF THE CONSOLIDATED PUBLIC RETIREMENT BOARD)

[Passed March 24, 2021; in effect ninety days from passage.]

1 AN ACT to amend and reenact §8-22A-2, §8-22A-14, §8-22A-16, §8-22A-17, §8-22A-18, and §8-
2 22A-22 of the Code of West Virginia, 1931, as amended; and to amend said code by
3 adding thereto two new sections, designated §8-22A-34 and §8-22A-35, all relating to the
4 West Virginia Municipal Police Officers and Firefighters Retirement System; defining
5 terms; removing conflicting and obsolete statutory provisions; eliminating conflicting
6 provisions relating to late retirement and restrictions on annuity options for married
7 members; clarifying preretirement death benefits; clarifying commencement date of
8 disability benefits; clarifying death benefit for dependent children; providing for return to
9 covered employment; and providing for severability.

Be it enacted by the Legislature of West Virginia:

CHAPTER 8. MUNICIPAL CORPORATIONS.

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 the context clearly requires a
2 different meaning:

3 (a) "Accrued benefit" means on behalf of any member two and six-tenths percent per year
4 of the member's final average salary for the first 20 years of credited service. Additionally, two
5 percent per year for 21 through 25 years and one percent per year for 26 through 30 years will be
6 credited with a maximum benefit of 67 percent of a member's final average salary. A member's
7 accrued benefit may not exceed the limits of Section 415 of the Internal Revenue Code and is
8 subject to the provisions of §8-22A-10 of this code.

9 (b) "Accumulated contributions" means the sum of all retirement contributions deducted
10 from the compensation of a member, or paid on his or her behalf as a result of covered
11 employment, together with regular interest on the deducted amounts.

12 (c) "Active military duty" means full-time duty in the active military service of the United
13 States Army, Navy, Air Force, Coast Guard or Marine Corps. The term does not include regularly
14 required training or other duty performed by a member of a reserve component or National Guard
15 unless the member can substantiate that he or she was called into the full-time active military
16 service of the United States and has received no compensation during the period of that duty from
17 any board or employer other than the armed forces.

18 (d) "Actuarial equivalent" means a benefit of equal value computed on the basis of the
19 mortality table and interest rates as set and adopted by the board in accordance with the
20 provisions of this article: *Provided*, That when used in the context of compliance with the federal
21 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 (e) "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 on 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
32 of this code and Section 401(a) (17) of the Internal Revenue Code.

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

34 (g) "Annuity starting date" means the first day of the month for which an annuity is payable
35 after submission of a retirement application or the required beginning date, if earlier. For purposes
36 of this subsection, if retirement income payments commence after the normal retirement age,
37 "retirement" means the first day of the month following or coincident with the latter of the last day

38 the member worked in covered employment or the member's normal retirement age and after
39 completing proper written application for retirement on an application supplied by the board.

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

42 (i) "Board" means the Consolidated Public Retirement Board.

43 (j) "Covered employment" means either: (1) Employment as a full-time municipal police
44 officer or firefighter and the active performance of the duties required of that employment; or (2)
45 the period of time during which active duties are not performed but disability benefits are received
46 under this article; or (3) concurrent employment by a municipal police officer or firefighter in a job
47 or jobs in addition to his or her employment as a municipal police officer or firefighter in this plan
48 where the secondary employment requires the police officer or firefighter to be a member of
49 another retirement system which is administered by the Consolidated Public Retirement Board
50 pursuant to this code: *Provided*, That the police officer or firefighter contributes to the fund created
51 in this article the amount specified as the member's contribution in §8-22A-8 of this code.

52 (k) "Credited service" means the sum of a member's years of service, active military duty
53 and disability service.

54 (l) "Dependent child" means either: (1) An unmarried person under age 18 who is: (A) A
55 natural child of the member; (B) a legally adopted child of the member; (C) a child who at the time
56 of the member's death was living with the member while the member was an adopting parent
57 during any period of probation; or (D) a stepchild of the member residing in the member's
58 household at the time of the member's death; or (2) Any unmarried child under age 23: (A) Who
59 is enrolled as a full-time student in an accredited college or university; (B) who was claimed as a
60 dependent by the member for federal income tax purposes at the time of the member's death;
61 and (C) whose relationship with the member is described in paragraph (A), (B) or (C), subdivision
62 (1) of this subsection.

