WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2004

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ENROLLED

House Bill No. 4453
(By Delegates Campbell, Craig, Frederick and Hall)

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Passed March 13, 2004

In Effect July 1, 2004
ENROLLED

H. B. 4453

(BY DELEGATES CAMPBELL, CRAIG, FREDERICK AND HALL)

[Passed March 13, 2004; in effect July 1, 2004.]

AN ACT to amend and reenact §7-14D-2, §7-14D-5, §7-14D-7, §7-14D-12, §7-14D-13, §7-14D-14, §7-14D-15, §7-14D-20, §7-14D-21 and §7-14D-23 of the code of West Virginia, 1931, as amended; and to further amend said code by adding thereto a new section, designated §7-14D-24a, all relating to benefits and responsibilities in the deputy sheriffs’ retirement system generally; providing for membership of certain persons not employed as a deputy when system initiated; changing method for determining contributions to the system’s fund; providing for calculation of contributions required upon reemployment as deputy sheriff; removing language providing for benefits upon reaching early retirement age; changing method for calculating retirement benefits; providing right of members to name a beneficiary in certain circumstances; providing for distribution of accumulated contributions to member’s estate in certain circumstances; limiting system loans to members; and providing for determining payment of benefits prior to, during and after deputy retiree returns to work as a deputy.

Be it enacted by the Legislature of West Virginia:
Enr. H. B. 4453]

That §7-14D-2, §7-14D-5, §7-14D-7, §7-14D-12, §7-14D-13, §7-14D-14, §7-14D-15, §7-14D-20, §7-14D-21 and §7-14D-23 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be further amended by adding thereto a new section, designated §7-14D-24a, all to read as follows:

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-2. Definitions.

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

(a) “Accrued benefit” means on behalf of any member two and one-quarter percent of the member’s final average salary multiplied by the member’s years of credited service. 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 nine-a of this article.

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

(c) “Active military duty” means full-time active duty with any branch of the armed forces of the United States, including service with the national guard or reserve military forces when the member has been called to active full-time duty 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 upon the basis of the mortality table and interest rates
as set and adopted by the retirement board in accordance with
the provisions of this article.

(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 upon 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 one hundred fifty
thousand dollars as adjusted for cost of living in accordance
with Section 401(a)(17)(B) of the Internal Revenue Code.

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

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

(h) “Base salary” means a member’s cash compensation
exclusive of overtime from covered employment during the last
twelve months of employment. Until a member has worked
twelve months, annualized base salary is used as base salary.

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

(j) “County commission” has the meaning ascribed to it in
section one, article one, chapter seven of this code.
(k) "Covered employment” means either: (1) Employment as a deputy sheriff and the active performance of the duties required of a deputy sheriff; or (2) the period of time which active duties are not performed but disability benefits are received under section fourteen or fifteen of this article; or (3) concurrent employment by a deputy sheriff in a job or jobs in addition to his or her employment as a deputy sheriff where the secondary employment requires the deputy sheriff to be a member of another retirement system which is administered by the consolidated public retirement board pursuant to article ten-d of chapter five of this code: Provided, That the deputy sheriff contribute to the fund created in section six of this article the amount specified as the deputy sheriff’s contribution in section seven of this article.

(l) “Credited service” means the sum of a member’s years of service, active military duty, disability service and annual leave service.

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

(n) “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
82  (D) A stepchild of the member residing in the member’s household at the time of the member’s death; or
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84  (2) Any unmarried child under age twenty-three:
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85  (A) Who is enrolled as a full-time student in an accredited college or university;
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88  (B) Who was claimed as a dependent by the member for federal income tax purposes at the time of the member’s death; and
90  (C) Whose relationship with the member is described in subparagraph (A), (B) or (C), paragraph (1) of this subdivision.
95  (o) “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.
95  (p) “Disability service” means service 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 section fourteen or fifteen of this article.
100  (q) “Early retirement age” means age forty or over and completion of twenty years of service.
102  (r) “Effective date” means the first day of July, one thousand nine hundred ninety-eight.
104  (s) “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. 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 section fourteen or fifteen of this article then “final average salary” means the average of the monthly salary determined paid to the member during that period as determined under section seventeen of this article multiplied by twelve.

