

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

### **Committee Substitute**

**for**

## **House Bill 4519**

(BY DELEGATES HAMILTON, CAMPBELL, LYNCH, P. SMITH,  
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[Originating in the Committee on Finance,  
February 23, 2016]



1 A BILL to amend and reenact §8-22A-2, §8-22A-6 and §8-22A-32 of the Code of West Virginia,  
2 1931, as amended; and to amend said code by adding thereto a new section, designated  
3 §8-22A-33, all relating to authorizing certain municipalities to elect to participate in the  
4 West Virginia Municipal Police Officers and Firefighters Retirement System; providing  
5 definitions; authorizing certain municipal police officers and firefighters to become  
6 members of the retirement system under certain circumstances and with certain  
7 restrictions; and providing limitations and requirements for municipalities or municipal  
8 subdivisions to elect to participate in the retirement system.

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

1 That §8-22A-2, §8-22A-6 and §8-22A-32 of the Code of West Virginia, 1931, as amended  
2 be amended and reenacted; and that said code be amended by adding thereto a new section,  
3 designated §8-22A-33, all to read as follows:

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

**§8-22A-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 six-tenths percent per year  
4 of the member's final average salary for the first twenty years of credited service. Additionally,  
5 two percent per year for twenty-one through twenty-five years and one percent per year for twenty-  
6 six through thirty years will be credited with a maximum benefit of sixty-seven percent. A  
7 member's accrued benefit may not exceed the limits of Section 415 of the Internal Revenue Code  
8 and is subject to the provisions of section ten of this article.

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

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

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

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

34 (g) "Annuity starting date" means the first day of the month for which an annuity is payable  
35 after submission of a retirement application or the required beginning date, if earlier. For purposes  
36 of this subsection, if retirement income payments commence after the normal retirement age,  
37 "retirement" means the first day of the month following or coincident with the latter of the last day

38 the member worked in covered employment or the member's normal retirement age and after  
39 completing proper written application for "retirement" on an application supplied by the board.

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

41 (i) "Covered employment" means either: (1) Employment as a full-time municipal police  
42 officer or firefighter and the active performance of the duties required of that employment; or (2)  
43 the period of time during which active duties are not performed but disability benefits are received  
44 under this article; or (3) concurrent employment by a municipal police officer or firefighter in a job  
45 or jobs in addition to his or her employment as a municipal police officer or firefighter in this plan  
46 where the secondary employment requires the police officer or firefighter to be a member of  
47 another retirement system which is administered by the Consolidated Public Retirement Board  
48 pursuant to this code: *Provided*, That the police officer or firefighter contributes to the fund created  
49 in this article the amount specified as the member's contribution in section eight of this article.

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

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

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

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

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

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

75 (p) "Full-time employment" means permanent employment of an employee by a  
76 participating municipality in a position which normally requires twelve months per year service  
77 and requires at least one thousand forty hours per year service in that position.

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

80 (r) "Hour of service" means: (1) Each hour for which a member is paid or entitled to  
81 payment for covered employment during which time active duties are performed. These hours  
82 shall be credited to the member for the plan year in which the duties are performed; and (2) each  
83 hour for which a member is paid or entitled to payment for covered employment during a plan  
84 year but where no duties are performed due to vacation, holiday, illness, incapacity including  
85 disability, layoff, jury duty, military duty, leave of absence or any combination thereof and without  
86 regard to whether the employment relationship has terminated. Hours under this subdivision shall  
87 be calculated and credited pursuant to West Virginia Division of Labor rules. A member will not  
88 be credited with any hours of service for any period of time he or she is receiving benefits under

89 section seventeen or eighteen of this article; and (3) each hour for which back pay is either  
90 awarded or agreed to be paid by the employing municipality, irrespective of mitigation of  
91 damages. The same hours of service shall not be credited both under subdivision (1) or (2) of this  
92 subsection and under this subdivision. Hours under this paragraph shall be credited to the  
93 member for the plan year or years to which the award or agreement pertains, rather than the plan  
94 year in which the award, agreement or payment is made.

95 (s) "Member" means, except as provided in ~~section~~ sections thirty-two or thirty-three of  
96 this article, a person hired as a municipal police officer or municipal firefighter, as defined in this  
97 section, by a participating municipal employer on or after January 1, 2010. A member shall remain  
98 a member until the benefits to which he or she is entitled under this article are paid or forfeited.

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

101 (u) "Municipality" has the meaning ascribed to it in this code.

