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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2001



ENROLLED

COMMITTEE SUBSTITUTE FOR House Bill No. 2777

(By Delegates Campbell, J. Smith, Hubbard and Harrison)



Passed April 12, 2001

In Effect Ninety Days from Passage

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COMMITTEE SUBSTITUTE

FOR

H. B. 2777

(BY DELEGATES CAMPBELL, J. SMITH, HUBBARD AND HARRISON)

[Passed April 12, 2001; in effect ninety days from passage.]

AN ACT to amend and reenact sections two and twenty-four, article fourteen-d, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to technical revisions and to clarify retirement membership of a retired deputy sheriff who is later elected sheriff.

Be it enacted by the Legislature of West Virginia:

That sections two and twenty-four, article fourteen-d, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-2. Definitions.

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

3 (a) "Accrued benefit" means on behalf of any member two
4 and one-quarter percent of the member's final average salary
5 multiplied by the member's years of credited service. A
6 member's accrued benefit may not exceed the limits of Section
7 415 of the Internal Revenue Code and is subject to the provi-
8 sions of section nine-a of this article.

9 (b) "Accumulated contributions" means the sum of all
10 amounts deducted from the compensation of a member, or paid
11 on his or her behalf pursuant to article ten-c, chapter five of this
12 code, either pursuant to section seven of this article or section
13 twenty-nine, article ten, chapter five of this code as a result of
14 covered employment together with regular interest on the
15 deducted amounts.

16 (c) "Active military duty" means full-time active duty with
17 any branch of the armed forces of the United States, including
18 service with the national guard or reserve military forces when
19 the member has been called to active full-time duty and has
20 received no compensation during the period of that duty from
21 any board or employer other than the armed forces.

22 (d) "Actuarial equivalent" means a benefit of equal value
23 computed upon the basis of the mortality table and interest rates
24 as set and adopted by the retirement board in accordance with
25 the provisions of this article.

26 (e) "Annual compensation" means the wages paid to the
27 member during covered employment within the meaning of
28 Section 3401(a) of the Internal Revenue Code, but determined
29 without regard to any rules that limit the remuneration included
30 in wages based upon the nature or location of employment or
31 services performed during the plan year plus amounts excluded
32 under Section 414(h)(2) of the Internal Revenue Code and less

33 reimbursements or other expense allowances, cash or noncash
34 fringe benefits or both, deferred compensation and welfare
35 benefits. Annual compensation for determining benefits during
36 any determination period may not exceed one hundred fifty
37 thousand dollars as adjusted for cost of living in accordance
38 with Section 401(a)(17)(B) of the Internal Revenue Code.

39 (f) "Annual leave service" means accrued annual leave.

40 (g) "Annuity starting date" means the first day of the first
41 period for which an amount is received as an annuity by reason
42 of retirement. For purposes of this subsection, if retirement
43 income payments commence after the normal retirement age,
44 "retirement" means the later of the last day the member worked
45 in covered employment and the normal retirement age.

46 (h) "Base salary" means a member's cash compensation
47 exclusive of overtime from covered employment during the last
48 twelve months of employment. Until a member has worked
49 twelve months, annualized base salary is used as base salary.

50 (i) "Board" means the consolidated public retirement board
51 created pursuant to article ten-d, chapter five of this code.

52 (j) "County commission" has the meaning ascribed to it in
53 section one, article one, chapter seven of this code.

54 (k) "Covered employment" means either: (1) Employment
55 as a deputy sheriff and the active performance of the duties
56 required of a deputy sheriff; or (2) the period of time which
57 active duties are not performed but disability benefits are
58 received under section fourteen or fifteen of this article; or (3)
59 concurrent employment by a deputy sheriff in a job or jobs in
60 addition to his or her employment as a deputy sheriff where
61 such secondary employment requires the deputy sheriff to be a
62 member of another retirement system which is administered by
63 the consolidated public retirement board pursuant to article ten-

64 d of chapter five of this code: *Provided*, That the deputy sheriff
65 contribute to the fund created in section six of this article the
66 amount specified as the deputy sheriff's contribution in section
67 seven of this article.

68 (l) "Credited service" means the sum of a member's years
69 of service, active military duty, disability service and annual
70 leave service.

71 (m) "Deputy sheriff" means an individual employed as a
72 county law-enforcement deputy sheriff in this state and as
73 defined by section two, article fourteen, chapter seven of this
74 code.

75 (n) "Dependent child" means either:

76 (1) An unmarried person under age eighteen who is:

77 (A) A natural child of the member;

78 (B) A legally adopted child of the member;

79 (C) A child who at the time of the member's death was
80 living with the member while the member was an adopting
81 parent during any period of probation; or

82 (D) A stepchild of the member residing in the member's
83 household at the time of the member's death; or

84 (2) Any unmarried child under age twenty-three:

85 (A) Who is enrolled as a full-time student in an accredited
86 college or university;

87 (B) Who was claimed as a dependent by the member for
88 federal income tax purposes at the time of member's death; and

89 (C) Whose relationship with the member is described in
90 subparagraph (A), (B) or (C), paragraph (1) of this subdivision.