(t) “Fund” means the West Virginia deputy sheriff retirement fund created pursuant to section six of this article.

(u) “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, illness, 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 paragraph 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 fourteen or fifteen of this article; and

(3) Each hour for which back pay is either awarded or agreed to be paid by the employing county commission, irrespective of mitigation of damages. The same hours of service shall not be credited both under paragraph (1) or (2) of this subdivision and under this paragraph. 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.
(v) “Member” means a person first hired as a deputy sheriff after the effective date of this article, as defined in subsection (r) of this section, or a deputy sheriff first hired prior to the effective date and who elects to become a member pursuant to section five or section seventeen of this article. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited.

(w) “Monthly salary” means the portion of a member’s annual compensation which is paid to him or her per month.

(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 service;

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

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

(4) Attainment of age sixty-two years and completion of five or more years of service.
“Partially disabled” means a member’s inability to engage in the duties of deputy sheriff by reason of any medically determinable 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. A member may be determined partially disabled for the purposes of this article and maintain the ability to engage in other gainful employment which exists within the state but which ability would not enable him or her to earn an amount at least equal to two thirds of the average annual compensation earned by all active members of this plan during the plan year ending as of the most recent thirtieth day of June, as of which plan data has been assembled and used for the actuarial valuation of the plan.

Public employees retirement system” means the West Virginia public employee’s retirement system created by article ten, chapter five of this code.

“Plan” means the West Virginia deputy sheriff death, disability and retirement plan established by this article.

“Plan year” means the twelve-month period commencing on the first day of July of any designated year and ending the following thirtieth day of June.

“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.

“Retirement income payments” means the annual retirement income payments payable under the plan.

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

(hh) “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 subdivision:

(1) A member is totally disabled only if his or her physical or mental impairment or impairments are so severe that he or she is not only unable to perform his or her previous work as a deputy sheriff 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.

(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.

A member’s receipt of social security disability benefits creates a rebuttable presumption that the member is totally disabled for purposes of this plan. Substantial gainful employment rebuts the presumption of total disability.

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

<table>
<thead>
<tr>
<th>Hours of Service</th>
<th>Year of Service Credited</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 500</td>
<td>0</td>
</tr>
<tr>
<td>500 to 999</td>
<td>1/3</td>
</tr>
<tr>
<td>1,000 to 1,499</td>
<td>2/3</td>
</tr>
<tr>
<td>1,500 or more</td>
<td>1</td>
</tr>
</tbody>
</table>

During a member’s first and last years of covered employment, the member shall be credited with one twelfth of a year of service for each month during the plan year in which the member is credited with an hour of service. A member is not entitled to credit for years of service for any time period during which he or she received disability payments under section fourteen or fifteen of this article. Except as specifically excluded, years of service include covered employment prior to the effective date.

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

(jj) “Required beginning date” means the first day of April of the calendar year following the later of: (i) The calendar year in which the member attains age seventy and one-half; or (ii)
§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 plan 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.

(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 the thirtieth day of January, one thousand nine hundred ninety-nine, 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 ten-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 the first day of July, one thousand
nine hundred ninety-eight, to the thirtieth day of January, one
thousand nine hundred ninety-nine, or who so elects during the
ten-day time period occurring immediately following the day
after the day the amendments made during the one thousand
nine hundred ninety-nine 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 section seven of this article
retroactive to the first day of July, one thousand nine hundred
ninety-eight. 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 subsequent termination of employment and
rehire.

(c) Any deputy sheriff who was employed as a deputy
sheriff prior to the effective date, 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
section, the member’s years of service and credited service
prior to the effective date 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 fund system pursuant to section thirty,
article ten, chapter five of this code; or (2) the accumulated
contributions returned to the member from the public employ-
ees retirement system have been repaid pursuant to section
thirteen of this article. 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. Each transferring deputy sheriff shall be
given credited service for the purposes of this article for all
covered employment transferred from the public employees
retirement system regardless of whether the credited service (as
that term is defined in section two, article ten, chapter five of
this code) was earned as a deputy sheriff. All service in the public employees retirement system accrued by a transferring deputy sheriff 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 covered service which is transferred from the public employees retirement system as that transferring deputy sheriff would have received from the public employees retirement system if the transfer had not occurred. In connection with each deputy sheriff receiving credit for prior employment provided in this subsection, a transfer from public employees retirement system to this plan shall be made pursuant to the procedures described in section eight of this article.

