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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1989



ENROLLED

HOUSE BILL No. 2757

(By ~~MR.~~ Del. Whitt & Helrick)



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.**

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

CHAPTER 15. PUBLIC SAFETY.**ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.****§15-2-29. Awards and benefits for disability—Incurred in performance of duty.**

1 Any member of said department who has been or shall
2 become physically or mentally permanently disabled by
3 injury, illness or disease resulting from any occupational
4 risk or hazard inherent in or peculiar to the services

5 required of members of said department and incurred
6 pursuant to or while such member was or shall be
7 engaged in the performance of his duties as a member
8 of said department shall, if, in the opinion of the
9 retirement board, he is by reason of such cause unable
10 to perform adequately the duties required of him as a
11 member of said department, be retired from active
12 service by the retirement board and thereafter such
13 member shall be entitled to receive annually and there
14 shall be paid to such member from the death, disability
15 and retirement fund in equal monthly installments
16 during the natural lifetime of such member or until
17 such disability shall sooner terminate, one or the other
18 of two amounts, whichever is greater:

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

25 (2) The sum of six thousand dollars.

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

43 The superintendent is authorized to expend moneys
44 from funds appropriated for the department in payment

45 of medical, surgical, laboratory, X-ray, hospital,
46 ambulance and dental expenses and fees, and reasonable
47 costs and expenses incurred in purchase of artificial
48 limbs and other approved appliances which may be
49 reasonably necessary for any member of said
50 department who has or shall become temporarily,
51 permanently or totally disabled by injury, illness or
52 disease resulting from any occupational risk or hazard
53 inherent in or peculiar to the service required of
54 members of said department and incurred pursuant to
55 or while such member was or shall be engaged in the
56 performance of duties as a member of said department.
57 Whenever the superintendent shall determine that any
58 disabled member is ineligible to receive any of the
59 aforesaid benefits at public expense the superintendent
60 shall, at the request of such disabled member, refer such
61 matter to the retirement board for hearing and final
62 decision.

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

Frederick Berken
.....
Chairman Senate Committee

J. L. Satter
.....
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Todd C. Miller
.....
Clerk of the Senate

Donald A. Kopp
.....
Clerk of the House of Delegates

Sam D. Tucker
.....
President of the Senate

[Signature]
.....
Speaker of the House of Delegates

The within this the
day of, 1989.

.....
Governor

PRESENTED TO
GOVERN

Date 4/20/89

Time 10:31