

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Committee Substitute

for

Senate Bill 270

BY SENATORS NELSON, HAMILTON, MARONEY, JEFFRIES,

LINDSAY, ROMANO, AND RUCKER

[Originating in the Committee on Pensions; reported

on January 27, 2022]

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

14 of a person. All annuities shall be paid in equal monthly installments, rounding to the upper cent for
15 any 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, except a retirant, who is entitled to, or will be entitled to,
20 an annuity or other benefit payable by the retirement system;

21 {7} "Board of Trustees" or "board" means the Board of Trustees of the West Virginia
22 Consolidated Public Retirement System;

23 {8} "Compensation" means the remuneration paid a member by a participating public
24 employer for personal services rendered by the member to the participating public employer. In the
25 event a member's remuneration is not all paid in money, his or her participating public employer shall
26 fix the value of the portion of the remuneration which is not paid in money: *Provided*, That members
27 hired in a position for the first time on or after July 1, 2014, who receive nonmonetary remuneration
28 shall not have nonmonetary remuneration included in compensation for retirement purposes and
29 nonmonetary remuneration may not be used in calculating a member's final average salary. Any
30 lump sum or other payments paid to members that do not constitute regular salary or wage payments
31 are not considered compensation for the purpose of withholding contributions for the system or for
32 the purpose of calculating a member's final average salary. These payments include, but are not
33 limited to, attendance or performance bonuses, one-time flat fee or lump sum payments, payments
34 paid as a result of excess budget, or employee recognition payments. The board shall have final
35 power to decide whether the payments shall be considered compensation for purposes of this article;

36 {9} "Contributing service" means service rendered by a member within this state and for which
37 the member made contributions to a public retirement system account of this state, to the extent
38 credited him or her as provided by this article;

39 {10} "Credited service" means the sum of a member's prior service credit, military service
40 credit, workers' compensation service credit and contributing service credit standing to his or her

CS for SB 270

41 credit as provided in this article;

42 “Dependent child” means either:

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

44 (i) A natural child of the member;

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

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

48 (iv) A stepchild of the member residing in the member’s household at the time of the member’s
49 death; or

50 (B) Any unmarried child under age 23:

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

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

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

56 “Dependent parent” means the father or mother of the member who was claimed as a
57 dependent by the member for federal income tax purposes at the time of the member’s death.

58 (44) “Employee” means any person who serves regularly as an officer or employee, full time,
59 on a salary basis, whose tenure is not restricted as to temporary or provisional appointment, in the
60 service of, and whose compensation is payable, in whole or in part, by any political subdivision, or
61 an officer or employee whose compensation is calculated on a daily basis and paid monthly or on
62 completion of assignment, including technicians and other personnel employed by the West Virginia
63 National Guard whose compensation, in whole or in part, is paid by the federal government: *Provided,*
64 That an employee of the Legislature whose term of employment is otherwise classified as temporary
65 and who is employed to perform services required by the Legislature for its regular sessions or during
66 the interim between regular sessions and who has been or is employed during regular sessions or
67 during the interim between regular sessions in seven or more consecutive calendar years, as certified

68 by the clerk of the house in which the employee served, is an employee, any provision to the contrary
69 in this article notwithstanding, and is entitled to credited service in accordance with provisions of §5-
70 10-14 of this code: *Provided, however,* That members of the legislative body of any political
71 subdivision and judges of the state ~~Court of Claims~~ Legislative Claims Commission are employees
72 receiving one year of service credit for each one-year term served and prorated service credit for any
73 partial term served, anything contained in this article to the contrary notwithstanding: *Provided*
74 *further,* That only a compensated board member of a participating public employer appointed to a
75 board of a nonlegislative body for the first time on or after July 1, 2014, who normally is required to
76 work twelve months per year and one thousand forty hours of service per year is an employee. In
77 any case of doubt as to who is an employee within the meaning of this article, the board of trustees
78 shall decide the question;

79 ~~(12)~~ “Employer error” means an omission, misrepresentation or violation of relevant
80 provisions of the West Virginia Code or of the West Virginia Code of State Regulations or the relevant
81 provisions of both the West Virginia Code and of the West Virginia Code of State Regulations by the
82 participating public employer that has resulted in an underpayment or overpayment of contributions
83 required. A deliberate act contrary to the provisions of this section by a participating public employer
84 does not constitute employer error;

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

91 (A) The average of the highest annual compensation received by a member, including a
92 member of the Legislature who participates in the retirement system in the year 1971 or thereafter,
93 during any period of three consecutive years of credited service contained within the member’s fifteen
94 years of credited service immediately preceding the date his or her employment with a participating

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

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

122 multiplied by eight, whichever computation as to the member produces the higher annual
123 compensation;

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

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

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

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

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

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

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

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

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

159 ~~(22)~~ "Required beginning date" means April 1 of the calendar year following the later of: (A)
160 The calendar year in which the member attains age seventy and one-half years of age; or (B) the
161 calendar year in which a member who has attained the age seventy and one-half years of age and
162 who ceases providing service covered under this system to a participating employer;

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

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

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

169 ~~(26)~~ "Retroactive service" means: (1) Service between July 1, 1961, and the date an employer
170 decides to become a participating member of the Public Employees Retirement System; (2) service
171 prior to July 1, 1961, for which the employee is not entitled to prior service at no cost in accordance
172 with 162 CSR 5.13; and (3) service of any member of a legislative body or employees of the State
173 Legislature whose term of employment is otherwise classified as temporary for which the employee
174 is eligible, but for which the employee did not elect to participate at that time;

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

176 employee of a participating public employer; and

177 ~~(28)~~ "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
2 is 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
9 her 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 will 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
2 in 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 is entitled to receive and shall be paid from the
6 fund benefits as determined in this section. To the surviving spouse annually, in equal monthly
7 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
11 the spouse would have received had the member retired the day before his or her death, elected
12 a 100 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, is entitled to 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
9 pay in equal monthly installments to the dependent parents of the deceased member during their
10 joint 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 is entitled
12 to 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, is entitled to receive a scholarship to be
21 applied to the career development education of that person. This sum, up to but not exceeding
22 \$7,500 per year, shall be paid from the fund to any higher education institution in this state, career-
23 technical education provider in this state or other entity in this state approved by the board, to
24 offset the expenses of tuition, room and board, books, fees or other costs incurred in a course of
25 study at any of these institutions so long as the recipient makes application to the board on an
26 approved form and under rules provided by the board and maintains scholastic eligibility as
27 defined by the institution or the board. The board may propose legislative rules for promulgation
28 in accordance with §29A-3-1 et seq. of this code which define age requirements, physical and
29 mental requirements, scholastic eligibility, disbursement methods, institutional qualifications and
30 other requirements as necessary and not inconsistent with this section. Scholarship benefits
31 awarded pursuant to this subsection are not subject to division or payable to an alternate payee
32 by any 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.

CS for SB 270