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

65 (n) "Disability service" means service credit received by a member, expressed in whole
66 years, fractions thereof, or both, equal to one half of the whole years, fractions thereof, or both,
67 during which time a member receives disability benefits under this article.

68 (o) "Effective date" means January 1, 2010.

69 (p) "Final average salary" means the average of the highest annual compensation
70 received for covered employment by the member during any five consecutive plan years within
71 the member's last 10 years of service while employed, prior to any disability payment. If the
72 member did not have annual compensation for the five full plan years preceding the member's
73 attainment of normal retirement age and during that period the member received disability benefits
74 under this article, then "final average salary" means the average of the monthly compensation
75 which the member was receiving in the plan year prior to the initial disability. "Final average salary"
76 does not include any lump sum payment for unused, accrued leave of any kind or character.

77 (q) "Full-time employment" means permanent employment of an employee by a
78 participating municipality in a position which normally requires 12 months per year service and
79 requires at least 1,040 hours per year service in that position.

80 (r) "Fund" means the West Virginia Municipal Police Officers and Firefighters Retirement
81 Fund created by this article.

82 (s) "Hour of service" means: (1) Each hour for which a member is paid or entitled to
83 payment for covered employment during which time active duties are performed. These hours
84 shall be credited to the member for the plan year in which the duties are performed; and (2) each
85 hour for which a member is paid or entitled to payment for covered employment during a plan
86 year but where no duties are performed due to vacation, holiday, illness, incapacity including
87 disability, layoff, jury duty, military duty, leave of absence or any combination thereof and without
88 regard to whether the employment relationship has terminated. Hours under this subdivision shall

89 be calculated and credited pursuant to West Virginia Division of Labor rules. A member may not
90 be credited with any hours of service for any period of time he or she is receiving benefits under
91 §8-22A-17 and §8-22A-18 of this code; and (3) each hour for which back pay is either awarded
92 or agreed to be paid by the employing municipality, irrespective of mitigation of damages. The
93 same hours of service may not be credited both under subdivision (1) or (2) of this subsection
94 and under this subdivision. Hours under this paragraph shall be credited to the member for the
95 plan year or years to which the award or agreement pertains, rather than the plan year in which
96 the award, agreement or payment is made.

97 (t) "Member" means, except as provided in §8-22A-32 and §8-22A-33 of this code, a
98 person hired as a municipal police officer or municipal firefighter, as defined in this section, by a
99 participating municipal employer on or after January 1, 2010. A member shall remain a member
100 until the benefits to which he or she is entitled under this article are paid or forfeited.

101 (u) "Monthly salary" means the W-2 reportable compensation received by a member
102 during the month.

103 (v) "Municipality" has the meaning ascribed to it in this code.

104 (w)(1) "Municipal police officer" means an individual employed as a member of a paid
105 police department by a West Virginia municipality or municipal subdivision which has established
106 and maintains a municipal policemen's pension and relief fund, and who is not a member of, and
107 not eligible for membership in, a municipal policemen's pension and relief fund as provided in §8-
108 22-16 of this code: *Provided*, That municipal police officer also means an individual employed as
109 a member of a paid police department by a West Virginia municipality or municipal subdivision
110 which is authorized to elect to participate in the plan pursuant to §8-22A-33 of this code. Paid
111 police department does not mean a department whose employees are paid nominal salaries or
112 wages or are paid only for services actually rendered on an hourly basis.

113 (2) "Municipal firefighter" means an individual employed as a member of a paid fire
114 department by a West Virginia municipality or municipal subdivision which has established and

115 maintains a municipal firemen's pension and relief fund, and who is not a member of, and not
116 eligible for membership in, a municipal firemen's pension and relief fund as provided in §8-22-16
117 of this code: *Provided*, That municipal firefighter also means an individual employed as a member
118 of a paid fire department by a West Virginia municipality or municipal subdivision which is
119 authorized to elect to participate in the plan pursuant to §8-22A-33 of this code. Paid fire
120 department does not mean a department whose employees are paid nominal salaries or wages
121 or are paid only for services actually rendered on an hourly basis.

