

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

ENROLLED

Senate Bill 392

OFFICE WEST VIRGINIA
SECRETARY OF STATE

2017 APR 18 P 3:15

FILED

BY SENATOR GAUNCH

[Passed April 4, 2017; in effect 90 days from passage]

SB 392

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

ENROLLED

Senate Bill 392

BY SENATOR GAUNCH

[Passed April 4, 2017; in effect 90 days from passage]

OFFICE WEST VIRGINIA
SECRETARY OF STATE

2017 APR 18 P 3:15

FILED

1 AN ACT 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 (jj) "Vested" means eligible for retirement income payments after completion of five or
 178 more years of regular contributory service.

179 (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 | |
|---|-----|
| 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 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 municipal police
2 officer or municipal firefighter with ten or more years of contributory service who, after the effective
3 date of this article and during covered employment: (1) Has been or becomes totally disabled
4 from any cause other than those set forth in section seventeen of this article and not due to vicious
5 habits, intemperance or willful misconduct on his or her part; and (2) in the opinion of two
6 physicians after medical examination, at least one of whom shall be named by the board, he or
7 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.

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Mark Thompson
.....
Chairman, Senate Committee

Ray Haddock
.....
Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

Mark Barnes
.....
Clerk of the Senate

Alyssa D. Harrison
.....
Clerk of the House of Delegates

Mark B. Canfield
.....
President of the Senate

Jim Cooper
.....
Speaker of the House of Delegates

FILED
2017 APR 18 P 3:15
OFFICE WEST VIRGINIA
SECRETARY OF STATE

The within *is approved* this the *18th*
April
Day of, 2017.

Jim Justice
.....
Governor

PRESENTED TO THE GOVERNOR

APR 13 2017

Time 9:07am