

Senate Bill No. 301

(By Senators Gaunch and Trump)

[Introduced January 26, 2015; referred to the Committee on Pensions; and then to the Committee
on Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §8-22A-2 and §8-22A-6 of the Code of West Virginia, 1931, as amended, all relating to membership provisions in the West Virginia Municipal Police and Firefighters Retirement System.

Be it enacted by the Legislature of West Virginia:

That §8-22A-2 and §8-22A-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 22A WEST VIRGINIA MUNICIPAL POLICE OFFICERS AND
FIREFIGHTERS RETIREMENT SYSTEM.**

§8-22A-2. Definitions.

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

(a) "Accrued benefit" means on behalf of any member two and six-tenths percent per year

1 of the member's final average salary for the first twenty years of credited service. Additionally, two
2 percent per year for twenty-one through twenty-five years and one percent per year for twenty-six
3 through thirty years will be credited with a maximum benefit of sixty-seven percent. A member's
4 accrued benefit may not exceed the limits of Section 415 of the Internal Revenue Code and is subject
5 to the provisions of section ten of this article.

6 (b) "Accumulated contributions" means the sum of all retirement contributions deducted from
7 the compensation of a member, or paid on his or her behalf as a result of covered employment,
8 together with regular interest on the deducted amounts.

9 (c) "Active military duty" means full-time duty in the active military service of the United
10 States Army, Navy, Air Force, Coast Guard or Marine Corps. The term does not include regularly
11 required training or other duty performed by a member of a reserve component or National Guard
12 unless the member can substantiate that he or she was called into the full-time active military service
13 of the United States and has received no compensation during the period of that duty from any board
14 or employer other than the armed forces.

15 (d) "Actuarial equivalent" means a benefit of equal value computed on the basis of the
16 mortality table and interest rates as set and adopted by the board in accordance with the provisions
17 of this article: *Provided*, That when used in the context of compliance with the federal maximum
18 benefit requirements of Section 415 of the Internal Revenue Code, "actuarial equivalent" shall be
19 computed using the mortality tables and interest rates required to comply with those requirements.

20 (e) "Annual compensation" means the wages paid to the member during covered employment
21 within the meaning of Section 3401(a) of the Internal Revenue Code, but determined without regard

1 to any rules that limit the remuneration included in wages based on the nature or location of
2 employment or services performed during the plan year plus amounts excluded under Section
3 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense allowances, cash
4 or noncash fringe benefits or both, deferred compensation and welfare benefits. Annual
5 compensation for determining benefits during any determination period may not exceed the
6 maximum compensation allowed as adjusted for cost-of-living in accordance with section seven,
7 article ten-d, chapter five of this code and Section 401(a)(17)of the Internal Revenue Code.

8 (f) "Annual leave service" means accrued annual leave.

9 (g) "Annuity starting date" means the first day of the month for which an annuity is payable
10 after submission of a retirement application or the required beginning date, if earlier. For purposes
11 of this subsection, if retirement income payments commence after the normal retirement age,
12 "retirement" means the first day of the month following or coincident with the latter of the last day
13 the member worked in covered employment or the member's normal retirement age and after
14 completing proper written application for "retirement" on an application supplied by the board.

15 (h) "Board" means the Consolidated Public Retirement Board.

16 (I) "Covered employment" means either: (1) Employment as a full-time municipal police
17 officer or firefighter and the active performance of the duties required of that employment; or (2) the
18 period of time during which active duties are not performed but disability benefits are received under
19 this article; or (3) concurrent employment by a municipal police officer or firefighter in a job or jobs
20 in addition to his or her employment as a municipal police officer or firefighter in this plan where
21 the secondary employment requires the police officer or firefighter to be a member of another

1 retirement system which is administered by the Consolidated Public Retirement Board pursuant to
2 this code: *Provided*, That the police officer or firefighter contributes to the fund created in this article
3 the amount specified as the member's contribution in section eight of this article.

4 (j) "Credited service" means the sum of a member's years of service, active military duty and
5 disability service.

6 (k) "Dependent child" means either: (1) An unmarried person under age eighteen who is: (A)
7 A natural child of the member; (B) a legally adopted child of the member; (C) a child who at the time
8 of the member's death was living with the member while the member was an adopting parent during
9 any period of probation; or (D) a stepchild of the member residing in the member's household at the
10 time of the member's death; or (2) Any unmarried child under age twenty-three: (A) Who is enrolled
11 as a full-time student in an accredited college or university; (B) who was claimed as a dependent by
12 the member for federal income tax purposes at the time of the member's death; and (C) whose
13 relationship with the member is described in paragraph (A), (B) or (C), subdivision (1) of this
14 subsection.

15 (l) "Dependent parent" means the father or mother of the member who was claimed as a
16 dependent by the member for federal income tax purposes at the time of the member's death.