122 (x) "Municipal subdivision" means any separate corporation or instrumentality established
123 by one or more municipalities, as permitted by law; and any public corporation charged by law
124 with the performance of a governmental function and whose jurisdiction is coextensive with one
125 or more municipalities.

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

132 (z) "Normal retirement age" means the first to occur of the following: (1) Attainment of age
133 50 years and the completion of 20 or more years of regular contributory service; (2) while still in
134 covered employment, attainment of at least age 50 years and when the sum of current age plus
135 regular contributory service equals or exceeds 70 years; (3) while still in covered employment,
136 attainment of at least age 60 years and completion of 10 years of regular contributory service; or
137 (4) attainment of age 62 years and completion of five or more years of regular contributory service.

138 (aa) "Plan" means the West Virginia Municipal Police Officers and Firefighters Retirement
139 System established by this article.

140 (bb) "Plan year" means the 12-month period commencing on January 1 of any designated
141 year and ending the following December 31.

142 (cc) "Qualified public safety employee" means any employee of a participating state or
143 political subdivision who provides police protection, firefighting services or emergency medical
144 services for any area within the jurisdiction of the state or political subdivision, or such other
145 meaning given to the term by Section 72(t) (10) (B) of the Internal Revenue Code or by Treasury
146 Regulation §1.401(a)-1(b) (2) (v) as they may be amended from time to time.

147 (dd) "Regular contributory service" means a member's credited service excluding active
148 military duty, disability service and accrued annual and sick leave service.

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

151 (ff) "Required beginning date" means April 1 of the calendar year following the later of: (1)
152 The calendar year in which the member attains age 70 and one-half; or (2) the calendar year in
153 which he or she retires or otherwise separates from covered employment.

154 (gg) "Retirement income payments" means the monthly retirement income payments
155 payable.

156 (hh) "Spouse" means the person to whom the member is legally married on the annuity
157 starting date.

158 (ii) "Surviving spouse" means the person to whom the member was legally married at the
159 time of the member's death and who survived the member.

160 (jj) "Totally disabled" means a member's inability to engage in substantial gainful activity
161 by reason of any medically determined physical or mental impairment that can be expected to
162 result in death or that has lasted or can be expected to last for a continuous period of not less
163 than 12 months. For purposes of this subsection: (1) A member is totally disabled only if his or
164 her physical or mental impairment or impairments is so severe that he or she is not only unable

165 to perform his or her previous work as a police officer or firefighter but also cannot, considering
166 his or her age, education and work experience, engage in any other kind of substantial gainful
167 employment which exists in the state regardless of whether: (A) The work exists in the immediate
168 area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be
169 hired if he or she applied for work. For purposes of this article, substantial gainful employment is
170 the same definition as used by the United States Social Security Administration; and (2) "Physical
171 or mental impairment" is an impairment that results from an anatomical, physiological or
172 psychological abnormality that is demonstrated by medically accepted clinical and laboratory
173 diagnostic techniques. The board may require submission of a member's annual tax return for
174 purposes of monitoring the earnings limitation.

175 (kk) "Vested" means eligible for retirement income payments after completion of five or
176 more years of regular contributory service.

177 (ll) "Year of service" means a member shall, except in his or her first and last years of
178 covered employment, be credited with years of service credit based on the hours of service
179 performed as covered employment and credited to the member during the plan year based on
180 the following schedule:

181 Hours of Service	Year of Service Credited
182 Less than 500	0
183 500 to 999	1/3
184 1,000 to 1,499	2/3
185 1,500 or more	1

186 During a member's first and last years of covered employment, the member shall be
187 credited with one twelfth of a year of service for each month during the plan year in which the
188 member is credited with an hour of service for which contributions were received by the fund. A

189 member is not entitled to credit for years of service for any time period during which he or she
190 received disability payments under §8-22A-17 and §8-22A-18 of this code.

§8-22A-14. Retirement benefits.