102 (v)(1) "Municipal police officer" means an individual employed as a member of a paid  
103 police department by a West Virginia municipality or municipal subdivision which has established  
104 and maintains a municipal policemen's pension and relief fund, and who is not a member of, and  
105 not eligible for membership in, a municipal policemen's pension and relief fund as provided in  
106 section sixteen, article twenty-two of this chapter: Provided, That municipal police officer also  
107 means an individual employed as a member of a paid police department by a West Virginia  
108 municipality or municipal subdivision which is authorized to elect to participate in the plan pursuant  
109 to section thirty-three of this article. Paid police department does not mean a department whose  
110 employees are paid nominal salaries or wages or are paid only for services actually rendered on  
111 an hourly basis.

112 (2) "Municipal firefighter" means an individual employed as a member of a paid fire  
113 department by a West Virginia municipality or municipal subdivision which has established and  
114 maintains a municipal firemen's pension and relief fund, and who is not a member of, and not

115 eligible for membership in, a municipal firemen's pension and relief fund as provided in section  
116 sixteen, article twenty-two of this chapter: Provided, That municipal firefighter also means an  
117 individual employed as a member of a paid fire department by a West Virginia municipality or  
118 municipal subdivision which is authorized to elect to participate in the plan pursuant to section  
119 thirty-three of this article. Paid fire department does not mean a department whose employees  
120 are paid nominal salaries or wages or are paid only for services actually rendered on an hourly  
121 basis.

122 (w) "Municipal subdivision" means any separate corporation or instrumentality established  
123 by one or more municipalities, as permitted by law; and any public corporation charged by law  
124 with the performance of a governmental function and whose jurisdiction is coextensive with one  
125 or more municipalities.

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

132 (y) "Normal retirement age" means the first to occur of the following: (1) Attainment of age  
133 fifty years and the completion of twenty or more years of regular contributory service; (2) while  
134 still in covered employment, attainment of at least age fifty years and when the sum of current  
135 age plus regular contributory service equals or exceeds seventy years; (3) while still in covered  
136 employment, attainment of at least age sixty years and completion of ten years of regular  
137 contributory service; or (4) Attainment of age sixty-two years and completion of five or more years  
138 of regular contributory service.

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

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

143 (bb) "Qualified public safety employee" means any employee of a participating state or  
144 political subdivision who provides police protection, firefighting services or emergency medical  
145 services for any area within the jurisdiction of the state or political subdivision, or such other  
146 meaning given to the term by Section 72(t)(10)(B) of the Internal Revenue Code or by Treasury  
147 Regulation §1.401(a)-1(b)(2)(v) as they may be amended from time to time.

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

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

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

155 (ff) "Retirement income payments" means the monthly retirement income payments  
156 payable under the plan.

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

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

161 (ii) "Totally disabled" means a member's inability to engage in substantial gainful activity  
162 by reason of any medically determined physical or mental impairment that can be expected to  
163 result in death or that has lasted or can be expected to last for a continuous period of not less  
164 than twelve months. For purposes of this subsection: (1) A member is totally disabled only if his  
165 or her physical or mental impairment or impairments is so severe that he or she is not only unable  
166 to perform his or her previous work as a police officer or firefighter but also cannot, considering

167 his or her age, education and work experience, engage in any other kind of substantial gainful  
168 employment which exists in the state regardless of whether: (A) The work exists in the immediate  
169 area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be  
170 hired if he or she applied for work. For purposes of this article, substantial gainful employment is  
171 the same definition as used by the United States Social Security Administration. (2) "Physical or  
172 mental impairment" is an impairment that results from an anatomical, physiological or  
173 psychological abnormality that is demonstrated by medically accepted clinical and laboratory  
174 diagnostic techniques. The board may require submission of a member's annual tax return for  
175 purposes of monitoring the earnings limitation.

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

Hours of Service Year of Service Credited	
181	Less than 500 ..... 0
182	500 to 999 ..... 1/3
183	1,000 to 1,499 ..... 2/3
184	1,500 or more ..... 1

185 During a member's first and last years of covered employment, the member shall be  
186 credited with one twelfth of a year of service for each month during the plan year in which the  
187 member is credited with an hour of service for which contributions were received by the fund. A  
188 member is not entitled to credit for years of service for any time period during which he or she  
189 received disability payments under section seventeen or eighteen of this article.

