

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

**Introduced**

### **House Bill 4006**

By Delegate Kelley

[Introduced February 13, 2024; Referred to the  
Committee on Pensions and Retirement then  
Finance]

1 A BILL to amend and reenact §20-18-2, §20-18-8, §20-18-20, §20-18-25 and §20-18-26 of the  
 2 Code of West Virginia, 1931, as amended, all relating to Natural Resource Police Officer  
 3 Retirement; modifying the accrued benefit of members of the West Virginia Natural  
 4 Resources Police Officer Retirement System who retire on or after January 1, 2027;  
 5 permitting the employer contribution to be set by the board; providing or additional funding  
 6 under the West Virginia Natural Police Officer Retirement System; clarifying payment upon  
 7 death of member with less than 10 years of contributing service; and clarifying surviving  
 8 spouse benefits when the member dies from duty related or non-duty related cause.

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

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

**§20-18-2.**

**Definitions.**

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

3 (a) "Accrued benefit" means on behalf of any member two and one-quarter percent of the  
 4 member's final average salary multiplied by the member's years of credited service: *Provided*,  
 5 That members who retire after July 1, 2025, shall have an accrued benefit of two and one-half  
 6 percent of the member's final average salary multiplied by the member's years of credited service;  
 7 *Provided, however, That members who retire on or after January 1, 2027, shall have an accrued*  
 8 *benefit of two and three-fourths percent of the member's final average salary multiplied by the*  
 9 *member's years of credited service.* A member's accrued benefit may not exceed the limits of  
 10 Section 415 of the Internal Revenue Code and is subject to the provisions of §20-18-13 of this  
 11 code.

12 (b) "Accumulated contributions" means the sum of all amounts deducted from the annual  
 13 compensation of a member or paid on his or her behalf pursuant to §5-10C-1 *et seq.* of this code,

14 either pursuant to §20-18-8(a) or §5-10-29 of this code as a result of covered employment together  
15 with regular interest on the deducted amounts.

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

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

21 (e) "Actuarial equivalent" means a benefit of equal value computed upon the basis of the  
22 mortality table and interest rates as set and adopted by the retirement board in accordance with  
23 the provisions of this article: *Provided*, That when used in the context of compliance with the  
24 federal maximum benefit requirements of Section 415 of the Internal Revenue Code, "actuarial  
25 equivalent" shall be computed using the mortality tables and interest rates required to comply with  
26 those requirements.

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

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

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

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

44 (k) "Covered employment" means either: (1) Employment as a Natural Resources Police  
45 Officer and the active performance of the duties required of a Natural Resources Police Officer; (2)  
46 the period of time which active duties are not performed but disability benefits are received under  
47 §20-18-21 or §20-18-22 of this code; or (3) concurrent employment by a Natural Resources Police  
48 Officer in a job or jobs in addition to his or her employment as a Natural Resources Police Officer  
49 where the secondary employment requires the Natural Resources Police Officer to be a member  
50 of another retirement system which is administered by the Consolidated Public Retirement Board  
51 pursuant to §5-10D-1 *et seq.* of this code: *Provided*, That the Natural Resources Police Officer  
52 contributes to the fund created in §20-18-7 of this code the amount specified as the Natural  
53 Resource Police Officer's contribution in §20-18-8 of this code.

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

56 (m) "Dependent child" means either:

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

58 (A) A natural child of the member;

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

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

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

64 (2) Any unmarried child under age 23:

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

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

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

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

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

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

77 (q) "Division of Natural Resources" or "division" means the West Virginia Division of  
78 Natural Resources.

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

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

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

92 compensation equal to that average monthly compensation which the member was receiving in  
93 the plan year prior to the initial disability multiplied by 12.

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

96 (v) "Hour of service" means:

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

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

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

109 (w) "Medical examination" means an in-person or virtual examination of a member's  
110 physical or mental health, or both, by a physician or physicians selected or approved by the board;  
111 or, at the discretion of the board, a medical record review of the member's physical or mental  
112 health, or both, by a physician selected or approved by the board.