1 This section describes when adjustment of a member's accrued benefit to reflect the
2 difference in age, in years and months, between the member's annuity starting date and the date
3 the member attains normal retirement age shall be made. This age adjustment, when required,
4 shall be made based on the normal form of benefit and shall be the actuarial equivalent of the
5 accrued benefit at the member's normal retirement age. The member shall receive the age
6 adjusted retirement income in the normal form or in an actuarial equivalent amount in an optional
7 form as provided under this article, subject to reduction if necessary to comply with the maximum
8 benefit limitations of Section 415 of the Internal Revenue Code and §8-22A-10 of this code. The
9 first day of the calendar month following the month of birth shall be used in lieu of any birth date
10 that does not fall on the first day of a calendar month.

11 Normal retirement. — A member whose annuity starting date is the date the member
12 attains normal retirement age is entitled to his or her accrued benefit without adjustment for age
13 at commencement.

14 Retirement benefits shall be paid monthly in an amount equal to one twelfth of the
15 retirement income payments elected and at those times established by the board.

**§8-22A-16. Refunds to certain members on discharge or resignation; deferred retirement;
preretirement death; forfeitures.**

1 (a) Any member who terminates covered employment and is not eligible to receive
2 disability benefits under this article is, by written request filed with the board, entitled to receive
3 from the fund the member's accumulated contributions. Except as provided in subsection (b) of
4 this section, on withdrawal, the member shall forfeit his or her accrued benefit and cease to be a
5 member.

6 (b)(1) Any member who ceases employment in covered employment and active
7 participation in this plan and who thereafter becomes reemployed in covered employment may
8 not receive any credited service for any prior accumulated contributions withdrawn from the plan
9 unless following his or her return to covered employment and active participation in this plan, the
10 member redeposits in the fund the amount of the accumulated contributions withdrawn from
11 previous covered employment, together with interest on the accumulated contributions at the rate
12 determined by the board from the date of withdrawal to the date of redeposit. On repayment he
13 or she shall receive the same credit on account of his or her former covered employment as if no
14 refund had been made.

15 (2) The repayment authorized by this subsection shall be made in a lump sum within 60
16 months of the police officer's or firefighter's reemployment in covered employment.

17 (c) Every member who completes 60 months of regular contributory service may, on
18 cessation of covered employment, either withdraw his or her accumulated contributions in
19 accordance with this section or choose not to withdraw his or her accumulated contribution and
20 receive retirement income payments, if eligible, on attaining normal retirement age.

21 (d) If a member dies from any cause other than those specified in §8-22A-20 of this code
22 and does not have 10 or more years of credited service, the member's accumulated contributions
23 may be paid to a named beneficiary or beneficiaries. If no beneficiary is named, then the
24 accumulated contributions shall be paid to the estate of the deceased member.

25 (e) Notwithstanding any other provision of this article, forfeitures under the plan may not
26 be applied to increase the benefits any member would otherwise receive under the plan.

§8-22A-17. Awards and benefits for disability — duty related; exception during early period.

1 (a) Except as provided in §8-22A-9(a) of this code, any member who after the effective
2 date of this article and during covered employment: (1) Has been or becomes totally disabled by
3 injury, illness or disease; and (2) the disability is a result of an occupational risk or hazard inherent

4 in or peculiar to the services required of members; or (3) the disability was incurred while
5 performing police officer or firefighter functions during either scheduled work hours or at any other
6 time; and (4) in the opinion of two physicians after medical examination, at least one of whom
7 shall be named by the board, the member is by reason of the disability not only unable to perform
8 his or her previous work as a police officer or firefighter but also cannot, considering his or her
9 age, education and work experience, engage in any other kind of substantial gainful employment
10 which exists in the state regardless of whether: (A) The work exists in the immediate area in which
11 the member lives; (B) a specific job vacancy exists; or (C) the member would be hired if he or she
12 applied for work, is entitled to receive and shall be paid from the fund in monthly installments
13 during the lifetime of the member or, if sooner, until the member attains normal retirement age or
14 until the disability sooner terminates, the compensation under this section. For purposes of this
15 article, substantial gainful employment is the same definition as used by the United States Social
16 Security Administration.

17 (b) If the member is totally disabled, the member shall receive 90 percent of his or her
18 average monthly compensation for months in which full compensation was received for the 12-
19 month contributory period preceding the member's disability or the shorter period if the member
20 has not worked 12 months.

