WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1989

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ENROLLED

HOUSE BILL No. 2757

(By Del. Whitt Helwick)

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Passed April 8, 1989

In Effect Ninety Days from Passage
ENROLLED
H. B. 2757
(By Delegates Whitt and Helmick)

[Passed April 8, 1989; in effect ninety days from passage.]

AN ACT to amend and reenact section three, article five, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section twenty-nine, article two, chapter fifteen of said code, all relating to retirement; the department of public safety; providing that the amount received for permanent and total disability incurred in the performance of duty may not be less than fifteen thousand dollars per year if such disability is to the extent that it prevents the disabled from ever engaging in any gainful employment; and providing that lump sum payments for unused accrued annual leave may not enter into final average salary computation for purposes of retirement.

Be it enacted by the Legislature of West Virginia:

That section three, article five, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section twenty-nine, article two, chapter fifteen of said code be amended and reenacted, all to read as follows:

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.
ARTICLE 5. SALARY INCREASE FOR STATE EMPLOYEES.

§5-5-3. Optional payment to employee in lump sum amount for accrued and unused annual leave at termination of employment; no withholding of any employee contribution deduction; exception.

Every eligible employee, as defined in section one of this article, at the time his or her active employment ends due to resignation, death, retirement or otherwise, may be paid in a lump sum amount, at his or her option, for accrued and unused annual leave at the employee's usual rate of pay at such time. The lump sum payment shall be made by the time of what would have been the employee's next regular payday had his employment continued. In determining the amount of annual leave entitlement, weekends, holidays or other periods of normal, noncountable time shall be excluded, and no deductions may be made for contributions toward retirement from lump sum payments for unused, accrued annual leave, since no period of service credit is granted in relation thereto; however, such lump sum payment may not be a part of final average salary computation; and where any such deduction of employee contribution may have been heretofore made, a refund of such shall be granted the former employee and made by the head of the respective former employer spending unit: Provided, That the superintendent of the department of public safety shall make deductions for retirement contributions of members of the department, since retirement benefits are based on cumulative earnings rather than period of service.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.


Any member of said department who has been or shall become physically or mentally permanently disabled by injury, illness or disease resulting from any occupational risk or hazard inherent in or peculiar to the services
required of members of said department and incurred pursuant to or while such member was or shall be engaged in the performance of his duties as a member of said department shall, if, in the opinion of the retirement board, he is by reason of such cause unable to perform adequately the duties required of him as a member of said department, be retired from active service by the retirement board and thereafter such member shall be entitled to receive annually and there shall be paid to such member from the death, disability and retirement fund in equal monthly installments during the natural lifetime of such member or until such disability shall sooner terminate, one or the other of two amounts, whichever is greater:

(1) An amount equal to five and one-half percent of the total salary which would have been earned during twenty-five years or actual service if more than twenty-five years in said department based on the average earnings of such member while employed as a member of said department; or

(2) The sum of six thousand dollars.

If such disability shall be permanent and total to the extent that such member is or shall be incapacitated ever to engage in any gainful employment, such member shall be entitled to receive annually and there shall be paid to such member from the death, disability and retirement fund in equal monthly installments during the natural lifetime of such member or until such disability shall sooner terminate, an amount equal to eight and one-half percent of the total salary which would have been earned by such member during twenty-five years or actual service if more than twenty-five years of service in said department based on the average earnings of such member while employed as a member of said department: Provided, That on and after the first day of July, one thousand nine hundred eighty-nine, in no event may such amount be less than fifteen thousand dollars per annum.

The superintendent is authorized to expend moneys from funds appropriated for the department in payment
of medical, surgical, laboratory, X-ray, hospital, ambulance and dental expenses and fees, and reasonable costs and expenses incurred in purchase of artificial limbs and other approved appliances which may be reasonably necessary for any member of said department who has or shall become temporarily, permanently or totally disabled by injury, illness or disease resulting from any occupational risk or hazard inherent in or peculiar to the service required of members of said department and incurred pursuant to or while such member was or shall be engaged in the performance of duties as a member of said department. Whenever the superintendent shall determine that any disabled member is ineligible to receive any of the aforesaid benefits at public expense the superintendent shall, at the request of such disabled member, refer such matter to the retirement board for hearing and final decision.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker of the House of Delegates

The within .................................................................. this the .............
day of ............................................., 1989.

[Signature]
Governor