113 (x) "Member" means a person first hired as a Natural Resources Police Officer, as defined  
114 in subsection (z) of this section, on or after January 2, 2021, or a Natural Resources Police Officer  
115 first hired prior to the effective date and who elects to become a member pursuant to §20-18-6 of  
116 this code. A member shall remain a member until the benefits to which he or she is entitled under  
117 this article are paid or forfeited or until cessation of membership pursuant to §20-18-6 of this code.

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

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

126 (aa) "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 or beneficiaries shall receive in one lump sum the  
130 difference between the accumulated contributions at the annuity starting date and the total of the  
131 retirement income payments made to the member.

132 (bb) "Normal retirement age" means the first to occur of the following: (1) Attainment of age  
133 55 years and the completion of 15 or more years of service; (2) while still in covered employment,  
134 attainment of at least age 55 years, and when the sum of current age plus years of service equals  
135 or exceeds 70 years; or (3) attainment of at least age 62 years, and completion of 10 years of  
136 service: *Provided*, That any member shall in qualifying for retirement pursuant to this article have  
137 10 or more years of service, all of which years shall be actual, contributory ones.

138 (cc) "Partially disabled" means a member's inability to engage in the duties of a Natural  
139 Resources Police Officer by reason of any medically determinable physical or mental impairment  
140 that can be expected to result in death or that has lasted or can be expected to last for a  
141 continuous period of not less than 12 months. A member may be determined partially disabled for  
142 the purposes of this article and maintain the ability to engage in other gainful employment which  
143 exists within the state but which ability would not enable him or her to earn an amount at least

144 equal to two thirds of the average annual compensation earned by all active members of this plan  
145 during the plan year ending as of the most recent June 30, as of which plan data has been  
146 assembled and used for the actuarial valuation of the plan.

147 (dd) "Plan" means the West Virginia Natural Resources Police Officers Retirement System  
148 established by this article.

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

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

153 (gg) "Qualified public safety employee" means any employee of the division who provides  
154 police protection, fire-fighting services, or emergency medical services for any area within the  
155 jurisdiction of the state or political subdivision, or such other meaning given to the term by Section  
156 72(t)(10)(B) of the Internal Revenue Code or by Treasury Regulation §1.401(a)-1(b)(2)(v) as they  
157 may be amended from time to time.

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

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

163 (jj) "Retirant" means any member who commences an annuity payable by the retirement  
164 system.

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

167 (ll) "Retirement income payments" means the annual retirement income payments payable  
168 under the plan.

169 (mm) "Substantial gainful employment" or "gainful employment" means employment in

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

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

174 (oo) "Totally disabled" means a member's inability to engage in substantial gainful activity  
175 by reason of any medically determined physical or mental impairment that can be expected to  
176 result in death or that has lasted or can be expected to last for a continuous period of not less than  
177 12 months. For purposes of this subdivision:

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

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

189 (pp) Year of service. — A member shall, except in his or her first and last years of covered  
190 employment, or within the plan year of the effective date, be credited with year of service credit,  
191 based upon the hours of service performed as covered employment and credited to the member  
192 during the plan year based upon the following schedule:

193	Hours of Service	Years of Service Credited
194	Less than 500	0
195	500 to 999	1/3

196 1,000 to 1,499  $\frac{2}{3}$

197 1,500 or more 1

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

**§20-18-8. Members' contributions; employer contributions.**

1 (a) There shall be deducted from the monthly salary of each member and paid into the fund  
2 an amount equal to nine and one-half percent of his or her monthly salary.

3 (b) An amount equal to an additional 12 percent of the monthly salary of each member  
4 shall be paid to the fund by the employer as annually reviewed and actuarially set by the board.

5 (c) If the board finds that the benefits provided by this article can be actuarially funded with  
6 a lesser contribution, then the board shall reduce the required member or employer contributions  
7 or both. The sums withheld each pay date shall be paid to the fund no later than 15 days following  
8 the end of the pay date.