91 (o) "Dependent parent" means the father or mother of the
92 member who was claimed as a dependent by the member for
93 federal income tax purposes at the time of the member's death.

94 (p) "Disability service" means service received by a
95 member, expressed in whole years, fractions thereof or both,
96 equal to one half of the whole years, fractions thereof, or both,
97 during which time a member receives disability benefits under
98 section fourteen or fifteen of this article.

99 (q) "Early retirement age" means age forty or over and
100 completion of twenty years of service.

101 (r) "Effective date" means the first day of July, one
102 thousand nine hundred ninety-eight.

103 (s) "Final average salary" means the average of the highest
104 annual compensation received for covered employment by the
105 member during any five consecutive plan years within the
106 member's last ten years of service. If the member did not have
107 annual compensation for the five full plan years preceding the
108 member's attainment of normal retirement age and during that
109 period the member received disability benefits under section
110 fourteen or fifteen of this article then "final average salary"
111 means the average of the monthly salary determined paid to the
112 member during that period as determined under section
113 seventeen of this article multiplied by twelve.

114 (t) "Fund" means the West Virginia deputy sheriff retire-
115 ment fund created pursuant to section six of this article.

116 (u) "Hour of service" means:

117 (1) Each hour for which a member is paid or entitled to
118 payment for covered employment during which time active
119 duties are performed. These hours shall be credited to the
120 member for the plan year in which the duties are performed;
121 and

122 (2) Each hour for which a member is paid or entitled to
123 payment for covered employment during a plan year but where
124 no duties are performed due to vacation, holiday, illness,
125 incapacity including disability, layoff, jury duty, military duty,
126 leave of absence, or any combination thereof, and without
127 regard to whether the employment relationship has terminated.
128 Hours under this paragraph shall be calculated and credited
129 pursuant to West Virginia division of labor rules. A member
130 will not be credited with any hours of service for any period of
131 time he or she is receiving benefits under section fourteen or
132 fifteen of this article; and

133 (3) Each hour for which back pay is either awarded or
134 agreed to be paid by the employing county commission,
135 irrespective of mitigation of damages. The same hours of
136 service shall not be credited both under paragraph (1) or (2) of
137 this subdivision and under this paragraph. Hours under this
138 paragraph shall be credited to the member for the plan year or
139 years to which the award or agreement pertains, rather than the
140 plan year in which the award, agreement or payment is made.

141 (v) "Member" means a person first hired as a deputy sheriff
142 after the effective date of this article, as defined in subsection
143 (r) of this section, or a deputy sheriff first hired prior to the
144 effective date and who elects to become a member pursuant to
145 section five or section seventeen of this article. A member shall
146 remain a member until the benefits to which he or she is
147 entitled under this article are paid or forfeited.

148 (w) "Monthly salary" means the portion of a member's
149 annual compensation which is paid to him or her per month.

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

159 (y) "Normal retirement age" means the first to occur of the
160 following:

161 (1) Attainment of age fifty years and the completion of
162 twenty or more years of service;

163 (2) While still in covered employment, attainment of at
164 least age fifty years and when the sum of current age plus years
165 of service equals or exceeds seventy years;

166 (3) While still in covered employment, attainment of at
167 least age sixty years and completion of five years of service; or

168 (4) Attainment of age sixty-two years and completion of
169 five or more years of service.

170 (z) "Partially disabled" means a member's inability to
171 engage in the duties of deputy sheriff by reason of any medi-
172 cally determinable physical or mental impairment that can be
173 expected to result in death or that has lasted or can be expected
174 to last for a continuous period of not less than twelve months.
175 A member may be determined partially disabled for the
176 purposes of this article and maintain the ability to engage in
177 other gainful employment which exists within the state but

178 which ability would not enable him or her to earn an amount at
179 least equal to two thirds of the average annual compensation
180 earned by all active members of this plan during the plan year
181 ending as of the most recent thirtieth day of June, as of which
182 plan data has been assembled and used for the actuarial
183 valuation of the plan.

184 (aa) "Public employees retirement system" means the West
185 Virginia public employee's retirement system created by article
186 ten, chapter five of this code.

187 (bb) "Plan" means the West Virginia deputy sheriff death,
188 disability and retirement plan established by this article.

189 (cc) "Plan year" means the twelve-month period commenc-
190 ing on the first day of July of any designated year and ending
191 the following thirtieth day of June.

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

195 (ee) "Retirement income payments" means the annual
196 retirement income payments payable under the plan.

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

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

202 (hh) "Totally disabled" means a member's inability to
203 engage in substantial gainful activity by reason of any medi-
204 cally determined physical or mental impairment that can be
205 expected to result in death or that has lasted or can be expected
206 to last for a continuous period of not less than twelve months.

207 For purposes of this subdivision:

208 (1) A member is totally disabled only if his or her physical
209 or mental impairment or impairments is so severe that he or she
210 is not only unable to perform his or her previous work as a
211 deputy sheriff but also cannot, considering his or her age,
212 education and work experience, engage in any other kind of
213 substantial gainful employment which exists in the state
214 regardless of whether: (A) The work exists in the immediate
215 area in which the member lives; (B) a specific job vacancy
216 exists; or (C) the member would be hired if he or she applied
217 for work.

