

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 337

By Senator Stover

[Introduced January 12, 2024; referred
to the Committee on Pensions; and then to the
Committee on Finance]

16 member has been called to active full-time duty and has received no compensation during the
17 period of that duty from any board or employer other than the armed forces.

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

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

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

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

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

41 (k) "Covered employment" means either: (1) Employment as a Natural Resources Police

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

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

55 (m) "Dependent child" means either:

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

57 (A) A natural child of the member;

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

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

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

63 (2) Any unmarried child under age 23:

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

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

67 (C) Whose relationship with the member is described in subparagraph (A), (B), or (C),

68 paragraph (1) of this subdivision.

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

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

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

76 (q) ~~"Division of Natural Resources" or "division"~~ "Division" means either the West Virginia
77 Division of Natural Resources or the Division of Corrections and Rehabilitation.

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

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

84 (t) "Final average salary" means the average of the highest annual compensation received
85 for covered employment by the member during any five consecutive plan years within the
86 member's last 10 years of service. If the member did not have annual compensation for the five full
87 plan years preceding the member's attainment of normal retirement age and during that period the
88 member received disability benefits under §20-18-21 or §20-18-22 of this code then "final average
89 salary" means the average of the monthly salary determined paid to the member during that period
90 determined as if the disability first commenced after the effective date of this article with monthly
91 compensation equal to that average monthly compensation which the member was receiving in
92 the plan year prior to the initial disability multiplied by 12.

93 (u) "Fund" means the West Virginia Natural Resources Police Officer Retirement Fund

94 created pursuant to §20-18-7 of this code.

95 (v) "Hour of service" means:

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

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

103 (3) Each hour for which back pay is either awarded or agreed to be paid by the Division of
104 Natural Resources or the Division of Corrections and Rehabilitation, irrespective of mitigation of
105 damages. The same hours of service may not be credited both under this subdivision and
106 subdivision (1) or (2) of this subsection. Hours under this paragraph shall be credited to the
107 member for the plan year or years to which the award or agreement pertains rather than the plan
108 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, or a state correctional officer first hired on or after July 1, 2024. A member shall remain a
117 member until the benefits to which he or she is entitled under this article are paid or forfeited or
118 until cessation of membership pursuant to §20-18-6 of this code.

119 (y) "Monthly salary" means the portion of a member's gross annual compensation which is

120 paid to him or her per month.

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

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

133 (bb) "Normal retirement age" means the first to occur of the following: (1) Attainment of age
134 55 years and the completion of 15 or more years of service; (2) while still in covered employment,
135 attainment of at least age 55 years, and when the sum of current age plus years of service equals
136 or exceeds 70 years; or (3) attainment of at least age 62 years, and completion of 10 years of
137 service: *Provided*, That any member shall in qualifying for retirement pursuant to this article have
138 10 or more years of service, all of which years shall be actual, contributory ones.

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

146 members of this plan during the plan year ending as of the most recent June 30, as of which plan
147 data has been assembled and used for the actuarial valuation of the plan.

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

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

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

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

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

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

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

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

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

170 (mm) "State correctional officer" means any person regularly employed in the service of
171 the Division of Corrections and Rehabilitation to enforce rules necessary for the control of

172 offenders and the maintenance of public safety in state adult centers, prisons, regional jails, and
173 juvenile centers who was hired on or after July 1, 2024, and who is eligible to participate in the
174 fund.

175 ~~(mm)~~ (nn) "Substantial gainful employment" or "gainful employment" means employment
176 in which an individual may earn up to an amount that is determined by the United States Social
177 Security Administration as substantial gainful activity and still receive total disability benefits.

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

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

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

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

196 ~~(pp)~~ (rr) Year of service. — A member shall, except in his or her first and last years of
197 covered employment, or within the plan year of the effective date, be credited with year of service

198 credit, based upon the hours of service performed as covered employment and credited to the
199 member during the plan year based upon the following schedule:

200 Hours of Service Years of Service Credited

201 Less than 500 0

202 500 to 999 1/3

203 1,000 to 1,499 2/3

204 1,500 or more 1

205 During a member's first and last years of covered employment or within the plan year of the
206 effective date, the member shall be credited with one-twelfth of a year of service for each month
207 during the plan year in which the member is credited with an hour of service. A member is not
208 entitled to credit for years of service for any time period during which he or she received disability
209 payments under §20-18-21 or §20-18-22 of this code. Except as specifically excluded, years of
210 service include covered employment prior to the effective date. Years of service which are credited
211 to a member prior to his or her receipt of accumulated contributions upon termination of
212 employment pursuant to §20-18-20 or §5-10-30 of this code, shall be disregarded for all purposes
213 under this plan unless the member repays the accumulated contributions with interest pursuant to
214 §20-18-20 of this code or had prior to the effective date made the repayment pursuant to §5-10-18
215 of this code.

§20-18-5. Article to be liberally construed; supplements federal social security Social

Security; federal qualification requirements.

