

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

**Introduced**

### **Senate Bill 446**

By Senators Deeds, Smith, Stover, Stuart, Hamilton,  
and Woelfel

[Introduced January 15, 2024; referred  
to the Committee on Pensions; and then to the  
Committee on Finance]

1 A BILL to amend and reenact §20-18-2 and §20-18-8 of the Code of West Virginia, 1931, as  
 2 amended, all relating to Natural Resources Police Officer retirement; increasing the  
 3 accrued benefit of members of the West Virginia Natural Resources Police Officer  
 4 Retirement System who retire on or after January 1, 2027; and providing for additional  
 5 funding of the West Virginia Natural Police Officer Retirement System.

*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)~~ (1) 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)~~ (2) Each hour for which back pay is either awarded or agreed to be paid by the Division  
105 of Natural Resources, irrespective of mitigation of damages. The same hours of service may not  
106 be credited both under this subdivision and subdivision (1) or (2) of this subsection. Hours under  
107 this 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 may not include Emergency Natural Resources  
123 Police 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 ~~(ee)~~ "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 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 additional 12 percent of the monthly salary of each member shall be paid to the fund  
 4 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. If the  
18 board finds that the benefits provided by this article can be funded with a lesser contribution, then  
19 the board shall reduce the required member, or employer contributions or both. The sums withheld  
20 each calendar month shall be paid to the fund no later than 15 days following the end of the  
21 calendar month.

22 (e) Beginning the plan year commencing July 1, 2024, and extending through the plan year  
23 ending June 30, 2029, the division shall make payment of \$850,000 to the fund during each plan  
24 year, in addition to the contribution requirement in subsection (b) above, no later than July 30 of  
25 each plan year.

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 and provide funding for the benefit.

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