218 (2) "Physical or mental impairment" is an impairment that
219 results from an anatomical, physiological or psychological
220 abnormality that is demonstrated by medically accepted clinical
221 and laboratory diagnostic techniques.

222 A member's receipt of social security disability benefits
223 creates a rebuttable presumption that the member is totally
224 disabled for purposes of this plan. Substantial gainful employ-
225 ment rebuts the presumption of total disability.

226 (ii) "Year of service." A member shall, except in his or her
227 first and last years of covered employment, be credited with
228 year of service credit based upon the hours of service performed
229 as covered employment and credited to the member during the
230 plan year based upon the following schedule:

231	Hours of Service	Year of Service Credited
232	Less than 500	0
233	500 to 999	1/3
234	1,000 to 1,499	2/3
235	1,500 or more	1

236 During a member's first and last years of covered employ-
237 ment, the member shall be credited with one twelfth of a year
238 of service for each month during the plan year in which the
239 member is credited with an hour of service. A member is not
240 entitled to credit for years of service for any time period during
241 which he or she received disability payments under section
242 fourteen or fifteen of this article. Except as specifically ex-
243 cluded, years of service include covered employment prior to
244 the effective date.

245 Years of service which are credited to a member prior to his
246 or her receipt of accumulated contributions upon termination of
247 employment pursuant to section thirteen of this article or
248 section thirty, article ten, chapter five of this code, shall be
249 disregarded for all purposes under this plan unless the member
250 repays the accumulated contributions with interest pursuant to
251 section twelve of this article or had prior to the effective date
252 made the repayment pursuant to section eighteen, article ten,
253 chapter five of this code.

254 (jj) "Required beginning date" means the first day of April
255 of the calendar year following the later of: (i) The calendar year
256 in which the member attains age seventy and one-half; or (ii)
257 the calendar year in which he or she retires or otherwise
258 separates from covered employment.

§7-14D-24. Service as sheriff.

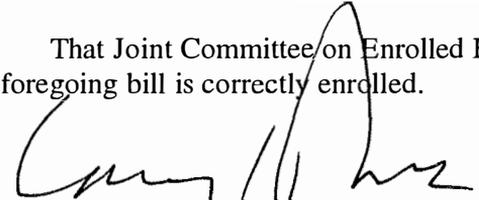
1 (a) Any active member who after the effective date of this
2 article is elected sheriff of a county in West Virginia may elect
3 to continue as a member in this plan by paying the amounts
4 required by section seven of this article. Upon the election,
5 service as a sheriff shall be treated as covered employment and
6 the sheriff is not entitled to any credit for that service under any
7 other retirement system of the state.

8 (b) Any member retired as a deputy sheriff under this plan
9 who, after the effective date of this article, is elected or ap-
10 pointed sheriff of a county in West Virginia, may elect to
11 suspend the payment of his or her annuity from this system and
12 again become a contributing member of this plan by paying the
13 amounts required by section seven of this article. Upon such
14 election, service as a sheriff shall be treated as covered employ-
15 ment, and the sheriff is not entitled to any credit for that period
16 of elected service under any other retirement system of the
17 state. At the end of his or her term as sheriff, the member
18 making such election shall have his or her annuity recalculated,
19 and shall be granted an adjustment to his or her previous
20 annuity to include the period of elected service.

21 (c) Any person, who before the effective date of this article
22 was elected sheriff of a county in West Virginia, and who,
23 immediately prior to being so elected sheriff, was a deputy
24 sheriff with at least twenty years of credited service under the
25 public employees retirement system, with at least sixteen of
26 those twenty years having been earned as a deputy sheriff, may
27 elect to become a member of this plan by paying the amounts
28 required by section seven of this article. Upon such election,
29 service shall be transferred from the public employees retire-
30 ment system pursuant to section eight of this article: *Provided,*
31 That any service as a sheriff shall be treated as covered employ-
32 ment under this article and the sheriff is not entitled to any
33 credit for that service as a sheriff or the prior service as a
34 deputy sheriff under any other retirement system of the state.
35 Persons making the election provided for in this subsection
36 shall do so within ten days of taking office as sheriff or within
37 ten days of the effective date of this provision.

Enr. Com. Sub. for H. B. 2777] 12

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



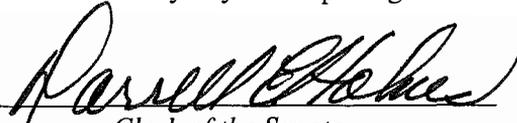
Chairman Senate Committee



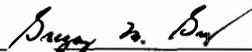
Chairman House Committee

Originating in the House.

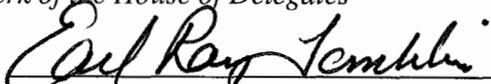
In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates



President of the Senate



Speaker of the House of Delegates

The within is approved this the 30th
day of April, 2001.



Governor

PRESENTED TO THE

GOVERNOR

Date 4/21/01

Time 2:08 pm