1 (a) The provisions of this article shall be liberally construed to provide a general retirement
2 system for Natural Resources Police Officers eligible to retire under the provisions of this plan.
3 Nothing in this article may be construed to permit the state to substitute this plan for federal social
4 security Social Security now in force in West Virginia.

5 (b) The board shall administer the plan in accordance with its terms and may construe the
6 terms and determine all questions arising in connection with the administration, interpretation and

7 application of the plan. The board may sue and be sued, contract and be contracted with and
 8 conduct all the business of the system in the name of the plan. The board may employ those
 9 persons it considers necessary or desirable to administer the plan. All start-up costs to modify the
 10 existing line of business computer system and all personnel salary, including benefits, shall be
 11 paid by the board from funds received by the board through gifts and bequests to the fund and any
 12 accretions and accumulations which may properly be paid into and become a part of the fund. The
 13 board may receive gifts and bequests for purposes of paying start-up costs as set forth in this
 14 subsection. The board may also receive gifts and additional contributions for the purpose of
 15 supplementing the plan. The board may also receive gifts and additional contributions for the
 16 purpose of supplementing the plan. The board shall administer the plan for the exclusive benefit of
 17 the members and their beneficiaries subject to the specific provisions of the plan.

18 (c) The plan is intended to meet the federal qualification requirements of Section 401(a)
 19 and related sections of the Internal Revenue Code as applicable to governmental plans.
 20 Notwithstanding any other provision of state law, the board shall administer the plan to fulfill this
 21 intent for the exclusive benefit of the members and their beneficiaries. Any provision of this article
 22 referencing or relating to these federal qualification requirements shall be effective as of the date
 23 required by federal law. The board may promulgate rules and amend or repeal conflicting rules in
 24 accordance with the authority granted to the board pursuant to §5-10D-1 of this code to assure
 25 compliance with the requirements of this section.

§20-18-6.

Members.

1 (a) Any Natural Resources Police Officer first employed in covered employment after the
 2 effective date of this article and any state correctional officer first employed in covered
 3 employment on or after July 1, 2024, shall be a member of this retirement system and does not
 4 qualify for membership in any other retirement system administered by the board, so long as he or
 5 she remains employed in covered employment: *Provided*, That any Natural Resources Police
 6 Officer or state correctional officer who has concurrent employment in an additional job or jobs

7 which would require the Natural Resources Police Officer or state correctional officer to be a
8 member of the West Virginia Deputy Sheriff Retirement System, West Virginia Municipal Police
9 Officers and Firefighters Retirement System or the West Virginia Emergency Medical Services
10 Retirement System shall participate in only one retirement system administered by the board, and
11 the retirement system applicable to the concurrent employment for which the employee has the
12 earliest date of hire shall prevail. The membership of any person in the plan ceases: (1) Upon the
13 withdrawal of accumulated contributions after the cessation of service; (2) upon retirement; or (3)
14 at death.

15 (b) Any Natural Resources Police Officer employed in covered employment on July 1,
16 2020, shall notify in writing both the Division of Natural Resources and the board no later than
17 September 30, 2020, of his or her desire to become a member of the plan beginning January 2,
18 2021: *Provided*, That any Natural Resources Police Officer hired after July 1, 2020, but before
19 January 2, 2021, shall make this required notification to the division and the board no later than 30
20 days from receipt of the notice required by §20-18-11 of this code or September 30, 2020,
21 whichever is later. Any Natural Resources Police Officer who elects to become a member of the
22 plan ceases to be an active member in the Public Employees Retirement System and shall
23 continue to be ineligible for future membership in any other retirement system administered by the
24 board so long as the Natural Resources Police Officer remains employed in covered employment
25 in this plan; any Natural Resources Police Officer who does not affirmatively elect to become a
26 member of the plan continues to be eligible for any other retirement system as is from time to time
27 offered to other state employees but is ineligible for this plan regardless of any subsequent
28 termination of employment and rehire.

29 (c) Any Natural Resources Police Officer employed in covered employment on the
30 effective date of this article, who has timely elected to transfer into this plan as provided in

31 subsection (b) of this section, shall be given credited service at the time of transfer for all credited
32 service then standing to the Natural Resources Police Officer service credit in the Public
33 Employees Retirement System regardless of whether the credited service (as that term is defined
34 in §5-10-2 of this code) was earned as a Natural Resources Police Officer. All the credited service
35 standing to the transferring Natural Resources Police Officer's credit in the Public Employees
36 Retirement Fund System at the time of transfer into this plan shall be transferred into the plan
37 created by this article, and the transferring Natural Resources Police Officer shall be given the
38 same credit for the purposes of this article for all service transferred from the Public Employees
39 Retirement System, as that transferring Natural Resources Police Officer would have received
40 from the Public Employees Retirement System as if the transfer had not occurred. In connection
41 with each transferring Natural Resources Police Officer receiving credit for prior employment as
42 provided in this subsection, a transfer from the Public Employees Retirement System to this plan
43 shall be made pursuant to the procedures described in §20-18-10 of this code: *Provided*, That a
44 member of this plan who has elected to transfer from the Public Employees Retirement System
45 into this plan pursuant to subsection (b) of this section may not, after having transferred into and
46 become an active member of this plan, reinstate to his or her credit in this plan any service credit
47 relating to periods of non-Natural Resources Police Officer service which were withdrawn from the
48 Public Employees Retirement System prior to his or her elective transfer into this plan.