(d) Once made, the election made under 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 section seven of this article.

(e) Notwithstanding any other provisions of this article, any individual who is a leased employee shall not be 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.

§7-14D-7. Members’ contributions; employer contributions.

There shall be deducted from the monthly salary of each member and paid into the fund an amount equal to eight and one-half percent of his or her monthly salary. Any active member who has concurrent employment in an additional job
or jobs and the additional employment requires the deputy sheriff to be a member of another retirement system which is administered by the consolidated public retirement board pursuant to article ten-d, chapter five of this code shall contribute to the fund the sum of eight and one-half percent of his or her monthly salary earned as a deputy sheriff as well as the sum of eight and one-half percent of his or her monthly salary earned from any additional employment which additional employment requires the deputy sheriff to be a member of another retirement which is administered by the consolidated public retirement board pursuant to article ten-d, chapter five of this code. An additional amount shall be paid to the fund by the county commission of the county in which the member is employed in covered employment in an amount determined by the board: Provided, That in no year may the total of the contributions provided for in this section, to be paid by the county commission, exceed ten and one-half percent of the total payroll for the members in the employ of the county commission for the preceding fiscal year. If the board finds that the benefits provided by this article can be actually funded with a lesser contribution, then the board shall reduce the required member or employer contributions or both. The sums withheld each calendar month shall be paid to the fund no later than ten days following the end of the calendar month.

§7-14D-12. Annuity options.

Prior to the effective date of retirement, but not thereafter, a member may elect to receive retirement income payments in the normal form, or the actuarial equivalent of the normal form from the following options:

(a) Option A — Joint and Survivor Annuity. — A life annuity payable during the joint lifetime of the member and his or her beneficiary who is a natural person with an insurable interest in the member’s life. Upon the death of either the
member or his or her beneficiary, the benefit shall continue as
a life annuity to the survivor in an amount equal to fifty percent,
sixty-six and two-thirds percent, seventy-five percent or one
hundred percent of the amount paid while both were living as
selected by the member. If the retiring member is married, the
spouse shall sign a waiver of benefit rights if the beneficiary is
to be other than the spouse.

(b) **Option B — Contingent Joint and Survivor Annuity.** —
A life annuity payable during the joint lifetime of the member
and his or her beneficiary who must be a natural person with an
insurable interest in the member’s life. Upon the death of the
member, the benefit shall continue as a life annuity to the
beneficiary in an amount equal to fifty percent, sixty-six and
two-thirds percent, seventy-five percent or one hundred percent
of the amount paid while both were living as selected by the
member. If the beneficiary dies first, the monthly amount of
benefits may not be reduced, but shall be paid at the amount
that was in effect before the death of the beneficiary. If the
retiring member is married, the spouse shall sign a waiver of
benefit rights if the beneficiary is to be other than the spouse.

(c) **Option C — Ten Years Certain and Life Annuity.** — A
life annuity payable during the member’s lifetime but in any
event for a minimum of ten years. If the member dies before the
expiration of ten years, the remaining payments shall be made
to a designated beneficiary, if any, or otherwise to the mem-
ber’s estate.

(d) **Option D — Level Income Annuity.** — A life annuity
payable monthly in an increased amount “A” from the time of
retirement until the member is social security retirement age,
and then a lesser amount “B” payable for the member’s lifetime
thereafter, with these amounts computed actuarially to satisfy
the following two conditions:
(1) Actuarial equivalence. — The actuarial present value at the date of retirement of the member’s annuity if taken in the normal form must equal the actuarial present value of the term life annuity in amount “A” plus the actual present value of the deferred life annuity in amount “B”; and

(2) Level income. — The amount “A” equals the amount “B” plus the amount of the member’s estimated monthly social security primary insurance amount that would commence at the date amount “B” becomes payable. For this calculation, the primary insurance amount is estimated when the member applies for retirement, using social security law then in effect, using assumptions established by the board.