17 (m) "Disability service" means service credit received by a member, expressed in whole
18 years, fractions thereof or both, equal to one half of the whole years, fractions thereof, or both, during
19 which time a member receives disability benefits under this article.

20 (n) "Effective date" means January 1, 2010.

21 ~~(o)(1) "Municipal police officer" means an individual employed as a member of a paid police~~

1 department by a West Virginia municipality or municipal subdivision which has established and
2 maintains a municipal policemen's pension and relief fund, and who is not a member of, and not
3 eligible for membership in, a municipal policemen's pension and relief fund as provided in section
4 sixteen, article twenty-two of this chapter. Paid police department does not mean a department whose
5 employees are paid nominal salaries or wages or are paid only for services actually rendered on an
6 hourly basis. (2) "Municipal firefighter" means an individual employed as a member of a paid fire
7 department by a West Virginia municipality or municipal subdivision which has established and
8 maintains a municipal firemen's pension and relief fund, and who is not a member of, and not
9 eligible for membership in, a municipal firemen's pension and relief fund as provided in section
10 sixteen, article twenty-two of this chapter. Paid fire department does not mean a department whose
11 employees are paid nominal salaries or wages or are paid only for services actually rendered on an
12 hourly basis.

13 ~~(p)~~(o) "Final average salary" means the average of the highest annual compensation received
14 for covered employment by the member during any five consecutive plan years within the member's
15 last ten years of service while employed, prior to any disability payment. If the member did not have
16 annual compensation for the five full plan years preceding the member's attainment of normal
17 retirement age and during that period the member received disability benefits under this article, then
18 "final average salary" means the average of the monthly compensation which the member was
19 receiving in the plan year prior to the initial disability. "Final average salary" does not include any
20 lump sum payment for unused, accrued leave of any kind or character.

21 ~~(q)~~(p) "Full-time employment" means permanent employment of an employee by a

1 participating municipality in a position which normally requires twelve months per year service and
2 requires at least one thousand forty hours per year service in that position.

3 (†) (q) "Fund" means the West Virginia Municipal Police Officers and Firefighters
4 Retirement Fund created by this article.

5 (†) (r) "Hour of service" means: (1) Each hour for which a member is paid or entitled to
6 payment for covered employment during which time active duties are performed. These hours shall
7 be credited to the member for the plan year in which the duties are performed; and (2) each hour for
8 which a member is paid or entitled to payment for covered employment during a plan year but where
9 no duties are performed due to vacation, holiday, illness, incapacity including disability, layoff, jury
10 duty, military duty, leave of absence or any combination thereof and without regard to whether the
11 employment relationship has terminated. Hours under this subdivision shall be calculated and
12 credited pursuant to West Virginia Division of Labor rules. A member will not be credited with any
13 hours of service for any period of time he or she is receiving benefits under section seventeen or
14 eighteen of this article; and (3) each hour for which back pay is either awarded or agreed to be paid
15 by the employing municipality, irrespective of mitigation of damages. The same hours of service
16 shall not be credited both under subdivision (1) or (2) of this subsection and under this subdivision.
17 Hours under this paragraph shall be credited to the member for the plan year or years to which the
18 award or agreement pertains, rather than the plan year in which the award, agreement or payment is
19 made.

20 (†) (s) "Member" means, except as provided in section thirty-two of this article, a person ~~first~~
21 hired as a municipal police officer or municipal firefighter, as defined in this section, by a

1 participating municipal employer on or after January 1, 2010. A member shall remain a member until
2 the benefits to which he or she is entitled under this article are paid or forfeited.

3 ~~(t)~~ (t) "Monthly salary" means the W-2 reportable compensation received by a member
4 during the month.

5 ~~(v)~~ (u) "Municipality" has the meaning ascribed to it in this code.

6 ~~(v)~~ (1) "Municipal police officer" means an individual employed as a member of a paid police
7 department by a West Virginia municipality or municipal subdivision which has established and
8 maintains a municipal policemen's pension and relief fund, and who is not a member of, and not
9 eligible for membership in, a municipal policemen's pension and relief fund as provided in section
10 sixteen, article twenty-two of this chapter. Paid police department does not mean a department
11 whose employees are paid nominal salaries or wages or are paid only for services actually rendered
12 on an hourly basis.

13 ~~(2)~~ (2) "Municipal firefighter" means an individual employed as a member of a paid fire
14 department by a West Virginia municipality or municipal subdivision which has established and
15 maintains a municipal firemen's pension and relief fund, and who is not a member of, and not
16 eligible for membership in, a municipal firemen's pension and relief fund as provided in section
17 sixteen, article twenty-two of this chapter. Paid fire department does not mean a department whose
18 employees are paid nominal salaries or wages or are paid only for services actually rendered on an
19 hourly basis.