49 (d) Any Natural Resources Police Officer who was employed as a Natural Resources
50 Police Officer between the effective date of this article and June 30, 2026, who has not
51 commenced retirement under the Public Employees Retirement System, shall become a member
52 upon rehire as a Natural Resources Police Officer. For purposes of this subsection, the member's
53 years of service and credited service prior to the effective date ~~shall~~ may not be counted for any
54 purposes under this plan unless the Natural Resources Police Officer has not received the return

55 of his or her accumulated contributions in the Public Employees Retirement System pursuant to
56 §5-10-30 of this code. The member may request in writing within two years of first becoming a
57 member of the plan to have his or her accumulated contributions and employer contributions from
58 all credited service, as that term is defined in §5-10-2 of this code, in the Public Employees
59 Retirement System transferred to the plan regardless of whether the credited service was earned
60 as a Natural Resources Police Officer. If the conditions of the subsection are met, all years of the
61 Natural Resources Police Officer's credited service shall be counted as years of service for the
62 purposes of this article.

63 (e) Any certified law enforcement officer who has law enforcement service with a
64 participating public employer in the Public Employees Retirement System who is first employed in
65 covered employment between the effective date of this article and June 30, 2026, and who has not
66 commenced retirement under the Public Employees Retirement System, shall be a member of this
67 retirement system. For purposes of this subsection, the member's years of service and credited
68 service prior to the effective date shall not be counted for any purposes under this plan unless the
69 Natural Resources Police Officer has not received the return of his or her accumulated
70 contributions in the Public Employees Retirement System pursuant to §5-10-30 of this code. The
71 member may request in writing within two years of first becoming a member of the plan to have up
72 to a maximum of three years of his or her accumulated contributions and employer contributions
73 from credited service, as that term is defined in §5-10-2 of this code, earned while performing
74 service as a certified law enforcement officer in the Public Employees Retirement System
75 transferred to the plan. If the member has more than three years of credited service as a certified
76 law enforcement officer in the Public Employees Retirement System, the accumulated
77 contributions and employer contributions of the first thirty-six months of credited service with full
78 salary as a certified law enforcement officer shall be transferred. If the conditions of the subsection

79 are met, the maximum three years of credited service in the Public Employees Retirement System
80 as a certified law enforcement officer shall be counted as years of service for the purposes of this
81 article.

82 (f) Any Natural Resources Police Officer who was employed as a Natural Resources
83 Police Officer prior to the effective date of this article and who was rehired as a Natural Resource
84 Police Officer on or after July 1, 2026, and who has not commenced retirement under the Public
85 Employees Retirement System, shall become a member upon rehire as a Natural Resources
86 Police Officer. For purposes of this subsection, the member's years of service and credited service
87 prior to the effective date shall not be counted for any purposes under this plan unless the Natural
88 Resources Police Officer has not received the return of his or her accumulated contributions in the
89 Public Employees Retirement System pursuant to §5-10-30 of this code. The member may
90 request in writing within one year of first becoming a member of the plan to have his or her
91 accumulated contributions and employer contributions from covered employment in the Public
92 Employees Retirement System transferred to the plan. If the conditions of the subsection are met,
93 all years of the Natural Resources Police Officer's covered employment shall be counted as years
94 of service for the purposes of this article.

95 (g) Once made, the election provided in this section is irrevocable. All Natural Resources
96 Police Officers first employed after the effective date and Natural Resources Police Officers
97 electing to become members as described in this section shall be members as a condition of
98 employment and shall make the contributions required by §20-18-8 of this code.

99 (h) Notwithstanding any other provisions of this article to the contrary, any individual who is
100 a leased employee is not eligible to participate in the plan. For purposes of this plan, a "leased
101 employee" means any individual who performs services as an independent contractor or pursuant
102 to an agreement with an employee leasing organization or similar organization. If a question arises

103 regarding the status of an individual as a leased employee, the board has final power to decide the
104 question. Additionally, any individual who is an Emergency Natural Resources Police Officer as
105 defined in §20-7-1(c) of this code, Special Natural Resources Police Officer as defined in §20-7-
106 1(d) of this code, Forestry Special Natural Resources Police Officer as defined in §20-7-1(e) of this
107 code, or Federal Law Enforcement Officer as defined in §20-7-1b of this code, is not eligible to
108 participate in the plan.

NOTE: The purpose of this bill is to provide supplement funding for the Natural Resource Police Officer Retirement System plan and to increase recruitment and retention of certified officers for the agency.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added. §5-16-1 and §5-16-2 have been completely rewritten.