9 (d) Any active member who has concurrent employment in an additional job or jobs and the  
10 additional employment requires the Natural Resources Police Officer to be a member of another  
11 retirement system which is administered by the Consolidated Public Retirement Board pursuant to  
12 §5-10D-1 *et seq.* of this code shall make an additional contribution to the fund of nine and one-half

13 percent of his or her monthly salary earned from any additional employment which requires the  
 14 Natural Resources Police Officer to be a member of another retirement system which is  
 15 administered by the Consolidated Public Retirement Board pursuant to §5-10D-1 *et seq.* of this  
 16 code. An additional employer contribution shall be paid to the fund by the concurrent employer for  
 17 which the member is employed in an amount ~~equal to 12 percent of his or her monthly salary~~  
 18 determined by the board. If the board finds that the benefits provided by this article can be funded  
 19 with a lesser contribution, then the board shall reduce the required member, or employer  
 20 contributions or both. The sums withheld each calendar month shall be paid to the fund no later  
 21 than 15 days following the end of the calendar month.

22 (e) Beginning the plan year commencing July 1, 2024, the division shall make a one-time  
 23 payment of \$4,250,000 to the fund, in addition to the contribution requirement in subsection (b)  
 24 above, the payment shall be made no later than July 31<sup>st</sup> of that year. If the board finds that an  
 25 amount lower than the one-time payment will achieve 100% or greater funding in the plan year, the  
 26 board may reduce the payment amount and notify the division accordingly.

**§20-18-20. Refunds to certain members upon discharge or resignation; deferred retirement; preretirement death; forfeitures.**

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

6 (b) Any member of this plan 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 withdrawn accumulated contributions from either this  
 9 plan or the Public Employees Retirement System relating to the prior covered employment unless  
 10 following his or her return to covered employment and active participation in this plan, the member

11 redeposits in this plan the amount of the withdrawn accumulated contributions submitted on salary  
12 earned while a Natural Resources Police Officer, together with interest on the accumulated  
13 contributions at the rate determined by the board from the date of withdrawal to the date of  
14 redeposit. Upon repayment he or she shall receive the same credit on account of his or her former  
15 service in covered employment as if no refund had been made. The repayment authorized by this  
16 subsection shall be made in a lump sum within 60 months of the Natural Resources Police  
17 Officer's reemployment in covered employment or if later, within 60 months of the effective date of  
18 this article.

19 (c) A member of this plan who has elected to transfer from the Public Employees  
20 Retirement System into this plan pursuant to §20-18-6(b) of this code may not, after having  
21 transferred into and become an active member of this plan, reinstate to his or her credit in this plan  
22 any service credit relating to periods of non-Natural Resources Police Officer service which were  
23 withdrawn from the Public Employees Retirement System plan prior to his or her elective transfer  
24 into this plan.

25 (d) Any member of this plan who: (1) Was employed as a Natural Resource Police Officer  
26 prior to the effective date of this article; and (2) was not employed as a Natural Resource Police  
27 Officer on the effective date of this article; and (3) thereafter becomes reemployed in covered  
28 employment, may not receive any credited service for any previously withdrawn accumulated  
29 contributions from either this plan or the Public Employees Retirement System relating to the prior  
30 covered employment unless, following his or her return to covered employment and active  
31 participation in this plan, the member redeposits in this plan the amount of the withdrawn  
32 accumulated contributions submitted on salary earned while a Natural Resources Police Officer,  
33 together with interest on the accumulated contributions at the rate determined by the board from  
34 the date of withdrawal to the date of redeposit. Upon repayment he or she shall receive the same  
35 credit for his or her former service in covered employment as if no refund had been made. The

36 repayment required by this subsection shall be made in a lump sum within 60 months of the  
 37 Natural Resource Police Officers reemployment in covered employment.