**§8-22A-6. Members.**

1 (a) A police officer or firefighter hired in covered employment after the effective date of this  
2 article by a municipality or municipal subdivision which has established and maintained a

3 policemen's pension and relief fund or a firemen's pension and relief fund pursuant to section  
4 sixteen, article twenty-two of this chapter and which is a participating employer or which is a  
5 participating public employer as authorized by section thirty-three of this article, shall be a member  
6 of this retirement plan: *Provided*, That any police officer or firefighter who has concurrent  
7 employment in an additional job or jobs which would require the police officer or firefighter to be  
8 a member of the West Virginia Deputy Sheriff Retirement System or the West Virginia Emergency  
9 Medical Services Retirement System shall participate in only one retirement system administered  
10 by the board, and the retirement system applicable to the concurrent employment for which the  
11 employee has the earliest date of hire shall prevail.

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

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

**§8-22A-32. Membership retroactive in certain circumstances.**

1 (a) Notwithstanding all other provisions relating to this article and article twenty-two of this  
2 chapter, any police officer or firefighter hired by a participating public employer on or after June  
3 1, 2009, and before January 1, 2010, who received notice at the time of employment that he or  
4 she may be placed in a new retirement system created by legislation and who has been enrolled  
5 in but received no benefits from a municipal policemen's or firemen's pension and relief fund shall,  
6 if permitted by applicable federal law, be enrolled in the Municipal Police Officers and Firefighters

7 Retirement System upon acceptance by the Consolidated Public Retirement Board of the  
8 resolution of the municipality required by section twenty-eight of this article. Employee and  
9 employer contributions made by or on behalf of the employee to the municipal pension and relief  
10 fund pursuant to article twenty-two of this chapter shall be transferred within sixty days to the  
11 retirement system created in this article and the employee subject to the transfer shall receive  
12 service credit for time worked while a member of the municipal pension and relief fund.

13 (b) Notwithstanding any other provision of the code to the contrary, any police officer or  
14 firefighter hired by a participating public employer on or after July 1, 2015, who chooses pursuant  
15 to section thirty-three of this article to be a member of the plan, shall be a member of the plan  
16 upon acceptance by the Consolidated Public Retirement Board of the notification by the  
17 municipality required by section thirty-three of this article.

18 (1) The Consolidated Public Retirement Board shall transfer assets and service credit  
19 earned on or after July 1, 2015, from the Public Employees Retirement System Trust Fund into  
20 the West Virginia Municipal Police Officers and Firefighters Retirement Fund for those police  
21 officers or firefighters who elect to be a member of the plan and were members in the Public  
22 Employees Retirement System no later than sixty days from receipt of notification by the  
23 municipality or municipal subdivision of the police officer or firefighter's election to become a  
24 member. The amount of service credit recognized by the plan for the transferring employees shall  
25 be the service credit transferred and recognized by the Public Employees Retirement System.

26 (2) The amount of assets to be transferred for each police officer or firefighter shall be  
27 computed as of the actuarial valuation date preceding the notification to the Consolidated Public  
28 Retirement Board by the municipality or municipal subdivision of the police officer or firefighter's  
29 election to become a member and updated with seven and one-half percent annual interest to the  
30 date of the actual asset transfer. For purposes of this section, the actuarial valuation date is the  
31 most recent actuarial valuation of the Public Employees Retirement System approved by the  
32 Consolidated Public Retirement Board. The market value of the assets of the transferring

33 employees in the Public Employees Retirement System shall be determined as of the end of the  
34 month preceding the actual transfer. To determine the computation of the asset share to be  
35 transferred, the Consolidated Public Retirement Board shall:

36 (A) Compute the market value of the Public Employees Retirement System assets using  
37 the actuarial valuation date;

38 (B) Compute the actuarial accrued liabilities for all Public Employees Retirement System  
39 retirees, beneficiaries, disabled retirees and terminated inactive members using the actuarial  
40 valuation date;

41 (C) Compute the market value of active member assets in the Public Retirement System  
42 as of the actuarial valuation date by reducing the assets value under paragraph (A) of this  
43 subdivision by the inactive liabilities under paragraph (B) of this subdivision;

44 (D) Compute the actuarial accrued liability for all active Public Employees Retirement  
45 System members using the actuarial valuation date immediately preceding the computation date;

46 (E) Compute the funded percentage of the active members' actuarial accrued liabilities  
47 under the Public Employees Retirement System as of the actuarial valuation date by dividing the  
48 active members' market value of assets under paragraph (C) of this subdivision by the active  
49 members' actuarial accrued liabilities under paragraph (D) of this subsection;

50 (F) Compute the actuarial accrued liabilities under the Public Employees Retirement  
51 System as of the actuarial valuation date for active employees transferring to the plan;

52 (G) Determine the assets to be transferred from the Public Employees Retirement System  
53 to the plan by multiplying the active members' funded percentage determined under paragraph  
54 (E) of this subdivision by the transferring active members' actuarial accrued liabilities under the  
55 Public Employees Retirement System under paragraph (F) of this subdivision and adjusting the  
56 asset transfer amount by interest at seven and five-tenths percent for the period from the  
57 calculation date of July 1 through the first day of the month in which the asset transfer is to be  
58 completed.