In the case of a member who has elected the options set forth in subdivisions (a) and (b) of this section, respectively, and whose beneficiary dies prior to the member’s death, the member may name an alternative beneficiary. If an alternative beneficiary is named within eighteen months following the death of the prior beneficiary, the benefit shall be adjusted to be the actuarial equivalent of the benefit the member is receiving just after the death of the member’s named beneficiary. If the election is not made until eighteen months after the death of the prior beneficiary, the amount shall be reduced so that it is only ninety percent of the actuarial equivalent of the benefit the member is receiving just after the death of the member’s named beneficiary.

§7-14D-13. Refunds to certain members upon discharge or resignation; deferred retirement; forfeitures.

(a) Any member who terminates covered employment and is not eligible to receive disability benefits under this article is, by written request filed with the board, entitled to receive from the fund the member’s accumulated contributions. Except as provided in subsection (b) of this section, upon withdrawal the
(b) Any member who withdraws accumulated contributions from either this plan or the public employees retirement system and thereafter becomes reemployed in covered employment shall not receive any credited service for the prior employment unless following his or her return to covered employment, the member redeposits in the fund the amount of the accumulated contributions submitted on salary earned while a deputy sheriff, together with interest on the accumulated contributions at the rate determined by the board from the date of withdrawal to the date of redeposit. Upon repayment he or she shall receive the same credit on account of his or her former service as if no refund had been made. The repayment shall be made in a lump sum within sixty months of the deputy sheriff’s reemployment or if later, within sixty months of the effective date of this article.

(c) Every member who completes sixty months of covered employment is eligible, upon cessation of covered employment, to either withdraw his or her accumulated contributions in accordance with subsection (a) of this section, or to choose not to withdraw his or her accumulated contribution and to receive retirement income payments upon attaining normal retirement age.

(d) Notwithstanding any other provision of this article, forfeitures under the plan shall not be applied to increase the benefits any member would otherwise receive under the plan.


Any member who after the effective date of this article and during covered employment: (A) Has been or becomes either totally or partially disabled by injury, illness or disease; and (B)
the disability is a result of an occupational risk or hazard inherent in or peculiar to the services required of members; or (C) the disability was incurred while performing law-enforcement functions during either scheduled work hours or at any other time; and (D) in the opinion of the board, the member is by reason of the disability unable to perform adequately the duties required of a deputy sheriff, is entitled to receive and shall be paid from the fund in monthly installments during the lifetime of the member, or if sooner until the member attains normal retirement age or until the disability sooner terminates, the compensation under either subdivision (a) or (b) of this section.

(a) If the member is totally disabled, the member shall receive ninety percent of his or her average full monthly compensation for the twelve-month contributory period preceding the member’s disability award, or the shorter period if the member has not worked twelve months.

(b) If the member is partially disabled, the member shall receive forty-five percent of his or her average full monthly compensation for the twelve-month contributory period preceding the member’s disability award, or the shorter period if the member has not worked twelve months.

If the member remains totally disabled until attaining sixty-five years of age, the member shall then receive the retirement benefit provided for in sections eleven and twelve of this article.

If the member remains partially disabled until attaining sixty years of age the member shall then receive the retirement benefit provided for in sections eleven and twelve of this article.

§7-14D-15. Same — Due to other causes.
(a) Any member who after the effective date of this article and during covered employment: (1) Has been or becomes totally or partially disabled from any cause other than those set forth in section fourteen of this article and not due to vicious habits, intemperance or willful misconduct on his or her part; and (2) in the opinion of the board, he or she is by reason of the disability unable to perform adequately the duties required of a deputy sheriff, is entitled to receive and shall be paid from the fund in monthly installments during the lifetime of the member, or if sooner until the member attains normal retirement age or until the disability sooner terminates the compensation set forth in, either subsection (b) or (c) of this section.