38 (e) ~~In the event~~ If a member dies from any cause other than those specified in §20-18-25 of  
 39 this code and does not have ten or more years of ~~credited~~ contributory service, the member's  
 40 accumulated contributions may be paid to a named beneficiary or beneficiaries. If no beneficiary  
 41 is named, then the accumulated contributions shall be paid to the estate of the deceased member.

42 (f) Every member who completes 120 months of covered employment is eligible, upon  
 43 cessation of covered employment, to either withdraw his or her accumulated contributions in  
 44 accordance with subsection (a) of this section, or to choose not to withdraw his or her accumulated  
 45 contribution and to receive retirement income payments upon attaining normal retirement age.

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

**§20-18-25. Awards and benefits to surviving spouse — When member dies in performance  
 of duty, etc.**

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 Natural Resources Police  
 5 Officer, or the survivor spouse of a member who dies from any cause while receiving benefits  
 6 pursuant to §20-18-21 of this code, is entitled to receive and shall be paid from the fund benefits as  
 7 follows: To the surviving spouse annually, in equal monthly installments during his or her lifetime  
 8 an amount equal to the greater of: (i) Two thirds of the annual compensation received in ~~the~~  
 9 ~~preceding 12-month period~~ by the deceased member during the last 12 full months of contributory  
 10 service; or (ii) if the member dies after his or her meeting normal retirement age requirements, the  
 11 monthly amount which the spouse would have received had the member retired the day before his

12 or her death, elected a 100 percent joint and survivor annuity with the spouse as the joint  
13 annuitant, and then died.

14 (b) Benefits for a surviving spouse received under this section, §20-18-27 and §20-18-28  
15 of this code, are in lieu of receipt of any other benefits under this article for the spouse, or any other  
16 person, or under the provisions of any other state retirement system based upon the member's  
17 covered employment.

**§20-18-26. Awards and benefits to surviving spouse — When member dies from  
nonservice-connected causes.**

1 (a) In any case where a member who has been a contributing member for at least 10  
2 years, ~~while in covered employment after the effective date of this article, has died or dies~~ prior to  
3 retirement from any cause other than those specified in §20-18-25 of this code, and not due to  
4 vicious habits, intemperance, or willful misconduct on his or her part, the fund shall pay annually in  
5 equal monthly installments to the surviving spouse during his or her lifetime, a sum equal to the  
6 greater of: (i) One half of the annual compensation received ~~in the preceding 12-month~~  
7 ~~employment period~~ by the deceased member during the last 12 full months of contributory service;  
8 or (ii) if the member dies after ~~his or her early or~~ meeting normal retirement age requirements, the  
9 monthly amount which the spouse would have received had the member retired the day before his  
10 or her death, elected a 100 percent joint and survivor annuity with the spouse as the joint  
11 annuitant, and then died.

12 (b) In any case where a retirant who had been a contributing member for at least 10 years,  
13 had not obtained the age of 60 and was receiving benefits pursuant to §20-18-22 of this code dies  
14 and leaves a surviving spouse, the fund shall pay annually in equal monthly installments to the  
15 surviving spouse during his or her lifetime a sum equal to the greater of: (1) One half of the annual  
16 compensation received by the deceased member during the last 12 full months of contributory  
17 service; or (2) if the retirant dies after meeting normal retirement age requirements, the monthly  
18 amount which the spouse would have received had the member retired the day before his or her

19 death, elected a 100 percent joint and survivor annuity with the spouse as the joint annuitant, and  
20 then died.

21 (c) Benefits for a surviving spouse received under §20-18-27 and §20-18-28 of this code,  
22 are in lieu of receipt of any other benefits under this article for the spouse or any other person or  
23 under the provisions of any other state retirement system based upon the member's covered  
24 employment.

NOTE: The purpose of this bill is to increase the West Virginia Natural Resources Police Officer Retirement System accrued benefit for members who retire on or after January 1, 2027, to provide funding for the benefit, to remove the cap on the employer contribution, and clarify surviving spouse benefits when a member dies from a duty or non-duty related cause.

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