WEST VIRGINIA CODE: §7-14D-5

§7-14D-5. Members.

(a) Any deputy sheriff first employed by a county in covered employment after the effective date of this article shall be a member of this retirement system and does not qualify for membership in any other retirement system administered by the board, so long as he or she remains employed in covered employment: *Provided,* That any deputy sheriff who has concurrent employment in an additional job or jobs which would require the deputy sheriff to be a member of the West Virginia Municipal Police Officers and Firefighters Retirement System, the West Virginia Emergency Medical Services Retirement System or the West Virginia Natural Resources Police Officers 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. The membership of any person in the plan ceases: (1) Upon the withdrawal of accumulated contributions after the cessation of service; (2) upon retirement; (3) at death; or (4) upon the date, if any, when after the cessation of service, the outstanding balance of any loan obtained by the member pursuant to §7-14D-23 of this code, plus accrued interest, equals or exceeds the accumulated contributions of the member.

(b) Any deputy sheriff employed in covered employment on the effective date of this article shall within six months of that effective date notify in writing both the county commission in the county in which he or she is employed and the board, of his or her desire to become a member of the plan: *Provided,* That this time period is extended to January 30, 1999, in accordance with the decision of the Supreme Court of Appeals in *West Virginia Deputy Sheriffs' Association, et al v. James L. Sims, et al*, No. 25212: *Provided, however,* That any deputy sheriff employed in covered employment on the effective date of this article has an additional time period consisting of the 10-day period following the day after which the amended provisions of this section become law to notify in writing both the county commission in the county in which he or she is employed and the board of his or her desire to become a member of the plan. Any deputy sheriff who elects to become a member of the plan ceases to be a member or have any credit for covered employment in any other retirement system administered by the board and shall continue to be ineligible for membership in any other retirement system administered by the board so long as the deputy sheriff remains employed in covered employment in this plan: *Provided further,* That any deputy sheriff who elects during the time period from July 1, 1998 to January 30, 1999 or who so elects during the10-day time period occurring immediately following the day after the day the amendments made during the 1999 legislative session become law, to transfer from the Public Employees Retirement System to the plan created in this article shall contribute to the plan created in this article at the rate set forth in §7-14D-7 of this code retroactive to July 1, 1998. Any deputy sheriff who does not affirmatively elect to become a member of the plan continues to be eligible for any other retirement system as is from time to time offered to other county employees but is ineligible for this plan regardless of any

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subsequent termination of employment and rehire.

(c) Any deputy sheriff employed in covered employment on the effective date of this article who has timely elected to transfer into this plan as provided in subsection (b) of this section shall be given credited service at the time of transfer for all credited service then standing to the deputy sheriff's service credit in the Public Employees Retirement System regardless of whether the credited service (as that term is defined in §5-10-2 of this code) was earned as a deputy sheriff. All the credited service standing to the transferring deputy sheriff's credit in the Public Employees Retirement Fund System at the time of transfer into this plan shall be transferred into the plan created by this article, and the transferring deputy sheriff shall be given the same credit for the purposes of this article for all service transferred from the Public Employees Retirement System as that transferring deputy sheriff would have received from the Public Employees Retirement System as if the transfer had not occurred. In connection with each transferring deputy sheriff receiving credit for prior employment as provided in this subsection, a transfer from the Public Employees Retirement System to this plan shall be made pursuant to the procedures described in §7-14D-8 of this code: *Provided,* That a member of this plan who has elected to transfer from the Public Employees Retirement System into this plan pursuant to subsection (b) of this section may not, after having transferred into and become an active member of this plan, reinstate to his or her credit in this plan any service credit relating to periods of nondeputy sheriff service which were withdrawn from the Public Employees Retirement System prior to his or her elective transfer into this plan.

(d) Any deputy sheriff who was employed as a deputy sheriff prior to the effective date of this article, but was not employed as a deputy sheriff on the effective date of this article, shall become a member upon rehire as a deputy sheriff. For purposes of this subsection, the member's years of service and credited service in the Public Employees Retirement System prior to the effective date of this article shall not be counted for any purposes under this plan unless: (1) The deputy sheriff has not received the return of his or her accumulated contributions in the Public Employees Retirement System pursuant to §5-10-30 of this code; or (2) the accumulated contributions returned to the member from the Public Employees Retirement System have been repaid pursuant to §7-14D-13 of this code. If the conditions of subdivision (1) or (2) of this subsection are met, all years of the deputy sheriff's covered employment shall be counted as years of service for the purposes of this article.

(e) Once made, the election provided in this section is irrevocable. All deputy sheriffs first employed after the effective date and deputy sheriffs electing to become members as described in this section shall be members as a condition of employment and shall make the contributions required by §7-14D-7 of this code.

(f) 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.

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