

# **WEST VIRGINIA LEGISLATURE**

**2017 REGULAR SESSION**

**Introduced**

## **Senate Bill 392**

BY SENATOR GAUNCH

[Introduced February 22, 2017; Referred  
to the Committee on Pensions; and then to the  
Committee on Finance]

1 A BILL to amend and reenact §8-22A-2, §8-22A-17 and §8-22A-18 of the Code of West Virginia,  
2 1931, as amended, all relating to the Municipal Police Officers and Firefighters Retirement  
3 System; defining the term “vested”; clarifying factors determining duty/nonduty disability  
4 payouts; and requiring ten or more years of contributory service as a municipal police  
5 officer or municipal firefighter for a member to be eligible to receive benefits for nonduty  
6 disability.

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

1 That §8-22A-2, §8-22A-17 and §8-22A-18 of the Code of West Virginia, 1931, as  
2 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.**

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 of a  
7 member’s final average salary. A member’s accrued benefit may not exceed the limits of Section  
8 415 of the Internal Revenue Code 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  
33 Code.

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

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

40 completing proper written application for retirement on an application supplied by the board.

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

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

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

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

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

64 (m) "Disability service" means service credit received by a member, expressed in whole  
65 years, fractions thereof, or both, equal to one half of the whole years, fractions thereof, or both,

66 during which time a member receives disability benefits under this article.

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

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

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

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

81 (r) "Hour of service" means: (1) Each hour for which a member is paid or entitled to  
82 payment for covered employment during which time active duties are performed. These hours  
83 shall be credited to the member for the plan year in which the duties are performed; and (2) each  
84 hour for which a member is paid or entitled to payment for covered employment during a plan  
85 year but where no duties are performed due to vacation, holiday, illness, incapacity including  
86 disability, layoff, jury duty, military duty, leave of absence or any combination thereof and without  
87 regard to whether the employment relationship has terminated. Hours under this subdivision shall  
88 be calculated and credited pursuant to West Virginia Division of Labor rules. A member will not  
89 be credited with any hours of service for any period of time he or she is receiving benefits under  
90 section seventeen or eighteen of this article; and (3) each hour for which back pay is either  
91 awarded or agreed to be paid by the employing municipality, irrespective of mitigation of

92 damages. The same hours of service shall not be credited both under subdivision (1) or (2) of this  
93 subsection and under this subdivision. Hours under this paragraph shall be credited to the  
94 member for the plan year or years to which the award or agreement pertains, rather than the plan  
95 year in which the award, agreement or payment is made.

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

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

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

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

113 (2) "Municipal firefighter" means an individual employed as a member of a paid fire  
114 department by a West Virginia municipality or municipal subdivision which has established and  
115 maintains a municipal firemen's pension and relief fund, and who is not a member of, and not  
116 eligible for membership in, a municipal firemen's pension and relief fund as provided in section  
117 sixteen, article twenty-two of this chapter: *Provided*, That municipal firefighter also means an

118 individual employed as a member of a paid fire department by a West Virginia municipality or  
119 municipal subdivision which is authorized to elect to participate in the plan pursuant to section  
120 thirty-three of this article. Paid fire department does not mean a department whose employees  
121 are paid nominal salaries or wages or are paid only for services actually rendered on an hourly  
122 basis.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

177 (j) "Vested" means eligible for retirement income payments after completion of five or  
178 more years of regular contributory service.

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

Hours of Service Year of Service Credited	
183	
184	Less than 500 ..... 0
185	500 to 999 ..... 1/3
186	1,000 to 1,499..... 2/3
187	1,500 or more ..... 1

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

**§8-22A-17. Awards and benefits for disability — duty related; exception during early period.**

1 (a) Except as provided in subsection (a), section nine of this article, any member who after

2 the effective date of this article and during covered employment: (1) Has been or becomes totally  
3 disabled by injury, illness or disease; and (2) the disability is a result of an occupational risk or  
4 hazard inherent in or peculiar to the services required of members; or (3) the disability was  
5 incurred while performing police officer or firefighter functions during either scheduled work hours  
6 or at any other time; and (4) in the opinion of two physicians after medical examination, at least  
7 one of whom shall be named by the board, the member is by reason of the disability not only  
8 unable to perform his or her previous work as a police officer or firefighter but also cannot,  
9 considering his or her age, education and work experience, engage in any other kind of substantial  
10 gainful employment which exists in the state regardless of whether: (A) The work exists in the  
11 immediate area in which the member lives; (B) a specific job vacancy exists; or (C) the member  
12 would be hired if he or she applied for work, is entitled to receive and shall be paid from the fund  
13 in monthly installments during the lifetime of the member or, if sooner, until the member attains  
14 normal retirement age or until the disability sooner terminates, the compensation under this  
15 section. For purposes of this article, substantial gainful employment is the same definition as used  
16 by the United States Social Security Administration.

17 (b) If the member is totally disabled, the member shall receive ninety percent of his or her  
18 average ~~full~~ monthly compensation for months in which full compensation was received for the  
19 twelve-month contributory period preceding the member's disability or the shorter period if the  
20 member has not worked twelve months.

21 (c) If the member remains totally disabled until attaining sixty-five years of age, the  
22 member shall then receive the retirement benefit provided in sections fourteen and fifteen of this  
23 article.

**§8-22A-18. Awards and benefits for disability — due to other causes; exception during  
early period.**

1 (a) Except as provided in subsection (a), section nine of this article, any ~~member~~ municipal  
2 police officer or municipal firefighter with ten or more years of contributory service who, after the

3 effective date of this article and during covered employment: (1) Has been or becomes totally  
4 disabled from any cause other than those set forth in section seventeen of this article and not due  
5 to vicious habits, intemperance or willful misconduct on his or her part; and (2) in the opinion of  
6 two physicians after medical examination, at least one of whom shall be named by the board, he  
7 or she is by reason of the disability not only unable to perform his or her previous work as a police  
8 officer or firefighter but also cannot, considering his or her age, education and work experience,  
9 engage in any other kind of substantial gainful employment which exists in the state regardless  
10 of whether: (A) The work exists in the immediate area in which the member lives; (B) a specific  
11 job vacancy exists; or (C) the member would be hired if he or she applied for work, is entitled to  
12 receive and shall be paid from the fund in monthly installments during the lifetime of the member  
13 or, if sooner, until the member attains normal retirement age or until the disability sooner  
14 terminates, the compensation set forth in, either subsection (b) or (c) of this section.

15 (b) If the member is totally disabled, he or she shall receive sixty-six and two-thirds percent  
16 of his or her average monthly compensation for months in which full compensation was received  
17 for the twelve-month contributory period preceding the disability, ~~or the shorter period, if the~~  
18 ~~member has not worked twelve months.~~

19 (c) If the member remains totally disabled until attaining sixty years of age, then the  
20 member shall receive the retirement benefit provided in sections fourteen and fifteen of this article.

NOTE: This purpose of this bill is to add a definition for "vested" to Municipal Police and Fire Retirement System; and clarify duty/nonduty disability.

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