59           (3) Any police officer or firefighter who elects to become a member of the plan must also  
60 pay to the plan a four percent contribution no later than June 30, 2019. The contribution shall be  
61 calculated as four percent of the member's total earnings for which assets are transferred, plus  
62 interest of seven and one-half percent accumulated from the date of the police officer's or  
63 firefighter's initial participation in the Public Employees Retirement System through the calculation  
64 date. Installment payments may be made over no more than a twenty-four month period plus  
65 seven and one-half percent interest shall accrue on the outstanding balance due from the  
66 calculation date until paid in full.

67           (4) Once an employee transfers from the Public Employees Retirement System to the  
68 plan, the Public Employees Retirement System shall bar any further liability and said transfer will  
69 constitute an agreement whereby the transferring employee forever indemnifies and holds  
70 harmless the Public Employees Retirement System from providing him or her any form of  
71 retirement benefit whatsoever until that employee obtains other employment which would make  
72 him or her eligible to reenter the Public Employees Retirement System with no credit whatsoever  
73 for the amounts transferred to the plan.

**§8-22A-33. Special authorization for municipal police or firefighters hired after July 1,**  
**2015.**

1           (a) Notwithstanding any provision of this code to the contrary, any municipality or  
2 municipal subdivision that employs individuals as members of paid police departments or paid  
3 fire departments, but did not establish either a municipal policemen's pension and relief fund or a  
4 municipal firemen's pension and relief fund as provided in section sixteen, article twenty-two of  
5 this chapter and whose current police officers or firefighters are participating in the Public  
6 Employees Retirement System may elect, in the same manner as provided in section twenty-  
7 eight of this article, to become a participating public employer in the plan and thereby include its  
8 police officers and firefighters in the membership of the plan subject to the restrictions provided  
9 in this section.

10           (b) The municipality or municipal subdivision may elect to include only police officers and  
11 firefighters who have been hired on or after July 1, 2015, to become members of the plan. Police  
12 officers and firefighters hired before July 1, 2015, will remain members of the Public Employees  
13 Retirement System.

14           (c) The municipality or municipal subdivision must make its election on or prior to July 1,  
15 2017.

16           (d) Once a municipality or municipal subdivision makes its election to become a  
17 participating public employer pursuant to this section and section twenty-eight of this article, all  
18 police officers and firefighters hired by the municipality or municipal subdivision after the date of  
19 shall be members of the plan: *Provided*, That police officers and firefighters hired by the  
20 municipality or municipal subdivision on or after July 1, 2015, who are members of the Public  
21 Employees Retirement System, may choose to become a member of the plan by notifying the  
22 municipality or municipal subdivision on a form provided by the Consolidated Public Retirement  
23 Board: *Provided, however*, That he or she make this decision within ninety days of the municipality  
24 or municipal subdivision's decision to participate in the plan. A municipality or municipal  
25 subdivision making an election to become a participating public employer pursuant to section  
26 twenty-eight of this article that has hired any police officer or firefighter on or after July 1, 2015,  
27 shall notify each police officer or firefighter hired on or after July 1, 2015, of its election to become  
28 a participating public employer within thirty days of making the election. This notice shall include  
29 instructions as to how a police officer or firefighter may make notification to the municipality or  
30 municipal subdivision of his or her decision to become a member in the plan. The municipality or  
31 municipal subdivision shall notify the Consolidated Public Retirement Board in writing of any  
32 police officer or firefighter hired after July 1, 2015, who has decided to become a member of the  
33 plan and terminate his or her membership in the Public Employees Retirement System within  
34 thirty days of notification by the police officer or firefighter on forms provided by the Consolidated  
35 Public Retirement System.

NOTE: The purpose of this bill is to allow certain municipalities participating in the Public Employees Retirement System to choose to have their paid police officers or firefighters move to the Municipal Police Officers and Firefighters Retirement System.

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