(b) If the member is totally disabled, he or she shall receive sixty-six and two-thirds percent of his or her average full monthly compensation for the twelve-month contributory period preceding the disability award, or the shorter period, if the member has not worked twelve months.

(c) If the member is partially disabled, he or she shall receive thirty-three and one-third percent of his or her average full monthly compensation for the twelve-month contributory period preceding the disability award, or the shorter period, if the member has not worked twelve months.

(d) If the member remains disabled until attaining sixty years of age, then the member shall receive the retirement benefit provided for in sections eleven and twelve of this article.

(e) The board shall propose legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code concerning member disability payments so as to ensure that the payments do not exceed one hundred percent of the average current salary in any given county for the position last held by the member.
(1) Actuarial equivalence. — The actuarial present value at the date of retirement of the member’s annuity if taken in the normal form must equal the actuarial present value of the term life annuity in amount “A” plus the actual present value of the deferred life annuity in amount “B”; and

(2) Level income. — The amount “A” equals the amount “B” plus the amount of the member’s estimated monthly social security primary insurance amount that would commence at the date amount “B” becomes payable. For this calculation, the primary insurance amount is estimated when the member applies for retirement, using social security law then in effect, using assumptions established by the board.

In the case of a member who has elected the options set forth in subdivisions (a) and (b) of this section, respectively, and whose beneficiary dies prior to the member’s death, the member may name an alternative beneficiary. If an alternative beneficiary is named within eighteen months following the death of the prior beneficiary, the benefit shall be adjusted to be the actuarial equivalent of the benefit the member is receiving just after the death of the member’s named beneficiary. If the election is not made until eighteen months after the death of the prior beneficiary, the amount shall be reduced so that it is only ninety percent of the actuarial equivalent of the benefit the member is receiving just after the death of the member’s named beneficiary.

§7-14D-13. Refunds to certain members upon discharge or resignation; deferred retirement; forfeitures.

(a) Any member who terminates covered employment and is not eligible to receive disability benefits under this article is, by written request filed with the board, entitled to receive from the fund the member’s accumulated contributions. Except as provided in subsection (b) of this section, upon withdrawal the
member shall forfeit his or her accrued benefit and cease to be a member.

(b) Any member who withdraws accumulated contributions from either this plan or the public employees retirement system and thereafter becomes reemployed in covered employment shall not receive any credited service for the prior employment unless following his or her return to covered employment, the member redeposits in the fund the amount of the accumulated contributions submitted on salary earned while a deputy sheriff, together with interest on the accumulated contributions at the rate determined by the board from the date of withdrawal to the date of redeposit. Upon repayment he or she shall receive the same credit on account of his or her former service as if no refund had been made. The repayment shall be made in a lump sum within sixty months of the deputy sheriff’s reemployment or if later, within sixty months of the effective date of this article.

(c) Every member who completes sixty months of covered employment is eligible, upon cessation of covered employment, to either withdraw his or her accumulated contributions in accordance with subsection (a) of this section, or to choose not to withdraw his or her accumulated contribution and to receive retirement income payments upon attaining normal retirement age.

(d) Notwithstanding any other provision of this article, forfeitures under the plan shall not be applied to increase the benefits any member would otherwise receive under the plan.


Any member who after the effective date of this article and during covered employment: (A) Has been or becomes either totally or partially disabled by injury, illness or disease; and (B)
the disability is a result of an occupational risk or hazard inherent in or peculiar to the services required of members; or (C) the disability was incurred while performing law-enforcement functions during either scheduled work hours or at any other time; and (D) in the opinion of the board, the member is by reason of the disability unable to perform adequately the duties required of a deputy sheriff, is entitled to receive and shall be paid from the fund in monthly installments during the lifetime of the member, or if sooner until the member attains normal retirement age or until the disability sooner terminates, the compensation under either subdivision (a) or (b) of this section.

(a) If the member is totally disabled, the member shall receive ninety percent of his or her average full monthly compensation for the twelve-month contributory period preceding the member’s disability award, or the shorter period if the member has not worked twelve months.

(b) If the member is partially disabled, the member shall receive forty-five percent of his or her average full monthly compensation for the twelve-month contributory period preceding the member’s disability award, or the shorter period if the member has not worked twelve months.

