

WEST VIRGINIA LEGISLATURE
2022 SECOND EXTRAORDINARY SESSION

ENROLLED

House Bill 216

BY DELEGATES HANSHAW (MR. SPEAKER) AND SKAFF

(BY REQUEST OF THE EXECUTIVE)

[Passed April 25, 2022; in effect January 1, 2023.]

1 AN ACT to amend and reenact §8-22A-2 of the Code of West Virginia, 1931, as amended, as
2 contained in Chapter 256, Acts of the Legislature, Regular Session, 2022, relating to the
3 West Virginia Municipal Police Officers and Firefighters Retirement System; and
4 increasing the multiplier for use in determining accrued benefit.

Be it enacted by the Legislature of West Virginia:

**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 2.75 percent per year of the
4 member's final average salary for the first 20 years of credited service. Additionally, 2 percent per
5 year for 21 through 25 years and 1.5 percent per year for each year over 25 years will be credited
6 with a maximum benefit of 90 percent of a member's final average salary. A member's accrued
7 benefit may not exceed the limits of Section 415 of the Internal Revenue Code and is subject to
8 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) "Employer error" means an omission, misrepresentation or deliberate act in violation
70 of relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations
71 or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State
72 Regulations by the participating public employer that has resulted in an underpayment or
73 overpayment of contributions required.

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

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

85 (s) "Fund" means the West Virginia Municipal Police Officers and Firefighters Retirement
86 Fund created by this article.

87 (t) "Hour of service" means: (1) Each hour for which a member is paid or entitled to
88 payment for covered employment during which time active duties are performed. These hours
89 shall be credited to the member for the plan year in which the duties are performed; and (2) each
90 hour for which a member is paid or entitled to payment for covered employment during a plan
91 year but where no duties are performed due to vacation, holiday, illness, incapacity including
92 disability, layoff, jury duty, military duty, leave of absence or any combination thereof and without
93 regard to whether the employment relationship has terminated. Hours under this subdivision shall
94 be calculated and credited pursuant to West Virginia Division of Labor rules. A member may not

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

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

106 (v) "Monthly salary" means the W-2 reportable compensation received by a member
107 during the month.

108 (w) "Municipality" has the meaning ascribed to it in this code.

109 (x)(1) "Municipal police officer" means an individual employed as a member of a paid
110 police department by a West Virginia municipality or municipal subdivision which has established
111 and maintains a municipal policemen's pension and relief fund, and who is not a member of, and
112 not eligible for membership in, a municipal policemen's pension and relief fund as provided in §8-
113 22-16 of this code: *Provided*, That municipal police officer also means an individual employed as
114 a member of a paid police department by a West Virginia municipality or municipal subdivision
115 which is authorized to elect to participate in the plan pursuant to §8-22A-33 of this code. Paid
116 police department does not mean a department whose employees are paid nominal salaries or
117 wages or are paid only for services actually rendered on an hourly basis.

118 (2) "Municipal firefighter" means an individual employed as a member of a paid fire
119 department by a West Virginia municipality or municipal subdivision which has established and
120 maintains a municipal firemen's pension and relief fund, and who is not a member of, and not

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

127 (y) "Municipal subdivision" means any separate corporation or instrumentality established
128 by one or more municipalities, as permitted by law; and any public corporation charged by law
129 with the performance of a governmental function and whose jurisdiction is coextensive with one
130 or more municipalities.

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

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

143 (bb) "Plan" means the West Virginia Municipal Police Officers and Firefighters Retirement
144 System established by this article.

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

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

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

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

156 (gg) "Required beginning date" means April 1 of the calendar year following the later of:
157 (1) The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age
158 72 (if born after June 30, 1949); or (2) the calendar year in which he or she retires or otherwise
159 separates from covered employment.

160 (hh) "Retirement income payments" means the monthly retirement income payments
161 payable.

162 (ii) "Spouse" means the person to whom the member is legally married on the annuity
163 starting date.

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

166 (kk) "Totally disabled" means a member's inability to engage in substantial gainful activity
167 by reason of any medically determined physical or mental impairment that can be expected to
168 result in death or that has lasted or can be expected to last for a continuous period of not less
169 than 12 months. For purposes of this subsection: (1) A member is totally disabled only if his or
170 her physical or mental impairment or impairments are so severe that he or she is not only unable
171 to perform his or her previous work as a police officer or firefighter but also cannot, considering
172 his or her age, education and work experience, engage in any other kind of substantial gainful

173 employment which exists in the state regardless of whether: (A) The work exists in the immediate
174 area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be
175 hired if he or she applied for work. For purposes of this article, substantial gainful employment is
176 the same definition as used by the United States Social Security Administration; and (2) "Physical
177 or mental impairment" is an impairment that results from an anatomical, physiological or
178 psychological abnormality that is demonstrated by medically accepted clinical and laboratory
179 diagnostic techniques. The board may require submission of a member's annual tax return for
180 purposes of monitoring the earnings limitation.

181 (ll) "Vested" means eligible for retirement income payments after completion of five or
182 more years of regular contributory service.

183 (mm) "Year of service" means a member shall, except in his or her first and last years of
184 covered employment, be credited with years of service credit based on the hours of service
185 performed as covered employment and credited to the member during the plan year based on
186 the following schedule:

187	Hours of Service	Year of Service Credited
188	Less than 500	0
189	500 to 999	1/3
190	1,000 to 1,499	2/3
191	1,500 or more	1

192 During a member's first and last years of covered employment, the member shall be
193 credited with one twelfth of a year of service for each month during the plan year in which the
194 member is credited with an hour of service for which contributions were received by the fund. A
195 member is not entitled to credit for years of service for any time period during which he or she
196 received disability payments under §8-22A-17 and §8-22A-18 of this code.

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

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect January 1, 2023.

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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, 2022.

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Governor