21 (c) If the member remains totally disabled until attaining 65 years of age, the member shall
22 then receive the retirement benefit provided in §8-22A-14 and §8-22A-15 of this code.

23 (d) The disability benefit payments will begin the first day of the month following
24 termination of employment and receipt of the disability retirement application by the Consolidated
25 Public Retirement Board.

**§8-22A-18. Awards and benefits for disability — due to other causes; exception during
early period.**

1 (a) Except as provided in §8-22A-9(a) of this code, any municipal police officer or
2 municipal firefighter with 10 or more years of contributory service who, after the effective date of

3 this article and during covered employment: (1) Has been or becomes totally disabled from any
4 cause other than those set forth in §8-22A-17 of this code and not due to vicious habits,
5 intemperance or willful misconduct on his or her part; and (2) in the opinion of two physicians after
6 medical examination, at least one of whom shall be named by the board, he or she is by reason
7 of the disability not only unable to perform his or her previous work as a police officer or firefighter
8 but also cannot, considering his or her age, education and work experience, engage in any other
9 kind of substantial gainful employment which exists in the state regardless of whether: (A) The
10 work exists in the immediate area in which the member lives; (B) a specific job vacancy exists; or
11 (C) the member would be hired if he or she applied for work, is entitled to receive and shall be
12 paid from the fund in monthly installments during the lifetime of the member or, if sooner, until the
13 member attains normal retirement age or until the disability sooner terminates, the compensation
14 set forth in, either subsection (b) or (c) of this section.

15 (b) If the member is totally disabled, he or she shall receive 66 and two-thirds percent of
16 his or her average monthly compensation for months in which full compensation was received for
17 the 12-month contributory period preceding the disability.

18 (c) If the member remains totally disabled until attaining 60 years of age, then the member
19 shall receive the retirement benefit provided in §8-22A-14 and §8-22A-15 of this code.

20 (d) The disability benefit payments will begin the first day of the month following
21 termination of employment and receipt of the disability retirement application by the Consolidated
22 Public Retirement Board.

§8-22A-22. Additional death benefits and scholarships - Dependent children.

1 (a) Except as provided in §8-22A-9(a) of this code, in addition to the spouse death benefits
2 in this article, the surviving spouse is entitled to receive and there shall be paid to the spouse
3 \$100 monthly for each dependent child.

4 (b) If the surviving spouse dies while receiving death benefits provided in §8-22A-20 or
5 §8-22A-21 of this code, or if there is no surviving spouse, the fund shall pay monthly to each

6 dependent child a sum equal to 100 percent of the spouse's entitlement under this article divided
7 by the number of dependent children. If there is neither a surviving spouse nor a dependent child,
8 the fund shall pay in equal monthly installments to the dependent parents of the deceased
9 member during their joint lifetimes a sum equal to the amount which a surviving spouse, without
10 children, would have received: *Provided*, That when there is only one dependent parent surviving,
11 that parent is entitled to receive during his or her lifetime one-half the amount which both parents,
12 if living, would have been entitled to receive: *Provided, however*, That if there is no surviving
13 spouse, dependent child or dependent parent of the deceased member, the accumulated
14 contributions shall be paid to a named beneficiary or beneficiaries: *Provided further*, That if there
15 is no surviving spouse, dependent child or dependent parent of the deceased member, or any
16 named beneficiary or beneficiaries, then the accumulated contributions shall be paid to the estate
17 of the deceased member.

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

§8-22A-34. Return to covered employment by retirant.

1 The annuity of any member who retires under the provisions of this article and who
2 resumes service in covered employment shall be suspended while the member continues in
3 covered employment. The monthly annuity payment for the month in which the service resumes
4 shall be pro rated to the date of commencement of service, and the member shall again become
5 a contributing member during resumption of service. At the conclusion of resumed service in
6 covered employment, the member shall have his or her annuity recalculated to take into account
7 the entirety of service in covered employment.

§8-22A-35. Severability.

1 If any part of this article is declared unconstitutional by a court of competent jurisdiction,
2 such decision shall not affect the validity of the remaining provisions of this article, or the article
3 in its entirety.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....
Chairman, House Committee

.....
Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2021.

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Governor