If the member remains totally disabled until attaining sixty-five years of age, the member shall then receive the retirement benefit provided for in sections eleven and twelve of this article.

If the member remains partially disabled until attaining sixty years of age the member shall then receive the retirement benefit provided for in sections eleven and twelve of this article.

§7-14D-15. Same — Due to other causes.
(a) Any member who after the effective date of this article and during covered employment: (1) Has been or becomes totally or partially disabled from any cause other than those set forth in section fourteen of this article and not due to vicious habits, intemperance or willful misconduct on his or her part; and (2) in the opinion of the board, he or she is by reason of the disability unable to perform adequately the duties required of a deputy sheriff, is entitled to receive and shall be paid from the fund in monthly installments during the lifetime of the member, or if sooner until the member attains normal retirement age or until the disability sooner terminates the compensation set forth in, either subsection (b) or (c) of this section.

(b) If the member is totally disabled, he or she shall receive sixty-six and two-thirds percent of his or her average full monthly compensation for the twelve-month contributory period preceding the disability award, or the shorter period, if the member has not worked twelve months.

(c) If the member is partially disabled, he or she shall receive thirty-three and one-third percent of his or her average full monthly compensation for the twelve-month contributory period preceding the disability award, or the shorter period, if the member has not worked twelve months.

(d) If the member remains disabled until attaining sixty years of age, then the member shall receive the retirement benefit provided for in sections eleven and twelve of this article.

(e) The board shall propose legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code concerning member disability payments so as to ensure that the payments do not exceed one hundred percent of the average current salary in any given county for the position last held by the member.
§7-14D-20. Additional death benefits and scholarships — Dependent children.

(a) In addition to the spouse death benefits in sections eighteen and nineteen of this article, the surviving spouse is entitled to receive and there shall be paid to the spouse one hundred dollars monthly for each dependent child.

(b) If the surviving spouse dies or if there is no surviving spouse, the fund shall pay monthly to each dependent child a sum equal to one fourth of the surviving spouse’s entitlement under either section nineteen or twenty of this article. If there is neither a surviving spouse nor a dependent child, the fund shall pay in equal monthly installments to the dependent parents of the deceased member during their joint lifetimes a sum equal to the amount which a surviving spouse, without children, would have received: Provided, That when there is only one dependent parent surviving, that parent is entitled to receive during his or her lifetime one-half the amount which both parents, if living, would have been entitled to receive: Provided, however, That if there is no surviving spouse, dependent child, nor dependent parent of the deceased member the accumulated contributions shall be paid to a named beneficiaries: Provided, further, That if there is no surviving spouse, dependent child, nor any named beneficiary or beneficiaries then the accumulated contributions shall be paid to the estate of the deceased member.

(c) Any person qualifying as a dependent child under this, in addition to any other benefits due under this or other sections of this article, is entitled to receive a scholarship to be applied to the career development education of that person. This sum, up to but not exceeding six thousand dollars per year, shall be paid from the fund to any university or college in this state or to any trade or vocational school or other entity in this state
approved by the board, to offset the expenses of tuition, room
and board, books, fees or other costs incurred in a course of
study at any of these institutions so long as the recipient makes
application to the board on an approved form and under such
rules as the board may provide, and maintains scholastic
eligibility as defined by the institution or the board. The board
may propose legislative rules for promulgation in accordance
with article three, chapter twenty-nine-a of this code which
define age requirements, physical and mental requirements,
scholastic eligibility, disbursement methods, institutional
qualifications and other requirements as necessary and not
inconsistent with this section.


Any member who dies as a result of any service related
illness or injury after the effective date is entitled to a lump sum
burial benefit of five thousand dollars. If the member is
married, the burial benefit shall be paid to the member’s
spouse. If the member is not married, the burial benefit shall be
paid to the member’s estate for the purposes of paying burial
expenses, settling the member’s final affairs, or both. Any
unspent balance shall be distributed as a part of the member’s
estate.

§7-14D-23. Loans to members.