20 (w) "Municipal subdivision" means any separate corporation or instrumentality established
21 by one or more municipalities, as permitted by law; and any public corporation charged by law with

1 the performance of a governmental function and whose jurisdiction is coextensive with one or more
2 municipalities.

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

9 (y) "Normal retirement age" means the first to occur of the following: (1) Attainment of age
10 fifty years and the completion of twenty or more years of regular contributory service; (2) while still
11 in covered employment, attainment of at least age fifty years and when the sum of current age plus
12 regular contributory service equals or exceeds seventy years; (3) while still in covered employment,
13 attainment of at least age sixty years and completion of ten years of regular contributory service; or
14 (4) Attainment of age sixty-two years and completion of five or more years of regular contributory
15 service.

16 (z) "Plan" means the West Virginia Municipal Police Officers and Firefighters Retirement
17 System established by this article.

18 (aa) "Plan year" means the twelve-month period commencing on January 1 of any designated
19 year and ending the following December 31.

20 (bb) "Qualified public safety employee" means any employee of a participating state or
21 political subdivision who provides police protection, fire-fighting services or emergency medical

1 services for any area within the jurisdiction of the state or political subdivision, or such other
2 meaning given to the term by Section 72(t)(10)(B) of the Internal Revenue Code or by Treasury
3 Regulation §1.401(a)-1(b)(2)(v) as they may be amended from time to time.

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

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

8 (ee) "Required beginning date" means April 1 of the calendar year following the later of: (1)
9 The calendar year in which the member attains age seventy and one-half; or (2) the calendar year in
10 which he or she retires or otherwise separates from covered employment.

11 (ff) "Retirement income payments" means the monthly retirement income payments payable
12 under the plan.

13 (gg) "Spouse" means the person to whom the member is legally married on the annuity
14 starting date.

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

17 (ii) "Totally disabled" means a member's inability to engage in substantial gainful activity
18 by reason of any medically determined physical or mental impairment that can be expected to result
19 in death or that has lasted or can be expected to last for a continuous period of not less than twelve
20 months. For purposes of this subsection: (1) A member is totally disabled only if his or her physical
21 or mental impairment or impairments is so severe that he or she is not only unable to perform his or

1 her previous work as a police officer or firefighter but also cannot, considering his or her age,
 2 education and work experience, engage in any other kind of substantial gainful employment which
 3 exists in the state regardless of whether: (A) The work exists in the immediate area in which the
 4 member lives; (B) a specific job vacancy exists; or (C) the member would be hired if he or she
 5 applied for work. For purposes of this article, substantial gainful employment is the same definition
 6 as used by the United States Social Security Administration. (2) "Physical or mental impairment"
 7 is an impairment that results from an anatomical, physiological or psychological abnormality that
 8 is demonstrated by medically accepted clinical and laboratory diagnostic techniques. The board may
 9 require submission of a member's annual tax return for purposes of monitoring the earnings
 10 limitation.

11 (jj) "Year of service" means a member shall, except in his or her first and last years of
 12 covered employment, be credited with years of service credit based on the hours of service
 13 performed as covered employment and credited to the member during the plan year based on the
 14 following schedule:

	Hours of Service	Year of Service Credited
16	Less than 500	0
17	500 to 999	1/3
18	1,000 to 1,499	2/3
19	1,500 or more	1

20 During a member's first and last years of covered employment, the member shall be credited
 21 with one twelfth of a year of service for each month during the plan year in which the member is

1 credited with an hour of service for which contributions were received by the fund. A member is not
2 entitled to credit for years of service for any time period during which he or she received disability
3 payments under section seventeen or eighteen of this article.

4 **§8-22A-6. Members.**

5 (a) A police officer or firefighter ~~first employed~~ hired in covered employment after the
6 effective date of this article by a municipality or municipal subdivision which has established and
7 maintained a policemen's pension and relief fund or a firemen's pension and relief fund pursuant to
8 section sixteen, article twenty-two of this chapter and which is a participating employer, shall be a
9 member of this retirement plan.

10 (b) Except as provided in section thirty-two of this article, a police officer or firefighter who
11 is a member of the Municipal Police Officers and Firefighters Retirement System may not have
12 credit for covered employment in any other retirement system applied as service credit in the
13 Municipal Police Officers and Firefighters Retirement System.

14 (c) Notwithstanding any other provisions of this article, any individual who is a leased
15 employee is not eligible to participate in the plan. For purposes of this plan, a "leased employee"
16 means any individual who performs services as an independent contractor or pursuant to an
17 agreement with an employee leasing organization or similar organization. If a question arises
18 regarding the status of an individual as a leased employee, the board has final power to decide the
19 question.

NOTE: The purpose of this bill is to modify the definition of "member" in MPFRS to be consistent with § 8-22-20.

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