ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2507

(By Delegate(s) Canterbury, Pethtel, Folk, Kurcaba, Walters, Hamilton, Marcum and Hicks)

Passed March 9, 2015

In effect ninety days from passage.
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:

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

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

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

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

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

(e) “Annual compensation” means the wages paid to the
member during covered employment within the meaning of
Section 3401(a) of the Internal Revenue Code, but determined
without regard to any rules that limit the remuneration included
in wages based on the nature or location of employment or
services performed during the plan year plus amounts excluded
under Section 414(h)(2) of the Internal Revenue Code and less
reimbursements or other expense allowances, cash or noncash
fringe benefits or both, deferred compensation and welfare
benefits. Annual compensation for determining benefits during
any determination period may not exceed the maximum
compensation allowed as adjusted for cost-of-living in
accordance with section seven, article ten-d, chapter five of this
code and Section 401(a)(17) of the Internal Revenue Code.

(f) “Annual leave service” means accrued annual leave.

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

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

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

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

(l) "Dependent parent" means the father or mother of the member who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death.
(m) "Disability service" means service credit received by a member, expressed in whole years, fractions thereof or both, equal to one half of the whole years, fractions thereof, or both, during which time a member receives disability benefits under this article.

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

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

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

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

(r) "Hour of service" means: (1) Each hour for which a member is paid or entitled to payment for covered employment during which time active duties are performed. These hours shall be credited to the member for the plan year in which the duties are performed; and (2) each hour for which a member is paid or
entitled to payment for covered employment during a plan year
but where no duties are performed due to vacation, holiday,
ilness, incapacity including disability, layoff, jury duty, military
duty, leave of absence or any combination thereof and without
regard to whether the employment relationship has terminated.

Hours under this subdivision shall be calculated and credited
pursuant to West Virginia Division of Labor rules. A member
will not be credited with any hours of service for any period of
time he or she is receiving benefits under section seventeen or
eighteen of this article; and (3) each hour for which back pay is
either awarded or agreed to be paid by the employing
municipality, irrespective of mitigation of damages. The same
hours of service shall not be credited both under subdivision (1)
or (2) of this subsection and under this subdivision. Hours under
this paragraph shall be credited to the member for the plan year
or years to which the award or agreement pertains, rather than
the plan year in which the award, agreement or payment is made.

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

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

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

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

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

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

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

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

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

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

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

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

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

(ee) “Required beginning date” means April 1 of the calendar year following the later of: (1) The calendar year in which the member attains age seventy and one-half; or (2) the calendar year in which he or she retires or otherwise separates from covered employment.
(ff) "Retirement income payments" means the monthly retirement income payments payable under the plan.

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

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

(ii) "Totally disabled" means a member's inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve months. For purposes of this subsection: (1) A member is totally disabled only if his or her physical or mental impairment or impairments is so severe that he or she is not only unable to perform his or her previous work as a police officer or firefighter but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work. For purposes of this article, substantial gainful employment is the same definition as used by the United States Social Security Administration. (2) "Physical or mental impairment" is an impairment that results from an anatomical, physiological or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques. The board may require submission of a member's annual tax return for purposes of monitoring the earnings limitation.

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

255 Hours of Service Year of Service Credited
256 Less than 500. ............................................ 0
257 500 to 999. .............................................. 1/3
258 1,000 to 1,499. ........................................ 2/3
259 1,500 or more.......................................... 1

260 During a member’s first and last years of covered
261 employment, the member shall be credited with one twelfth of
262 a year of service for each month during the plan year in which
263 the member is credited with an hour of service for which
264 contributions were received by the fund. A member is not
265 entitled to credit for years of service for any time period during
266 which he or she received disability payments under section
267 seventeen or eighteen of this article.

§8-22A-6. Members.

1 (a) A police officer or firefighter hired in covered
2 employment after the effective date of this article by a
3 municipality or municipal subdivision which has established and
4 maintained a policemen’s pension and relief fund or a firemen’s
5 pension and relief fund pursuant to section sixteen, article
6 twenty-two of this chapter and which is a participating employer,
7 shall be a member of this retirement plan: Provided, That any
8 police officer or firefighter who has concurrent employment in
9 an additional job or jobs which would require the police officer
10 or firefighter to be a member of the West Virginia Deputy
11 Sheriff Retirement System or the West Virginia Emergency
12 Medical Services Retirement System shall participate in only
one retirement system administered by the board, and the
retirement system applicable to the concurrent employment for
which the employee has the earliest date of hire shall prevail.

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

(c) Notwithstanding any other provisions of this article, any
individual who is a leased employee is not eligible to participate
in the plan. For purposes of this plan, a "leased employee"
means any individual who performs services as an independent
contractor or pursuant to an agreement with an employee leasing
organization or similar organization. If a question arises
regarding the status of an individual as a leased employee, the
board has final power to decide the question.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee,

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within approved this the ______ day of ______, 2015.

Governor