(a) A member who is not yet receiving disability or
retirement income benefits from the plan may borrow from the
plan no more than one time in any year an amount up to one
half of his or her accumulated contributions, but not less than
five hundred dollars nor more than eight thousand dollars:
Provided, That the maximum amount of any loan shall not
exceed the lesser of the following: (1) Eight thousand dollars;
or (2) fifty percent of his or her accumulated contributions. No
member is eligible for more than one outstanding loan at any
time. No loan may be made from the plan if the board determines that the loans constitute more than fifteen percent of the amortized cost value of the assets of the plan as of the last day of the preceding plan year. The board may discontinue the loans any time it determines that cash flow problems might develop as a result of the loans. Each loan shall be repaid through monthly installments over periods of six through sixty months and carry interest on the unpaid balance and an annual effective interest rate that is two hundred basis points higher than the most recent rate of interest used by the board for determining actuarial contributions levels: Provided, however, That interest charged shall be commercially reasonable in accordance with the provisions of section 72(p)(2) of the Internal Revenue Code and federal regulations issued thereunder. Monthly loan payments shall be calculated to be as nearly equal as possible with all but the final payment being an equal amount. An eligible member may make additional loan payments or pay off the entire loan balance at any time without incurring any interest penalty. At the member’s option, the monthly loan payment may include a level premium sufficient to provide declining term insurance with the plan as beneficiary to repay the loan in full upon the member’s death. If a member declines the insurance and dies before the loan is repaid, the unpaid balance of the loan shall be deducted from the lump sum insurance benefits payable under section twenty-one of this article.

(b) A member with an unpaid loan balance who wishes to retire may have the loan repaid in full by accepting retirement income payments reduced by deducting from the actuarial reserve for the accrued benefit the amount of the unpaid balance and then converting the remaining of the reserve to a monthly pension payable in the form of the annuity desired by the member.
(c) The entire unpaid balance of any loan, and interest due thereon, shall at the option of the retirement board become due and payable without further notice or demand upon the occurrence with respect to the borrowing member of any of the following events of default: (1) Any payment of principal and accrued interest on a loan remains unpaid after the same become due and payable under the terms of the loan or after such grace period as may be established in the discretion of the retirement board; (2) the borrowing member attempts to make an assignment for the benefit of creditors of his or her benefit under the retirement system; or (3) any other event of default set forth in rules promulgated by the board pursuant to the authority granted in section one, article ten-d, chapter five of this code: Provided, That any offset of an unpaid loan balance shall be made only at such time as the member is entitled to receive a distribution under the plan.

(d) Loans shall be evidenced by such form of obligations and shall be made upon such additional terms as to default, prepayment, security, and otherwise as the retirement board may determine.

(e) Notwithstanding anything herein to the contrary, the loan program authorized by this section shall comply with the provisions of section 72(p)(2) and section 401 of the Internal Revenue Code and the federal regulations issued thereunder. The retirement board is authorized to: (a) Apply and construe the provisions of this section and administer the plan loan program in such a manner as to comply with the provisions of sections 72(p)(2) and section 401 of the Internal Revenue Code; (b) adopt plan loan policies or procedures consistent with these federal law provisions; and (c) take such actions as it deems necessary or appropriate to administer the plan loan program created hereunder in accordance with these federal law provisions. The retirement board is further authorized in connection with the plan loan program to take any actions that may at any
time be required by the Internal Revenue Service regarding compliance with the requirements of section 72(p)(2) or section 401 of the Internal Revenue Code, notwithstanding any provision in this article to the contrary.

§7-14D-24a. Return to covered employment by retired member.

The annuity of any member who retires under the provisions of this article and who resumes service in covered employment shall be suspended while the member continues in covered employment. The monthly annuity payment for the month in which the service resumes shall be pro-rated to the date of commencement of service, and the member shall again become a contributing member during resumption of service. At the conclusion of resumed service in covered employment the member shall have his or her annuity recalculated to take into account the entirety of service in covered employment.
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 July 1, 2004.

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 __th

day of ___, 2004.

Governor
PRESENTED TO THE GOVERNOR

Date 4/2/04

Time 2:15 pm